

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 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. 9-1-1 SERVICE--STANDARDS

1 TAC §251.2

The Commission on State Emergency Communications (CSEC) adopts, in Title 1, Part 12, Chapter 251 of the Texas Administrative Code, amendments to rule §251.2 concerning Changes to 9-1-1 Service Arrangements. The rule is adopted without changes to the proposed text as published in the December 5, 2025 issue of the *Texas Register* (50 TexReg 7783) and will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

The primary purpose of the amendment is to address the use of Next Generation 9-1-1 systems and technologies to temporarily route 911 calls to a different emergency service provider or public safety answering point (PSAP) based on the caller's location using geographic coordinates and other information obtained by geographic information system (GIS) technology.

PUBLIC COMMENT

The 30-day comment period ended on January 5, 2026. During this period, CSEC received no comments on the proposed amendments.

STATEMENT OF AUTHORITY

The amended section is proposed pursuant to Health and Safety Code §§771.051, which establishes CSEC as the state's authority on emergency communications and, among other directives, charges CSEC with administering the implementation of statewide 9-1-1 service; 771.055, which, among other things, requires each regional planning commission to develop a regional plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves, including a description of how 9-1-1 service is to be administered; and 771.056, which requires submission of a regional plan to the commission for approval or disapproval; and Title 1 Texas Administrative Code, Part 12, Chapter 251, 9-1-1 Service--Standards.

No other statute, article, or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 29, 2026.

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Kenny Moreland

General Counsel

Commission on State Emergency Communications

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CHAPTER 252. ADMINISTRATION

1 TAC §§252.2, 252.3, 252.5 - 252.9

The Commission on State Emergency Communications (CSEC) adopts, in Title 1, Part 12, Chapter 252 of the Texas Administrative Code, amendments to rules 252.2 concerning Purchase of Goods and Services: Historically Underutilized Businesses, 252.3 concerning State Employee Sick and Family Leave Pools, 252.5 concerning Employee Training, 252.6 concerning Wireless Service Fee Proportional Distribution, 252.7 concerning Definitions, 252.8 concerning Emergency Communications Advisory Committee, and 252.9 concerning Liability Protection of NG9-1-1 Service Providers.

These amendments are adopted without changes to the proposed text as published in the December 5, 2025, issue of the *Texas Register* (50 TexReg 7784). The amended rules will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

The primary purposes of the amendments are to update the rules to reduce inefficiency, be more consistent with relevant statutes, update the agency's procedures, reflect current terminology in the industry, and improve clarity.

PUBLIC COMMENT

The 30-day comment period ended on January 5, 2026. During this period, CSEC received comments from one interested party, the Texas 9-1-1 Alliance, on certain proposed amendments to Rule 252.8. The Alliance opposes the proposed amendments to Subsections (c) and (e) of Rule 252.8 that would make CSEC's Executive Director a voting member of the Emergency Communications Advisory Committee (Committee) with a term that does not expire.

Comment: The current rule faithfully implements the relevant statute establishing the Committee's membership.

Response: The current rule sets the Committee's membership at two voting representatives each from a regional planning commission (RPC); an Emergency Communications District (ECD), as that term is defined by Health and Safety Code § 771.001(3)(A); and an ECD, as that term is defined by Health and Safety Code § 771.001(3)(B). It also makes the Executive

Director an ex-officio, non-voting member. The relevant statute is Health and Safety Code Section 771.0511(d), which states the membership of the Committee "must include *at least*: (1) one representative from a [RPC]; (2) one representative from an [ECD], as that term is defined by Section 771.001(3)(A); and (3) one representative from an [ECD], as that term is defined by Section 771.001(3)(B)." (Emphasis added.) This comment ignores that the Legislature included the words "at least" before enumerating the three minimum members. CSEC is given clear authority to appoint additional members, which the Commission has previously done by appointing an additional member to represent each of the three categories of entities that were only given one representative under statute. Criteria for appointing members of the Committee is addressed in Health and Safety Code § 771.0511(e), as discussed below. Therefore, adding CSEC's Executive Director as a voting member is consistent with the relevant statute that establishes the Committee's minimum membership.

Comment: CSEC did not consult with RPCs and ECDs as required by statute before appointing CSEC's Executive Director as a voting member.

Response: Health and Safety Code § 771.0511(e) states, in part, "In appointing members of an advisory committee, the commission shall consult with regional planning commissions and emergency communication districts throughout the state." CSEC believes the appropriate reading of this requirement is for the Commission to consult the respective entities when appointing a position to represent that entity's interest. It would be illogical to consult an ECD on an appointment of a member to represent the interests of an RPC. In any event, the proposed amendment of Rule 252.8 that would appoint CSEC's Executive Director as a voting member was provided on the agency's website prior to an open meeting, discussed at an open meeting prior to publication in the *Texas Register*, and presented for formal comment for 30 days by its eventual publication. The Alliance availed itself of the opportunity to submit comments. Adding CSEC's Executive Director with these opportunities to provide input satisfies the statutory requirement to consult RPCs and ECDs, if in fact it does apply to this circumstance.

Comment: This change will erode the Committee's independence and ability to provide unbiased recommendations to the Commission.

Response: The Alliance makes several references to the Committee's independence, despite the fact that no part of the enabling statute suggests the Committee should be an independent body. Notwithstanding, the proposed change would simply give CSEC's Executive Director a single vote in a 7-member body. At most, this vote would represent a tie-breaker, rather than allow a possible tie if the vote of the current composition was split. To the extent the Committee benefits the Commission in providing independent perspective, a single vote would not dictate the Committee's actions such that any independence would be eroded. The argument that the Committee's current composition somehow provides an independent, unbiased input, however, ignores the reality that each member represents its own membership. Each member's representation informs and influences the member's actions on the Committee. CSEC's Executive Director would be no different. Adding CSEC's Executive Director as a voting member to represent the state's authority on emergency communications does not impede the Committee's narrow purpose of assisting the Commission to coordinate the development, implementation, and management of an inter-

connected, state-level emergency services Internet Protocol network, also known as an ESInet.

Comment: Giving CSEC's Executive Director a permanent seat on the Committee as a voting member will almost inevitably make CSEC's Executive Director the dominant, controlling voice of the Committee.

Response: Emphasizing the lack of term limit for CSEC's Executive Director voting position on the Committee is misleading. The RPCs and ECDs all have permanent representation on the Committee as well. Because their members represent multiple entities that make up each group, it is logical for the term of the individual representing each group to be term-limited so that a different entity within the group may be represented by a succeeding representative. CSEC's Executive Director only represents CSEC. Hence, there is no need for a term limit for the position on the Committee. Notwithstanding, one vote in a seven-member body cannot be a "dominant, controlling voice" simply by virtue of the math. A four-member majority would be needed on an issue that the Committee is not in unanimous agreement on. A single vote cannot control. Nor does the duration of a member's position on the Committee have a bearing on the strength of its vote or its informal influence. Adding CSEC's Executive Director as a voting member, regardless of term limit, will not make that position a dominant or controlling voice.

Comment: CSEC's Executive Director serving as a voting member is contrary to the Committee's purpose and intended function as an outside, independent voice.

Response: The Alliance incorrectly cites to Subsection 252.8(j) in describing the Committee's purpose, but that provision merely affirms that the Committee is an "advisory committee" for the application of open meetings laws under Government Code Ch. 551. The actual purpose of the Committee is clearly stated in Health and Safety Code § 771.0511(b)-(c): to assist CSEC with coordinating the development, implementation, and management of an interconnected, state-level emergency services Internet Protocol network. Subsection 252.8(a) reiterates this directive under a clear heading: Purpose. This purpose says nothing of outside independence. On the contrary, the purpose laid out in statute speaks of working with CSEC. An argument that the Committee must be "an outside, independent voice" to fulfill its purpose is not based on the text of the statute or the current rule. Nor must an advisory body exclude from its membership the body being advised. The very committee the Alliance later points out as statutorily requiring an agency's Executive Director to be a voting member, the Texas Electricity Supply Chain Security and Mapping Committee, is established Texas Utilities Code Sec. 38.202 as an advisory committee that is not be subject to Government Code Ch. 551. Adding CSEC's Executive Director as a voting member is consistent with the Committee's purpose and function as stated in statute.

Comment: The legislature's omission of CSEC's Executive Director in Health and Safety Code Sec. 771.0511(d) creates a strong presumption that the Committee should operate with only members who do not represent CSEC because the Legislature knows how to speak clearly to effectuate that end.

Response: This comment points to part of the text while ignoring the whole. Certainly the Legislature knew it could list CSEC's Executive Director among the minimum members. Likewise, the Legislature knew that using the words "must include at least" left the Commission open to appoint additional members. A more revealing omission is the Legislature's decision not to

require that additional members be representatives for specific groups as it did for the prescribed minimum membership. On the contrary, the Legislature only prescribed the minimum qualifications for additional members in Health and Safety Code Sec. 771.0511(e), stating that CSEC shall "ensure that each member of the advisory committee has appropriate training, experience, and knowledge in 9-1-1 systems and network management to assist in the implementation and operation of a complex network." Adding CSEC's Executive Director, who meets the requisite criteria in Health and Safety Code Sec. 771.0511(e), as a voting member is consistent with the statutory language when read in full.

Comment: If CSEC implements changes to Subsections (c) and (e) of Rule 252.8 as proposed, then the Alliance proposes also adding the Alliance's then-existing chairman or designee as an additional voting member to balance the addition of CSEC's Executive Director.

Response: CSEC identified the benefit of the amendment to Subsections (c) and (e) of Rule 252.8 as proposed as allowing the Executive Director to play a more active role as a participant and to have a part in decision-making. The alternative proposal does not accomplish this same benefit. Further, if balancing influences were a desire, the alternative proposal would create more imbalance by giving a third representative for ECDs as that term is defined by Health and Safety Code § 771.001(3)(B), while the other two enumerated groups- RPCs and ECDs as that term is defined by Health and Safety Code § 771.001(3)(A)- remain with only two representatives each. There is no need to add an additional voting member to balance CSEC's Executive Director as proposed in the alternative.

STATEMENT OF AUTHORITY

The amended sections are authorized pursuant to Health and Safety Code §§771.051, which establishes CSEC as the state's authority on emergency communications and, among other directives, charges CSEC with administering the implementation of statewide 9-1-1 service; 771.0511, which authorizes CSEC to appoint the Emergency Communications Advisory Committee; 771.053, which limits liability for certain 9-1-1 service providers; and 771.0711(c), which directs CSEC to distribute to each emergency communication district that does not participate in the state system a portion of the money that bears the same proportion to the total amount collected that the population of the area served by the district bears to the population of the state; and Government Code §§ 656.048, which requires a state agency to adopt rules relating to: (1) the eligibility of the agency's administrators and employees for training and education supported by the agency; and (2) the obligations assumed by the administrators and employees on receiving the training and education; 661.002, which requires a state agency to adopt rules and prescribe procedures relating to the operation of the agency sick leave pool; and 2161.003, which require a state agency to adopt the comptroller's rules under § 2161.002 as the agency's own rules.

CROSS-REFERENCE TO STATUTE

The adopted amendment to Rule 252.9 affects Health and Safety Code § 771.053(a). No other statute, article, or code is affected by the adoptions.

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

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

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1 TAC §252.4

The Commission on State Emergency Communications (CSEC) adopts, in Title 1, Part 12, Chapter 252 of the Texas Administrative Code, the repeal of rule §252.4 concerning charges for open records requests. The repeal is adopted without changes to the proposed text as published in the December 5, 2025 issue of the *Texas Register* (50 TexReg 7791). The rule will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

This repeal will remove a rule that is unnecessary because the requirements for imposing charges for open records requests are governed by the rules adopted by the Texas Office of the Attorney General in Title 1, Part 3, Chapter 70 of the Texas Administrative Code pursuant to the directive in Texas Government Code §552.262.

Statute directs the attorney general to adopt rules for use by each governmental body and states such rules shall be used by each governmental body in determining charges for providing copies of public information and in determining the charge, deposit, or bond required for making public information that exists in a paper record available for inspection, except to the extent that other law provides for charges for specific kinds of public information. There is no requirement for a state agency to adopt these rules.

PUBLIC COMMENT

The 30-day comment period ended on January 5, 2026. During this period, CSEC received no comments on the proposed repeal.

STATEMENT OF AUTHORITY

The proposed repeal is authorized pursuant to Health and Safety Code §771.051, which establishes CSEC as the state's authority on emergency communications and, among other directives, charges CSEC with administering the implementation of statewide 9-1-1 service; Government Code §552.262, which requires the attorney general to adopt rules for use by each governmental body, as well as requires each governmental body to use such rules, in determining charges for providing copies of public information under Government Code Chapter 552, subchapter F and in determining the charge, deposit, or bond required for making public information that exists in a paper record available for inspection as authorized by Government Code Sections 552.271(c) and (d); and Texas Administrative Code Title 1, Part 3, Chapter 70, which the attorney general adopted to provide rules for costs of copies of public information.

CROSS-REFERENCE TO STATUTE

No other statute, article, or code is affected by the adoption.

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

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CHAPTER 253. PRACTICE AND PROCEDURE

1 TAC §§253.1, 253.3 - 253.5

The Commission on State Emergency Communications (CSEC) adopts, in Title 1, Part 12, Chapter 253 of the Texas Administrative Code, amendments to §253.1 concerning Petitions for Rulemaking before the Commission, §253.3 concerning Protest Procedures, §253.4 concerning Negotiated Rulemaking and Alternative Dispute Resolution, and §253.5 concerning Enhanced Contract and Performance Monitoring.

These amendments are adopted without changes to the proposed text as published in the December 5, 2025, issue of the *Texas Register* (50 TexReg 7792). The amended rules will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

The primary purposes of the amendments are to update, simplify, and clarify the agency's procedures regarding petitions for rulemaking, protest procedures, negotiated rulemaking, and enhanced contract and performance monitoring.

PUBLIC COMMENT

The 30-day comment period ended on January 5, 2026. During this period, CSEC received no comments on the proposed amendments.

STATEMENT OF AUTHORITY

The amendments are adopted pursuant to Health and Safety Code §§771.040, which requires CSEC to develop and implement a policy to encourage the use of: (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of CSEC rules; and (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code; 771.051, which establishes CSEC as the state's authority on emergency communications and, among other directives, charges CSEC with administering the implementation of statewide 9-1-1 service; and Texas Government Code §§2001.021, which requires a state agency by rule to prescribe the form for a petition for adoption of rules and the procedure for its submission, consideration, and disposition; 2009.051, which permits a state agency that adopts an alternative dispute resolution procedure to do so by rule; 2155.076, which requires each state agency by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues; and

2261.202, which requires a state agency to establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

No other statute, article, or code is affected by the adoptions.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The commissioner of insurance adopts new 28 TAC §5.4013 and amendments to §§5.4011, 5.4012, 5.4601, 5.4603, 5.4622, and 5.4642, concerning the adoption of the 2024 *International Residential Code* (IRC) and 2024 *International Building Code* (IBC), to update the building standards for structures that the Texas Windstorm Insurance Association (TWIA) insures. The new section and amendments are adopted with changes to the proposed text published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7505). The sections will be republished.

REASONED JUSTIFICATION. New §5.4013 and amendments to §§5.4011, 5.4012, 5.4601, 5.4603, 5.4622, and 5.4642 are necessary to adopt the 2024 IRC and IBC and make conforming changes to adopted forms. These amendments are also necessary to correct applicable dates for the 2006 and 2018 IRC and IBC because an emergency rule adopted under 28 TAC §35.3 in response to the coronavirus delayed the effective date. Insurance Code §2210.251(b) requires the commissioner to adopt the 2003 IRC and allows for the adoption of subsequent editions of, and supplements to, the IRC published by the International Code Council (ICC). Insurance Code §2210.252 allows the commissioner to supplement by rule the plan of operation building specifications with the structural provisions of the IRC, as well as to adopt by rule a subsequent edition of, or supplement to, the IRC.

The text of §§5.4012, 5.4013, 5.4601, and 5.4603 as proposed have been changed to reference April 1, 2026, instead of March 1, 2026, as the date on and after which the 2024 IRC and IBC apply. This change is made to allow affected parties sufficient time to implement the new codes. Nonsubstantive changes have

also been made to §5.4011 as proposed to italicize "International Residential Code" and "International Building Code."

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on December 23, 2025.

Commenters: TDI received comments from one commenter. No commenters spoke at a public hearing on the proposal held on December 16, 2025. Commenters in support of the proposal were the Insurance Council of Texas (ICT).

Comment. A commenter supports the proposal, noting the adoption of the 2024 IRC and IBC would modernize TWIA eligibility standards, reinforce loss-mitigation principles, and advance shared objectives related to public safety, risk management, and long-term cost stability for Texas policyholders.

Agency Response. TDI agrees and thanks the commenter for its support.

DIVISION 1. PLAN OF OPERATION

28 TAC §§5.4011 - 5.4013

STATUTORY AUTHORITY.

The commissioner adopts the amendments to §5.4011 and §5.4012 and new §5.4013 under Insurance Code §§2210.008, 2210.251(b), 2210.252, and 36.001.

Insurance Code §2210.008 authorizes the commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

Insurance Code §2210.251(b) requires the commissioner to adopt the 2003 IRC and allows for the adoption of subsequent editions and supplements to the IRC published by the ICC.

Insurance Code §2210.252 allows the commissioner to supplement by rule the plan of operation building specifications with the structural provisions of the IRC, as well as to adopt by rule a subsequent edition of the IRC.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§5.4011. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made On and After January 1, 2008, and before September 1, 2020.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.4008 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) and which are constructed, repaired, or to which additions are made on and after January 1, 2008, and before September 1, 2020, must comply with the 2006 editions of the *International Residential Code* and the *International Building Code*, as each is revised by the 2006 Texas Revisions and all of which are adopted by reference to be effective January 1, 2008. The codes are published by and available from the International Code Council at iccsafe.org or by calling toll-free 1-888-422-7233, and the 2006 Texas Revisions to both codes are available from the Windstorm Inspections Program of the Inspections Office at TDI and on the TDI website at www.tdi.texas.gov. The following wind speed requirements must apply.

(1) Areas seaward of the intracoastal canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the intracoastal canal and constructed, repaired, or to which additions are made on and after January 1, 2008, and before September 1, 2020, must be designed and constructed to resist a 3-second gust of 130 miles per hour.

(2) Areas inland of the intracoastal canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in §5.4008(b)(2)(A) and (B) of this title and constructed, repaired, or to which additions are made on and after January 1, 2008, and before September 1, 2020, must be designed and constructed to resist a 3-second gust of 120 miles per hour.

(3) Areas inland and west of the specified boundary line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in §5.4008(c) of this title and constructed, repaired, or to which additions are made on and after January 1, 2008, and before September 1, 2020, must be designed and constructed to resist a 3-second gust of 110 miles per hour.

(b) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. For a historic structure to be exempted, at least one of the following conditions must be met.

(1) The structure is listed or is eligible for listing on the National Register of Historic Places.

(2) The structure is a Recorded Texas Historic Landmark (RTHL).

(3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old, and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

§5.4012. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made On and After September 1, 2020, and Before April 1, 2026.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in paragraphs (1), (2), and (3) of this subsection that are constructed, repaired, or to which additions are made on and after September 1, 2020, and before April 1, 2026, must comply with the 2018 editions of the *International Residential Code* and the *International Building Code*, which are adopted by reference and applicable beginning September 1, 2020. The codes are published by and available from the International Code Council at iccsafe.org or by calling toll-free 1-888-422-7233. The designated catastrophe areas are those areas:

(1) seaward of the intracoastal canal;

(2) inland of the intracoastal canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County as described in §5.4008(b)(2)(A) and (B) of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003); and

(3) inland and west of the specified boundary line as described in §5.4008(c) of this title.

(b) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. For a historic structure to be exempted, at least one of the following conditions must apply to the structure.

(1) The structure is listed or is eligible for listing on the National Register of Historic Places.

(2) The structure is a Recorded Texas Historic Landmark by the Texas Historical Commission.

(3) The structure has been designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old, and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure to maintain its historical designation.

§5.4013. *Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made On and After April 1, 2026.*

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in paragraphs (1), (2), and (3) of this subsection that are constructed, repaired, or to which additions are made on and after April 1, 2026, must comply with the 2024 editions of the *International Residential Code* and the *International Building Code*, which are adopted by reference and applicable beginning April 1, 2026. The codes are published by and available from the International Code Council at iccsafe.org or by calling toll-free 1-888-422-7233. The designated catastrophe areas are those areas:

(1) seaward of the intracoastal canal;

(2) inland of the intracoastal canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County as described in §5.4008(b)(2)(A) and (B) (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) of this title; and

(3) inland and west of the specified boundary line as described in §5.4008(c) of this title.

(b) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. For a historic structure to be exempted, at least one of the following conditions must apply to the structure.

(1) The structure is listed or is eligible for listing on the National Register of Historic Places.

(2) The structure is an RTHL by the Texas Historical Commission.

(3) The structure has been designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old, and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure to maintain its historical designation.

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

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Jessica Barta

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For further information, please call: (512) 676-6555

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DIVISION 7. INSPECTIONS FOR
WINDSTORM AND HAIL INSURANCE

28 TAC §§5.4601, 5.4603, 5.4622, 5.4642

STATUTORY AUTHORITY. The commissioner adopts amendments to §§5.4601, 5.4603, 5.4622, and 5.4642 under Insurance Code §§2210.008, 2210.251(b), 2210.252, and 36.001.

Insurance Code §2210.008 authorizes the commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

Insurance Code §2210.251(b) requires the commissioner to adopt the 2003 IRC and allows for the adoption of subsequent editions and supplements to the IRC published by the ICC.

Insurance Code §2210.252 allows the commissioner to supplement by rule the plan of operation building specifications with the structural provisions of the IRC, as well as to adopt by rule a subsequent edition of the IRC.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§5.4601. *Definitions.*

The following definitions apply to this subchapter:

(1) Applicant--A person who submits a new or renewal application for appointment as an appointed qualified inspector.

(2) Appointed qualified inspector--An engineer licensed by the Texas Board of Professional Engineers and appointed by TDI as a qualified inspector under Insurance Code §2210.254(a)(2), concerning Qualified Inspectors.

(3) Appointed qualified inspector number--A number TDI assigns to each appointed qualified inspector.

(4) Constructed or construction--The act of building or erecting a structure or repairing (including reroofing), altering, remodeling, or enlarging an existing structure.

(5) Completed improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is substantially completed.

(6) Improvement--The construction of or repair (including reroofing), alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(7) Ongoing improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has not occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is not substantially completed.

(8) Substantially completed--An improvement for which the final framing stage, including attachment of component and cladding items and installation of windborne debris protection, has been completed. If the improvement's windborne debris protection consists of wood structural panels, all the panels must be present at the improvement's location but need not be installed.

(9) TDI inspector--A qualified inspector authorized under Insurance Code §2210.254(a)(1) and employed by TDI.

(10) TDI--The Texas Department of Insurance.

(11) Texas Board of Professional Engineers and Land Surveyors, Texas Board of Professional Engineers, or TBPE--House Bill 1523, 86th Legislature, 2019, abolished the Texas Board of Professional Land Surveying and transferred its functions to the renamed Texas Board of Professional Engineers and Land Surveyors, effective September 1, 2019. All references to the Texas Board of Professional Engineers or the TBPE in this division are references to the Texas Board of Professional Engineers and Land Surveyors.

(12) Association--The Texas Windstorm Insurance Association.

(13) Windstorm building code standards--The requirements for building construction in §§5.4007 - 5.4013 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After February 1, 2003 and before January 1, 2005; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2005, and before January 1, 2008; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008, and before September 1, 2020; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made On and After September 1, 2020, and Before April 1, 2026; and Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made On and After April 1, 2026; respectively).

§5.4603. *Windstorm Inspection Forms.*

(a) TDI adopts the following forms by reference and will make them available on its website.

(1) Application for Certificate of Compliance, Form WPI-1, effective April 2021, for ongoing improvements. Information requested by Form WPI-1 can be found in §5.4621(1) of this title, relating to Certification of Ongoing Improvements Inspected by Appointed Qualified Inspectors.

(2) Inspection Verification, Form WPI-2-BC-6, effective April 2021, for use in windstorm inspection for structures constructed,

repaired, or to which additions are made on and after January 1, 2008, and before September 1, 2020. Information requested by Form WPI-2-BC-6 can be found in §5.4621(4) of this title.

(3) Inspection Verification, Form WPI-2-BC-7, effective January 2026, for use in windstorm inspection for structures constructed, repaired, or to which additions are made on and after September 1, 2020, and before April 1, 2026. Information requested by Form WPI-2-BC-7 can be found in §5.4621(4) of this title.

(4) Inspection Verification, Form WPI-2-BC-8, effective January 2026, for use in windstorm inspection for structures constructed, repaired, or to which additions are made on and after April 1, 2026. Information requested by Form WPI-2-BC-8 can be found in §5.4621(4) of this title.

(5) Application for Certificate of Compliance for Completed Improvement, Form WPI-2E, effective January 2026. Information requested by Form WPI-2E can be found in §5.4604(a) and (b) of this title, relating to Certification Form for Completed Improvement.

(6) Application for Appointment as a Qualified Inspector, Form AQI-1, effective January 2024. Information requested by Form AQI-1 can be found in §5.4609(b) of this title, relating to Application for Qualified Inspector Appointment.

(7) Application Renewal for Appointment as a Qualified Inspector, Form AQI-R, effective June 2025. Information requested by Form AQI-R can be found in §5.4610(b)(1) of this title, relating to Renewal of Qualified Inspector Appointment.

(b) TDI inspection and certification forms. When appropriate, TDI will issue the following forms:

(1) Field Form, Form WPI-7;

(2) Certificate of Compliance for Ongoing Improvement, Form WPI-8; and

(3) Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

(c) The information required by the forms listed in subsection (a)(1) - (5) of this section must be submitted to TDI electronically using the Windstorm system, which is available on the TDI website. TDI will accept a completed Form WPI-1 or WPI-2 emailed to windstorm@tdi.texas.gov only when the Windstorm system is non-functional, unless the individual submitting is not a licensed professional engineer.

(d) In this subchapter, the first four alphanumeric characters in the designation of a form listed in this section, such as "WPI-2," refer to all forms with that prefix unless otherwise specified by all the characters in the designation.

§5.4622. *Inspection Verification.*

In submitting an Inspection Verification, Form WPI-2, an appointed qualified inspector verifies that:

(1) the ongoing improvement:

(A) complies with the wind load requirements of the applicable building code; or

(B) conforms to a design of the ongoing improvement that complies with the wind load requirements of the applicable building code under the plan of operation and that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers and Land Surveyors; or

(C) does not comply with the wind load requirements of the applicable building code; and

(2) if the ongoing improvement meets the requirements of paragraph (1)(A) or (B) of this section, the appointed qualified inspector is able to provide TDI with information and evidence substantiating compliance.

§5.4642. *Disciplinary Action.*

(a) Revocation or denial of appointment. After notice and opportunity for hearing, the commissioner may revoke an appointed qualified inspector's appointment or deny an appointed qualified inspector's application for appointment if:

(1) the applicant or appointed qualified inspector violates or fails to comply with the Insurance Code or any rule in this chapter;

(2) the applicant has made a material misrepresentation in the appointment application;

(3) the applicant has attempted to obtain an appointment by fraud or misrepresentation; or

(4) the applicant or appointed qualified inspector has made a material misrepresentation in any form, report, or other information required to be submitted to TDI, including an Application for Certificate of Compliance for Ongoing Improvement, Form WPI-1; a construction inspection report; an Inspection Verification, Form WPI-2; or a Certification Form for Completed Improvement, Form WPI-2E.

(b) Cease and desist order. The commissioner, ex parte, may enter an emergency cease and desist order under Insurance Code Chapter 83, concerning Emergency Cease and Desist Orders, against an appointed qualified inspector, or a person acting as an appointed qualified inspector, if:

(1) the commissioner believes that:

(A) the appointed qualified inspector has:

(i) failed to demonstrate, through submitting or failing to submit to TDI, substantiating information as described in §5.4626 of this title (relating to Substantiating Information), that an ongoing improvement or a portion of an ongoing improvement subject to inspection meets the requirements of Insurance Code Chapter 2210, concerning Texas Windstorm Insurance Association, and TDI rules; or

(ii) refused to comply with requirements imposed under this chapter or TDI rules; or

(B) a person acting as an appointed qualified inspector is acting without appointment under Insurance Code §2210.254, concerning Qualified Inspectors, or §2210.2551, concerning Enforcement Authority; Rules; and

(2) the commissioner determines that the conduct described by paragraph (1) of this subsection is fraudulent, hazardous, or creates an immediate danger to the public.

(c) Alternative sanctions. Under Insurance Code §2210.2551(b) and §2210.256(b), concerning Disciplinary Proceedings Regarding Appointed Inspectors and Certain Other Persons, the commissioner, instead of revocation or denial, may impose one or more of the following sanctions if the commissioner determines from the facts that the alternative sanction would be fair, reasonable, or equitable:

(1) suspension of the appointment for a specific period, not to exceed one year; or

(2) issuance of an order directing the appointed qualified inspector to cease and desist from the specified activity or failure to act determined to be in violation of Insurance Code Chapter 2210, Subchapter F, concerning Property Inspections for Windstorm and Hail In-

surance, or rules of the commissioner adopted under Insurance Code Chapter 2210, Subchapter F.

(d) Failure to comply with order. Under Insurance Code §2210.2551(b) and §2210.256(d), if the commissioner finds, after notice and a hearing, that an appointed qualified inspector has failed to comply with an order issued under subsections (a), (b), or (c) of this section, the commissioner will, unless the commissioner's order is lawfully stayed, revoke the appointed qualified inspector's appointment.

(e) Informal disposition. The commissioner may informally dispose of any matter under this section or under §5.4612 of this title (relating to Appointment as Qualified Inspector) by consent order or default.

(f) Automatic cancellation. If the Texas Board of Professional Engineers and Land Surveyors revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

(g) Reasonable penalty. If TDI finds that a person acting as an appointed qualified inspector under Insurance Code §2210.254 has failed to provide complete and accurate information regarding an inspection for a certificate of compliance under Insurance Code §2210.2515, concerning Issuance of Certificates of Compliance, then TDI may impose a reasonable penalty on the inspector, including prohibiting the inspector from applying for certificates of compliance under Insurance Code §2210.2515.

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

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Texas Department of Insurance

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For further information, please call: (512) 676-6555



CHAPTER 21. TRADE PRACTICES

The commissioner of insurance adopts amendments to 28 TAC §§21.4902, 21.5002, 21.5003, 21.5010, and 21.5040, concerning out-of-network provider disclosures and the claim dispute resolution process, and §21.5070 and §21.5071, concerning data submission and payment requirements for emergency medical services. The amendments are adopted without changes to the proposed text published in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6461). The sections will not be republished.

REASONED JUSTIFICATION. Amendments to §§21.4902, 21.5002, 21.5003, and 21.5040 are necessary to implement Senate Bill 1409, 89th Legislature, 2025, which authorizes post-secondary educational institutions to offer health benefit plans under Insurance Code Chapter 1683. SB 1409 also amends Insurance Code Chapter 1275 to make higher education health benefit plans subject to state balance billing protections and independent dispute resolution processes. Insurance Code Chapter 1275 establishes balance billing protections for plans

that are otherwise not subject to state regulation. The protections in Insurance Code Chapter 1275 closely align with the requirements for out-of-network billing that were originally established by Senate Bill 1264, 86th Legislature, 2019, for health maintenance organizations and preferred provider benefit plans, and health benefit plans administered by the Employees Retirement System of Texas and Teacher Retirement System of Texas.

The amendments to §§21.4902, 21.5002, and 21.5003 add health benefit plans offered under Insurance Code Chapter 1683 to the definition and scope sections to clarify that these plans are subject to the rules found in 28 TAC Chapter 21, Subchapters OO and PP. Insurance Code §1275.004 makes Insurance Code Chapter 1467 applicable to health benefit plans identified in Insurance Code Chapter 1275.

In addition, amendments to §21.5040 require health benefit plans offered by postsecondary educational institutions to include additional information in the explanation of benefits (EOB) provided to physicians and providers. Specifically, the EOB must include an instruction that is substantially similar to the following language: "The request for mediation or arbitration must identify the plan type as 'Higher Ed Plan.'" This addition is consistent with the treatment of other plan types under Insurance Code §1275.002 and should assist in identifying and processing eligible mediation and arbitration requests through the Texas IDR process.

Amendments to §21.5010 are necessary to implement Senate Bill 2544, 89th Legislature, 2025, which creates a statutory deadline for an out-of-network provider or health benefit plan issuer or administrator to request mandatory mediation under Insurance Code Chapter 1467, Subchapter B. The amendment to §21.5010 adds new subsection (d) to clarify that mediation under Subchapter PP, Division 2, must be requested by the out-of-network provider or health benefit plan issuer or administrator not later than 180 days after the date the initial payment is received. The amended language in new subsection (d) is consistent with the treatment of arbitration claims under §21.5020(d), except that the mediation deadline is 180 days.

Amendments to §21.5070 and §21.5071 are necessary to implement Senate Bill 916, 89th Legislature, 2025, which authorizes political subdivisions to annually adjust rates submitted to TDI under Insurance Code §38.006, subject to certain statutory limits. A political subdivision may not adjust a rate submitted to TDI under Insurance Code §38.006 by more than the lesser of (1) the Medicare Ambulance Inflation Factor or (2) 10% of the provider's previous calendar year rates.

Political subdivisions first submitted rates under Insurance Code §38.006 for calendar year 2024 to implement Senate Bill 2476, 88th Legislature, 2023, which expired on September 1, 2025. While SB 2476 included a method for plan payment rates to increase when plans renewed, it did not give political subdivisions an opportunity to submit rates for calendar year 2025. Since SB 916 is effective for emergency medical services provided on or after September 1, 2025, TDI announced a new reporting opportunity in Commissioner's Bulletin #B-0011-25 to allow political subdivisions to submit adjusted rates between August 1 and September 1, 2025. If a political subdivision did not submit a rate adjustment during this reporting window, the previously reported rates continue to apply to claims made between September 1, 2025, and December 31, 2025. On September 15, 2025, TDI published new rate data submitted by the September 1, 2025, deadline.

For calendar year 2026, the data submission deadline will be 30 days after the date this adoption order becomes effective. TDI will issue a message through the GovDelivery system that will announce when political subdivisions and their designees may begin submitting 2026 rate data. Sign up to receive messages through the GovDelivery system here: public.govdelivery.com/accounts/TXINSUR/subscriber/new?topic_id=TXINSUR_3.

For subsequent years, the data submission deadline will be December 1 of the year prior to the calendar year for the data being reported. For example, a political subdivision that elects to submit a rate adjustment must submit data applicable for calendar year 2027 by December 1, 2026. TDI will publish data within 10 business days of the data submission deadline, according to §21.5070(e). Issuers must apply the published rate for the calendar year during which the service or transport was provided or, if rate data was not adjusted for that year, the most recent available rate.

TDI intends to continue to publish previously submitted data in the four emergency services billing rates datasets on the Texas Open Data Portal at data.texas.gov. Information in these datasets include code rates, National Provider Identifier Standard numbers, ZIP codes, and contact lists. For more information about rate data submission, including frequently asked questions and links to other resources, visit www.tdi.texas.gov/health/esbindex.html.

Consistent with SB 916, a political subdivision may annually adjust a rate by not more than the lesser of the Medicare Ambulance Inflation Factor or 10% of the provider's previous calendar rates. For 2025, the Medicare Ambulance Inflation Factor is 2.4%, so an adjusted rate that was submitted by a political subdivision for 2025 could not be more than 2.4% higher than the rate submitted for 2024 for the same service. TDI audited data submitted between August 1 and September 1, 2025, for compliance and referred noncompliant rates to the Texas Department of State Health Services for further action as authorized under Health and Safety Code §773.061(a-1). TDI will continue to review compliance and take necessary actions under SB 916.

Descriptions of the sections' amendments follow.

Section 21.4902. This section provides definitions for use in Subchapter OO. The amendments to §21.4902 expand the definition of an "administrator" to include an administrator of a health benefit plan offered by a postsecondary educational institution under new Insurance Code Chapter 1683, as added by SB 1409. The amendments also expand the definition of "health benefit plan" to include a plan offered by a postsecondary educational institution under Insurance Code Chapter 1683.

Section 21.5002. This section describes the scope of Subchapter PP. The amendments to §21.5002 expand the applicability of Subchapter PP to a qualified mediation or qualified arbitration claim filed under health benefit plan coverage administered by an administrator of a health benefit plan under new Insurance Code Chapter 1683. The amendments add a citation to Insurance Code Chapter 1683 in subsections (a) and (c) of §21.5002 to reflect this expanded applicability.

Section 21.5003. This section provides definitions for use in Subchapter PP. The amendments to §21.5003 expand the definition of an "administrator" to include an administrator of a health benefit plan offered by a postsecondary educational institution under new Insurance Code Chapter 1683. The amendments also expand the definition of "health benefit plan" to include a

plan offered by a postsecondary educational institution under Insurance Code Chapter 1683.

Section 21.5010. The amendment to §21.5010 adds new subsection (d) to narrow the availability of mediation for eligible claim disputes that occur on or after June 20, 2025, consistent with SB 2544. Specifically, new subsection (d) requires the out-of-network provider or health benefit plan issuer or administrator to request mediation under the section not later than 180 days after the date the initial payment is received. The amendment also clarifies that the initial payment made to the out-of-network provider could be zero dollars if the allowable amount was applied to an enrollee's deductible, which is consistent with how arbitration claims are treated in 28 TAC §21.5020(d).

Section 21.5040. This section provides the content required in an EOB provided to an enrollee, physician, or provider. The amendment to §21.5040 adds new subsection (b)(3) to address the specific requirements for EOBs provided by a health benefit plan offered by a postsecondary educational institution under Insurance Code Chapter 1683. New subsection (b)(3) requires the health benefit plan to include in the EOB to the physician or provider an instruction to identify the plan type as "Higher Ed Plan" when requesting mediation or arbitration.

Section 21.5070. This section provides the requirements for political subdivisions or their designees to submit emergency medical service rates to TDI for publication under Insurance Code §38.006. The amendments to §21.5070 specify the deadlines for submission of a rate based on the calendar year the rates apply to. For calendar year 2026, the deadline for a political subdivision to submit new or adjusted rates is 30 days after the date §21.5070 becomes effective. The deadline for political subdivisions to submit new or adjusted rates to be used in the following calendar year is December 1 of the current year.

New subsection (g) limits the amount that a political subdivision or its designee may adjust a rate submitted under Insurance Code §38.006 compared with its rate for the previous calendar year. Consistent with SB 916, new subsection (g) states a political subdivision may annually adjust a rate by not more than the lesser of the Medicare Ambulance Inflation Factor or 10% of the provider's previous calendar year rates. For 2026 rates, the Medicare Ambulance Inflation Factor is 2%.

Section 21.5071. This section outlines the requirements that certain health benefit plan issuers or administrators must meet when making payments to emergency medical services providers. The amendments clarify that the health benefit plan issuer or administrator must pay the lesser of the billed charge or the EMS rate published by TDI in the EMS provider rate database for the calendar year that the service or transport was provided. The adopted section specifies that if a new or adjusted rate was not submitted and published in the EMS provider rate database for the calendar year in which the service or transport was provided, the health benefit plan issuer or administrator must use the most recently submitted rate published in the EMS provider rate database established by TDI.

The adoption order also deletes former subsections (c) - (e), concerning payments by issuers and administrators, and Figure: 28 TAC §21.5071(e), which provided examples illustrating how a health benefit plan should apply published rates to a plan year under subsection (d). Subsections (c) - (e) and Figure: 28 TAC §21.5071(e) are no longer necessary because SB 916 removes the requirement that health benefit plans recalculate previously

submitted rates and authorizes political subdivisions to submit adjusted rates annually.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on November 3, 2025, and at a public rule hearing held on October 21, 2025.

Commenters: TDI received comments from four commenters. One commenter spoke at the public hearing. The three others submitted written comments. Commenters in support of the proposal were Texas Association of Health Plans and Texas EMS Alliance. Commenters in support of the proposal with changes were Texas College of Emergency Physicians and Texas Medical Association.

General Comments

Comment. One commenter thanks TDI for the proposed rules and recommends adoption.

Agency Response. TDI appreciates the commenter's support.

Comment. One commenter encourages TDI to proactively audit the rate data submitted to ensure compliance with the statutory limits on annual rate increases.

Agency Response. TDI agrees and has added a column containing a validation rate to the "Emergency Services Billing Rates - Code Rates" Open Data Portal dataset for each billing code for which a political subdivision submitted rates for the years of 2024 and 2025. The validation rate is calculated by multiplying the 2024 rate by 1.024, consistent with the Medicare Ambulance Inflation Factor of 2.4% for 2025. A rate for 2025 is marked as "Noncompliant" if it exceeds the validation rate. A rate for 2025 is marked as "N/A" in the "Compliance" column if no 2025 rate was submitted.

Comment. One commenter suggests that TDI establish a method to monitor which group numbers qualify for the Texas IDR process and notify providers of qualifying group numbers.

Agency Response. TDI already encourages health plans subject to Insurance Code Chapter 1467 to voluntarily submit group numbers that are not eligible for the Texas IDR process. This information is used in the Texas IDR portal to validate requests submitted in real time, which gives providers immediate feedback on requests that are ineligible and lessens the amount of time health plans use to manually identify ineligible requests. TDI also notes that Senate Bill 1236, 89th Legislature, 2025, requires health plans to use group numbers on identification cards for pharmacy benefits that differ based on whether the plan is subject to Insurance Code provisions. As health plans develop new processes to comply with SB 1236, TDI encourages the plans to consider how these processes may be leveraged to improve efficiency in validating IDR requests. TDI welcomes additional information provided by health plans regarding methods TDI could consider to validate IDR requests and make the Texas IDR portal more efficient. TDI declines to publish group number information, as it is provided on a voluntary basis and already used to validate IDR requests.

Comment. One commenter asks that TDI add a new section that requires TDI to establish and maintain a website that displays a list of health benefit plans subject to the Texas IDR process under Insurance Code Chapter 1275, including information about the plan year and the plans' registered agents. Another commenter suggests creating a website with similar information as a supplement to the information included on EOB notifications.

Agency Response. TDI agrees that this information may be of use to the public but declines to make a change to the rule text, as the requested action is outside the scope of the rule as proposed. TDI has existing webpages that explain which plans are eligible for the Texas IDR process and how to identify eligible plans based on ID cards. TDI also has a webpage that lists ERISA plans that have opted in to the Texas IDR process under Insurance Code Chapter 1275. Once self-funded student health plans begin registering with TDI, as is required under Insurance Code §1683.005, TDI will consider listing the plans on a webpage similar to the opt-in ERISA plans webpage.

Comments on §21.5040

Comment. Two commenters note that most claims are submitted and returned electronically in the form of an electronic remittance advice (ERA) file. However, certain payors may opt to provide the EOB in a hardcopy format or in a non-machine-readable PDF format, which creates administrative burdens to determine if the claim is eligible for the state or federal IDR process. One commenter recommends that plan identification or IDR eligibility information be included in ERA files, in lieu of or in addition to hardcopy EOBs. Another commenter recommends adding rule text to §21.5040 that would require health plans subject to Insurance Code Chapter 1275 to return EOBs in a searchable, standardized remark code.

Agency Response. TDI declines to make a change at this time, as the requested action is outside the scope of this rulemaking. As noted in TDI's 2023 rule adoption, TDI has monitored this issue but has not received complaints about payors providing this information using methods that are not standardized and searchable. TDI will continue monitoring the issue and encourages providers and facilities subject to Insurance Code Chapter 1467 to file complaints if payors are not meeting expectations for electronic claims processing.

SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §21.4902

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.4902 under Insurance Code §§1275.004, 1467.003, and 36.001.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1467.003 directs the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 January 30, 2026.

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555

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SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION DIVISION 1. GENERAL PROVISIONS

28 TAC §21.5002, §21.5003

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5002 and §21.5003 under Insurance Code §§1275.004, 1467.003, and 36.001.

Insurance Code §1275.004 provides that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1467.003 directs the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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DIVISION 2. MEDIATION PROCESS

28 TAC §21.5010

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5010 under Insurance Code §§1467.003, 1467.0505, and 36.001.

Insurance Code §1467.003 directs the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §1467.0505 authorizes the commissioner to adopt rules, forms, and procedures necessary for the implementation and administration of the mediation program.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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DIVISION 5. EXPLANATION OF BENEFITS

28 TAC §21.5040

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5040 under Insurance Code §§1275.004, 1467.003, and 36.001.

Insurance Code §1275.004 provides that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1467.003 directs the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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DIVISION 8. EMERGENCY MEDICAL SERVICE RATE SUBMISSION AND PAYMENT REQUIREMENTS

28 TAC §21.5070, §21.5071

STATUTORY AUTHORITY. The commissioner adopts amendments to §21.5070 and §21.5071 under Insurance Code §§38.006, 1301.007, and 36.001.

Insurance Code §38.006 authorizes the commissioner to prescribe the form and manner by which political subdivisions may submit rates for ground ambulance services.

Insurance Code §1301.007 directs the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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General Counsel

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 17. TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

30 TAC §§17.2, 17.10, 17.12, 17.14, 17.17, 17.18, 17.20, 17.25

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 Texas Administrative Code (TAC) §§17.2, 17.10, 17.12, 17.14, 17.17, 17.20, and 17.25 and adopts new §17.18.

Amended §§17.2, 17.10, 17.12, 17.14, 17.17, 17.20, and 17.25 and new §17.18 are adopted without changes to the proposed text as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5871) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The commission's rules in 30 TAC Chapter 17 implement the exemption from taxation established in Texas Tax Code (TTC), §11.31 for certain property that is used wholly or partially as a facility, device, or method for the control of air, water, or land pollution. Under the requirements of 30 TAC Chapter 17, an owner of property may submit an application to the executive director to determine if the facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. The rulemaking amends the provisions in 30 TAC

Chapter 17 to update the requirements of the Tax Relief for Pollution Control Property Program based on the recommendations and advice of the Tax Relief for Pollution Control Property Advisory Committee (committee), established under TTC, §11.31(n), make clarifying changes to items on the Tier I Table, and provide other updates as discussed in the Section by Section Discussion. This rulemaking also fulfills the requirement of TTC, §11.31(l) that the commission, by rule, update the list adopted under TTC, §11.31(k), the Expedited Review List (ERL), at least once every three years and fulfills the requirement of 30 TAC §17.14(b) that the commission review and update the Tier I Table every three years.

On December 1, 2022, the committee submitted its recommendations to TCEQ as part of the triennial review of the Tier I Table located in §17.14(a) and the ERL included as part of §17.17(b). The committee evaluated Tier II and Tier III applications submitted from April 1, 2018, through April 30, 2021, that received positive use determinations (PUD) to determine whether the pollution control property, if any, had been demonstrated consistently to be wholly used as pollution control property in the same manner on each application for any given property. The committee determined that one type of pollution control property currently submitted as Tier II property should be considered Tier I property in the Tier I Table, which will no longer require a Tier II application. Additional adopted changes include clarifying changes to items on the Tier I Table.

Applications for use determinations may be submitted under Tiers I, II, and III. A Tier I application may be submitted for property used as listed on the Tier I Table that is used for pollution control in accordance with the description listed in the Tier I Table for that property type. Because the property listed on the Tier I Table has been pre-determined to be pollution control property by rule, a Tier I application is expected to be less complicated to prepare and review and has a smaller application fee. A Tier II application may be submitted for property that is not listed on the Tier I Table, but is used wholly for the control of air, water, and/or land pollution. A Tier III application may be submitted for property that is used partially for pollution control. For Tier III applications, a cost analysis procedure (CAP) is used to determine the proportion of the property used for pollution control purposes.

The rulemaking removes requirements that the commission review and update the Tier I Table every three years. This review is not required by statute and removal of the requirements does not preclude the commission from reviewing the table or the committee from providing advice regarding the Tier I Table at any time. The requirement to review the ERL is not changed because it is required in TTC, §11.31(l).

This rulemaking allows for appeal-related documents and executive director notifications to be sent and received electronically to make the process more efficient.

The commission also adopts the corresponding provisions in Chapter 18, Voter-Approval Tax Relief for Pollution Control Requirements, to mirror the adopted changes in Chapter 17.

Section by Section Discussion

In addition to the adopted amendments to address recommendations from the advisory committee and to update and clarify program requirements, the commission adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in

the Texas Legislative Council Drafting Manual, September 2020. The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections. Non-substantive changes are not intended to alter the rule requirements in any way and may not be specifically discussed in this preamble.

§17.2 Definitions

The commission adopts updated references included in certain definitions in §17.2 to reflect revisions to other sections of the chapter. The adopted relocation of the ERL from §17.17(b) to a new section, §17.18, makes the reference to §17.17(b)(1) obsolete; therefore, the reference to 17.17(b)(1) of this title relating to Partial Determinations is replaced with a reference to §17.18 of this title (relating to Expedited Review List) in the definition of "capital cost old." Similarly, the adopted removal of subsection (b) in §17.14 makes references to §17.14(b) obsolete, and those references are revised from §17.14(b) to §17.14 in the definitions for "Tier I," "Tier II," and "Tier III."

§17.10. Application for Use Determination

The commission adopts amendments to §17.10(a)(1) to provide that the executive director specifies the form of applications submitted to the program instead of requiring applicants to submit two printed copies of the application. This allows the executive director to require electronic submittal of applications, which is more efficient for the program to administer than processing paper applications. Adopted amendments to §17.10(c) remove references to the postmarking of applications and replace them with references to submittal of applications.

The commission adopts revised language in §17.10(d)(1) to specify that applications pertaining only to property listed on the ERL need not provide the environmental benefits of the property. This change is consistent with TTC, §11.31(m), and requirements in Chapter 17.

The commission adopts amendments to §17.10(d)(5) to change the reference to §17.17(c) to §17.17(b). This change corresponds with the adopted relocation of the ERL.

§17.12. Application Review Schedule

The commission adopts revisions to §17.12 to allow administrative completeness "notifications" to be sent in a form other than a letter, such as via electronic mail. Electronic correspondence for communications with applicants is more efficient. The commission also adopts an amendment to §17.12(3) to revise the reference to the ERL to reflect the renumbering of the ERL to new §17.18.

§17.14. Tier I Pollution Control Property

The commission adopts amendments to §17.14 to remove subsection (b) and update the Tier I Table. Adopted amendments to the table include adding an item based on a recommendation from the committee and revising items for clarity and to expand applicability.

The property listed in the table of §17.14 is designated as Tier I because the property has been predetermined to be pollution control property when used as described in the table. The commission adopts the addition of item number M-25 to the Tier I Table at 100% use for pollution control purposes as recommended by the advisory committee, but with some deviations from the committee's recommendation. The commission agrees with the committee's recommendation to add Amine Treating Systems (components necessary to transfer impurities removed from nat-

ural gas to a final control device), when used as described in the committee's recommendation, to the Tier I Table because they are used wholly for pollution control purposes.

The committee recommended adding amine treating systems as an item number beginning with letter "A," to designate it as air pollution control equipment. However, the rule adoption designates this as miscellaneous pollution equipment, using the letter "M" because this property could be used to control pollution from the air, water, or land. Similarly, the commission adopts the listing of Amine Treating Systems with the media Air/Land/Water. The commission adopts the addition of the item using the property name, description, and use determination percentage recommended by the committee and notes that "foul" amine is considered equivalent to "rich" amine or amine that has gathered pollutants for item M-25. This property type is described in the adopted rule language and is not further discussed in the Section by Section Discussion of this preamble.

The committee recommended that amine treating systems be added to the Tier I Table based on a review and analysis of Tier II applications submitted from April 1, 2018, through April 30, 2021. The property type consistently received a PUD of 100% each time an applicant requested a use determination for such property, demonstrating the property was consistently used wholly for pollution control. Although the adopted item number is added to the Tier I Table as 100% for pollution control purposes, an applicant is still required, under §17.14 and §17.17, to submit a Tier III application if such property produces a marketable product or a Tier II or Tier III application if it is not used as described in the Tier I Table.

The commission adopts the removal of the requirement from item A-115 that external floating roofs be used to comply with a requirement in 30 TAC §115.112. This rule applies only to certain geographical areas in Texas, but external floating roofs may be installed throughout the state to comply with a pollution control requirement other than those in §115.112. Additionally, other rules may be appropriate for applicants to cite when identifying the sections of the law(s), rule(s), or regulation(s) being met or exceeded by the use, installation, construction, or acquisition of the external floating roofs. Removing this requirement for item A-115 allows applicants outside of the areas specified in §115.112 to be able to apply for a use determination using a Tier I application.

The commission adopts an amendment to revise the description for item T-32 for Dielectric Coatings to clarify that the item includes factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. This change clarifies that newer and alternative technologies such as fusion-bonded epoxies that protect against corrosion of tanks or pipes could also qualify for Tier I applications.

The commission adopts the removal of subsection (b) that requires the commission to update and review the Tier I Table at least once every three years. The scheduled review required in this section is not required by statute and places an unnecessary burden on the commission to engage in a review and rulemaking on a rigid schedule. Further, the standard of review requiring "compelling evidence" in paragraphs (1) and (2) to add or remove items on the Tier I Table is not required by statute and does not need to be imposed on the commission. Any future rulemaking to revise the Tier I Table would be subject to the rulemaking authority conferred to the commission in the Texas Water Code (TWC), the Texas Government Code (TGC), and the TTC. Removal of the requirements and limitations does not preclude the

commission from reviewing the table or the committee from providing advice on its contents at any time. The adopted removal of subsection (b) results in a §17.14 that no longer requires subsection formatting. Corresponding changes to reflect reference to the renumbering of §17.14 are also made.

§17.17 Partial Determinations

The adopted rulemaking moves §17.17(b) concerning and including the ERL to adopted new §17.18. The rule provisions for applications for partial use determinations and applications for property on the ERL are different and should be addressed in separate sections. No changes are adopted to the ERL in the figure in existing 30 TAC §17.17(b). Subsections (c) and (d) and figures in 30 TAC §17.17(c)(1) and §17.17(c)(2) are renumbered accordingly. References to §17.14(a) are also removed from the rule language.

§17.18 Expedited Review List

The adopted rulemaking adds new §17.18 and move existing §17.17(b), including the ERL, into the new section. The adopted move helps clarify that the applicability of the ERL is independent of the application requirements for partial use determinations, which are provided in existing §17.17. No changes are adopted for the ERL in the existing figure in 30 TAC §17.17(b), adopted new figure 30 TAC §17.18. However, the rule language in adopted new §17.18 is revised from existing §17.17(b) to indicate that an application that relies on an item from the ERL must still adhere to the requirements in Chapter 17 associated with application tier and fee.

§17.20 Application Fees

The adopted amendments update rules related to the payment of application fees. The adopted rule revisions in §17.20(b) clarify that if it is determined, during review of an application, that the fee originally remitted with an application was not appropriate for the application, the correct fee must be submitted before application review continues. Additionally, adopted revisions to §17.20(c) specify how payment may be remitted and that the payment must be made payable to the Texas Commission on Environmental Quality. This change reflects rule language used by other program areas for processing payments to the agency. Finally, the commission adopts an amendment to §17.20(d) to specify that either the application fee or a receipt for payment of the application fee must accompany the application.

§17.25 Appeals Process

The commission adopts amendments to §17.25 to provide for electronic submission of appeals and related correspondence by e-mail. Allowing such communications by e-mail provides more efficient administration of the program. This rule adoption allows for appeal-related documents to be sent and received electronically. Previously, the rules specified appeals must be submitted via United States mail, facsimile or hand delivery, but did not specifically include e-mail. Conforming changes, including requiring the appeal to include the e-mail address of the person who files the appeal, to accommodate these changes, are also adopted in §17.25(b), (c), (f), and (g).

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of TGC, §2001.0225, and determined the rules do not meet the definition of a "Major environmental rule." Under TGC, §2001.0225, a "Major environmental rule" means a rule, the specific intent of which is to protect

the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking amends the Tax Relief for Pollution Control Property rules. The commission rules in Chapter 17 implement a voluntary property tax exemption for owners of certain property used to control pollution as set out in TTC, §11.31. Because the adopted rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax relief program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules do not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

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 a preliminary assessment of whether TGC, Chapter 2007 is applicable. The commission's preliminary assessment indicates TGC, Chapter 2007 does not apply to these adopted rules. Enforcement of these adopted rules will be neither a statutory nor constitutional taking of private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the adopted regulations.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

Participation in the Tax Relief for Pollution Control Property Program is voluntary, but sites subject to the Federal Operating Permits Program could choose to file an application for a use determination. After the rulemaking adoption, owners or operators of affected sites subject to the federal operating permit program may choose to apply consistent with Chapter 17.

Public Comment

The commission offered a public hearing on September 29, 2025. The comment period opened on September 5, 2025, and closed on October 6, 2025. The commission received comments from the Tax Relief for Pollution Control Property Advisory Committee (committee). The comments were supportive of the proposed revisions and did not suggest changes to the proposal.

Response to Comment

Comment

The committee commented they support the proposed revisions.

Response

The commission appreciates the committee's support.

No changes were made to this rulemaking in response to this comment.

Statutory Authority

The new rule and amendments are adopted under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other laws that are necessary and convenient to the exercise of its jurisdiction and powers; and TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The rules are also adopted under Texas Tax Code (TTC), §11.31, which authorizes the commission to adopt rules to implement the tax exemption for pollution control property.

The adopted rules implement TTC, §11.31.

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

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CHAPTER 18. VOTER-APPROVAL TAX RATE RELIEF FOR POLLUTION CONTROL REQUIREMENTS

30 TAC §§18.2, 18.10, 18.15, 18.25, 18.26, 18.30, 18.35

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendment to the title of 30 Texas Administrative Code (TAC) Chapter 18 and amendments to §§18.2, 18.10, 18.15, 18.25, 18.26, 18.30, and 18.35.

Amended §§18.2, 18.10, 18.15, 18.25, 18.26, 18.30, and 18.35 are adopted without changes to the proposed text as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5871) and, therefore, will not be republished. Chapter 18 title is

adopted without changes to the proposed text but will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The commission's rules in 30 TAC Chapter 18 implement a tax rate adjustment program established in Texas Tax Code (TTC), §26.045 to increase a political subdivision's tax rate equal to an amount that will allow the political subdivision to spend maintenance and operation funds to pay for certain property that is used wholly or partially as a facility, device, or method for the control of air, water or land pollution necessary to meet a permit issued by the commission. Under the requirements of 30 TAC Chapter 18, a political subdivision may submit an application to the executive director to determine if property is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. If the determination is approved by the executive director, the political subdivision then presents the executive director's determination to the tax assessor for adjustment of the tax rate for the political subdivision.

The rulemaking amends the provisions in 30 TAC Chapter 18 to correct the title of the chapter from Voter-Approval Tax Relief for Pollution Control Requirements to Voter-Approval Tax Rate Relief for Pollution Control Requirements. Senate Bill (SB) 2, Section 44, 86th Texas Legislature, 2019, required the revision of the title's chapter. This change was adopted as part of a previous rulemaking, Rule Project Number 2020-031-018-AI, but the full title change was not made correctly.

The rulemaking also amends the provisions in Chapter 18 to mirror the changes adopted in Chapter 17 as part of this rulemaking project (Rule Project No. 2023-123-017-AI). The commission's adopted amendments are based on the recommendations and advice of the Tax Relief for Pollution Control Property Advisory Committee (committee) and also include clarifying changes to items on the Tier I Table, and provide other updates as discussed in the Section by Section Discussion. This rulemaking also fulfills the requirement of TTC, §26.045(g) that the commission, by rule, update the list adopted under TTC, §26.045(f), the Expedited Review List (ERL), at least once every three years and fulfills the requirement of 30 TAC §18.25(b) that the commission review and update the Tier I Table every three years.

On December 1, 2022, the committee submitted its recommendations to TCEQ as part of the triennial review of the Tier I Table located in §17.14(a) and ERL located in §17.17(b). This rulemaking mirrors the committee's recommendation made for Chapter 17 regarding the Tier I Table and ERL in Chapter 18, except when deviation from these recommendations is needed to ensure the rule appropriately and consistently describes pollution control property eligible for a positive use determination (PUD) under Chapter 18.

Because Chapter 18 is not in the committee's purview, it did not consider the ERL in TTC, §26.045(f), codified in §18.26, or the Tier I Table in §18.25(a). The ERL and Tier I Table in Chapter 18 are identical to the ERL in §17.17(b) and the Tier I Table in §17.14(a), respectively. The committee did not recommend any changes for the ERL in §17.17(b). However, the committee recommended the addition of one type of pollution control property to the Tier I Table. In the associated rule project for Chapter 17, several changes are adopted to the Tier I Table; therefore, the commission adopts corresponding changes to the Tier I Table in §18.25(a). The adopted changes allow applicants applying under the Chapter 18 rules the same opportunities to receive a

PUD for property submitted on a Tier I application as applicants applying under the Chapter 17 rules.

The rulemaking removes requirements in §18.25(b) that the commission review and update the Tier I Table every three years. This review is not required by statute and removal of the requirements does not preclude the commission from reviewing the table at any time. The requirement to review the ERL is not changed because it is required in TTC, §26.045(g).

Section by Section Discussion

The commission adopts amendment of the title of Chapter 18 from "Voter-Approval Tax Relief for Pollution Control Requirements" to "Voter-Approval Tax Rate Relief for Pollution Control Requirements" to implement SB 2, Section 44 and revise the chapter's title.

In addition to the adopted amendments to incorporate corresponding adopted changes to Chapter 17, the commission adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections. Non-substantive changes are not intended to alter the rule requirements in any way and may not be specifically discussed in this preamble.

§18.2 Definitions

The commission adopts revisions to the definition of Tier II in §18.2(5) to remove language that associates a Tier II application with property listed on the ERL. This change clarifies that the applicability of the ERL is independent of the Tier II application requirements for partial use determinations. The definition for Tier II is also revised to add language that clarifies Tier II applications are required when the property is not included on the Tier I Table or when the property does not correspond exactly to an item on the Tier I Table. As an example, property that is used differently than the manner established in the Tier I Table description for that item must apply as a Tier II application.

Under the existing rules, §18.25(a) requires applicants to submit a Tier II application if the property is used for pollution control purposes at a percentage different than what is listed on the table or, at the request of the executive director, if the equipment is not being used in a standard manner. These criteria in §18.25(a) were not proposed for revision. Any of the property adopted for inclusion in the Tier I Table will need to continue to adhere to these requirements.

§18.10 Application for Use Determination

The commission adopts amendments to §18.10 to provide that the executive director specifies the form of applications submitted to the program. This allows the executive director to require electronic submittal of applications, which is more efficient for the program to administer than processing paper applications.

The commission adopts revision to §18.10(c)(5) to specify that the applicability of the ERL is independent of the Tier II application requirements for partial use determinations as specified in §18.30, relating to Partial Determinations.

§18.15 Application Review Schedule

The commission adopts amendments to §18.15 to allow the executive director to send notifications in a form other than a letter, such as via electronic mail, and to remove references to applications being mailed or sent back with notices of deficiency. Electronic correspondence for communications with applicants is more efficient. The commission also adopts amendments to §18.15 to specify that the executive director will take no action on an application, rather than sending an application back, if an applicant does not submit an adequate response within the 30 days.

§18.25 Tier I Eligible Equipment

The commission adopts amendments to §18.25 to remove subsection (b) and update the Tier I Table. In addition to adopted updates to the Tier I Table in §18.25 to mirror the updates adopted for the Chapter 17 Tier I Table in §17.14, the commission adopts revisions to the Tier I Table in §18.25 to remove the reference to the Cost Analysis Procedure, which is not found in Chapter 18, and to add a requirement that documentation showing the calculation of the partial determination be included for Tier II applications. The adopted revisions also correct the citation in the introductory paragraph to the Tier I Table to refer to the appropriate section in the TTC.

The commission adopts the addition of item number M-25 to the Tier I Table in §18.25(a), at 100% pollution control property as recommended by the advisory committee for the Tier I Table of Chapter 17, but with some deviations from the committee's recommendation. The commission agrees with the committee's recommendation to add Amine Treating Systems (components necessary to transfer impurities removed from natural gas to a final control device), when used as described in the committee's recommendation, to the Tier I Table because they are used wholly for pollution control purposes. The commission adopts the addition of item M-25 to be consistent with the adopted revisions for Chapter 17.

The committee recommended adding amine treating systems as an item number beginning with letter "A," to designate it as air pollution control equipment. However, the commission designates this as miscellaneous pollution equipment, using the letter "M" because this property could be used to control pollution from the air, water, or land. Similarly, the commission adopts the listing of Amine Treating Systems with the media Air/Land/Water. The commission adopts the addition of the item using the property name, description, and use determination percentage recommended by the committee and notes that "foul" amine is considered equivalent to "rich" amine or amine that has gathered pollutants for item M-25. This property type is described in the adopted rule language and is not further discussed in the Section by Section Discussion of this preamble.

The committee recommended that amine treating systems be added to the Tier I Table based on a review and analysis of Tier II applications submitted under Chapter 17 from April 1, 2018, through April 30, 2021. The property type consistently received a PUD of 100% each time an applicant requested a use determination for such property, demonstrating the property was consistently used wholly for pollution control. Although the adopted item number is added to the Tier I Table as 100% for pollution control purposes, an applicant is still be required, under §18.25, to submit a Tier II application if such property produces a marketable product or is not used as described in the Tier I Table.

The commission adopts the removal of the requirement from item A-115 that external floating roofs be used to comply with

a requirement in 30 TAC §115.112. This rule applies only to certain geographical areas in Texas, but external floating roofs may be installed throughout the state to comply with a pollution control requirement other than those in §115.112. Additionally, other rules may be appropriate for applicants to cite when identifying the sections of the law(s), rule(s), or regulation(s) being met or exceeded by the use, installation, construction, or acquisition of the external floating roofs. Removing this requirement for item A-115 allows applicants outside of the areas specified in §115.112 to be able to apply for a use determination using a Tier I application.

The commission adopts amendments to revise the description for item T-32 for Dielectric Coatings to clarify that the item includes factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. This change clarifies that newer and alternative technologies such as fusion-bonded epoxies that protect against corrosion of tanks or pipes could also qualify for Tier I applications.

The commission adopts the removal of subsection (b) that requires the commission to update and review the Tier I Table at least once every three years. The scheduled review required in this section is not required by statute and places an unnecessary burden on the commission to engage in a review and rulemaking on a rigid schedule. Further, the standard of review requiring "compelling evidence" in paragraphs (1) and (2) to add or remove items on the Tier I Table is also not required by statute and does not need to be imposed on the commission. Any future rulemaking to revise the Tier I Table would be subject to the rulemaking authority conferred to the commission in the Texas Water Code (TWC), the Texas Government Code (TGC), and the TTC. Removal of the requirements and limitations does not preclude the commission from reviewing the table or the committee from providing advice on it at any time. The removal of subsection (b) results in a §18.25 that no longer requires subsection formatting. References to the subsection for §18.25(a) are also removed from the rule language.

§18.26 Expedited Review List

The commission adopts amendments to §18.26 to add language to §18.26 to indicate that an application that relies on an item from the ERL must still adhere to the requirements in Chapter 18 associated with the application tier level and fee.

§18.30 Partial Determinations

The commission adopts amendments to §18.30 to remove the requirement that applicants must request a partial use determination for items on the ERL. Prior rule language did not account for a scenario in which ERL property could be used as described on the Tier I Table, making it eligible for a Tier I application. This change clarifies that property included on the Tier I Table and ERL may be included on a Tier I application when used as described on the Tier I Table. A Tier II application would still be required if the property is not used wholly for pollution control purposes or as described on the Tier I Table.

§18.35 Application Fees

Revisions are adopted to remove the provision in §18.35(a)(2) that a Tier II application is required for items listed on the ERL. Removal of this provision helps clarify that property on the ERL does not have to be submitted on a Tier II application.

The adopted amendments also update rules related to application fees. Adopted revisions to §18.35(b) explain that fees will be forfeited for a use application upon which the executive director

takes no further action, rather than for an application that is sent back to an applicant. The adopted rule revisions in §18.35(b) clarify that if, during review of an application, it is determined that the fee originally remitted with an application was not appropriate for the application, the correct fee must be submitted before application review continues. Additional adopted revisions to §18.35(c) clarify how payment may be remitted and that the payment must be made payable to the Texas Commission on Environmental Quality. This change reflects rule language used by other program areas for processing payments to the agency. Finally, the commission adopts amendment to §18.35(d) to specify that either the application fee or a receipt for payment of the application fee must accompany the application.

Final Regulatory Impact Determination

The commission reviewed the adopted amendments in light of the regulatory analysis requirements of TGC, §2001.0225, and determined the rules do not meet the definition of a "Major environmental rule." Under TGC, §2001.0225, a "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking amends the voter-approval tax rate relief for pollution control property rules. The commission rules in Chapter 18 implement a procedure available to political subdivisions to adjust tax rates to recover maintenance and operation funds used to pay for certain property used to control pollution as set out in TTC, §26.045. The adopted rule amendments revise requirements for use determination applications submitted to the executive director. Because the adopted rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax rate adjustment program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules do not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

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 these amended rules and performed a preliminary assessment of whether TGC, Chapter 2007 is applicable. The commission's preliminary assessment indicates TGC, Chapter 2007 does not apply to these adopted amendments. Enforcement of these adopted rules will be neither a statutory nor constitutional taking of private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property, because this rulemaking action does not bur-

den, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

Participation in the program for the voter-approval tax rate relief for pollution control requirements is voluntary, but sites subject to the Federal Operating Permits Program could choose to file an application for a use determination. After the rulemaking adoption, owners or operators of affected sites subject to the federal operating permit program may choose to apply consistent with Chapter 18.

Public Comment

The commission offered a public hearing on September 29, 2025. The comment period opened on September 5, 2025, and closed on October 6, 2025. The commission received comments from the Tax Relief for Pollution Control Property Advisory Committee (committee). The comments were supportive of the proposed revisions and did not suggest changes to the proposal.

Response to Comment

Comment

The committee commented they support the proposed revisions.

Response

The commission appreciates the committee's support.

No changes were made to this rulemaking in response to this comment.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other laws that are necessary and convenient to the exercise of its jurisdiction and powers; and TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The rules are also adopted under Texas Tax Code (TTC), §26.045, which authorizes the commission to adopt rules to implement the program for the voter-approval tax rate relief for pollution control requirements.

The adopted amendments implement TTC, §26.045.

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

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Texas Commission on Environmental Quality
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Proposal publication date: September 5, 2025
For further information, please call: (512) 239-0682



CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§39.1, 39.606, 39.804; and amendments to §§39.402, 39.403, 39.405, 39.407, 39.409, 39.411, 39.412, 39.419, 39.420, 39.423, 39.425, 39.426, 39.501, 39.503, 39.509, 39.551, 39.553, 39.601, 39.603 - 39.605, 39.651, 39.707, 39.803, 39.804, 39.807 - 39.810, 39.902, 39.903, 39.1003, 39.1005, 39.1009 and 39.1011.

Amended §§39.405, 39.409, 39.411, 39.420, 39.510, 39.553, and 39.604, and new §39.606 are adopted with changes to the proposed text as published in the August 8, 2025 issue of the *Texas Register* (50 TexReg 5145) and, therefore, will be republished.

Adopted new §39.1 and §39.804; and amendments to §§39.402, 39.403, 39.407, 39.412, 39.419, 39.423, 39.425, 39.426, 39.501, 39.503, 39.509, 39.551, 39.601, 39.603, 39.605, 39.651, 39.707, 39.803, 39.804, 39.807 - 39.810, 39.902, 39.903, 39.1003, 39.1005, 39.1009 and 39.1011 are adopted without changes to the proposed text as published in the August 8, 2025 issue of the *Texas Register* (50 TexReg 5145) and, therefore, will not be republished.

Adopted new §§39.1, 39.405(l), 39.606(a), (b)(1), (3)-(6), (c), (d)(1)-(3), (5), and (e)-(i) and the amended §§39.402(a)(10) and (11), 39.405(g), 39.407, 39.409, 39.411(e)(1), (5), (11)(A)(iv), (11)(A)(v), (11)(A)(vi), (11)(A)(vii), (14), (15), and (13), 39.411(f)(3), (4), (5) and 39.411(g), 39.412(b)(2)(A) and (b)(4), 39.419, 39.426, 39.601, 39.603 - 39.605 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

TCEQ underwent Sunset review during the 88th Regular Legislative Session, 2023. The Sunset bill, SB 1397, continuing TCEQ, included provisions requiring changes to TCEQ's public participation rules, which are found primarily in 30 Texas Administrative Code (TAC) Chapters 39, Public Notice, and 55, Requests for Reconsideration and Contested Case Hearings; Public Comment.

The agency engaged in an extended stakeholder process for this rulemaking. A hybrid virtual/in-person stakeholder meeting was held in Austin on July 15, 2024, with in-person meeting rooms also open in TCEQ regional offices in Midland and Harlingen. Spanish-language interpretation was available for this meeting. In-person meetings were held in Arlington on July 16, 2024, and in Houston on July 18, 2024. Because the July 18, 2024, meeting in Houston was shortly after the city experienced Hurricane Beryl, a second in-person meeting was held in Houston on October 3, 2024. Professional Spanish-language interpretation was available at both Houston meetings, and an agency interpreter was available for Spanish language assistance at the Arlington meeting. Stakeholder comments were accepted until October

8, 2024. The agency received robust participation from stakeholders during this process, receiving many comments and suggestions for changes to improve the agency's public participation rules.

The TCEQ Sunset bill required the extension of the public comment period and opportunity to request a hearing for a subset of air quality permit applications. Specifically, air quality permit applications that are required to publish notice in a consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) (consolidated notice) must extend the close of the comment period and the opportunity to request a contested case hearing to at least 36 hours following the public meeting held on the permit application. The Sunset bill also required TCEQ to post permit applications electronically on TCEQ's website and make these available to the public.

During the stakeholder process, a large number of comments requested that the extension of the comment period and opportunity to request a contested case hearing following a public meeting be given to all types of permit applications. Although many other comments were beyond the scope of the current rulemaking, there was a general request to make the rules less confusing and more helpful to the public participation process. The adopted amendments to Chapter 39, along with the companion rulemaking adopting changes to Chapter 55, seek to improve and clarify the rules in addition to satisfying the requirements of the Sunset bill.

The rulemaking adoption will remove obsolete date references throughout Chapter 39 and correct minor grammatical issues to reflect current correct usage. A new Subchapter A for definitions will be added to define several commonly used terms. The commission is not finalizing proposed updates to notice requirements that would have required the addition of an email address to the information for an agency contact. The commission has determined that because staff may change during the review of a permit application, posting agency emails as contact information could lead to inaccurate information being provided throughout the review process. The agency has already implemented the Sunset bill requirement to electronically post administratively and technically complete applications on its website. Information about the availability of this information and how to find it is added to the text of required notices. Additionally, provisions are re-structured for ease of reading comprehension in some places where the current rule is in paragraph form.

The adopted rules will also make clear that required sign posting must remain in place continuously throughout the permit review process from the beginning until the end of the final comment period of a permit application. There was a change from proposal in response to comments that signs should not be required to remain in place following the end of the comment period. The adopted rule language requires signs to remain in place continuously, without interruption, until the end of the final comment period on a permit application. The signs must remain in place and be legible the entire time the public has an opportunity to submit timely comments. Also, documents required to be provided by applicants in a public place must remain in place throughout the permit review process from the beginning until a final action is taken on a permit application. This can be final action by the commission, voidance of an application, or withdrawal of an application by the applicant. Rule language at adoption was clarified in response to comment to make clear that the initial application must remain in place until replaced by the techni-

cally complete application and draft permit. The technically complete application and draft permit must then remain in the public place until final action on the permit application. These adopted changes make explicit in the rule language the agency's policy to make application information available throughout the comment period, and the changes are intended to reduce confusion on the part of both the public and the regulated industry. The commission is also adopting a new subsection in Subchapter H to detail how the commission will provide notice to the public when a comment period is extended.

The comment period and deadline to submit comments and request a contested case hearing will be extended for at least 36 hours following the close of a public meeting for air quality permits that have consolidated notice, as required by the Sunset bill, that are received on or after March 1, 2026. Because permit applications are being submitted and reviewed constantly, the new rule requirements need an implementation date by which the new rules will apply to new permit applications. The commission is adopting March 1, 2026, for this new requirement and May 1, 2026, for other adopted new requirements.

Currently, the information about how to request a contested case hearing for air quality applications is found only in Subchapter H, §39.411. This can be a source of confusion for all stakeholders seeking to understand the public participation processes for air quality permit applications. To make this information easier to access, the commission is adopting a new section in Subchapter K, Public Notice of Air Quality Permit Applications. The new section has the information about requesting a public meeting, a notice and comment hearing, and a contested case hearing for those air quality permit applications for which these opportunities exist. A comment was received that the commission should amend §39.411(e)(13) and the new §39.606(f) to mirror the statutory language in Texas Health and Safety Code (THSC), §382.058(c) relating to who may request a contested case hearing as an affected person on an application for a registration for a concrete batch plant standard permit. As the statutory language is controlling, the commission agrees that amending the rule language to more closely mirror the statutory language is appropriate.

In response to comments the commission is not adopting proposed changes to the size of required signs.

Section by Section Discussion

New Subchapter A. Definitions

The commission is adopting a new Subchapter A, Definitions, to provide clarity relating to commonly used terms in Chapter 39. Adopted new §39.1(1)-(8) defines administratively complete application, contested case hearing, notice and comment hearing, public comment, public meeting, response to comment, request for reconsideration, and technically complete application.

Subchapter H. Applicability and General Provisions.

The commission is deleting §39.402(a)(10) as obsolete. The deadline of January 1, 2018, in this provision has passed, and the commission has no FutureGen applications to which this provision applies. The remaining §39.402(a)(11) and (12) are re-numbered to (a)(10) and (11), and (b)(2) is amended to update the reference to reflect the change in numbering. The commission is also deleting obsolete language in §39.403(a).

The commission is amending §39.405(g)(1) and (2) to add clarifying language to make clear that an application must remain available for the entirety of the time an application is under review, except for applications for which there is no

requirement for a NAPD, for which the application must remain available for the publication's designated comment period, and to amend §39.405(g)(3) to replace "issues" with "the application" to be more accurate. In response to comment, the commission amended the proposed language. The adopted §39.405(g)(1) adds language that the administratively complete application must remain in place until replaced by the technically complete application, or, for applications without a requirement for a NAPD, for the publication's designated comment period. Adopted §39.405(g)(2) adds clarifying language to specify that the notice referenced in this rule is a NAPD or a combined NORI and NAPD. At adoption, the word "continuously" was added to amend §39.405(g)(3) for consistency with proposed and adopted amendments to §39.405(g)(2). New §39.405(l) adds new language for applications that are administratively complete on or after June 1, 2024, to require the executive director to make the administratively complete and technically complete applications available on the commission's website until the commission has taken action on an application or refers the application to the State Office of Administrative Hearings. This is a change from the proposed language which would have required the application to be available until there is no further opportunity for commission or judicial review, and more closely mirrors the requirement for the length of time that the agency requires hard copies of a technically complete application to be available in a local public place. This requirement exempts materials that will be overly burdensome or too large for posting on the commission's website, as allowed by SB 1397. The implementation date in this section of the rule is the date on which the commission began making applications electronically available, as required by SB 1397.

Adopted amendment to §39.407 improves clarity and requires that persons requesting to be on the mailing list provide a valid mailing address.

The commission restructures §39.409 as new language is to be added. Adopted new §39.409(a) is the current existing language. Adopted new (b) clarifies when comments must be received to be considered timely. Adopted new (c) states that the executive director may extend a comment period for good cause.

The commission is not finalizing the proposed amendment to §39.411(b)(1) that would have required an email address for the agency contact. Adopted amendments to §39.411(b)(5) re-word and re-structure for improved readability. The adopted amendment to §39.411(b)(8) requires, for applications administratively complete on or after May 1, 2026, a statement that a copy of the administratively complete application can be found online at the commission's website; and the location of the website must be included in the notice.

Adopted amendments to §39.411(c)(2) re-word and re-structure for improved readability. The adopted amendment to §39.411(c)(5) requires, for applications administratively complete on or after May 1, 2026, a statement that a copy of the technically complete application can be found online at the commission's website; and the location of the website must be included in the notice. The commission included this as a proposed amendment in the preamble of the proposal package and proposed and is adopting similar language in §39.411(f)(3). Amendments to §39.411(d)(3) are adopted to re-word and re-structure for improved readability.

The agency is not finalizing the proposed amendment to §39.411(e)(1) that would have added the requirement for an email address for an agency contact. An amendment to

§39.411(e)(5) fixes a language issue that appears to be missing punctuation and words that makes the current language confusing. The adopted amendment to §39.411(e)(11)(A)(iv) replaces the date of January 1, 2017, with March 1, 2026. Adopted new §39.411(e)(11)(A)(v) provides for requirements for initial registrations for concrete batch plant standard permits received on or after March 1, 2026, including the requirement that if a public meeting is held, then the comment period and right to request a contested case hearing extends for at least 36 hours following the close of the public meeting. Existing §39.411(e)(11)(A)(v) is renumbered to (vi) and is amended to apply existing requirements for timely hearing requests to applications received before March 1, 2026. For applications declared administratively complete on or after March 1, 2026, the new requirement for the opportunity to comment and request a hearing to be extended to at least 36 hours following a public meeting is added, as these types of permit applications have a consolidated notice. Existing §39.411(e)(11)(A)(vi) is renumbered to (vii) and amended to reflect the re-numbering. Current §39.411(e)(14) is deleted, as TCEQ regional offices no longer keep hard copies of compliance files, and many offices do not have viewing capabilities for the public. Current §39.411(e)(15) and (16) are renumbered to (e)(14) and (15).

A comment was received that the commission should amend §39.411(e)(13) to mirror the statutory language in THSC, §382.058(c) relating to who may request a contested case hearing as an affected person on an application for a registration for a concrete batch plant standard permit. As the statutory language is controlling, the commission agrees that amending the rule language to more closely mirror the statutory language is appropriate. Therefore, the commission is adopting a change to §39.411(e)(13) to be clear that for concrete batch plant standard permits, only a person actually residing within 440 yards of a proposed concrete batch plant may request a contested case hearing as a person who may be affected.

The adopted amendment to §39.411(f)(3) adds a requirement for the notice on applications that are declared administratively complete on or after May 1, 2026, to include a statement that the technically complete application and draft permit may be viewed online at the commission's website and the location of the website where these can be found. Adopted amendments to §39.411(f)(4) and (5) re-word and re-structure for improved readability. The adopted amendment to §39.411(g)(1) reflects the adopted re-numbering of the cited subsections. Adopted amendments to §39.411(g)(3) re-word and re-structure for improved readability.

The commission is amending §39.412(b)(2)(A) to reflect the adopted re-numbering of these sections. Adopted amendments to (b)(4) clarify that signs must remain in place continuously throughout the entirety of the comment period on a permit application. At adoption this was changed from having the signs remain in place until final commission action on a permit, as proposed, to having the signs remain in place continuously, without interruption, until the end of the final comment period in response to comments on the length of time that signs were to remain in place. The signs must remain in place and be legible the entire time the public has an opportunity to submit timely comments.

The commission is amending §39.419 to re-structure and re-word to clarify language related to air quality permit applications. Notice of Application and Preliminary Decision (NAPD) applies to minor New Source Review air quality permits, and the

language as written could imply that only certain major sources are subject to NAPD. The adopted amendments move language to (a) concerning major air quality permit applications subject to Chapter 116, Subchapter B and add language to specify that the NAPD requirement applies to applications subject to Chapter 116, Subchapter E. The adopted amendment also moves language to specify that NAPD does not apply to air quality permit renewal applications that do not have a poor compliance history. The adopted amendment adds new (d) to specify that for air applications mailed notice requirements under §39.602 requirements apply. The adopted amendment also renumbers (d) to (e).

Adopted amendments to §39.420(c)(1)(D)(i)(III) replace the reference to §39.402(7) to be specific about the type of permit application that is being referenced. The existing citation is incorrect, and it is clearer to state that the reference is to Chapter 116, Subchapter E of this title, relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63), whether for construction or reconstruction. The commission is not adopting the proposed new §39.420(c)(1)(D)(i)(IV)..

The commission is not adopting the proposed new §39.422..

An amendment is adopted in §39.426 (a)(1)(B) to remove an obsolete date requirement.

Subchapter I

An adopted amendment to §39.501(a) will remove obsolete date language.

Obsolete language related to applicability date is removed from §39.503(a).

Obsolete language related to date of applicability is removed from §39.509(a). A reference to an obsolete notice process and an extra word in existing language is deleted from (b). An adopted amendment to (c) replaces a citation to a specific paragraph with a citation to the subsection that contains information regarding an applicant held meeting. The agency is not finalizing the proposed amendment to §39.510(a)(5)(A) that would have added the requirement for the email of the agency contact.

Subchapter J

An adopted amendment to §39.551(a) will remove obsolete language related to the applicability date. The commission is not finalizing the proposed amendment to §39.553 (b)(3)(D) that would have added the requirement for an email for the agency contact.

Subchapter K

The removal of obsolete language regarding date of applicability in §39.601 is adopted. Adopted amendments to §39.603(c) remove the obsolete date reference.

The commission is not adopting the proposed amendment to §39.604(a)(1) relating to the size of signs for permit applications administratively complete on or after May 1, 2026. The adopted amendment to §39.604(b) was revised in response to comment to clarify that signs must remain posted continuously, without interruption, until the end of the final comment period on a permit application. An amendment to remove obsolete language from §39.605(1)(D) is adopted.

The commission is adopting new §39.606, Contested Case Hearings and Public Meetings, to specify the details on information related to contested case hearings and public meetings

on air quality permit applications. The commission is adopting a new subsection (a) to clarify that the requirements of the new section apply to air quality applications subject to Subchapters H and K of Chapter 39 to avoid any confusion on the part of the public or regulated entities. Accordingly, the other new subsections have been renumbered to reflect this change. Adopted new (b)(1)-(6) lists the types of air quality permit applications for which a contested case hearing may be requested. Adopted new (c) lists the types of air quality permits for which a notice and comment hearing may be requested. Applications for Plant-Wide Permits (PALs) were moved from new (b) to new (c) to more closely mirror the current rule requirements in §39.411. Also, clarifying language was added to adopted new (b)(6) to be clear that it applies to air renewals subject to the requirements of Chapter 116, Subchapter D (relating to Permit Renewals). Adopted new (d) lists the time periods by which a request for contested case hearing must be received to be considered timely for different types of air quality permits. Adopted (d)(1) states that for an application that is for a renewal of an air quality permit that will not result in an increase in allowable emissions and will not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under TWC, §5.753 and §5.754 and the commission's rules in 30 TAC Chapter 60 of this title, relating to Compliance History, a request for a contested case hearing must be received by the end of the 15-day comment period following NORI. The commission is not adopting a specific proposed requirement that would have stated that for an application that is for a renewal of an air quality permit that will not result in an increase in allowable emissions and will not result in the emission of an air contaminant not previously emitted and the application does involve a facility for which the applicant's compliance history is in the lowest classification under TWC, §5.753 and §5.754 and the commission's rules in 30 TAC Chapter 60, relating to Compliance History, a request for a contested case hearing must be received by end of the comment period or within 30 days of the mailing of the Response to Comments. Adopted (d)(2) lists the requirements for permit types that have a consolidated notice - applications for concrete batch plant standard permits and permit amendment applications issued under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits), for which the executive director has declared the application administratively and technically complete and prepared a draft permit within 15 days of receipt of the application. Because these types of applications must receive an extension of the comment period and the opportunity to request a contested case hearing of at least 36 hours following the end of a public meeting if a one is held, the requirements are clearly listed for the different scenarios. For permit applications received before March 1, 2026, the current requirements in §39.411(e) are repeated here, and a request for a contested case hearing must be received within 30 days following the publication of the combined notice for the opportunity to request a hearing to continue to exist. If a request is received within 30 days, then the right to request a hearing is present until 30 days following the mailing of the executive director's Response to Comments. For permit applications received on or after March 1, 2026, a request for a contested case hearing must be received within 30 days following the publication of the combined notice for the opportunity to request a hearing to continue to exist unless a public meeting is held on the application. If a public meeting is held, then the opportunity to comment and request a contested

case hearing is extended for at least 36 hours following the end of the public meeting. Additionally, a request for a contested case hearing can be submitted for up to 30 days following the mailing of the executive director's Response to Comments, if an otherwise timely hearing request is received.

Adopted new §39.606(d)(3) and (4) allow for a request for a contested case hearing to be received by the end of the comment period or within 30 days after the executive director's Response to Comments is mailed for air quality applications and amendments subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B, or the requirements of Chapter 116, Subchapter E. These are major New Source Review permit applications and amendments. Adopted new §39.606(d)(5) applies to all other applicable air quality permit applications and requires that the request for a contested case hearing must be received by the end of the 30-day comment period following the final publication of the NORI. If no hearing request is received during this time, then there is no longer an opportunity to request a contested case hearing. If a request is received during the required time frame, then the right to request a hearing is extended to 30 days after the mailing of the executive director's Response to Comments.

Adopted new §39.606(e) lists the things that must be included in a request for a contested case hearing (CCH): (e)(1) requester's location; (e)(2) description of how the requester is impacted differently than the general public; and (e)(3) the form requirements of Chapter 55. Adopted new (f) specifies that only relevant and material issues raised during the comment period can be considered if a CCH is granted. Adopted new (g) specifies that for an application for a registration to use a concrete batch plant standard permit, only someone who actually resides within 440 yards of the proposed plant may be an affected person who is entitled to a contested case hearing. Adopted new (h) states that the executive director shall hold a public meeting on permits listed in (b)(1) and (2), if requested by a legislator or any interested person or if there is substantial public interest; and adopted new (i) states that the executive director may hold a public meeting on permits listed in (b)(3) - (5) if requested by a member of the legislature who represents the general area where the facility is to be located or if there is substantial public interest in the proposed activity. The commission revised the proposed language to match the requirements in §39.411(e) and §55.154(c) and then switched the two subsections for improved readability.

Subchapter L

The adopted amendment to §39.651(a) will delete obsolete language related to the applicability date.

Subchapter M

A minor grammar fix is adopted for §39.707(b).

Subchapter N

An amendment is adopted for §39.803(a) to provide clarity. The adopted amendment to §39.803(f) and adopted new §39.804(b)(10) add citations to §39.405(l), requiring that the application be posted on the commission's website. The commission is not finalizing the proposed amendment to §39.804(a)(1) that would have added a requirement for an email for the agency contact. The adopted amendment to §39.804(b) replaces the word remediation with remedial for clarity. The adopted amendments to §39.807(b)(1) and (2) add language to clarify that it is the post-closure order and preliminary decision

that is being published and mailed. The adopted amendment to §39.809(b) removes extra words for clarity.

Subchapter O

The agency is not finalizing the proposed amendment to §39.902 that would have added the requirement for an email address for the agency contact to (b)(12). The commission is not finalizing the proposed amendment that would have added the requirement for an email address for the agency contact to §39.903(b)(9).

Subchapter P

The commission is not finalizing the proposed amendments that would have added the requirement for an email address for the agency contact to §39.1003(b)(4) and §39.1005(b)(4). The commission amends 39.1009(a) to delete the requirement to include in the public notice the location and phone number of a regional office to be contacted for information about accessing a public copy of the application because the commission posts a copy of the application on the commission's website, the TCEQ public education program provides customer service to the public regarding pending applications, and the location of a public copy of the application is not readily available to the individual who answers the phone at a region office. The commission is not finalizing the proposed amendment to §39.1011(b)(4) that would have added the requirement for an email address for the agency contact.

Final Regulatory Impact Determination

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

The rulemaking adoption is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the econ-

omy, a sector of the economy, productivity, competition, jobs, the environment, or the public health. The purpose of the rulemaking adoption is to update and clarify the requirements for public participation in the permitting process for air quality, water quality, and waste permit applications. The rulemaking adoption will implement the requirements in the Sunset Bill, SB 1397, 88th Regular Legislature, as well as other recommended changes. The TCEQ Sunset bill required the extension of the public comment period and opportunity to request a hearing for a subset of air quality permit applications. The Sunset bill also required TCEQ to post permit applications electronically on its website and make these available for the public. Following extensive stakeholder outreach, the commission is adopting that the comment period and opportunity to request a contested case hearing will be extended for at least 36 hours following a public meeting for air quality permit applications that have a consolidated notice. The rulemaking adoption will update and clarify language relating to public meetings, comment periods, and contested case hearings, update what language is required in the text of notices, and clarify other information related to public participation in the permitting process.

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

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an analysis of whether Texas Government Code (TGC), Chapter 2007, is applicable. The adopted amendments are procedural in nature and will not burden private real property. The adopted amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under TGC, §2007.002(5). The adopted amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

The adopted amendments, new sections, and repealed sections will not require any changes to outstanding federal operating permits.

Public Comment

The commission held a public hearing on September 8, 2025. The comment period closed on September 9, 2025. The commission received comments from Air Alliance Houston (AAH), Arcosa Stabilized & Recycling (Arcosa), Associated General

Contractors of Texas (AGC of Texas), the Associations- joint letter from Texas Association of Manufacturers (TAM), Texas Chemistry Council (TCC), and Texas Oil and Gas Association (TXOGA), Lone Star Legal Aid on behalf of Better Brazoria Clean Air and Clean Water in Brazoria County (Better Brazoria), Environmental Integrity Project (EIP), Harris County Attorney's Office (HCAO), Harris County Pollution Control Services (HCPCS), City of Houston Health Department (HHD), Perales, Allmon, & Ice (PAI), Texas Aggregates and Concrete Association (TACA), and Texas Industry Project (TIP). The comments expressed mixed support for the rulemaking, requested further changes, and included comments that the commission should limit the rulemaking to statutorily required changes.

Response to Comment

Comment

TIP comments that the new requirement to leave permit documents in the public place and signs in place until final commission action on a permit lacks clarity and could lead to confusion.

Response

Changes in adopted §39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application must now remain in the public place until replaced by the technically complete application and draft permit. Generally, the publication of the NAPD notifies the public of the availability of the technically complete application and draft permit. The technically complete application and draft permit must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, then the application must remain in place through the publication's designated comment period. The proposed change to §39.405(g)(2) to require the technically complete application to remain in place continuously is adopted and for consistency the same change is also being adopted for §39.405(g)(3). The signs must now be in place at the start of the comment period and remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must go up at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application, as is intended by the posting of signs. The commission notes that the current rule requires the application to remain available in the public place until the commission takes action on the application or refers it to SOAH for applications that require a NAPD and the commission did not propose to change this time period. For applications for which there is no requirement for a NAPD, the requirement in current rule is for the application to remain in place for the publication's designated comment period and the commission is retaining this requirement in the adopted rule. The suggestion in the comment that materials remain only until the end of the comment period would provide less notice to the public than current rules and what the commission proposed. No changes were made in response to that part of the comment.

Comment

TIP comments that the proposed change to §39.405 could be interpreted to require availability of the administratively complete application from the date of the NORI up to and including the end of the public comment period on the application. Such a

duplicative requirement would be confusing to the public as the technically complete application is required to be made available from the date of the NAPD until the commission has taken final action on the permit or the commission refers the permit to SOAH. TIP also comments that the extension of the requirement to maintain a copy of the administratively complete application for longer than the initial 30-day comment period after the NORI and the use of the term continuously in the proposed rule changes raises questions about how and when revisions, clarifications or updates to an application should be added to the locally available copy.

Response

Changes in adopted §39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application must now remain in place until replaced by the technically complete application and draft permit. The technically complete application and draft permit must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, as some types of permit applications are only required to publish NORI, then the application must remain in place through the publication's designated comment period. The proposed change to §39.405(g)(2) to require the technically complete application to remain in place continuously is adopted and for consistency the same change is also being adopted for §39.405(g)(3).

The commission notes that the current rule requires the application to remain available in the public place until the commission takes action on the application or refers it to SOAH and the commission did not propose to change this time period. The suggestion in the comment that materials remain only until the end of the comment period would provide less notice to the public than current rules and what the commission proposed. No changes were made in response to that part of the comment.

Comment

TIP comments with respect to §39.405(g) recommend deleting the requirement to keep the administratively complete application in place after the NAPD is published and confirming the current requirement to include "any subsequent revisions to the application" in §39.405(g)(2) to commence only with the publication of the NAPD.

Response

Changes in adopted §39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application must now remain in place until replaced by the technically complete application and draft permit. The technically complete application must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, then the application must remain in place through the publication's designated comment period. The proposed change to §39.405(g)(2) to require the technically complete application to remain in place continuously is adopted and for consistency the same change is also being adopted for §39.405(g)(3).

Comment

TIP suggested changes to new §39.405(l), including a change to specify on the commission's website that there is additional confidential information in a confidential file, if an application is submitted with confidential information. TIP also commented in its suggested changes that the commission should only keep the

electronic copies on the application available until the end of the comment period. Additionally, TIP's suggested changes request the commission change language in §39.405(g) that require the technically complete application to remain in place until the commission takes final action or refers the application to SOAH.

Response

The commission disagrees that it is necessary to add information in the rule regarding confidential information, as that is not included in the new legislative requirement in SB 1397, and therefore no change has been made in response to this comment. The commission disagrees that electronic copies of the technically complete application should not remain available until final opportunity for the public to request review of the application. The commission notes that it is a longstanding rule in §39.405(g) that the technically complete application must remain available in the public place until the commission takes action on an application or refers it to SOAH and is also declining to make changes to shorten that time until only the end of the comment period. New §39.405(l) was amended at adoption to require the technically complete application to remain in place until final action or referral to SOAH, to mirror the requirements in §39.405(g). The commission notes that following the end of the public comment period and transmittal of the executive director's response to comments, the public may continue to participate by submitting a request for contested case hearing or request for consideration. These opportunities benefit from having the technically complete application and draft permit available electronically on the commission's website. No other changes were made in response to this comment.

Comment

EIP objects to imposing additional procedural hurdles for a litigant to be considered an affected person who can pursue a matter in court. EIP states that for the sake of efficiency, clarity, and legal certainty, litigants should have a uniform standard for justifiability in administrative hearings and courts alike.

Response

This comment is outside the scope of this rulemaking. Nothing in the proposed rules imposes any additional procedural hurdles for a litigant to be considered an affected person. No changes were made in response to this comment.

Comment

EIP commented that TCEQ should amend §55.211 to provide guidelines for when a person who is not deemed an affected person is entitled to reconsideration and what the requestor must provide to meet such a standard.

Response

This comment is outside the scope of this rulemaking. The commission did not propose any changes related to requesting reconsideration or what requesters may need to provide in relation to such a request. No changes were made in response to this comment.

Comment

AGC of Texas requests that §39.606(f) be amended to match THSC §382.058(c), and to therefore be clear that an affected person is someone who actually resides within 440 yards. AGC also requests that the commission review §39.411(e)(13) so that the language matches the statutory requirement. Commenter

also wants the commission to affirm that the 440-yard setback requirement is not an environmental protectiveness measure.

Response

The commission added "actually" to new §39.606(g), which was proposed as §39.606(f), to match the statutory language, as requested by this comment. The commission is also adopting a change to §39.411(e)(13) to have the rule language more closely mirror the statutory requirement. This is a statutory requirement regarding who may request a contested case hearing as a person who may be affected for a specific type of air quality permit - a registration for a standard permit for a concrete batch plant.

Comment

Arcosa commented that the commission should clarify thresholds for granting hearings so that only requests with clear, material evidence of environmental or health impacts move forward.

Response

The commission did not propose any changes to the requirements for being an affected person or for issues for which a hearing can be granted. Therefore, this comment is outside the scope of this rulemaking. No changes have been made in response to this comment.

Comment

Better Brazoria comments that the brightline 440-yard requirement to determine access to judicial review is not consistent with Article III.

Response

The requirement that a person must actually reside within 440 yards of a proposed plant to be an affected person entitled to request a contested case hearing on a concrete batch plant standard permit is a requirement of Texas statute - THSC §382.058(c). This comment is outside the scope of this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria commented that TCEQ rules require a contested case hearing request to state a person's location and relative distance to the proposed facility but provides no clarification of how the agency will take into account or measure that distance. Commenter further stated that TCEQ should be consistent in how to measure distances

Response

This comment is outside the scope of this rulemaking. The commission did not propose any changes to the process for how a person may request a contested case hearing or for the contents of those requests. No changes were made in response to this rulemaking.

Comment

Better Brazoria commented that TCEQ should not allow distance to predominate over all other considerations of an affected person

Response

This comment is outside the scope of this rulemaking. The commission did not propose any changes to the consideration of distance in affected person determinations. For concrete batch plant standard permit registrations, the commission considers distance as prescribed by THSC §382.058(c). Otherwise, dis-

tance is only one of many factors that the commission considers in an affected person determination. No changes were made in response to this comment.

Comment

Better Brazoria suggested that §55.103(1)(c) should state "For an air quality standard permit for a concrete batch plant, only a person actually residing within 440 yards of the proposed plant boundary may be an affected person."

Response

The plain language of THSC §382.058(c) provides: "For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected." The statutory language does not include the "plant boundary" as requested in this comment. No changes were made in response to this comment.

Comment

Better Brazoria proposed that the commission should make §39.423 the same notice period as §39.709, which is a minimum of 30 days mailed notice of a contested case hearing.

Response

Although the Office of the Chief Clerk typically mails notice for a contested case hearing prior to 30 days to give the public sufficient time for notice of the contested case hearing, the commission retains discretion to mail the notice no less than 13 days before the hearing, as required by the current rule. No changes were made in response to this comment.

Comment

AAH requests that the commission clarify the criteria for a contested case hearing.

Response

The commission did not propose any changes to the criteria for a contested case hearing. This comment is therefore outside the scope of this rulemaking. No changes were made in response to this comment.

Comment

The Associations requested that the commission require additional language in the text of public notices that properly informs the public that failing to submit timely comments will preclude a person from being able to potentially request a contested case hearing. This complies with the statutory text of Texas Government Code §2003.047(e-1).

Response

The commission did not propose any language related to changes in how to request a contested case hearing; therefore, this comment is outside the scope of the current rulemaking. No changes were made in response to this comment.

Comment

TIP requests the commission revise §39.411 as proposed to require notice language clarifying that if no comments are timely submitted by a person (or association meeting the requirements of 30 TAC §55.205) to the TCEQ during the public comment period, then that person or association may not be named an affected person or association by the commission or SOAH.

Response

The commission did not propose any language related to changes in how to request a contested case hearing; therefore, this comment is outside the scope of the current rulemaking. No changes were made in response to this comment.

Comment

AGC of Texas believes that there is no justification for §39.606(c)(2), with respect to why facilities with low compliance classification are treated differently, since THSC Chapter 382 and Chapter 5 of the Texas Water Code are silent on the impact of poor compliance history.

Response

In response to comment, the commission is not adopting this provision.

Comment

AGC of Texas states in their comment that it appears that all new §39.606 may not have been underlined.

Response

The proof copies submitted to TCEQ by the Secretary of State show all of new §39.606 underlined as new language. No changes were made in response to this comment.

Comment

Better Brazoria agrees with adding new §39.606, as it makes the contested case hearing process clearer to the public.

Response

The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

TIP also seeks clarification on the processing and issuance of these types of applications in §39.606(a), as they should not be subject to the opportunity for any person or association to submit comments, request a public meeting, request reconsideration, or request a contested case hearing.

Response

The commission has added a new applicability subsection to new §39.606 to clarify that the section only applies to applications subject to Subchapters H and K of Chapter 39. As this is now new §39.606(a), the remaining subsections have been re-numbered accordingly. The language in new §39.606(b) mirrors the long-standing language in §39.402 and §39.411 for the types of air quality applications that have opportunities for public meetings and contested case hearings. The adopted new language provides clarity for the public but does not change the underlying requirements that already exist, other than specific changes that the commission has noted. These changes are related to comment periods for air quality permit applications with a consolidated NORI and NAPD. The commission has included the new subsection to clarify the applicability of the new §39.606.

Comment

TIP requests that the commission include language in §39.606(a) that recognizes the statutory limitation in THSC §382.056(g) which states that the commission may not seek further public comment or hold a public hearing on amendments, modifications, or renewals that "...would not result in

an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted."

Response

Language that addresses the deadline for requesting a contested case hearing on these types of applications was proposed and is being adopted in new §39.606(d)(1) specifically for contested case hearings, which mirrors existing language in §39.411. No language was proposed relating to the commission's consideration of requests on these types of applications. Furthermore, no-increase renewal applications are not included in the list of application types in §39.606(h) or (i) which list the types of air quality applications for which the executive director may hold a public meeting.

Comment

TIP requests that the commission revise §39.606(h) to be consistent with §55.154(c) and federal law.

Response

Adopted new §39.606(h) and (i), which were proposed as §39.606(g) and (h) were revised to match the requirements in §39.411(e) and §55.154(c).

Comment

PAI comments that additional time is needed to prepare a reply to responses to hearing requests. PAI states instead of the current 14-day time period, it would be more appropriate to establish a rule that allows 30 days to reply to a Response to Hearing Request.

Response

The commission did not propose to extend the time frame for replying to a Response to Hearing Request and is not adopting changes to the time frame at this time. No changes have been made in response to this comment.

Comment

HPCPS comments that an extended comment period is necessary and warranted and would afford participants time to process any new information that may have been garnered from the public meeting. HPCPS requests that the commission extend the comment period for at least 10 days following a public meeting for all types of permit applications.

Response

The commission did not propose changing comment periods for any types of permit applications other than those air quality permit applications with consolidated notice, as required by the Sunset bill. Expanding notice periods for other types of permit applications is beyond the scope of the current rulemaking project. No changes were made in response to this comment.

Comment

EIP commented that except where statutorily prohibited TCEQ should standardize and extend the length of all comment periods under §55.152 to 60 days to allow the public to secure legal and technical assistance and time to adequately review applications and permits.

Response

The proposed rules did not propose to extend any comment periods except for the one required by the TCEQ Sunset bill for air quality permit applications with consolidated notice. The length

of comment periods is provided in the notices published on permit applications. No changes were made in response to this comment.

Comment

AGC of Texas requests that the commission provide examples or clarify what good cause is to extend a comment period in §39.409(c) and §39.422. Commenter also requests clarification as to who has the burden for demonstrating good cause.

Response

The commission is not adopting the proposed §39.422. Some examples of when comment periods have been extended would include issues with notice, such as signs not being in place or documents not being available for the public to review in an appropriate local place, mistakes in notice that may be discovered later during the comment period, failure to publish notice in the correct newspaper, and other similar issues. The rules provide the basic legal standard; however, nuanced, in-depth consideration that is not easily captured by rule language can best be considered on a case-by-case basis as needed.

Comment

Better Brazoria agrees with extending the comment period for 36 hours, and suggests that this change be extended to all permits

Response

The commission appreciates the support for the extension of the comment period for certain types of air quality permit applications. The commission did not propose changing comment periods for any types of permit applications other than those air quality permit applications with consolidated notice, as required by the Sunset bill. Expanding notice periods for other types of permit applications is beyond the scope of the current rulemaking project. No changes were made in response to this comment.

Comment

Better Brazoria agrees with the language extending the comment period for good cause as it ensures more inclusive public participation.

Response

The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria suggests that notice of extensions of comment periods should be published in alternative languages when required in §39.422.

Response

The commission is not adopting the proposed §39.422.

Comment

AAH requests that the commission clarify the ED's role in extending comment periods.

Response

Some examples of when comment periods have been extended would include issues with notice, such as signs not being in place or documents not being available for the public to review in an appropriate local place, mistakes in notice that may be discovered later during the comment period, failure to publish notice in

the correct newspaper, and other similar issues. The rules provide the basic legal standard; however, nuanced, in-depth consideration that is not easily captured by rule language can best be considered on a case-by-case basis as needed. No changes were made in response to this comment.

Comment

PAI believes the comment period should extend to 36 hours after the close of the public meeting for all air quality, water quality, and solid waste permit applications.

Response

The commission proposed compliance dates for new rule requirements to allow applicants to plan and be able to fully comply with these changes. Providing a date certain helps both applicants and the public know when applications must meet the new requirements. The commission has been meeting its statutory requirement to extend the comment period for at least 36 hours for air quality permit applications with a consolidated NORI and NAPD since the effective date of the sunset bill. No changes were made in response to this comment.

Comment

Better Brazoria approves current language access plan and proposed rules in §39.422(d).

Response

The commission is not adopting the proposed §39.422.

Comment

Better Brazoria commented that the commission should be aware of the lack of email/ computer availability in low-income situations.

Response

The commission appreciates the comment and acknowledges that there are commenters with less technical expertise or resources who rely on other methods to participate in the permitting process. No changes were made in response to this comment.

Comment

Better Brazoria voiced concern about the distances in concrete batch plant applications and where it will vary to avoid providing someone with standing.

Response

The requirement that a person must actually reside within 440 yards of a proposed plant to request a contested case hearing on a concrete batch plant standard permit is a requirement of Texas statute - THSC §382.058(c). The current rulemaking does not concern how the agency reviews these types of applications or how applicants may revise their applications during the permit review process and is therefore outside the scope of this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria commented about the abuse of the notice function by publishing in smaller newspaper circulations.

Response

This comment is outside the scope of this rulemaking. The commission does not require publication in specific newspapers, so

long as they meet the rule requirements. No changes were made in response to this comment.

Comment

HCAO suggests including the exact URL where applicable for the proposed amendments that require a statement that a copy of the administratively complete application can be found online.

Response

Because a website URL may change over time, including it in rule language is not best practice, as it can lead to future problems. No changes were made in response to this comment.

Comment

Better Brazoria proposes changes for §§39.419, 39.804, 39.1003, and 39.1005(b) - "Regardless of the notice requirements in §39.XXX of this title, the commission shall make available by electronic means on the commission's website the permit application."

Response

The adopted changes to the rules provide specifically for the commission to make both the initial application and the technically complete application and draft permit available electronically on the commission's website in new §39.405(l). This requirement applies to all types of applications that are subject to Chapter 39, Subchapter H. Therefore, it is not necessary to repeat this requirement in other places in the rules as requested by the commenter. No changes were made in response to this comment.

Comment

TIP believes that electronic availability of the application will provide greater public access to application materials than the current requirement in §39.405(g) to provide access to physical copies in a local public place.

Response

While the commission agrees that having applications and the draft permit available electronically provides the best access for the public, it is still necessary for the commission to ensure that the public can access the relevant permit application documents in a local public place, as required by statute. No changes were made in response to this comment.

Comment

AAH commented that ensuring that information about permit meetings and public hearings is made more available, readily available to community members is great.

Response

The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

AAH commented that they also have concerns regarding applicants using less widely circulated newspapers.

Response

This comment is outside the scope of this rulemaking. The commission does not require publication in specific newspapers, so long as they meet the rule requirements. No changes were made in response to this comment.

Comment

Arcosa commented that the commission should encourage proactive outreach by operators (e.g., bilingual fact sheets, open houses) as an alternative to lengthier contested case proceedings.

Response

This comment is outside the scope of this rulemaking. Regulated entities are always welcome and encouraged to engage with community stakeholders during the application process. No changes have been made in response to this comment.

Comment

HCAO requests further clarification on the difference between public meeting and public hearing in Chapter 39 Subchapter A.

Response

A public meeting is intended for the public to ask questions of TCEQ staff and the applicant during the informal part of the meeting, and to provide formal oral comments that will receive an official written response from the executive director. A public meeting is not a contested case hearing. There is no definition for a public hearing included in the adopted rules. A contested case hearing is a formal legal proceeding at the State Office of Administrative Hearings before an Administrative Law Judge (ALJ). Following a contested case hearing, the ALJ will issue a Proposal for Decision and make a recommendation to the commission. The commission will then consider this decision at an open meeting and make a final decision on issuance of the permit. No changes were made in response to this comment.

Comment

HCAO requests clarification of what "too large and unduly burdensome for posting" means in §39.405(l); they further request that a tangible threshold be established before materials may be exempt.

Response

The text of the new rule language aligns with the statutory requirement. No changes were made in response to this comment.

Comment

HCAO suggests adding instructions on how shareholders can view permitting documents that are exempt under §39.405(l).

Response

Complete applications are available at physical locations and would include documents that may be too large for posting online. No changes were made in response to this comment.

Comment

Better Brazoria disagrees with the July 1, 2026 implementation date for certain rules and suggests that they should correspond with the March 1, 2026 implementation date.

Response

The commission proposed compliance dates for new rule requirements to allow applicants and the commission to plan and be able to fully comply with these changes. However, the commission is not adopting any proposed changes that would have had a July 1, 2026 implementation date. Providing a date certain helps both applicants and the public know when applications must meet the new requirements. There are two different implementation dates because some of the changes are already being

implemented by the commission, while others will require the development of new procedures and will therefore take longer for full implementation by the commission. No changes were made in response to this comment.

Comment

Better Brazoria suggests that the implementation of changes under §39.422 should be March 1, 2026, instead of May 1, 2026.

Response

The commission is not adopting the proposed new §39.422.Â

Comment

PAI supports the extension of the public comment period to 36 hours after a public meeting is held for air quality permits with a consolidated notice and believes that this requirement should apply earlier than only to those applications submitted on or after March 1, 2026.

Response

The commission proposed compliance dates for new rule requirements to allow applicants to plan and be able to fully comply with these changes. Providing a date certain helps both applicants and the public know when applications must meet the new requirements. The commission also notes that it has been implementing this statutory requirement since it became effective. No changes were made in response to this comment.

Comment

AGC of Texas comments that several proposed amendments go beyond the direction of the legislature and believes that the substantive changes should be limited to the statutory changes made through the sunset process.

Response

The purpose of this rulemaking is to improve readability and clarity of the rules to generally improve the commission's public participation processes, in addition to implementing specific requirements of the Sunset bill. No changes were made in response to this comment.

Comment

The Associations comment that the commission should confine any rule changes to those required by SB 1397 from the 88th Legislative Session.

Response

The purpose of this rulemaking is to improve readability and clarity of the rules to improve the commission's public participation processes, in addition to implementing specific requirements of the Sunset bill. No changes were made in response to this comment.

Comment

Arcosa commented that the commission should provide permit timelines certainty by setting reasonable deadlines for processing Requests for Reconsideration.

Response

The commission did not propose any changes for the process by which the commission sets Requests for Reconsideration for commission consideration. Following the end of the opportunity to request a contested case hearing or reconsideration of the executive director's initial decision, requests that have been re-

ceived are set for commission consideration on the commission's agenda. This comment is outside the scope of this rulemaking, and no changes have been made in response to this comment.

Comment

Arcosa commented that the commission should maintain flexibility for routine amendments so that these are not unnecessarily delayed.

Response

The commission did not propose any changes to the processing of routine amendments. This comment is outside the scope of this rulemaking, and no changes have been made in response.

Comment

EIP supports hybrid meetings to include virtual options for public meetings and contested case hearings. EIP comments that 30 TAC §55.154(f) should be amended to require that TCEQ produce slides, meeting audio recordings, written transcripts and presentation materials on its website and/or by email immediately following each meeting's conclusion.

Response

The current rulemaking project did not propose to include any options for public meetings; therefore, this comment is beyond the scope of this rulemaking. Virtual contested case hearings are currently allowed by the State Office of Administrative Hearings but are also beyond the scope of the current rulemaking. Information provided at a public meeting by an applicant is not under the control of the commission. The commission does not make a visual recording of public meetings and therefore does not have visual recordings to post. The commission does make an audio recording of public meetings, and the audio recording of the formal portion of the public meeting is available on the commission's website within a few days of public meetings. No changes were made in response to this comment.

Comment

EIP comments that TCEQ should establish a fund by which community members may pay for necessary contested case costs.

Response

This comment is outside the scope of this rulemaking. The current rulemaking project does not address costs associated with contested case hearings. The commission does not have the statutory authority or the mandate to provide such a fund for the public. No changes were made in response to this comment.

Comment

EIP believes that TCEQ should expand the availability of Texas Pollutant Discharge Elimination System program (TPDES) permit application information to the public. EIP comments that TCEQ should make information available for all phases of TPDES permit issuance, including draft fact sheets or statements of basis.

Response

This comment is outside the scope of this rulemaking. The commission did not propose changes to the ways in which TPDES permit applications are reviewed that would include the requested changes. No changes were made in response to this comment.

Comment

EIP comments that all recordkeeping violations are relevant and should be addressed by TCEQ, even if through informal compliance. EIP states that it is essential that TCEQ revise its approach to penalty calculations to ensure that recordkeeping violations are penalized sufficiently.

Response

This rulemaking does not concern the development of compliance history or penalty calculations. This comment is outside the scope of this rulemaking. No changes were made in response to this comment.

Comment

EIP urges TCEQ to consider compliance history in a comprehensive, holistic manner when determining whether permits should be renewed, modified, amended or otherwise changed and not to limit evaluations to immediate sites or current owners or operators.

Response

This comment is outside the scope of this rulemaking, which does not include consideration of how the agency uses compliance history when evaluating an application for a permit. No changes were made in response to this comment.

Comment

AGC of Texas requests that the commission affirm that air quality standard permits are "off-the-shelf" authorizations issued for specific, well-characterized classes of facilities; concrete batch plants are minor sources of emissions, and that plants operating in accordance with the terms and conditions of the standard permit (developed based on a conservative protectiveness review) are protecting human health and the environment; and the primary concerns expressed about these types of operations are land-use considerations that are beyond the authority of TCEQ, and, where there is local zoning, such concerns can and have been addressed locally.

Response

The proposed rule changes did not directly concern the review of air quality standard permits. The requirement to extend the comment period and opportunity to request a contested case hearing following a public meeting held on certain types of air quality permits, which includes an application for the registration to use the concrete batch plant standard permit, is a specific statutory requirement. There are no other air quality standard permit registrations that include a right to request a contested case hearing. No changes were made in response to this comment.

Comment

Better Brazoria commented that the agency should measure from the property boundary to the residence/school/place of worship when making distance determinations. Better Brazoria further states that one facility point is not sufficient representation of a concrete batch plant as they do not correspond to emission sources and plant equipment is subject to change.

Response

This comment is outside the scope of this rulemaking. The commission did not propose any changes to the process for how a person may request a contested case hearing or for the contents of those requests, including how distance is measured when evaluating those requests. No changes were made in response to this comment.

Comment

Better Brazoria comments that applicants in Harris County are abusing the requirement that notice should be published in a newspaper of general circulation as required by §39.603.

Response

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

Comment

AAH commented that industry misuses public notice requirements to limit the exposure of information.

Response

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

Comment

TACA asked if the ED staff can put some discretion on that portion of the rulemaking to account for situations where the signs accidentally fell down or the signs were stolen or the signs were burned by wildfires or the signs were blown down from a tornado or from a hurricane. TACA's comments also expressed concern about leaving signs in place until final commission action on a permit application.

Response

Issues with signs that may go missing or be damaged by weather are issues that can be considered on a case-by-case basis. No changes were made in response to this comment. However, the commission did make changes to the sign-posting requirement in adopted §39.604(b) in response to comments to clarify that signs must remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must be posted at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission's intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application.

Comment

AGC of Texas opposes defining personal justiciable interest in proposed §55.103(3) since it is already included in the determination of an affected person and the new language expands the definition of justiciable too much.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

PAI commented that the new definition of "personal justiciable interest" adds limitations upon who may be considered an affected person that are not contained in statute and are inappropriate.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition

for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

PAI adds that the limitations on defining personal justiciable interest raise concerns for whether Texas programs would meet the minimum requirements to maintain delegated authority over certain federal programs such as the TPDES program.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

The Associations commented that they believe there is a risk of adding a definition for "personal justiciable interest" that has additional terms, which may unintentionally expand or restrict the agency's determination of an affected person compared to the statute.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

TIP requests that TCEQ decline to adopt proposed 30 TAC §55.103(3), which would define "personal justiciable interest" based on key concepts from Texas Water Code §5.115 but with additional terms.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

In new §39.606(g) and (h) Better Brazoria suggests including express provisions on what may trigger a public meeting and further clarify by what measure the ED will determine whether substantial public interest is present.

Response

The commission rules include the provisions on when a public meeting may be held. The factors that determine substantial public interest can vary between media. The commission did not propose specific criteria to define these terms and is not making changes in adopted rules to address this concern. No changes were made in response to this comment.

Comment

Better Brazoria comments that public meetings should be held before and after the draft permit is completed and that an informal meeting during technical review would allow the public to propose suggestions to add to the permit and a second meeting would allow the public to formally comment on the draft permit.

Response

The commission did not propose to change the way in which it holds public meetings or to provide for a second meeting before the draft permit is prepared. The commission does not believe that holding such a second meeting before the technical review of the permit is completed would be a good use of agency resources and time. No changes were made in response to this comment.

Comment

AAH requests that the commission expand the authority to request a public meeting to any legislator.

Response

The requirement to hold a public meeting at the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located is a statutory requirement found at THSC §382.056(k)(1) and TWC §5.554(1). The commission did not propose changes to this requirement in Chapter 39 or 55. No changes were made in response to this comment.

Comment

HCAO requests that §39.411(e)(14) not be deleted and suggests that regional offices should be required to keep compliance history files and provide physical access to those documents

Response

TCEQ regional offices often do not have the space or on-site personnel available to assist. Compliance files are no longer kept by the agency as hard copy files, only as electronic files that can be accessed by the public without going to the physical regional office. No changes were made in response to this comment.

Comment

HCAO asserts that a copy of the application should be made physically available to the public and disagrees with deleting that requirement in §39.1009(a)

Response

The deletion in §39.1009(a) for a location of the regional office to contact for information about where a physical copy of the application can be found does not remove the requirement for providing a hard copy of the application in a local physical location. The information about where a hard copy of the application can be found is still included in the notice of the application, which is both published and available online on the commission's website. Regional staff often do not have staff on-site who are familiar with all applications filed with the commission. No change was made in response to this comment.

Comment

AGC of Texas comments §39.405(g)(1)-(2) and §39.604(b) should be modified to provide that the application and signage should be made available only through the comment period and not through final commission action as proposed.

Response

Changes in adopted §39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application and draft permit must remain in place until replaced by the technically complete application and draft permit. The technically complete application and draft permit must remain in place for the remaining entirety of the comment period. Generally, the publication of the NAPD notifies the public of the availability of the technically com-

plete application and draft permit. The technically complete application and draft permit must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, then the application must remain in place through the publication's designated comment period. The signs must now be in place at the start of the comment period and remain must remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must go up at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission's intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application.

Comment

AGC of Texas opposes change in signage size in §39.604(a)(1) for the following reasons: current size is proficient for notifying the public; signs and notice are being supplemented by social media and local advocacy; safety concerns with traffic and visibility; changes may result in more variance requests to the agency; and the change is outside the recommendation of the legislature.

Response

In response to comment the commission is not making any changes to the size of required signs in the adopted rule.

Comment

The Associations comment that they oppose change in signage size in §39.604(a)(1) for the following reasons: practical issues; highly complex industrial facilities can have several concurrent permitting actions taking several months to years for final resolution, which will make it difficult for the public to readily understand and meaningfully engage if signs are posted after public comment periods close; maintain the current requirements for applicants to post signs only during the appropriate public comment periods at the same time as physical and electronic copies of the permit application are available to ensure the public can provide timely comments.

Response

In response to comment the commission is not making any changes to the size of required signs in the adopted rule. Changes in adopted §39.604(b) were made in response to this comment addressing the time period for signage posting. The signs must now be in place at the start of the comment period and remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must go up at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission's intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application.

Comment

TIP commented on the requirement for the increased size of signs in §39.604, stating that increasing the size of the font may not allow all the information to be on the signs. TIP comments that the large size may be difficult for major plants that have multiple signs, which is different than the signs in §39.510(b)(1),

which are for inactive municipal solid waste permits. TIP comments that one possibility is to require some font to be larger for certain types of information.

Response

In response to comment the commission is not making any changes to the size of required signs in the adopted rule.

Comment

AGC of Texas asks that the commission consider consolidating all air quality permit related public notice rules under Chapter 39, Subchapter K.

Response

The adopted new §39.606 is intended to put existing public notice requirements in Chapter 39, Subchapter H also in Subchapter K to provide clarity for the public and regulated entities and to make it easier to find air-specific requirements. Therefore, the proposed and adopted rules have done this with the addition of new §39.606. Further consolidation and removing the air quality notice rules from Chapter 39, Subchapter H was not proposed by the commission and was not considered necessary for this rulemaking. No changes were made in response to this comment.

Comment

HHD generally supports the proposed changes and believes that the changes will provide multiple benefits. HHD also makes a suggestion that local compliance data be included in the permit review process, and that air monitoring data collected by local pollution control programs could be used to augment the permit approval process.

Response

The commission appreciates the support for the changes in this rulemaking. Compliance history and the use of monitoring data are issues outside the scope of this rulemaking. No change was made in response to this comment.

Comment

Better Brazoria agrees with the new proposed definitions in §39.1 and the new signage and notice requirements in §39.604(a)(1) and (b) and §39.510(b)(1).

Response

The commission appreciates the support for the rule changes. Although the commission did make some changes to §39.604 in response to other comments, no changes were made in response to this comment.

Comment

Better Brazoria recommends that the changes to Ch. 55 take effect as soon as possible and that an effective date of March 2026 seems reasonable.

Response

The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria generally agrees with embracing agency use of email but encourages more community outreach.

Response

The commission appreciates the support for the changes in this rulemaking. However, the commission is not finalizing changes requiring the use of agency email addresses in notices. Due to the potential for staff changes during the course of a permit review, it could lead to misunderstandings and incorrect available information if an email changes during the pendency of the permit action.

Comment

EIP comments that Operating Permits issued under Title V of the Clean Air Act should be electronically available to anyone wishing to learn more about them.

Response

This comment is outside the scope of this rulemaking. Title V permits are not the subject of the current rulemaking project; however, the commission notes that Title V permits under review and open for comment are available electronically on the commission's website. No changes were made in response to this comment.

Comment

Better Brazoria requested that the commission add additional language clarifying that any petition for judicial review should be filed 30 days after a motion for rehearing is decided since the concurrent timing is problematic.

Response

The statutory language of TWC §5.351 subsection (b) addresses this issue. Therefore, no rule changes are required. No changes were made in response to this comment.

Comment

Better Brazoria commented that as to the proposed changes in §55.209(d) and (g), as long as the time frames are not being shortened, they agree with the changes.

Response

The time periods are not changing; only the way the time periods are explained in the rule language is changing. The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria states that all public notices should provide notice of where the facility is located or proposed to be located.

Response

This information is currently required in §39.411(b)(3) and (e)(3). No changes were made in response to this comment.

Comment

EIP comments that the commission should remove all obsolete dates from Chapter 55.

Response

The commission notes that the dates EIP identified as obsolete rule language in this comment are not actually obsolete, as the commission is still actively reviewing permit applications that would be impacted. No changes were made in response to this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §39.1

Statutory Authority

The new section is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendment is adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §§361.024, 382.011, and 382.056.

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 January 29, 2026.

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



SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.402, 39.403, 39.405, 39.407, 39.409, 39.411, 39.412, 39.419, 39.420, 39.423, 39.425, 39.426

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments and new section are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. The amendments and new section are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments and new section are adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The rulemaking adoption implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §§361.024, 382.011, and 382.056.

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the Office of the Chief Clerk (chief clerk) prepares a newspaper notice that is required by Subchapters G - J, L, and M of this chapter (relating to Public Notice for Applications for Consolidated Permits; Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies

of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. When Subchapters G - L of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and affidavit. When Subchapters G - J and L of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality;

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in any newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county; and

(3) air quality permit applications required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications, respectively) to publish notice shall comply with the requirements of §39.603 of this title (relating to Newspaper Notice).

(g) Copy of application. The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public

file that there is additional information in a confidential file. The copy of the application must comply with the following.

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available:

(A) until replaced by the technically complete application and executive director's draft permit; or

(B) for applications for which there is no requirement for a Notice of Application and Preliminary Determination, for the publication's designated comment period.

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of the first newspaper publication of the Notice of Application and Preliminary Decision or a Combined Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, as applicable, required by this section and remain continuously available until the commission has taken action on the application or the commission refers the application to State Office of Administrative Hearings; and

(3) where applicable, for air quality permit applications, the applicant shall also make available the executive director's draft permit, preliminary determination summary, and air quality analysis for review and copying beginning on the first day of newspaper publication required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) and remain continuously available until the commission has taken action on the application or the commission refers the application to State Office of Administrative Hearings.

(h) Failure to publish notice of air quality permit applications. If the chief clerk prepares a newspaper notice that is required by Subchapters H and K of this chapter for air quality permit applications and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or, for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (i) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(i) Notice and affidavit for air quality permit applications. When Subchapters H and K of this chapter require an applicant for an air quality permit action to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (h) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(j) For applications filed on or after September 1, 2015, and subject to providing notice as prescribed by Texas Water Code, §5.115, the commission shall make available on the commission's website notice of administratively complete applications for a permit or license authorized under the Texas Water Code and the Texas Health and Safety Code.

(k) Summary of application. For permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022, the applicant will provide a plain-language summary of the application, no more than two pages long, that will describe the following:

- (1) the function of the proposed plant or facility;
- (2) the expected output of the proposed plant or facility;
- (3) the expected pollutants that may be emitted or discharged by the proposed plant or facility; and
- (4) how the applicant will control those pollutants, so that the proposed plant will not have an adverse impact on human health or the environment.

(l) Electronic copy of application. For permit applications that are declared by the executive director to be administratively complete on or after June 1, 2024, the executive director shall:

(1) make an electronic copy of the administratively complete application available on the commission's website in accordance with Texas Water Code, §5.1734 within five business days of transmitting the notice of the administratively complete application to the applicant; materials may be exempted if posting the materials on the website would be unduly burdensome or the materials are too large to be posted on the website;

(2) make an electronic copy of the technically complete application and the executive director's draft permit available on the commission's website within five business days of transmitting the notice of the technically complete application and the executive director's draft permit to the applicant; materials may be exempted if posting the materials on the website would be unduly burdensome or the materials are too large to be posted on the website; and

(3) retain these postings until the commission has taken action on the application or the commission refers the application to State Office of Administrative Hearings.

§39.409. Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing.

(a) Notice given under this chapter will specify any applicable deadline to file public comment specified under §55.152 of this title (relating to Public Comment Period) and, if applicable, any deadlines to file requests for reconsideration, contested case hearing, or notice and comment hearing. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

(b) Comments are considered timely if filed between the date an application is received and the end of the comment period, including comments received between publications of the Notice of Receipt of Application and Intent to Obtain Permit and the Notice of Application and Preliminary Decision.

(c) The executive director may extend any comment period for good cause.

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice is given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location, type of permit applied for, and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) A description printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice of procedures by which the public may participate in the final permit decision including, when applicable:

(A) how to request a public meeting, including a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(B) how to request a contested case hearing,

(C) how to request reconsideration of the executive director's decision,

(D) how to request a notice and comment hearing, or

(E) a statement that later notice will describe procedures for public participation, and

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying and for permit applications that are declared to be administratively complete by the executive

director on or after May 1, 2026, a statement that a copy of the administratively complete application may be viewed online at the commission's website and the location of the website where the copy can be found;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) a brief description of public comment procedures, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, including:

(A) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted; and

(B) a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying and, for applications administratively complete on or after May 1, 2026, a statement that the technically complete application and draft permit may be viewed online at

the commission's website and the location of the website where these can be found;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, the following information must be included:

(A) a brief description of public comment procedures,

(B) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted;

(C) a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, a brief description of procedures by which the public may participate in the final permit decision and, if applicable :

(A) how to request a public meeting,

(B) how to request a contested case hearing,

(C) how to request reconsideration of the executive director's decision,

(D) how to request a notice and comment hearing, or

(E) a statement that later notice will describe procedures for public participation; and

(F) a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located, if there is substantial public interest in the proposed activity, or for the following types of applications, when requested by any interested person :

(i) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(ii) air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(iii) air quality permit applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards or under state standards in Chapters 111 - 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(iv) for initial registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) received before March 1, 2026, the following statements:

(I) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(II) if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing; and

(III) if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(v) for initial registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) received on or after March 1, 2026, the following statements:

(I) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(II) if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing unless a public meeting is held on the application;

(III) if a public meeting is held on the application, the end of the comment period and opportunity to request a contested case hearing will be extended for at least 36 hours following the end of the public meeting; and

(IV) if any hearing requests are received before the close of the 30-day comment period or the extended comment period following a public meeting, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(vi) for new air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits), for which the executive director has declared the application administratively and technically complete and prepared a draft permit within 15 days of receipt of the application, the following information:

(I) the date the application was received and the date the draft permit was completed; and

(II) for applications submitted before March 1, 2026, a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(d) of this title. If no hearing requests are received by the end of the 30-day comment period, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments; or

(III) for applications declared administratively complete by the executive director on or after March 1, 2026, a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(d) of this title. If no hearing requests are received by the end of the 30-day comment period, there is no further opportunity to request a contested case hearing, unless a public meeting is held on the application. If a public meeting is held, then the opportunity to request a contested case hearing is extended for at least 36 hours following the close of the public meeting. If any hearing requests are received before the close of the 30-day comment period or the close of a comment period extended following a public meeting, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(vii) for all air quality permit applications other than those in clauses (i) - (vi) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following

the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requester will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requester's uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) if notice is for air quality permit applications described in subparagraph (A)(vi) of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission;

(13) notification that only those persons actually residing within 440 yards of a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title may request a contested case hearing as a person who may be affected;

(14) if notice is for an application for an air quality permit under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions), a statement that any interested person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(15) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision, or the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, as provided for in §39.603(c) or (d) of this title, to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county with internet access in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying and, for applications administratively complete on or after May 1, 2026, a statement that the technically complete application and draft permit may be viewed online at the commission's website and the location of the website where these can be found;

(4) a brief description of public comment procedures,

(A) a description of the manner in which comments regarding the executive director's draft permit and, as applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted; or

(B) a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted; and

(C) the public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting, including:

(A) a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(B) a statement that the comment period will be for at least 30 days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's website;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications for permits under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits and Prevention of Significant Deterioration Review):

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (15) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including

(A) a description of the manner in which comments regarding the executive director's draft permit and preliminary decision and, as applicable, preliminary determination summary and air quality analysis may be submitted and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9), and (15) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§39.420. *Transmittal of the Executive Director's Response to Comments and Decision.*

(a) Except for air quality permit applications, when required by and subject to §55.156 of this title (relating to Public Comment Processing), after the close of the comment period, the chief clerk shall transmit to the people listed in subsection (b) of this section the following information:

(1) the executive director's decision;

(2) the executive director's response to public comments;

(3) instructions for requesting that the commission reconsider the executive director's decision; and

(4) instructions for requesting a contested case hearing.

(b) The following persons shall be sent the information listed in subsection (a) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) the director of the External Relations Division.

(c) When required by and subject to §55.156 of this title, for air quality permit applications, after the close of the comment period, the chief clerk shall:

(1) transmit to the people listed in subsection (d) of this section the following information:

(A) the executive director's decision;

(B) the executive director's response to public comments;

(C) instructions for requesting that the commission reconsider the executive director's decision; and

(D) instructions, which include the statements in clause (ii) of this subparagraph, for requesting a contested case hearing for applications:

(i) for the following types of applications:

(I) permit applications which are subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits) as described in §39.402(a)(2) of this title (relating to Applicability to Air Quality Permits and Permit Amendments);

(II) permit and permit amendment applications which are not subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, and for which hearing requests were received by the end of the 30-day comment period following the final publication of Notice of Receipt of Application and Intent to Obtain Permit, and these requests were not withdrawn as described in:

(-a-) §39.402(a)(1), (3), (11) and (12) of this title; and

(-b-) §39.402(a)(4) and (5) of this title;

(III) applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction; and

(ii) the following statements must be included:

(I) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;

(II) that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(III) that a contested case hearing request should include a description of how and why the requester will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requester's uses of property which may be impacted by the proposed facility or activity;

(IV) that only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted; and

(V) that a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment; and

(2) for applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, make available by electronic means on the commission's website the executive director's draft permit and preliminary decision, the executive director's response to public comments, and, as applicable, preliminary determination summary and air quality analysis.

(d) The following persons shall be sent the information listed in subsection (c) of this section:

(1) the applicant;

(2) any person who requested to be on the mailing list for the permit action;

(3) any person who submitted comments during the public comment period;

(4) any person who timely filed a request for a contested case hearing;

(5) Office of the Public Interest Counsel; and

(6) the director of the External Relations Division.

(e) For air quality permit applications which meet the following conditions, items listed in subsection (c)(1)(C) and (D) of this section are not required to be included in the transmittals:

(1) applications for which no timely hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain a Permit;

(2) applications for which one or more timely hearing requests are submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and for which this is the only opportunity to request a hearing, and all of the requests are withdrawn before the date the preliminary decision is issued;

(3) the application is for any renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History); or

(4) applications for a Prevention of Significant Deterioration permit that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions).

(f) For applications for which all timely comments and requests have been withdrawn before the filing of the executive director's response to comments, the chief clerk shall transmit only the items listed in subsection (a)(1) and (2) of this section and the executive director may act on the application under §50.133 of this title (relating to Executive Director Action on Application or WQMP Update).

(g) For post-closure order applications under Subchapter N of this chapter (relating to Public Notice of Post-Closure Orders), the chief clerk shall transmit only items listed in subsection (a)(1) and (2) of this

section to the people listed in subsection (b)(1) - (3), (5), and (6) of this section.

(h) For applications for air quality permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk will not transmit the item listed in subsection (a)(4) of this section.

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

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Texas Commission on Environmental Quality

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



SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §§39.501, 39.503, 39.509, 39.510

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. In addition, the amendments are adopted under Texas Government Code (TGC), §2001.004, which requires state agencies to adopt procedural rules; and TGC, §2001.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 27.019; and THSC, §361.024.

§39.510. *Notice Requirements for Inactive Municipal Solid Waste Permit.*

(a) This section applies to the owners or operators of inactive permitted municipal solid waste (MSW) facilities, which are those facilities that have not accepted waste within two years of permit issuance or have ceased accepting waste for at least two consecutive years. For

the purposes of this section, permit issuance means the date that a permit is issued by the commission or the date of a final, non-appealable decision regarding the permit. This section applies to facilities permitted before, on, or after the effective date of this rule.

(1) Within two years of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owner or operator of an inactive MSW facility shall notify the executive director, in writing, that the facility is inactive and that the owner or operator intends to operate the facility in the future. In the event that the owner or operator does not intend to operate the facility, the owner or operator should begin voluntary permit revocation procedures.

(2) Within two years of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owner or operator of an inactive permitted MSW facility shall publish notice of intent to operate the facility, at least once, in a newspaper of the largest circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, then the owner or operator shall publish notice in a newspaper of general circulation in the county in which the facility is located or proposed to be located, and such notice may be satisfied by a one-time publication if the publishing newspaper meets the circulation requirements. Thereafter, notice must be published annually in accordance with this paragraph, until the facility begins accepting waste or voluntary permit revocation is requested.

(3) Within two years of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owner or operator of an inactive permitted MSW facility shall provide, by certified mail, the notice of intent to operate the facility to:

(A) landowners within 500 feet of the facility property line, as determined by county tax rolls or other reliable sources;

(B) the mayor and health authorities of the city or town in which territorial limits or extraterritorial jurisdiction the facility is located or proposed to be located;

(C) the county judge and health authorities of the county in which the facility is located or proposed to be located; and

(D) the council of governments that serves or covers the area or county in which the facility is located or proposed to be located. Thereafter, notice must be sent annually in accordance with this paragraph, until the facility begins accepting waste.

(4) The owner or operator shall file an affidavit with the executive director certifying facts that constitute compliance with the notice requirements of paragraphs (2) and (3) of this subsection within 30 days of the last publication of the published notice required by paragraph (2) of this subsection. The owner or operator shall also file a copy of the published notice required by paragraph (2) of this subsection with the executive director that shows the date of publication and the name of the newspaper within ten business days after its publication. The deadline to file a copy of the published notice that shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with the public notice requirements of paragraphs (2) and (3) of this subsection creates a rebuttable presumption of compliance with the requirement to publish notice.

(5) The text of the newspaper notice and the mailed notice must include:

(A) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(B) the name, address, and telephone number of the owner or operator and a contact person from whom interested persons may obtain further information and, if different, the location of the facility or activity to be regulated by the permit;

(C) a brief description of the activity authorized by the permit;

(D) the permit number and permit issuance date; and

(E) a statement indicating that the permitted facility may begin construction or operation at a future time, and an estimated date of when the facility is expected to begin construction and operation.

(b) Within six months of the date of permit issuance, the date of ceasing to accept waste, or the effective date of this rule, whichever is later, the owners or operators of permitted MSW facilities that are not receiving waste shall provide signs specifying the facility's status. At the owner's or operator's expense, a sign or signs must be placed at the site of the permitted facility declaring that the permit has been issued and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements. Signs must:

(1) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(2) be headed by the words "AUTHORIZED MUNICIPAL SOLID WASTE DISPOSAL FACILITY";

(3) include the words "PERMIT NO.", the number of the permit, and the type of permit;

(4) include the words "for further information contact";

(5) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate commission regional office;

(6) include the name of the owner or operator, and the address of the appropriate responsible official;

(7) include the telephone number of the owner or operator;

(8) include the expected start-up date for beginning operation; and

(9) remain in place and legible until the facility is opened. The owner or operator shall provide a verification to the executive director that the sign posting was conducted according to the requirements of this section.

(c) Each sign placed at the site must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the permitted facility.

(d) The executive director may approve variances from the requirements of subsections (b) and (c) of this section if the owner or operator has demonstrated that it is not practical to comply with the

specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. Approval from the executive director under this subsection must be received before posting alternative signs for purposes of satisfying the requirements of this section.

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

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SUBCHAPTER J. PUBLIC NOTICE OF WATER QUALITY APPLICATIONS AND WATER QUALITY MANAGEMENT PLANS

30 TAC §39.551, §39.553

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the amendments are adopted under Texas Government Code (TGC), §2001.004, which requires state agencies to adopt procedural rules; and TGC, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§39.553. *Water Quality Management Plan Updates.*

(a) Applicability. This section applies to Water Quality Management Plan (WQMP) Updates.

(b) Notice of WQMP updates.

(1) The chief clerk shall publish notice of the WQMP update in the *Texas Register*.

(2) The chief clerk shall mail the notice of the WQMP update to persons known to the commission to be interested in the WQMP update, and to persons requesting notices of the WQMP identified on mailing lists maintained by the chief clerk, in accordance with §39.407 of this title (relating to Mailing Lists).

(3) Section 39.411 of this title (relating to Text of Public Notice) does not apply to WQMP updates. However, the notice of the WQMP update shall:

(A) include the name and address of the agency;

(B) provide an opportunity to submit written comments on the proposed WQMP update;

(C) describe the public comment procedures and the time and place of any public meeting; and

(D) include the name, address, and telephone number of an agency contact person from whom interested persons may obtain information.

(4) The notice shall provide at least a 30-day public comment period.

(5) Any public meeting shall be held and conducted in accordance with the requirements and procedures of §55.156 of this title (relating to Public Comment Processing).

(c) The executive director shall prepare a response to all significant public comments received by the commission before the end of the comment period. The executive director may revise the WQMP update based on public comment, if appropriate.

(d) As described in §50.133 of this title (relating to Executive Director Action on Application or WQMP Update), the executive director may certify the WQMP update.

(e) After the executive director certifies a WQMP update, the chief clerk shall mail a copy of the Response to Comments and certified WQMP update to all persons who submitted timely comments.

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

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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

30 TAC §§39.601, 39.603 - 39.606

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are also adopted under Texas Government Code (TGC), §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and TGC, §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement THSC, §382.056.

§39.604. *Sign-Posting.*

(a) At the applicant's expense, a sign or signs must be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must be provided by the applicant and must substantially meet the following requirements:

(1) Signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1-1/2 inches in size and block printed capital lettering;

(2) Signs must be headed by the words listed in the following subparagraph:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must include the words "APPLICATION NO." and the number of the permit application. More than one application

number may be included on the signs if the respective public comment periods coincide;

(4) Signs must include the words "for further information contact";

(5) Signs must include the words "Texas Commission on Environmental Quality" and the address of the appropriate commission regional office;

(6) Signs must include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible continuously throughout the entirety of all comment periods on the permit application. The applicant shall provide a verification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign but no more than three signs must be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.426 of this title (relating to Alternative Language Requirements). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must be satisfied without regard to whether alternative language newspaper notice is waived under §39.426 of this title. The alternative language signs must meet all other requirements of this section.

§39.606. Contested Case Hearings and Public Meetings.

(a) Applicability. This section is only applicable to air quality permit applications as specified in Subchapters H and K of Chapter 39 (Public Notice).

(b) A contested case hearing may be requested for the following types of air quality permit applications:

(1) air quality permit applications and for permit amendment applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits);

(2) air quality permit applications and for permit amendment applications subject to the requirements of Chapter 116, Sub-

chapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(G), 40 CFR Part 63);

(3) for registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits);

(4) air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapter G of this title (relating to Flexible Permits);

(5) all other permit applications subject to the requirements of Chapter 116, Subchapter B (relating to New Source Review Permits); and

(6) applications for renewals of air quality permit applications subject to Chapter 116, Subchapter D of this title (relating to Permit Renewals).

(c) A notice and comment hearing may be requested for the following types of air quality permit applications:

(1) a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits);

(2) a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities); and

(3) air quality permit applications subject to the requirements of Chapter 116, Subchapter C of this title (relating to Plant-wide Applicability Limits).

(d) For a request for a contested case hearing to be considered timely it must be received by:

(1) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History, by the end of the 15-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(2) for initial registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) and for new air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits), for which the executive director has declared the application administratively and technically complete and prepared a draft permit, within 15 days of receipt of the application:

(A) for applications received before March 1, 2026:

(i) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(ii) if no hearing requests are received before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, there is no further opportunity to request a contested case hearing; and

(iii) if any hearing requests are received before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) for applications received on or after March 1, 2026:

(i) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision;

(ii) if no hearing requests are received before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision there is no further opportunity to request a contested case hearing unless a public meeting is held on the application;

(iii) if a public meeting is held on the application, the end of the comment period and opportunity to request a contested case hearing will be extended for at least 36 hours following the end of the public meeting; and

(iv) if any hearing requests are received before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision or the extended comment period following a public meeting, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(3) for all air quality permit applications and for permit amendment applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title, by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(4) for all air quality permit applications and for permit amendment applications subject to the requirements of Chapter 116, Subchapter E of this title, by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(5) for all other applicable air quality permit applications:

(A) a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(B) if no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing;

(C) if any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments.

(e) Requests for contested case hearings must be timely, in writing, and must include the following information:

(1) the requester's location relative to the proposed facility or activity;

(2) a description of how the requester will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requester's uses of property which may be impacted by the proposed facility or activity; and

(3) the form requirements of Chapter 55 of this title.

(f) Only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted.

(g) For applications for a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title, only those persons actually residing within 440 yards of the proposed plant may request a contested case hearing as a person who may be affected.

(h) The executive director shall hold a public meeting on permit applications listed in (b)(1)- (2) of this section if requested by a member of the legislature who represents the general area where the facility is to be located, if there is substantial public interest in the proposed activity, or if requested by any interested person.

(i) The executive director may hold a public meeting on permit applications listed in (b)(3) - (5) of this section if requested by a member of the legislature who represents the general area where the facility is to be located or if there is substantial public interest in the proposed activity.

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

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SUBCHAPTER L. PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

30 TAC §39.651

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. Additionally,

the amendments are adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. The amendments are also adopted to comply with Title VI of the Civil Rights Act of 1964, 42 United States Code, §§2000d *et seq.*, and United States Implementing Regulations at 40 Code of Federal Regulations Parts 5 and 7, which prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation and retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance. The commission receives financial assistance from the United States Environmental Protection Agency (EPA) and, therefore, must ensure nondiscrimination in its programs and activities pursuant to federal nondiscrimination laws and EPA's implementing regulation.

The adopted amendments implement TWC, Chapter 5, Subchapter M, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019, and THSC, §361.024.

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SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §39.707

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid

waste; and THSC, §401.051, which authorizes the commission to adopt rules relating to control of sources of radiation. In addition, the amendment is adopted under Texas Government Code (TGC), §2001.004, which requires state agencies to adopt procedural rules; and TGC, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

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SUBCHAPTER N. PUBLIC NOTICE OF POST-CLOSURE ORDERS

30 TAC §§39.803, 39.804, 39.807 - 39.810

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking adoption implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

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SUBCHAPTER O. PUBLIC NOTICE FOR MARINE SEAWATER DESALINATION PROJECTS

30 TAC §39.902, §39.903

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013 which establishes the general jurisdiction of the commission; TWC, §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103 which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; 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; TWC, §26.011 which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the commission in the public interest; TWC, §26.027 and §26.041 which authorize the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state, and to set standards to prevent the discharge of waste that is injurious to the public health; and TWC, §18.005(e) which directs the commission to adopt rules to expedite permitting and related processes for the discharge of both treated marine seawater and waste resulting from the desalination process, in accordance with TWC, Chapter 18.

The adopted rules implement TWC, §18.005.

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SUBCHAPTER P. OTHER NOTICE REQUIREMENTS

30 TAC §§39.1003, 39.1005, 39.1009, 39.1011

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. In addition, amendments are adopted under Texas Government Code (TGC), §2001.004, which requires state agencies to adopt procedural rules; and TGC, §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§55.103, 55.152, 55.154, 55.156, 55.200, 55.201, 55.203, 55.209, 55.210, 55.211, 55.250, 55.251, and 55.254.

Amended §§55.103, 55.152, 55.201, 55.209, 55.251 and 55.254 are adopted with changes to the proposed text as published in the August 8, 2025 issue of the *Texas Register* (50 TexReg 5185) and, therefore, will be republished. Amended §§55.154, 55.156, 55.200, 55.203, 55.209 - 55.211, 55.250, and 55.254 are adopted without changes to the proposed text as published in the August 8, 2025 issue of the *Texas Register* (50 TexReg 5185) and, therefore, will not be republished.

The adopted amendments to §55.152 and §55.154 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

TCEQ underwent Sunset review during the 88th Regular Legislative Session, 2023. The Sunset bill, SB 1397, continuing the Texas Commission on Environmental Quality (TCEQ), included provisions requiring certain changes to TCEQ's public participation rules, which are found primarily in Title 30 Texas Administrative Code (TAC) Chapters 39 and 55.

The agency engaged in an extended stakeholder process for this rulemaking. A hybrid virtual/in-person stakeholder meeting was held on July 15, 2024, in Austin, with in-person meeting rooms also open in TCEQ regional offices in Midland and Harlingen. Spanish language interpretation was available for this meeting. In-person meetings were held on July 16, 2024, in Arlington and on July 18, 2024, in Houston. Because the July 18, 2024, meeting in Houston was shortly after the city experienced a hurricane, a second in-person meeting was held in Houston on October 3, 2024. Professional Spanish-language interpretation was available at both Houston meetings, and an agency interpreter was available for Spanish language assistance at the Arlington meeting. Stakeholder comments were accepted until October 8, 2024. The agency received robust participation from stakeholders during this process, receiving many comments and suggestions for changes to improve the agency's public participation rules.

The TCEQ Sunset bill required the extension of public comment period and opportunity to request a hearing for a specific subset of air quality permit applications. Specifically, air quality permit applications that are required to publish notice in a consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) (consolidated notice) must extend the close of the comment period and the opportunity to request a contested case hearing to at least 36 hours following a public meeting held on the permit application. During the stakeholder process, a large number of comments requested that this extension be given to all types of permit applications. Although many other comments were beyond the scope of the current rulemaking, there was a general request to make the rules less confusing and more helpful to assist the public participation process. The adopted amendments to Chapter 55, along with the companion rulemaking adopting changes to Chapter 39, seek to improve and clarify the rules in addition to satisfying the requirements of the Sunset bill.

The adopted amendments in Chapter 55 will expand the current definitions section to add definitions relating to the public participation processes. In response to public comment received, the commission is not adopting a proposed definition for personal justiciable interest. The other proposed definitions are being adopted. The adopted amendments will extend the public comment period and opportunity to request a contested case hearing for at least 36 hours following the close of a public meeting for air quality permit applications with consolidated notice. This adopted requirement will apply to applications that the executive director receives on or after March 1, 2026. Because the agency is continually processing permit applications, a specific date by which new requirements will be in place is necessary to ensure smooth and fair processing of permit applications and not require current applications to follow new requirements that

do not exist when the applications are submitted. As the executive director has the authority to extend comment periods and the requirement for the extension has been a statutory requirement since September 1, 2023, when the agency has held public meetings for air quality permit applications with consolidated notice, the comment period has been extended. The current rule changes will make that requirement clear to both the regulated industry and the public. The adopted amendments will specify that the commission will follow new notice procedures that are being adopted in Chapter 39 when a comment period or period to request a contested case hearing is extended, to allow the public to know what the process is. The adopted amendments will clarify and update language, including removing a requirement for a fax number and adding a requirement for a valid email address in requests submitted to the commission for a contested case hearing or request for reconsideration. The commission is not adopting proposed new §39.422 in Chapter 39, so conforming proposed new language in Chapter 55 is also not being adopted. Further adopted changes update language to conform with current stylistic and grammar conventions.

Section by Section Discussion

Subchapter D. Applicability and Definitions.

Current §55.103 is amended to revise and clarify the existing definition for affected person as new §55.103(1). Adopted new §§55.103(2)-(6) will add new definitions for contested case hearing, motion to overturn, motion for rehearing, public meeting, and request for reconsideration. These are terms that the public has indicated consistently cause confusion; therefore, the new definitions are intended to provide clarity and assist the public in understanding the different components that are part of the public participation process. In response to public comment, the proposed definition for personal justiciable interest is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public. The numbering of the remaining proposed definitions is being updated from proposal to reflect this change.

Subchapter E. Public Comment and Public Meetings.

Section 55.152(b) is amended to extend the public comment period to at least the close of a public meeting by adding new §55.152(b)(1) for existing language and §55.152(b)(2) to specify that the comment period is extended for at least 36 hours following the close of a public meeting for air quality applications with a consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision that are received by the executive director on or after March 1, 2026. The commission is not adopting proposed new §55.152(c) which would have specified that any extension of time for filing public comments or hearing requests must follow the notice procedures of §39.422 (relating to Notice of Extension of Comment Period) because the commission is not adopting proposed new §39.422. New §55.152(c), which was proposed as (d), specifies that timely comments are those received by the Office of the Chief Clerk by the end of the comment period. Section 55.154(a) is amended to add the word "hearing" to be clear that a public meeting is not a contested case hearing under the Texas Administrative Procedure Act.

Subchapter F. Requests for Reconsideration or Contested Case Hearing.

Section 55.200 is adopted to remove obsolete language regarding the date of applicability. Subsections 55.201(d) and (e) are amended to remove the requirement for a fax number and to

add the requirement for a valid email address to be included in a request for hearing. The commission is not adopting proposed new subsection 55.201(g)(3), which would have added the requirement that extensions of time for filing public comments or hearing requests must follow the requirements of §39.422 of this title (relating to Notice of Extension of Comment Period) because the commission is not adopting proposed new §39.422. The adopted amendments of § 55.209 (d) and (g) revise the phrasing of the rule to make clear that the parties shall file notice of the response or reply with the chief clerk and shall serve the notice of the filing on the parties. Subsection 55.210(c)(4) is amended to extend the public comment period to at least the close of any public meeting, and for at least 36 hours following the close of a public meeting for air quality permit applications with a consolidated notice that are received on or after March 1, 2026. Subsection 55.210(c)(6) is amended to update the type of recording to the more appropriate audio recording.

Subchapter G. Requests for Contested Case Hearing and Public Comment on Certain Applications.

Section 55.250 is adopted to remove obsolete language regarding the date of applicability. Subsection 55.251(c)(1) is amended to remove the requirement for a fax number and add the requirement for a valid email address. The adopted amendment to §55.251(f)(2) clarifies that the commission may extend the time for submission of public comments and hearing requests. The commission is not adopting new §55.251(f)(3) which would have added the requirement that extensions of time for filing public comments or hearing requests must follow the requirements of §39.422 of this title (relating to Notice of Extension of Comment Period), because the commission is not adopting proposed new §39.422. Adopted amendments of § 55.254 (e) and (f) revise the phrasing of the rule to make clear that the parties shall file notice of the response or reply with the chief clerk and shall serve the notice of the filing on the parties. Section 55.251(g) is adopted for repeal as obsolete, as the commission no longer has authority over weather modification licenses or permits, and Texas Water Code Chapter 18 does allow for the opportunity for a contested case hearing on certain types of permit applications.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the action is not subject to TGC, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the rulemaking adoption does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in TGC, §2001.0225(a).

The rulemaking adoption is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health. The purpose of the rulemaking adoption is to update and clarify the requirements for public participation in the permitting process for air quality, water quality, and waste permit applications. The rulemaking adoption will implement changes to comply with the requirements in the Sunset

bill, SB 1397, 88th Regular Legislature, as well as other recommended changes. The TCEQ Sunset bill required the extension of the public comment period and opportunity to request a hearing for a subset of air quality permit applications that have a consolidated notice. Following extensive stakeholder outreach, the commission is adopting that the comment period and opportunity to request a contested case hearing be extended for at least 36 hours following the close of a public meeting for air quality permit applications with a consolidated notice that are received on or after March 1, 2026. The adopted amendments will specify that the commission will follow new notice procedures that are being simultaneously adopted in Chapter 39 when a comment period or period to request a contested case hearing is extended, to allow the public to know what the process is. The adopted amendments will clarify and update language, including removing a requirement for a fax number and adding a requirement for a valid email address in requests submitted to the commission for a contested case hearing or request for reconsideration. Further adopted changes update language to conform with current stylistic and grammar conventions.

As defined in TGC, TGC, §2001.0225, only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of TGC, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an analysis of whether Texas Government Code (TGC), Chapter 2007, is applicable. The adopted amendments are procedural in nature and will not burden private real property. The adopted amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under TGC, §2007.002(5). The adopted amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Effect on Sites Subject to the Federal Operating Permits Program

The adopted amendments will not require any changes to outstanding federal operating permits.

Public Comment

The commission held a public hearing on September 8, 2025. The comment period closed on September 9, 2025. The commission received comments from Air Alliance Houston (AAH), Arcosa Stabilized & Recycling (Arcosa), Associated General Contractors of Texas (AGC of Texas), the Associations- joint letter from Texas Association of Manufacturers (TAM), Texas Chemistry Council (TCC), and Texas Oil and Gas Association (TXOGA), Lone Star Legal Aid of behalf of Better Brazoria Clean Air and Clean Water in Brazoria County (Better Brazoria), Environmental Integrity Project (EIP), Harris County Attorney's Office (HCAO), Harris County Pollution Control Services (HCPCS), City of Houston Health Department (HHD), Perales, Allmon, & Ice (PAI), Texas Aggregates and Concrete Association (TACA), and Texas Industry Project (TIP). The comments expressed mixed support for the rulemaking, requested further changes, and included comments that the commission should limit the rulemaking to statutorily required changes.

Response to Comment

Comment

TIP comments that the new requirement to leave permit documents in the public place and signs in place until final commission action on a permit lacks clarity and could lead to confusion.

Response

Changes in adopted §§39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application must now remain in the public place until replaced by the technically complete application and draft permit. Generally, the publication of the NAPD notifies the public of the availability of the technically complete application and draft permit. The technically complete application and draft permit must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, then the application must remain in place through the publication's designated comment period. The proposed change to §39.405(g)(2) to require the technically complete application to remain in place continuously is adopted and for consistency the same change is also being adopted for §39.405(g)(3).

The signs must now be in place at the start of the comment period and remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must go up at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application, as is intended by the posting of signs.

The commission notes that the current rule requires the application to remain available in the public place until the commission

takes action on the application or refers it to SOAH for applications that require a NAPD and the commission did not propose to change this time period. For applications for which there is no requirement for a NAPD, the requirement in current rule is for the application to remain in place for the publication's designated comment period and the commission is retaining this requirement in the adopted rule. The suggestion in the comment that materials remain only until the end of the comment period would provide less notice to the public than current rules and what the commission proposed. No changes were made in response to that part of the comment.

Comment

TIP comments that the proposed change to §39.405 could be interpreted to require availability of the administratively complete application from the date of the NORI up to and including the end of the public comment period on the application. Such a duplicative requirement would be confusing to the public as the technically complete application is required to be made available from the date of the NAPD until the commission has taken final action on the permit or the commission refers the permit to SOAH. TIP also comments that the extension of the requirement to maintain a copy of the administratively complete application for longer than the initial 30-day comment period after the NORI and the use of the term continuously in the proposed rule changes raises questions about how and when revisions, clarifications or updates to an application should be added to the locally available copy.

Response

Changes in adopted §§39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application must now remain in place until replaced by the technically complete application and draft permit. The technically complete application and draft permit must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, as some types of permit applications are only required to publish NORI, then the application must remain in place through the publication's designated comment period. The proposed change to §39.405(g)(2) to require the technically complete application to remain in place continuously is adopted and for consistency the same change is also being adopted for §39.405(g)(3).

The commission notes that the current rule requires the application to remain available in the public place until the commission takes action on the application or refers it to SOAH and the commission did not propose to change this time period. The suggestion in the comment that materials remain only until the end of the comment period would provide less notice to the public than current rules and what the commission proposed. No changes were made in response to that part of the comment.

Comment

TIP comments with respect to §39.405(g) recommend deleting the requirement to keep the administratively complete application in place after the NAPD is published and confirming the current requirement to include "any subsequent revisions to the application" in §39.405(g)(2) to commence only with the publication of the NAPD.

Response

Changes in adopted §§39.405(g)(1) and (2) and §39.604(b) were made in response to this comment. The initial application

must now remain in place until replaced by the technically complete application and draft permit. The technically complete application must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, then the application must remain in place through the publication's designated comment period. The proposed change to §39.405(g)(2) to require the technically complete application to remain in place continuously is adopted and for consistency the same change is also being adopted for §39.405(g)(3).

Comment

TIP suggested changes to new §39.405(l), including a change to specify on the commission's website that there is additional confidential information in a confidential file, if an application is submitted with confidential information. TIP also commented in its suggested changes that the commission should only keep the electronic copies on the application available until the end of the comment period. Additionally, TIP's suggested changes request the commission change language in §39.405(g) that require the technically complete application to remain in place until the commission takes final action or refers the application to SOAH.

Response

The commission disagrees that it is necessary to add information in the rule regarding confidential information, as that is not included in the new legislative requirement in SB 1397, and therefore no change has been made in response this comment. The commission disagrees that electronic copies of the technically complete application should not remain available until final opportunity for the public to request review of the application. The commission notes that it is a longstanding rule in §39.405(g) that the technically complete application must remain available in the public place until the commission takes action on an application or refers it to SOAH and is also declining to make changes to shorten that time until only the end of the comment period. New §39.405(l) was amended at adoption to require the technically complete application to remain in place until final action or referral to SOAH, to mirror the requirements in §39.405(g). The commission notes that following the end of the public comment period and transmittal of the executive director's response to comments, the public may continue to participate by submitting a request for contested case hearing or request for consideration. These opportunities benefit from having the technically complete application and draft permit available electronically on the commission's website. No other changes were made in response to this comment.

Comment

EIP objects to imposing additional procedural hurdles for a litigant to be considered an affected person who can pursue a matter in court. EIP states that for the sake of efficiency, clarity, and legal certainty, litigants should have a uniform standard for justifiability in administrative hearings and courts alike.

Response

This comment is outside the scope of this rulemaking. Nothing in the proposed rules imposes any additional procedural hurdles for a litigant to be considered an affected person. No changes were made in response to this comment.

Comment

EIP commented that TCEQ should amend §55.211 to provide guidelines for when a person who is not deemed an affected person is entitled to reconsideration and what the requestor must provide to meet such a standard.

Response

This comment is outside the scope of this rulemaking. The commission did not propose any changes related to requesting reconsideration or what requesters may need to provide in relation to such a request. No changes were made in response to this comment.

Comment

AGC of Texas requests that §39.606(f) be amended to match THSC §382.058(c), and to therefore be clear that an affected person is someone who actually resides within 440 yards. AGC also requests that the commission review §39.411(e)(13) so that the language matches the statutory requirement. Commenter also wants the commission to affirm that the 440-yard setback requirement is not an environmental protectiveness measure.

Response

The commission added "actually" to new §39.606(g), which was proposed as §39.606(f), to match the statutory language, as requested by this comment. The commission is also adopting a change to §39.411(e)(13) to have the rule language more closely mirror the statutory requirement. This is a statutory requirement regarding who may request a contested case hearing as a person who may be affected for a specific type of air quality permit - a registration for a standard permit for a concrete batch plant.

Comment

Arcosa commented that the commission should clarify thresholds for granting hearings so that only requests with clear, material evidence of environmental or health impacts move forward.

Response

The commission did not propose any changes to the requirements for being an affected person or for issues for which a hearing can be granted. Therefore, this comment is outside the scope of this rulemaking. No changes have been made in response to this comment.

Comment

Better Brazoria comments that the brightline 440-yard requirement to determine access to judicial review is not consistent with Article III.

Response

The requirement that a person must actually reside within 440 yards of a proposed plant to be an affected person entitled to request a contested case hearing on a concrete batch plant standard permit is a requirement of Texas statute - THSC §382.058(c). This comment is outside the scope of this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria commented that TCEQ rules require a contested case hearing request to state a person's location and relative distance to the proposed facility but provides no clarification of how the agency will take into account or measure that distance. Commenter further stated that TCEQ should be consistent in how to measure distances

Response

This comment is outside the scope of this rulemaking. The commission did not propose any changes to the process for how a person may request a contested case hearing or for the contents of those requests. No changes were made in response to this rulemaking.

Comment

Better Brazoria commented that TCEQ should not allow distance to predominate over all other considerations of an affected person

Response

This comment is outside the scope of this rulemaking. The commission did not propose any changes to the consideration of distance in affected person determinations. For concrete batch plant standard permit registrations, the commission considers distance as prescribed by THSC §382.058(c). Otherwise, distance is only one of many factors that the commission considers in an affected person determination. No changes were made in response to this comment.

Comment

Better Brazoria suggested that §55.103(1)(c) should state "For an air quality standard permit for a concrete batch plant, only a person actually residing within 440 yards of the proposed plant boundary may be an affected person."

Response

The plain language of THSC §382.058(c) provides: "For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected." The statutory language does not include the "plant boundary" as requested in this comment. No changes were made in response to this comment.

Comment

Better Brazoria proposed that the commission should make §39.423 the same notice period as §39.709, which is a minimum of 30 days mailed notice of a contested case hearing.

Response

Although the Office of the Chief Clerk typically mails notice for a contested case hearing prior to 30 days to give the public sufficient time for notice of the contested case hearing, the commission retains discretion to mail the notice no less than 13 days before the hearing, as required by the current rule. No changes were made in response to this comment.

Comment

AAH requests that the commission clarify the criteria for a contested case hearing.

Response

The commission did not propose any changes to the criteria for a contested case hearing. This comment is therefore outside the scope of this rulemaking. No changes were made in response to this comment.

Comment

The Associations requested that the commission require additional language in the text of public notices that properly informs the public that failing to submit timely comments will preclude a person from being able to potentially request a contested case

hearing. This complies with the statutory text of Texas Government Code §2003.047(e-1).

Response

The commission did not propose any language related to changes in how to request a contested case hearing; therefore, this comment is outside the scope of the current rulemaking. No changes were made in response to this comment.

Comment

TIP requests the commission revise §39.411 as proposed to require notice language clarifying that if no comments are timely submitted by a person (or association meeting the requirements of 30 TAC §55.205) to the TCEQ during the public comment period, then that person or association may not be named an affected person or association by the commission or SOAH.

Response

The commission did not propose any language related to changes in how to request a contested case hearing; therefore, this comment is outside the scope of the current rulemaking. No changes were made in response to this comment.

Comment

AGC of Texas believes that there is no justification for §39.606(c)(2), with respect to why facilities with low compliance classification are treated differently, since THSC Chapter 382 and Chapter 5 of the Texas Water Code are silent on the impact of poor compliance history.

Response

In response to comment, the commission is not adopting this provision.

Comment

AGC of Texas states in their comment that it appears that all new §39.606 may not have been underlined.

Response

The proof copies submitted to TCEQ by the Secretary of State show all of new §39.606 underlined as new language. No changes were made in response to this comment.

Comment

Better Brazoria agrees with adding new §39.606, as it makes the contested case hearing process clearer to the public.

Response

The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

TIP also seeks clarification on the processing and issuance of these types of applications in §39.606(a), as they should not be subject to the opportunity for any person or association to submit comments, request a public meeting, request reconsideration, or request a contested case hearing.

Response

The commission has added a new applicability subsection to new §39.606 to clarify that the section only applies to applications subject to Subchapters H and K of Chapter 39. As this is now new §39.606(a), the remaining subsections have been

re-numbered accordingly. The language in new §39.606(b) mirrors the long-standing language in §39.402 and §39.411 for the types of air quality applications that have opportunities for public meetings and contested case hearings. The adopted new language provides clarity for the public but does not change the underlying requirements that already exist, other than specific changes that the commission has noted. These changes are related to comment periods for air quality permit applications with a consolidated NORI and NAPD. The commission has included the new subsection to clarify the applicability of the new §39.606.

Comment

TIP requests that the commission include language in §39.606(a) that recognizes the statutory limitation in THSC §382.056(g) which states that the commission may not seek further public comment or hold a public hearing on amendments, modifications, or renewals that "...would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted."

Response

Language that addresses the deadline for requesting a contested case hearing on these types of applications was proposed and is being adopted in new §39.606(d)(1) specifically for contested case hearings, which mirrors existing language in §39.411. No language was proposed relating to the commission's consideration of requests on these types of applications. Furthermore, no-increase renewal applications are not included in the list of application types in §39.606(h) or (i) which list the types of air quality applications for which the executive director may hold a public meeting.

Comment

TIP requests that the commission revise §39.606(h) to be consistent with §55.154(c) and federal law.

Response

Adopted new §§39.606(h) and (i), which were proposed as §§39.606(g) and (h) were revised to match the requirements in §39.411(e) and §55.154(c).

Comment

PAI comments that additional time is needed to prepare a reply to responses to hearing requests. PAI states instead of the current 14-day time period, it would be more appropriate to establish a rule that allows 30 days to reply to a Response to Hearing Request.

Response

The commission did not propose to extend the time frame for replying to a Response to Hearing Request and is not adopting changes to the time frame at this time. No changes have been made in response to this comment.

Comment

HCPCS comments that an extended comment period is necessary and warranted and would afford participants time to process any new information that may have been garnered from the public meeting. HCPCS requests that the commission extend the comment period for at least 10 days following a public meeting for all types of permit applications.

Response

The commission did not propose changing comment periods for any types of permit applications other than those air quality permit applications with consolidated notice, as required by the Sunset bill. Expanding notice periods for other types of permit applications is beyond the scope of the current rulemaking project. No changes were made in response to this comment.

Comment

EIP commented that except where statutorily prohibited TCEQ should standardize and extend the length of all comment periods under §55.152 to 60 days to allow the public to secure legal and technical assistance and time to adequately review applications and permits.

Response

The proposed rules did not propose to extend any comment periods except for the one required by the TCEQ Sunset bill for air quality permit applications with consolidated notice. The length of comment periods is provided in the notices published on permit applications. No changes were made in response to this comment.

Comment

AGC of Texas requests that the commission provide examples or clarify what good cause is to extend a comment period in §39.409(c) and §39.422. Commenter also requests clarification as to who has the burden for demonstrating good cause.

Response

The commission is not adopting the proposed §39.422. Some examples of when comment periods have been extended would include issues with notice, such as signs not being in place or documents not being available for the public to review in an appropriate local place, mistakes in notice that may be discovered later during the comment period, failure to publish notice in the correct newspaper, and other similar issues. The rules provide the basic legal standard; however, nuanced, in-depth consideration that is not easily captured by rule language can best be considered on a case-by-case basis as needed.

Comment

Better Brazoria agrees with extending the comment period for 36 hours, and suggests that this change be extended to all permits

Response

The commission appreciates the support for the extension of the comment period for certain types of air quality permit applications. The commission did not propose changing comment periods for any types of permit applications other than those air quality permit applications with consolidated notice, as required by the Sunset bill. Expanding notice periods for other types of permit applications is beyond the scope of the current rulemaking project. No changes were made in response to this comment.

Comment

Better Brazoria agrees with the language extending the comment period for good cause as it ensures more inclusive public participation.

Response

The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria suggests that notice of extensions of comment periods should be published in alternative languages when required in §39.422.

Response

The commission is not adopting the proposed §39.422.

Comment

AAH requests that the commission clarify the ED's role in extending comment periods.

Response

Some examples of when comment periods have been extended would include issues with notice, such as signs not being in place or documents not being available for the public to review in an appropriate local place, mistakes in notice that may be discovered later during the comment period, failure to publish notice in the correct newspaper, and other similar issues. The rules provide the basic legal standard; however, nuanced, in-depth consideration that is not easily captured by rule language can best be considered on a case-by-case basis as needed. No changes were made in response to this comment.

Comment

PAI believes the comment period should extend to 36 hours after the close of the public meeting for all air quality, water quality, and solid waste permit applications.

Response

The commission proposed compliance dates for new rule requirements to allow applicants to plan and be able to fully comply with these changes. Providing a date certain helps both applicants and the public know when applications must meet the new requirements. The commission has been meeting its statutory requirement to extend the comment period for at least 36 hours for air quality permit applications with a consolidated NORI and NAPD since the effective date of the sunset bill. No changes were made in response to this comment.

Comment

Better Brazoria approves current language access plan and proposed rules in §39.422(d).

Response

The commission is not adopting the proposed §39.422.

Comment

Better Brazoria commented that the commission should be aware of the lack of email/ computer availability in low-income situations.

Response

The commission appreciates the comment and acknowledges that there are commenters with less technical expertise or resources who rely on other methods to participate in the permitting process. No changes were made in response to this comment.

Comment

Better Brazoria voiced concern about the distances in concrete batch plant applications and where it will vary to avoid providing someone with standing.

Response

The requirement that a person must actually reside within 440 yards of a proposed plant to request a contested case hearing on a concrete batch plant standard permit is a requirement of Texas statute - THSC §382.058(c). The current rulemaking does not concern how the agency reviews these types of applications or how applicants may revise their applications during the permit review process and is therefore outside the scope of this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria commented about the abuse of the notice function by publishing in smaller newspaper circulations.

Response

This comment is outside the scope of this rulemaking. The commission does not require publication in specific newspapers, so long as they meet the rule requirements. No changes were made in response to this comment.

Comment

HCAO suggests including the exact URL where applicable for the proposed amendments that require a statement that a copy of the administratively complete application can be found online.

Response

Because a website URL may change over time, including it in rule language is not best practice, as it can lead to future problems. No changes were made in response to this comment.

Comment

Better Brazoria proposes changes for §§39.419, 39.804, 39.1003, and 39.1005(b) - "Regardless of the notice requirements in §39.XXX of this title, the commission shall make available by electronic means on the commission's website the permit application."

Response

The adopted changes to the rules provide specifically for the commission to make both the initial application and the technically complete application and draft permit available electronically on the commission's website in new §39.405(l). This requirement applies to all types of applications that are subject to Chapter 39, Subchapter H. Therefore, it is not necessary to repeat this requirement in other places in the rules as requested by the commenter. No changes were made in response to this comment.

Comment

TIP believes that electronic availability of the application will provide greater public access to application materials than the current requirement in §39.405(g) to provide access to physical copies in a local public place.

Response

While the commission agrees that having applications and the draft permit available electronically provides the best access for the public, it is still necessary for the commission to ensure that the public can access the relevant permit application documents in a local public place, as required by statute. No changes were made in response to this comment.

Comment

AAH commented that ensuring that information about permit meetings and public hearings is made more available, readily available to community members is great.

Response

The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

AAH commented that they also have concerns regarding applicants using less widely circulated newspapers.

Response

This comment is outside the scope of this rulemaking. The commission does not require publication in specific newspapers, so long as they meet the rule requirements. No changes were made in response to this comment.

Comment

Arcosa commented that the commission should encourage proactive outreach by operators (e.g., bilingual fact sheets, open houses) as an alternative to lengthier contested case proceedings.

Response

This comment is outside the scope of this rulemaking. Regulated entities are always welcome and encouraged to engage with community stakeholders during the application process. No changes have been made in response to this comment.

Comment

HCAO requests further clarification on the difference between public meeting and public hearing in Chapter 39 Subchapter A.

Response

A public meeting is intended for the public to ask questions of TCEQ staff and the applicant during the informal part of the meeting, and to provide formal oral comments that will receive an official written response from the executive director. A public meeting is not a contested case hearing. There is no definition for a public hearing included in the adopted rules. A contested case hearing is a formal legal proceeding at the State Office of Administrative Hearings before an Administrative Law Judge (ALJ). Following a contested case hearing, the ALJ will issue a Proposal for Decision and make a recommendation to the commission. The commission will then consider this decision at an open meeting and make a final decision on issuance of the permit. No changes were made in response to this comment.

Comment

HCAO requests clarification of what "too large and unduly burdensome for posting" means in §39.405(l); they further request that a tangible threshold be established before materials may be exempt.

Response

The text of the new rule language aligns with the statutory requirement. No changes were made in response to this comment.

Comment

HCAO suggests adding instructions on how shareholders can view permitting documents that are exempt under §39.405(l).

Response

Complete applications are available at physical locations and would include documents that may be too large for posting online. No changes were made in response to this comment.

Comment

Better Brazoria disagrees with the July 1, 2026 implementation date for certain rules and suggests that they should correspond with the March 1, 2026 implementation date.

Response

The commission proposed compliance dates for new rule requirements to allow applicants and the commission to plan and be able to fully comply with these changes. However, the commission is not adopting any proposed changes that would have had a July 1, 2026 implementation date. Providing a date certain helps both applicants and the public know when applications must meet the new requirements. There are two different implementation dates because some of the changes are already being implemented by the commission, while others will require the development of new procedures and will therefore take longer for full implementation by the commission. No changes were made in response to this comment.

Comment

Better Brazoria suggests that the implementation of changes under §39.422 should be March 1, 2026, instead of May 1, 2026.

Response

The commission is not adopting the proposed new §39.422.

Comment

PAI supports the extension of the public comment period to 36 hours after a public meeting is held for air quality permits with a consolidated notice and believes that this requirement should apply earlier than only to those applications submitted on or after March 1, 2026.

Response

The commission proposed compliance dates for new rule requirements to allow applicants to plan and be able to fully comply with these changes. Providing a date certain helps both applicants and the public know when applications must meet the new requirements. The commission also notes that it has been implementing this statutory requirement since it became effective. No changes were made in response to this comment.

Comment

AGC of Texas comments that several proposed amendments go beyond the direction of the legislature and believes that the substantive changes should be limited to the statutory changes made through the sunset process.

Response

The purpose of this rulemaking is to improve readability and clarity of the rules to generally improve the commission's public participation processes, in addition to implementing specific requirements of the Sunset bill. No changes were made in response to this comment.

Comment

The Associations comment that the commission should confine any rule changes to those required by SB 1397 from the 88th Legislative Session.

Response

The purpose of this rulemaking is to improve readability and clarity of the rules to improve the commission's public participation processes, in addition to implementing specific requirements of the Sunset bill. No changes were made in response to this comment.

Comment

Arcosa commented that the commission should provide permit timelines certainty by setting reasonable deadlines for processing Requests for Reconsideration.

Response

The commission did not propose any changes for the process by which the commission sets Requests for Reconsideration for commission consideration. Following the end of the opportunity to request a contested case hearing or reconsideration of the executive director's initial decision, requests that have been received are set for commission consideration on the commission's agenda. This comment is outside the scope of this rulemaking, and no changes have been made in response to this comment.

Comment

Arcosa commented that the commission should maintain flexibility for routine amendments so that these are not unnecessarily delayed.

Response

The commission did not propose any changes to the processing of routine amendments. This comment is outside the scope of this rulemaking, and no changes have been made in response.

Comment

EIP supports hybrid meetings to include virtual options for public meetings and contested case hearings. EIP comments that 30 TAC §55.154(f) should be amended to require that TCEQ produce slides, meeting audio recordings, written transcripts and presentation materials on its website and/or by email immediately following each meeting's conclusion.

Response

The current rulemaking project did not propose to include any options for public meetings; therefore, this comment is beyond the scope of this rulemaking. Virtual contested case hearings are currently allowed by the State Office of Administrative Hearings but are also beyond the scope of the current rulemaking. Information provided at a public meeting by an applicant is not under the control of the commission. The commission does not make a visual recording of public meetings and therefore does not have visual recordings to post. The commission does make an audio recording of public meetings, and the audio recording of the formal portion of the public meeting is available on the commission's website within a few days of public meetings. No changes were made in response to this comment.

Comment

EIP comments that TCEQ should establish a fund by which community members may pay for necessary contested case costs.

Response

This comment is outside the scope of this rulemaking. The current rulemaking project does not address costs associated with contested case hearings. The commission does not have the statutory authority or the mandate to provide such a fund for the public. No changes were made in response to this comment.

Comment

EIP believes that TCEQ should expand the availability of Texas Pollutant Discharge Elimination System program (TPDES) permit application information to the public. EIP comments that TCEQ should make information available for all phases of TPDES permit issuance, including draft fact sheets or statements of basis.

Response

This comment is outside the scope of this rulemaking. The commission did not propose changes to the ways in which TPDES permit applications are reviewed that would include the requested changes. No changes were made in response to this comment.

Comment

EIP comments that all recordkeeping violations are relevant and should be addressed by TCEQ, even if through informal compliance. EIP states that it is essential that TCEQ revise its approach to penalty calculations to ensure that recordkeeping violations are penalized sufficiently.

Response

This rulemaking does not concern the development of compliance history or penalty calculations. This comment is outside the scope of this rulemaking. No changes were made in response to this comment.

Comment

EIP urges TCEQ to consider compliance history in a comprehensive, holistic manner when determining whether permits should be renewed, modified, amended or otherwise changed and not to limit evaluations to immediate sites or current owners or operators.

Response

This comment is outside the scope of this rulemaking, which does not include consideration of how the agency uses compliance history when evaluating an application for a permit. No changes were made in response to this comment.

Comment

AGC of Texas requests that the commission affirm that air quality standard permits are "off-the-shelf" authorizations issued for specific, well-characterized classes of facilities; concrete batch plants are minor sources of emissions, and that plants operating in accordance with the terms and conditions of the standard permit (developed based on a conservative protectiveness review) are protecting human health and the environment; and the primary concerns expressed about these types of operations are land-use considerations that are beyond the authority of TCEQ, and, where there is local zoning, such concerns can and have been addressed locally.

Response

The proposed rule changes did not directly concern the review of air quality standard permits. The requirement to extend the comment period and opportunity to request a contested case hearing following a public meeting held on certain types of air quality permits, which includes an application for the registration to use the concrete batch plant standard permit, is a specific statutory requirement. There are no other air quality standard permit registrations that include a right to request a contested case hearing. No changes were made in response to this comment.

Comment

Better Brazoria commented that the agency should measure from the property boundary to the residence/school/place of worship when making distance determinations. Better Brazoria further states that one facility point is not sufficient representation of a concrete batch plant as they do not correspond to emission sources and plant equipment is subject to change.

Response

This comment is outside the scope of this rulemaking. The commission did not propose any changes to the process for how a person may request a contested case hearing or for the contents of those requests, including how distance is measured when evaluating those requests. No changes were made in response to this comment.

Comment

Better Brazoria comments that applicants in Harris County are abusing the requirement that notice should be published in a newspaper of general circulation as required by §39.603.

Response

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

Comment

AAH commented that industry misuses public notice requirements to limit the exposure of information.

Response

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

Comment

TACA asked if the ED staff can put some discretion on that portion of the rulemaking to account for situations where the signs accidentally fell down or the signs were stolen or the signs were burned by wildfires or the signs were blown down from a tornado or from a hurricane. TACA's comments also expressed concern about leaving signs in place until final commission action on a permit application.

Response

Issues with signs that may go missing or be damaged by weather are issues that can be considered on a case-by-case basis. No changes were made in response to this comment. However, the commission did make changes to the sign-posting requirement in adopted §39.604(b) in response to comments to clarify that signs must remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must be posted at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission's intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application.

Comment

AGC of Texas opposes defining personal justiciable interest in proposed §55.103(3) since it is already included in the determination of an affected person and the new language expands the definition of justiciable too much.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

PAI commented that the new definition of "personal justiciable interest" adds limitations upon who may be considered an affected person that are not contained in statute and are inappropriate.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

PAI adds that the limitations on defining personal justiciable interest raise concerns for whether Texas programs would meet the minimum requirements to maintain delegated authority over certain federal programs such as the TPDES program.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

The Associations commented that they believe there is a risk of adding a definition for "personal justiciable interest" that has additional terms, which may unintentionally expand or restrict the agency's determination of an affected person compared to the statute.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

TIP requests that TCEQ decline to adopt proposed 30 TAC §55.103(3), which would define "personal justiciable interest" based on key concepts from Texas Water Code §5.115 but with additional terms.

Response

The purpose of this rulemaking is to implement statutory and sunset review requirements regarding TCEQ's public participation process. In response to comment, the proposed definition for this term is not being adopted, as commenters indicated that it would not provide additional clarity or guidance to the public.

Comment

In new §39.606(g) and (h) Better Brazoria suggests including express provisions on what may trigger a public meeting and further clarify by what measure the ED will determine whether substantial public interest is present.

Response

The commission rules include the provisions on when a public meeting may be held. The factors that determine substantial public interest can vary between media. The commission did not propose specific criteria to define these terms and is not making changes in adopted rules to address this concern. No changes were made in response to this comment.

Comment

Better Brazoria comments that public meetings should be held before and after the draft permit is completed and that an informal meeting during technical review would allow the public to propose suggestions to add to the permit and a second meeting would allow the public to formally comment on the draft permit.

Response

The commission did not propose to change the way in which it holds public meetings or to provide for a second meeting before the draft permit is prepared. The commission does not believe that holding such a second meeting before the technical review of the permit is completed would be a good use of agency resources and time. No changes were made in response to this comment.

Comment

AAH requests that the commission expand the authority to request a public meeting to any legislator.

Response

The requirement to hold a public meeting at the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located is a statutory requirement found at THSC §382.056(k)(1) and TWC §5.554(1). The commission did not propose changes to this requirement in Chapter 39 or 55. No changes were made in response to this comment.

Comment

HCAO requests that §39.411(e)(14) not be deleted and suggests that regional offices should be required to keep compliance history files and provide physical access to those documents

Response

TCEQ regional offices often do not have the space or on-site personnel available to assist. Compliance files are no longer kept by the agency as hard copy files, only as electronic files that can be accessed by the public without going to the physical regional office. No changes were made in response to this comment.

Comment

HCAO asserts that a copy of the application should be made physically available to the public and disagrees with deleting that requirement in §39.1009(a)

Response

The deletion in §39.1009(a) for a location of the regional office to contact for information about where a physical copy of the application can be found does not remove the requirement for providing a hard copy of the application in a local physical location. The information about where a hard copy of the application can be found is still included in the notice of the application, which is both published and available online on the commission's website. Regional staff often do not have staff on-site who are fa-

miliar with all applications filed with the commission. No change was made in response to this comment.

Comment

AGC of Texas comments §39.405(g)(1)-(2) and §39.604(b) should be modified to provide that the application and signage should be made available only through the comment period and not through final commission action as proposed.

Response

Changes in adopted §§39.405(g)(1) and (2) and 39.604(b) were made in response to this comment. The initial application must now remain in place until replaced by the technically complete application and draft permit. The technically complete application and draft permit must remain in place for the remaining entirety of the comment period. Generally, the publication of the NAPD notifies the public of the availability of the technically complete application and draft permit. The technically complete application and draft permit must remain in place until the commission takes final action on the application or refers the application to the State Office of Administrative Hearings. If there is no requirement for a NAPD, then the application must remain in place through the publication's designated comment period. The signs must now be in place at the start of the comment period and remain must remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must go up at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission's intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application.

Comment

AGC of Texas opposes change in signage size in §39.604(a)(1) for the following reasons: current size is proficient for notifying the public; signs and notice are being supplemented by social media and local advocacy; safety concerns with traffic and visibility; changes may result in more variance requests to the agency; and the change is outside the recommendation of the legislature.

Response

In response to comment the commission is not making any changes to the size of required signs in the adopted rule.

Comment

The Associations comment that they oppose change in signage size in §39.604(a)(1) for the following reasons: practical issues; highly complex industrial facilities can have several concurrent permitting actions taking several months to years for final resolution, which will make it difficult for the public to readily understand and meaningfully engage if signs are posted after public comment periods close; maintain the current requirements for applicants to post signs only during the appropriate public comment periods at the same time as physical and electronic copies of the permit application are available to ensure the public can provide timely comments.

Response

In response to comment the commission is not making any changes to the size of required signs in the adopted rule. Changes in adopted §39.604(b) were made in response to this comment addressing the time period for signage posting. The

signs must now be in place at the start of the comment period and remain posted continuously, without interruption, until the end of the final comment period on a permit application. Thus, the signs must go up at the beginning of NORI and remain in place until completion of the final comment period following the final publication of the NAPD. This accomplishes the commission's intent that the public be informed of their opportunity to participate in the review of the permit application through the entirety of the time that the public is able to submit timely comments on the application.

Comment

TIP commented on the requirement for the increased size of signs in §39.604, stating that increasing the size of the font may not allow all the information to be on the signs. TIP comments that the large size may be difficult for major plants that have multiple signs, which is different than the signs in §39.510(b)(1), which are for inactive municipal solid waste permits. TIP comments that one possibility is to require some font to be larger for certain types of information.

Response

In response to comment the commission is not making any changes to the size of required signs in the adopted rule.

Comment

AGC of Texas asks that the commission consider consolidating all air quality permit related public notice rules under Chapter 39, Subchapter K.

Response

The adopted new §39.606 is intended to put existing public notice requirements in Chapter 39, Subchapter H also in Subchapter K to provide clarity for the public and regulated entities and to make it easier to find air-specific requirements. Therefore, the proposed and adopted rules have done this with the addition of new §39.606. Further consolidation and removing the air quality notice rules from Chapter 39, Subchapter H was not proposed by the commission and was not considered necessary for this rulemaking. No changes were made in response to this comment.

Comment

HHD generally supports the proposed changes and believes that the changes will provide multiple benefits. HHD also makes a suggestion that local compliance data be included in the permit review process, and that air monitoring data collected by local pollution control programs could be used to augment the permit approval process.

Response

The commission appreciates the support for the changes in this rulemaking. Compliance history and the use of monitoring data are issues outside the scope of this rulemaking. No change was made in response to this comment.

Comment

Better Brazoria agrees with the new proposed definitions in §39.1 and the new signage and notice requirements in §39.604(a)(1) and (b) and §39.510(b)(1).

Response

The commission appreciates the support for the rule changes. Although the commission did make some changes to §39.604

in response to other comments, no changes were made in response to this comment.

Comment

Better Brazoria recommends that the changes to Ch. 55 take effect as soon as possible and that an effective date of March 2026 seems reasonable.

Response

The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria generally agrees with embracing agency use of email but encourages more community outreach.

Response

The commission appreciates the support for the changes in this rulemaking. However, the commission is not finalizing changes requiring the use of agency email addresses in notices. Due to the potential for staff changes during the course of a permit review, it could lead to misunderstandings and incorrect available information if an email changes during the pendency of the permit action.

Comment

EIP comments that Operating Permits issued under Title V of the Clean Air Act should be electronically available to anyone wishing to learn more about them.

Response

This comment is outside the scope of this rulemaking. Title V permits are not the subject of the current rulemaking project; however, the commission notes that Title V permits under review and open for comment are available electronically on the commission's website. No changes were made in response to this comment.

Comment

Better Brazoria requested that the commission add additional language clarifying that any petition for judicial review should be filed 30 days after a motion for rehearing is decided since the concurrent timing is problematic.

Response

The statutory language of TWC §5.351 subsection (b) addresses this issue. Therefore, no rule changes are required. No changes were made in response to this comment.

Comment

Better Brazoria commented that as to the proposed changes in §§55.209(d) and (g), as long as the time frames are not being shortened, they agree with the changes.

Response

The time periods are not changing; only the way the time periods are explained in the rule language is changing. The commission appreciates the support for the changes in this rulemaking. No changes were made in response to this comment.

Comment

Better Brazoria states that all public notices should provide notice of where the facility is located or proposed to be located.

Response

This information is currently required in §§39.411(b)(3) and (e)(3). No changes were made in response to this comment.

Comment

EIP comments that the commission should remove all obsolete dates from Chapter 55.

Response

The commission notes that the dates EIP identified as obsolete rule language in this comment are not actually obsolete, as the commission is still actively reviewing permit applications that would be impacted. No changes were made in response to this comment.

SUBCHAPTER D. APPLICABILITY AND DEFINITIONS

30 TAC §55.103

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules.

The rulemaking adoption implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §§361.024, 382.011, and 382.056.

§55.103. *Definitions.*

The following words and terms, when used in Subchapters D - G of this chapter (relating to Applicability and Definitions; Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) shall have the following meanings.

(1) **Affected person**--A person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

(A) The determination of whether a person is affected shall be governed by §55.203 of this title (relating to Determination of Affected Person), or, if applicable, under §55.256 of this title (relating to Determination of Affected Person).

(B) Notwithstanding any other law, a state agency, except a river authority, may not file a request for a contested case hearing or request for reconsideration, nor may it be considered an affected person or named a party, or otherwise contest an application for a permit or license received by the commission on or after September 1, 2011 unless the state agency is the applicant.

(C) For an air quality standard permit for a concrete batch plant, only a person actually residing within 440 yards of the proposed plant may be an affected person

(2) **Contested case hearing**--A proceeding, including occupational licensing hearings, in which the legal rights, duties, or privileges of a person are determined by a state agency after an opportunity for adjudicative hearing.

(3) **Motion to overturn**--A request for the commission to overturn a final decision made by the executive director under §50.139 of this title (relating to Motion to Overturn the Executive Director's Decision).

(4) **Motion for rehearing**--A request for the commission to reconsider its final decision on a permit application under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing) and §80.272 of this title (relating to Motion for Rehearing).

(5) **Public meeting**--A meeting held under §55.154 of this title (relating to Public Meetings) that is intended for the taking of public comments. A public meeting is not a contested case hearing.

(6) **Request for reconsideration**--A request that the commission reconsider the decision of the executive director on a permit application.

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 January 29, 2026.

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Texas Commission on Environmental Quality

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



SUBCHAPTER E. PUBLIC COMMENT AND PUBLIC MEETINGS

30 TAC §§55.152, 55.154, 55.156

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The rulemaking adoption implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §§361.024, 382.011, and 382.056.

§55.152. Public Comment Period.

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice

of Application and Preliminary Decision under §39.603 of this title (relating to Newspaper Notice) for a registration for a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project;

(3) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title for an application for a new permit or permit amendment under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits);

(4) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(5) 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(6) 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(7) the time specified in commission rules for other specific types of applications; or

(8) as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended if a public meeting is held:

(1) to at least the close of any public meeting for permit applications; and

(2) for at least 36 hours following the close of any public meeting for air quality permit applications with a consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision that are received by the executive director on or after March 1, 2026.

(c) Timely comments are those received by the Office of the Chief Clerk by the end of the comment period.

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

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Texas Commission on Environmental Quality

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



SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §§55.200, 55.201, 55.203, 55.209 - 55.211

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the amendments are adopted under Texas Government Code (TGC), §2001.004, which requires state agencies to adopt procedural rules; and TGC, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking adoption implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§55.201. *Requests for Reconsideration or Contested Case Hearing.*

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

- (1) the commission;
- (2) the executive director;
- (3) the applicant; and
- (4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment, and, for

applications filed on or after September 1, 2015, must be based only on the requester's timely comments.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, a valid email address of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, a valid email address, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) for applications filed:

(A) before September 1, 2015, list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the executive director's responses to comments that the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; or

(B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requester during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the executive director's responses to the requester's comments that the requester disputes, the factual basis of the dispute, and list any disputed issues of law; and

(5) provide any other information specified in the public notice of application.

(e) Any person, other than a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title (relating to Definitions), may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, a valid email address of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case

Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline, but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, the public interest counsel, and a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program);

(C) a permit issued under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions); or

(D) amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine from Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.025, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

(8) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018;

(9) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law; and

(10) an application for a production area authorization, except as provided in accordance with §331.108 of this title (relating to Opportunity for a Contested Case Hearing on a Production Area Authorization Application).

§55.209. Processing Requests for Reconsideration and Contested Case Hearing.

(a) This section and §55.211 of this title (relating to Commission Action on Requests for Reconsideration or Contested Case Hearing) apply only to requests for reconsideration and contested case hearing that are timely filed.

(b) After the final deadline to submit requests for reconsideration or contested case hearing, the chief clerk shall process any requests for reconsideration or hearing by both:

(1) referring the application and requests for reconsideration or contested case hearing to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the requesters; and

(2) scheduling the hearing request and request for reconsideration for a commission meeting. However, if only a request for reconsideration is submitted and the commission has delegated its authority to act on the request to the general counsel, the request for reconsideration shall be scheduled for a commission meeting only if the general counsel directs the chief clerk to do so. The chief clerk should try to schedule the requests for a commission meeting that will be held approximately 44 days after the final deadline for timely filed requests for reconsideration or contested case hearing.

(c) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and all timely commenters and requesters at least 35 days before the first meeting at which the commission considers the requests. The notice shall explain how to participate in the commission decision, describe alternative dispute resolution under commission rules, and explain the relevant requirements of this chapter.

(d) The executive director, the public interest counsel, and the applicant may submit written responses to the requests no later than 12 days after the chief clerk mails notice of the first meeting at which the commission will consider the hearing request, unless extended by the general counsel. Each party shall file its response with the chief clerk. On the same day, each party shall serve the executive director, the public interest counsel, the director of the External Relations Division, the applicant, and any requesters its response or notice that its response is available electronically on the commission's website along with instructions for accessing the responses or requesting a mailed copy.

(e) Responses to hearing requests must specifically address:

- (1) whether the requester is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

(f) Responses to requests for reconsideration should address the issues raised in the request.

(g) The requesters may submit written replies to a response no later than 26 days after the chief clerk mails notice of the first meeting at which the commission will consider the request for reconsideration and the hearing request, unless extended by the general counsel. The requester shall file a reply with the chief clerk. On the same day, the requester shall serve to the executive director, the public interest counsel, and the applicant its reply or notice that its reply is available electronically on the commission's website.

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

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Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER G. REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

30 TAC §§55.250, 55.251, 55.254

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking adoption implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§55.251. *Requests for Contested Case Hearing, Public Comment.*

(a) The following may request a contested case hearing under this section:

- (1) the commission;
- (2) the executive director;
- (3) the applicant; and
- (4) affected persons, when authorized by law.

(b) A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (d) of this section.

(c) A hearing request must substantially comply with the following:

(1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, a valid email address, who shall be responsible for receiving all official communications and documents for the group.

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the activity that is the subject of the application and

how and why the requester believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

(d) Deadline for hearing requests; public comment period. A hearing request must be filed with the chief clerk within the time period specified in the notice. The public comment period shall also end at the end of this time period. The time period shall end as specified in §55.152 of this title (relating to Public Comment Period).

(e) Documents that are filed with the chief clerk that comment on an application but that do not request a hearing will be treated as public comment.

(f) Late filed hearing requests and public comment, extensions.

(1) A hearing request or public comment shall be processed under §55.254 of this title (relating to Hearing Request Processing) or under §55.253 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline for hearing requests and public comment. The chief clerk shall accept a hearing request or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.

(2) The commission may extend the time allowed for filing public comments or a hearing request.

§55.254. *Hearing Request Processing.*

(a) The requirements in this section and §55.255 of this title (relating to Commission Action on Hearing Request) apply only to hearing requests that are filed within the time period specified in §55.251(d) of this title (relating to Requests for Contested Case Hearing, Public Comment).

(b) The executive director shall file a statement with the chief clerk indicating that technical review of the application is complete. The executive director will file the statement with the chief clerk either before or after public notice of the application is issued.

(c) After a hearing request is filed and the executive director has filed a statement that technical review of the application is complete, the chief clerk shall process the hearing request by both:

(1) referring the application and hearing request to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the person making the request for hearing; and

(2) scheduling the hearing request for a commission meeting. The chief clerk shall attempt to schedule the request for a commission meeting that will be held approximately 44 days after the later of the following:

(A) the deadline to request a hearing specified in the public notice of the application; or

(B) the date the executive director filed the statement that technical review is complete.

(d) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making a timely hearing request at least 35 days before the first meeting at which the commission considers the request. The chief clerk shall explain how the person may submit public comment to the executive director, describe alternative dispute resolution under commission rules, explain

that the agency may hold a public meeting, and explain the requirements of this chapter.

(e) The executive director, the public interest counsel, and the applicant may submit written responses to the hearing request no later than 12 days after the chief clerk mails notice of the first meeting at which the commission will consider the hearing request, unless extended by the general counsel. Each party shall file its response with the chief clerk. On the same day, each party shall serve the applicant, the executive director, the public interest counsel, the External Relations Division, and any persons filing hearing requests its response or notice that its response is available electronically on the commission's website along with instructions for accessing the responses and requesting a mailed copy.

(f) The person who filed the hearing request may submit a written reply to a response no later than 26 days after the chief clerk mails notice of the first meeting at which the commission will consider the hearing request, unless extended by the general counsel. A reply may also contain additional information responding to the letter by the chief clerk required by subsection (d) of this section. The requester shall file its reply with the chief clerk. On the same day, the requester shall serve to the executive director, the public interest counsel, and the applicant its reply or notice that its reply is available electronically on the commission's website.

(g) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to the State Office of Administrative Hearings (SOAH) for a hearing on the application. If a request is filed under this subsection, the commission's scheduled consideration of the hearing request will be canceled. An application may only be sent to SOAH under this subsection if the executive director, the applicant, the public interest counsel, and all timely hearing requesters agree on a list of issues and a maximum expected duration of the hearing.

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

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Acting Deputy Director, Environmental Law Division

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

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §§5.40, 5.41, 5.48

The Comptroller of Public Accounts adopts amendments to §5.40, concerning overpayments and underpayments of compensation, §5.41, concerning payroll requirements, and §5.48, concerning deductions for contributions to charitable organizations, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5595). The rules will not be republished.

The amendments to §5.40 reformat the definitions listed in subsections (a), (b), and (c) to conform with other definitions in Chapter 5; add a definition of "CAPPS" (Centralized Accounting, Payroll and Personnel System) in new subsection (b)(1)(A); delete the definition of "USPS" (Uniform Statewide Payroll System) in subsection (b)(1)(N) and the reference to USPS in subsection (b)(3)(B) because USPS is no longer used by the comptroller; and add a reference to CAPPS in subsection (b)(3)(B) because CAPPS replaces the functions of USPS as it relates to this subsection.

The amendments to §5.41 alphabetize the definitions in subsection (a) for ease of use; delete the definitions of "appropriation year," "fiscal year," "standard work schedule" and "non-standard work schedule" because these terms either do not appear anywhere else in this section or will not appear anywhere else in this section if these amendments become effective; add a definition of "comptroller" in new subsection (a)(4); delete the definition of "USPS" in subsection (a)(16) and all references to "USPS" in subsections (c), (h), (i), (l), (m), and (n) because USPS is no longer used by the comptroller; change "Comptroller of Public Accounts" to "comptroller" in subsection (a)(6) to use the defined term; shorten the deadline by which a payroll document must be received by the comptroller if a state agency wants to pick up its warrants before payday under a bailment contract the agency has executed with the comptroller in subsection (c)(2)(A), from seven workdays to one workday before the day on which the agency wants to pick up the warrants because our current business process has improved; substitute "CAPPS" for references to "USPS" in subsections (n)(2) and (n)(2)(A) because CAPPS replaces the functions of USPS as it relates to this subsection; delete "or to use the payroll and personnel components of CAPPS" as a conforming change in subsection (n)(2)(B); update the title to §5.46 in subsection (r)(1)(A), the statutory reference and title for the State University Employees Uniform Insurance Benefits Act in subsection (r)(3)(N), and the reference to the Judicial Retirement System of Texas Plan One and Plan Two in subsection (r)(3)(T); delete the Department of Assistive and Rehabilitative Services from the list of authorized payroll deductions in subsection (r)(3)(R) because this agency no longer exists; and add the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired to the list of authorized payroll deductions in subsection (r)(3)(R) in compliance with Vernon's Civil Statutes, Art. 6228a-5.

The amendments to §5.48 delete the definitions of "direct services" and "indirect services" in subsections (a)(9) and (a)(19) respectively because these terms are no longer used in this section; correct the statutory reference in subsection (a)(35) to Government Code, Chapter 659, Subchapter I; delete the definition of "uniform statewide payroll/personnel system" in subsection (a)(38) because this system is no longer used by the comptroller; update the language in subsections (b)(1)(E)(i) and (e)(2) regarding the first day a state agency, other than an institution of higher education, is required to permit its state employees to authorize a deduction to mirror the language in Government Code, Section 659.132 regarding authorized deductions; change "generic materials" to "generic campaign

materials" in subsection (n)(2)(K) to use the defined term; and correct a typographical error in subsection (y)(1).

The comptroller did not receive any comments regarding adoption of the amendment.

The amendments to §5.40 are adopted under Government Code, §659.006, which requires the comptroller by rule to prescribe procedures for state agencies to follow in making adjustments to payrolls for the pay period immediately following the period in which an inaccurate payment or deduction is made or in which other error occurs. The amendments are also adopted under Government Code, §666.008, which authorizes the comptroller to adopt rules and establish procedures to administer Government Code, Chapter 666, regarding recovering excess compensation paid to a state officer or employee.

The amendments to §5.41 are adopted under Government Code, §659.004(b), which authorizes the comptroller, in consultation with the state auditor, to adopt rule that prescribe uniform procedures for payroll and personnel reporting. The comptroller has consulted with the state auditor regarding the amendments to §5.41 as required by Government Code, §659.004(b).

The amendments to §5.48 are adopted under Government Code, §659.142(d), which requires the comptroller to adopt rules for the administration of Government Code, Chapter 659, Subchapter I regarding charitable contributions, with the advice of the State Employee Charitable Campaign Advisory Committee (State Advisory Committee). The comptroller provided a copy of the proposed amendments to Section 5.48 to the State Advisory Committee and has received their response.

The amendments to §5.40 implement Government Code, §659.006 and Government Code, Chapter 666.

The amendments to §5.41 implement Government Code, §659.004 regarding payroll and personnel reporting.

The amendments to §5.48 implement Government Code, Chapter 659, Subchapter I.

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

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Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



SUBCHAPTER F. CLAIMS PROCESSING-- GENERAL REQUIREMENTS

34 TAC §5.61

The Comptroller of Public Accounts adopts amendments to §5.61, concerning approval and certification of certain payment, SPRS, and USPS documents, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5616). The rule will not be republished.

The amendments to §5.61 delete all references to "USPS" (Uniform Statewide Payroll/Personnel System) throughout this section because USPS is no longer used by the comptroller.

The amendments to subsection (a) alphabetize the definitions for ease of use; delete the definition of "appropriation year" in paragraph (1) because the term does not appear anywhere else in this section; change "comptroller of public accounts" to "Comptroller of Public Accounts" in paragraph (4) to format the term the same as it is formatted in other sections of Chapter 5; and delete the definitions of "USPS" and "USPS document" in paragraphs (18) and (19) respectively because USPS is no longer used by the comptroller.

The amendments to subsection (i) shorten from ten days to five days the deadline by which the comptroller must receive written notice of a revocation by a governing body of an authorization of a presiding officer or executive director to designate individuals to approve the agency's payment and SPRS documents in paragraph (1)(B), and the deadline by which the comptroller must receive written notice of a revocation by a head of agency of the authorization of a chief deputy to designate individuals to approve the agency's payment and SPRS documents in paragraph (2)(A) because modern communication methods, such as email, can be used to provide faster notice than was available when this section was written, preventing an individual from approving, or designating others from approving, the agency's payment and SPRS documents after the individual's authorization has been revoked.

The amendments to subsection (k) shorten from ten days to five days the deadline in paragraphs (1)(D) and (2)(C) by which the comptroller must receive written notice of a revocation of the designation of an individual to approve payment and SPRS document if the individual does not have a security profile or a user identification number in USAS or SPRS providing the individual with authority to approve payment; set forth a process in new paragraphs (1)(E) and (2)(D) for notifying the comptroller of the revocation of the designation of an individual to approve payment and SPRS documents if the individual has a security profile or a user identification number in USAS or SPRS providing the individual with authority to approve payment and SPRS documents, and describe the process, in paragraph (3)(B) and new paragraph (3)(C), for notifying the comptroller of the revocation of an individual's authority to approve payment and SPRS documents if the individual's employment has been terminated because modern communication methods, such as email, can be used to provide faster notice than was available when this section was written, preventing an individual from approving, or designating others to approve, the agency's payment and SPRS documents after the individual's authorization has been revoked.

The amendments to subsection (o) change the Penal Code reference in paragraph (5) from "§33.02(b)" to "§33.02" to correct the statutory reference.

The comptroller did not receive any comments regarding adoption of the amendment.

The amendments are adopted under Government Code, §2101.035(a), which authorizes the comptroller to adopt procedures and rules for the effective operation of the uniform statewide accounting system. The amendments are also adopted under Government Code, §2103.032(a), which authorizes the comptroller by rule to establish a system for state agencies to submit and approve vouchers electronically if the

comptroller determines that the system will facilitate the operation and administration of the uniform statewide accounting system.

The amendments implement Government Code, §2101.035 regarding administration of USAS and §2103.032 regarding approval and submission of vouchers.

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

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Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



SUBCHAPTER L. CLAIMS PROCESSING-- REPLACEMENT PAYMENTS

34 TAC §5.140

The Comptroller of Public Accounts adopts amendments to §5.140, concerning replacement payments, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5626). The rule will not be republished.

The amendments to subsection (a) change "comptroller of public accounts" to "comptroller" in subsection (a)(9)(A) to use the defined term and delete "the Uniform Statewide Payroll/Personnel System" from the definition of "statewide accounting system" in subsection (a)(10) because this system is no longer used by the comptroller.

The amendments also correct references to Labor Code, Chapter 210, in subsections (e)(1), (e)(2), and (g)(3).

The comptroller did not receive any comments regarding adoption of the amendment.

The amendments are adopted under Government Code, §403.016(f) and §403.054(h), which require the comptroller to adopt rules regarding electronic funds transfer and the issuance of replacement warrants.

The amendments implement Government Code, §403.016 regarding electronic funds transfers and §403.054 regarding replacement warrants.

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

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**SUBCHAPTER O. UNIFORM STATEWIDE
ACCOUNTING SYSTEM**

34 TAC §5.210

The Comptroller of Public Accounts adopts amendments to §5.210 regarding uniform statewide accounting system, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5628). The rule will not be republished.

The amendments to subsection (b) alphabetize the definitions for ease of use; update the definition of "Individual Accounting and/or Payroll System" to clarify that this system is not a direct component of the uniform statewide accounting system, but this system must report to it; delete the definition of "USPS" (Uniform Statewide Payroll/Personnel System) and delete the reference to "USPS" from the definition of "SPRS" (Standardized Payroll/Personnel Reporting System) because USPS is no longer used by the comptroller.

The amendments to subsection (c) delete the reference to "USPS" because USPS is no longer used by the comptroller, and change "comptroller" to "the comptroller" in paragraph (2) to correct a typographical error.

The comptroller did not receive any comments regarding adoption of the amendment.

The amendments are adopted under Government Code, §2101.035(a) and §2101.036(a), which authorize the comptroller to adopt procedures and rules for the effective operation of the uniform statewide accounting system and adopt rules related to state agency internal accounting systems.

The amendments implement Government Code, §2101.035 regarding the uniform statewide accounting system, and Government Code, §2101.036 regarding state agency internal accounting systems.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

**PART 5. TEXAS BOARD OF PARDONS
AND PAROLES**

**CHAPTER 143. EXECUTIVE CLEMENCY
SUBCHAPTER A. FULL PARDON AND
RESTORATION OF RIGHTS OF CITIZENSHIP**

37 TAC §143.11

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 143, Subchapter A, §143.11, concerning full pardon and restoration of rights of citizenship. The amendments are adopted with changes to the proposed text as published in the November 14, 2025, edition of the *Texas Register* (50 TexReg 7410). The amendments are adopted to provide edits for sentence structure, and for uniformity and consistency throughout the rules. The text of the rule will be republished.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the Board to make clemency recommendations to the Governor. Article 48.01 and Article 48.03, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

No other statutes, articles, or codes are affected by these amendments.

§143.11. Request of the Governor.

The Board shall consider a recommendation for a full pardon and, if applicable, request for restoration of firearm rights in any case upon the request of the Governor as authorized by Government Code, Section 508.050.

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

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**SUBCHAPTER D. REPRIEVE FROM
EXECUTION**

37 TAC §143.42

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 143, Subchapter D, concerning reprieve from execution, §143.42. The amendments are adopted with

changes to the proposed text as published in the November 14, 2025, edition of the *Texas Register* (50 TexReg 7411). The amendments are adopted to provide edits for grammar, uniformity and consistency throughout the rules, and to reiterate the Governor's statutory authority regarding reprieves. The text of the rule will be republished.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the Board to make clemency recommendations to the Governor. Article 48.01 and Article 48.03, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

No other statutes, articles, or codes are affected by these amendments.

§143.42. Reprieve Recommended by the Board.

The Board will consider a reprieve of execution from death sentence upon receipt of a written application on behalf of an offender. The individual filing such application, if other than the offender, may be required to demonstrate that the individual is authorized by the offender to file such application. Any such application shall be addressed to the Texas Board of Pardons and Paroles and contain the following information:

- (1) the name of the applicant, execution number, together with any other pertinent identifying information;
- (2) identification of the applicant's agents, if any, who are presenting the application;
- (3) certified copies of the indictment, judgment, verdict of the jury, and sentence in the case, including official documentation verifying the scheduled execution date, if said information is not contained in the sentence;
- (4) a brief statement of the offense for which the offender has been sentenced to death;
- (5) a brief statement of the appellate history of the case, including its current status;
- (6) a brief statement of the legal issues which have been raised during the judicial progress of the case;
- (7) the requested length of duration of the reprieve, which shall be in increments of 30 days in accordance with the governor's statutory authority to grant one 30-day reprieve, unless a different duration is requested upon the basis of the grounds for the application set forth pursuant to paragraph (8) of this section; and,
- (8) all grounds upon the basis of which the reprieve is requested; provided that such grounds shall not call upon the Board to decide technical questions of law which are properly presented via the judicial process.

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

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SUBCHAPTER E. COMMUTATION OF SENTENCE

37 TAC §143.54, §143.58

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 143, Subchapter E, concerning commutation of sentence, §143.54 and §143.58. The amendments are adopted without change to the proposed text as published in the November 14, 2025, edition of the *Texas Register* (50 TexReg 7411). The amendments are adopted to provide edits for grammar, and for uniformity and consistency throughout the rules. The text of the rules will not be republished.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the Board to make clemency recommendations to the Governor. Article 48.01 and Article 48.03, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

No other statutes, articles, or codes are affected by these amendments.

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SUBCHAPTER F. REMISSION OF FINES AND FORFEITURES

37 TAC §143.72, §143.74

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 143, Subchapter F, concerning remission of fines and forfeitures, §143.72 and §143.74. The amendments are adopted without change to the proposed text as published in the November 14, 2025, edition of the *Texas Register* (50 TexReg 7413). The amendments are adopted to provide edits for clarity, and for uniformity and consistency throughout the rules. The text of the rules will not be republished.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the Board to make clemency recommendations to the Governor. Article 48.01 and Article 48.03, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

No other statutes, articles, or codes are affected by these amendments.

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SUBCHAPTER G. RESTORATION OF DRIVER'S LICENSE

37 TAC §143.81

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 143, Subchapter G, concerning restoration

of driver's license, §143.81. The amendments are adopted without change to the proposed text as published in the November 14, 2025, edition of the *Texas Register* (50 TexReg 7414). The amendments are adopted to provide edits for sentence structure. The text of the rule will not be republished.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and the Code of Criminal Procedure, Article 48.01 and Article 48.03. Article 4, Section 11, Texas Constitution authorizes the Board to make clemency recommendations to the Governor. Article 48.01 and Article 48.03, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

No other statutes, articles, or codes are affected by these amendments.

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

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