TEXAS REGISTER

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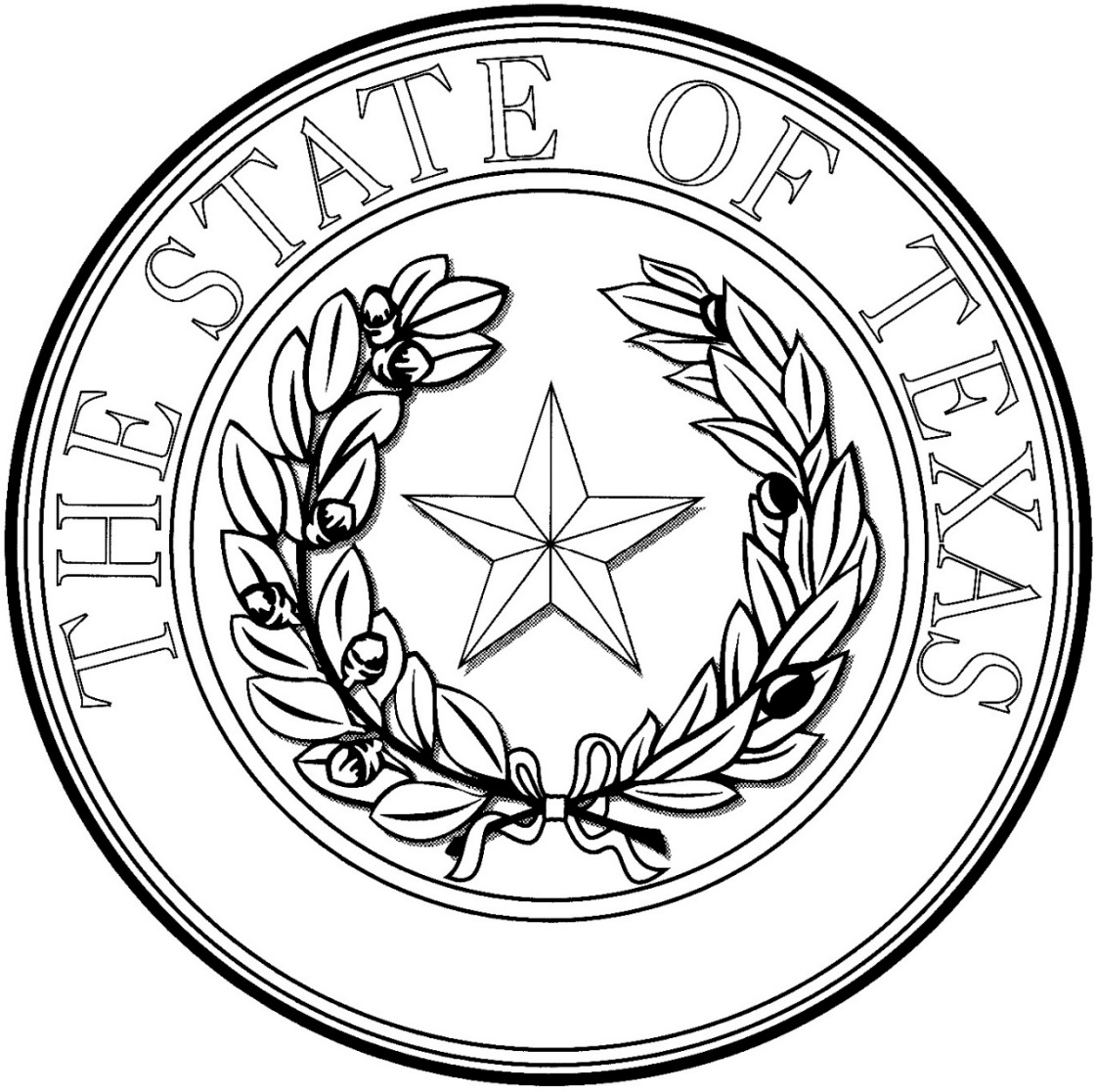

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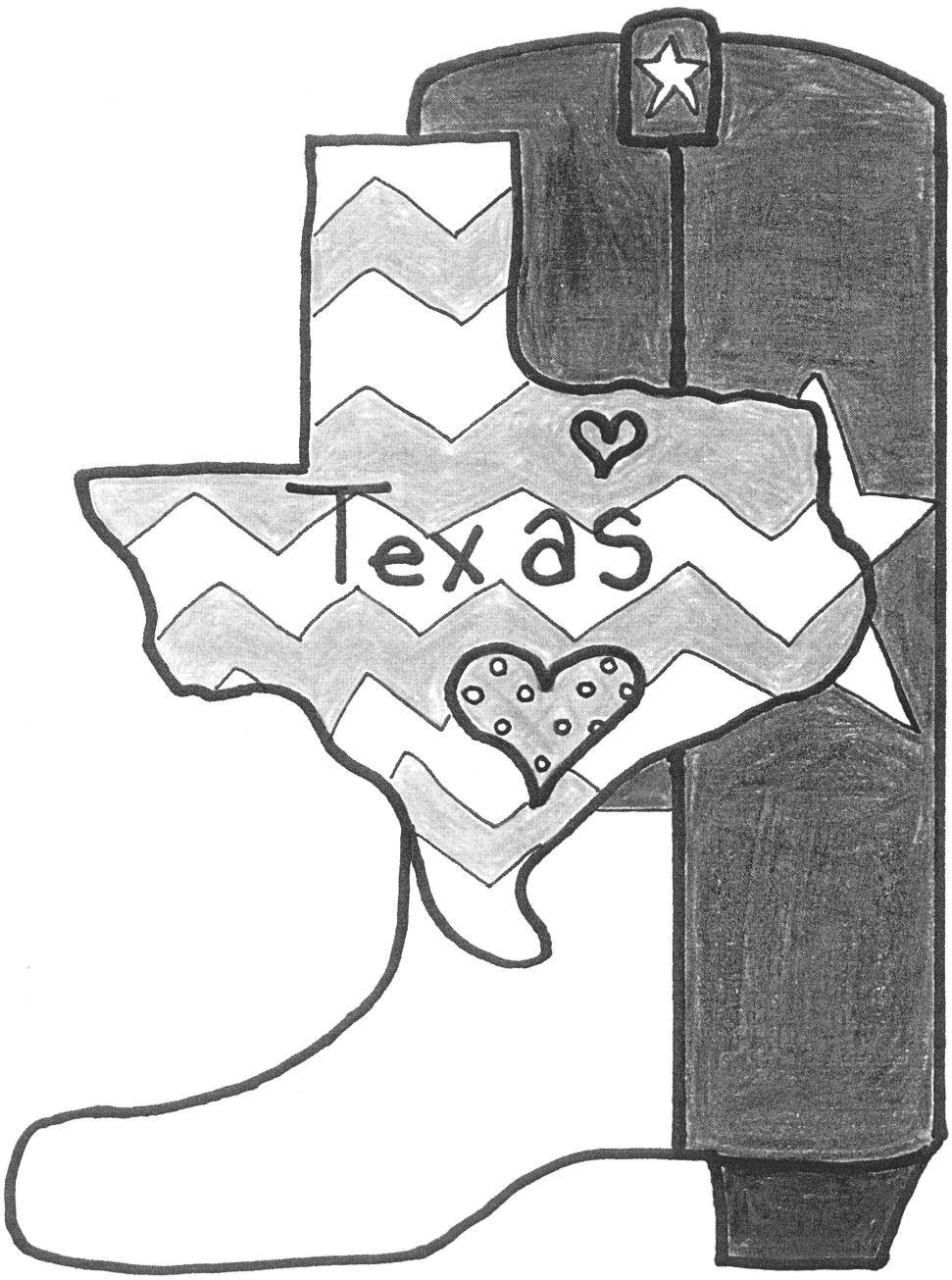
In This Issue


Texas

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Executive Order GA-15

Relating to hospital capacity during the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, on April 12, 2020, I issued a proclamation renewing the disaster declaration for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued numerous executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a shortage of hospital capacity or personal protective equipment would hinder efforts to cope with the COVID-19 disaster; and

WHEREAS, hospital capacity and personal protective equipment were being depleted by surgeries and procedures that were not medically necessary to correct a serious medical condition or to preserve the life of a patient, contrary to recommendations from the President's Coronavirus Task Force, the Centers for Disease Control and Prevention, the U.S. Surgeon General, and the Centers for Medicare and Medicaid Services; and

WHEREAS, various hospital licensing requirements would stand in the way of implementing increased occupancy in the event of surge needs for hospital capacity due to COVID-19; and

WHEREAS, I issued Executive Order GA-09 on March 22, 2020, in an effort to avoid a shortage of hospital capacity or personal protective equipment, and it is subject to expiration at 11:59 p.m. on April 21, 2020, absent further action by the governor; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.173, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable by a fine not to exceed $1,000, confinement in jail for a term not to exceed 180 days, or both fine and confinement.

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis beginning at 11:59 p.m. on April 21, 2020, and continuing until 11:59 p.m. on May 8, 2020:

All licensed health care professionals and all licensed health care facilities shall postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician; provided, however, that this prohibition shall not apply to either of the following:

any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster; or

any surgery or procedure performed in a licensed health care facility that has certified in writing to the Texas Health and Human Services Commission both:

(1) that it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and (2) that it will not request any personal protective equipment from any public source, whether federal, state, or local, for the duration of the COVID- 19 disaster.

I hereby continue the suspension of the following provisions to the extent necessary to implement increased occupancy in the event of surge needs for hospital capacity due to COVID-19:

25 TAC Sec. 133.162(d)(4)(A)(iii)(I);

25 TAC Sec. 133.163(f)(l)(A)(i)(II)-(III);

25 TAC Sec. 133.163(f)(l)(B)(i)(III)-(IV);

25 TAC Sec. 133.163(m)(l)(B)(ii);

25 TAC Sec. 133.163(t)(l)(B)(iii)-(iv);

25 TAC Sec. 133.163(t)(l)(C);

25 TAC Sec. 133.163(t)(5)(B)-(C); and

Any other pertinent regulations or statutes, upon written approval of the Office of the Governor.

This executive order shall remain in effect and in full force until 11:59 p.m. on May 8, 2020, unless it is modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 17th day of April, 2020.

Greg Abbott, Governor

TRD-202001506

♦ ♦ ♦

Executive Order GA-16

Relating to the safe, strategic reopening of select services as the first step to Open Texas in response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, on April 12, 2020, I issued a proclamation renewing the disaster declaration for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued numerous executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain obligations for Texans in accordance with the President's Coronavirus Guidelines for America, as promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC) on March 16, 2020, which called upon Americans to take actions to slow the spread of COVID-19 for 15 days; and

WHEREAS, shortly before Executive Order GA-08 expired, I issued Executive Order GA-14 on March 31, 2020, based on the President's announcement that the restrictive social-distancing Guidelines should extend through April 30, 2020, in light of advice from Dr. Anthony Fauci and Dr. Deborah Birx, and also based on guidance by DSHS Commissioner Dr. Hellerstedt and White House Coronavirus Response Coordinator Dr. Birx that the spread of COVID-19 can be reduced by minimizing social gatherings; and

WHEREAS, Executive Order GA-14 superseded Executive Order GA-08 and expanded the social-distancing restrictions and other obligations for Texans that are aimed at slowing the spread of COVID-19, including by limiting social gatherings and in-person contact with people (other than those in the same household) to providing or obtaining "essential services," and by expressly adopting the U.S. Department of Homeland Security's March 28, 2020 Guidance on the Essential Critical Infrastructure Workforce, Version 2.0, which provides a list of critical-infrastructure sectors, workers, and functions that should continue as "essential services" during the COVID-19 response; and

WHEREAS, Executive Order GA-14 therefore restricts non-essential services during the COVID-19 disaster; and

WHEREAS, although many lives have been saved because of social-distancing restrictions like those required by Executive Order GA-14, more than 400 Texans have lost their lives because of COVID-19, and the disease still presents a serious threat across Texas that could persist in certain areas; and

WHEREAS, apart from the threats to health and safety, COVID-19 has also wrought havoc on the many Texas businesses and workers affected by social-distancing restrictions that were necessary to protect human life; and

WHEREAS, over one million unemployment claims have been filed during the COVID-19 disaster by conscientious Texans who want to get back to work as soon as it is safe to do so; and

WHEREAS, Texas must protect lives while restoring livelihoods, both of which can be achieved with the expert advice of medical professionals and business leaders; and

WHEREAS, today I am also issuing Executive Order GA-17, creating the Governor's Strike Force to Open Texas to study and make recommendations on safely and strategically restarting and revitalizing all aspects of the Lone Star State-work, school, entertainment, and culture; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.017(a), the "governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable by a fine not to exceed $1,000, confinement in jail for a term not to exceed 180 days, or both fine and confinement.

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately, and continuing through April 30, 2020, subject to extension based on the status of COVID-19 in Texas and the recommendations of the CDC and the White House Coronavirus Task Force:

In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, every person in Texas shall, except where necessary to provide or obtain essential services or reopened services, minimize social gatherings and minimize in-person contact with people who are not in the same household.

"Essential services" shall consist of everything listed by the U.S. Department of Homeland Security (DHS) in its Guidance on the Essential Critical Infrastructure Workforce, Version 2.0 or any subsequent version, plus religious services conducted in churches, congregations, and houses of worship. Other essential services may be added to this list with the approval of the Texas Division of Emergency Management (TDEM). TDEM shall maintain an online list of essential services, as specified in this executive order and any approved additions. Requests for additions should be directed to TDEM at EssentialServices@tdem.texas.gov or by visiting www.tdem.texas.gov/essentialservices.

"Reopened services" shall consist of:

--Starting at 12:01 a.m. on Friday, April 24, 2020, retail services that are not "essential services," but that may be provided through pickup, delivery by mail, or delivery to the customer's doorstep in strict compli-

ance with the terms required by DSHS. The DSHS requirements may be found at www.dshs.texas.gov/coronavirus.

--Such additional services as may be enumerated by future executive orders or proclamations by the governor.

In providing or obtaining essential services or reopened services, people and businesses should follow the Guidelines from the President and the CDC by practicing good hygiene, environmental cleanliness, and sanitation, implementing social distancing, and working from home if possible. In particular, all such services should be provided through remote telework from home unless they cannot be provided through remote telework. Religious services should be conducted in accordance with the Guidelines for Houses of Worship During the COVID-19 Crisis, as promulgated by the attorney general and governor.

In accordance with the Guidelines from the President and the CDC, people shall avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms, massage establishments, tattoo studios, piercing studios, or cosmetology salons; provided, however, that the use of drive-thru, pickup, or delivery options for food and drinks is allowed and highly encouraged throughout the limited duration of this executive order.

This executive order does not prohibit people from accessing essential or reopened services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential or reopened services, visiting parks, hunting or fishing, or engaging in physical activity like jogging or bicycling, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household.

In accordance with the Guidelines from the President and the CDC, people shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.

In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance by students and shall not recommence before the end of the 2019-2020 school year. Public education teachers and staff are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, as well as perform administrative duties, under the strict terms required by the Texas Education Agency. Private schools and institutions of higher education should establish similar terms to allow teachers and staff to return to schools to conduct remote video instruction and perform administrative duties when it is not possible to do so remotely from home.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order or allows gatherings prohibited by this executive order. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

This executive order supersedes Executive Order GA-14, but does not supersede Executive Orders GA-09, GA-10, GA-11, GA-12, GA-13, or GA-15. This executive order shall remain in effect and in full force until 11:59 p.m. on April 30, 2020, unless it is modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 17th day of April, 2020.

Greg Abbott, Governor

TRD-202001507

Executive Order GA-17

Relating to the establishment of the Governor's Strike Force to Open Texas.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, on April 12, 2020, I issued a proclamation renewing the disaster declaration for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued numerous executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, Executive Order GA-14, issued on March 31, 2020, mandated certain social-distancing restrictions and other obligations for Texans that are aimed at slowing the spread of COVID-19 according to federal guidelines; and

WHEREAS, although many lives have been saved because of social-distancing restrictions like those required by Executive Order GA-14, more than 400 Texans have lost their lives because of COVID-19, and the disease still presents a serious threat across Texas that could persist in certain areas; and

WHEREAS, apart from the threats to health and safety, COVID-19 has also wrought havoc on the many Texas businesses and workers affected by social-distancing restrictions that were necessary to protect human life; and

WHEREAS, over one million unemployment claims have been filed during the COVID- 19 disaster by conscientious Texans who want to get back to work as soon as it is safe to do so; and

WHEREAS, Texas must protect lives while restoring livelihoods, both of which can be achieved with the expert advice of medical professionals and business leaders; and

WHEREAS, today I have issued Executive Order GA-16 to replace Executive Order GA- 14, and while it generally continues to mandate the same social-distancing restrictions and other obligations for Texans according to federal guidelines, Executive Order GA-16 offers a safe, strategic first step to Open Texas by permitting, starting on Friday, April 24, 2020, retail pick-up and delivery services under the strict conditions required by DSHS, and it also makes clear that teachers and staff can return to schools to conduct remote video instruction and perform administrative duties under certain restrictions; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.017(a), the "governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster."

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Creation and Duties. The Governor's Strike Force to Open Texas, hereafter referred to as the Strike Force, is hereby created to advise the governor on safely and strategically restarting and revitalizing all aspects of the Lone Star State- work, school, entertainment, and culture. The Strike Force will represent a collaboration among medical professionals and public and private leaders, and shall have as its principal charges the following advisory duties, as well as any other advisory tasks assigned by the governor:

1. Study and make recommendations, in consultation with state health officials, for revitalizing the Texas economy during our recovery from the COVID-19 disaster, including without limitation on the following topics:

a. Safely reopening Texas businesses across a variety of sectors in a strategic, healthy, and productive manner that protects workers and consumers, especially our most vulnerable populations, while also spurring economic recovery and growth;

b. Providing the necessary training and resources, based on White House and Centers for Disease Control and Prevention best practices, to position Texas workers and businesses to recover from and thrive after the COVID-19 disaster;

c. Re-stabilizing individuals and families who have been economically affected by the COVID-19 disaster;

d. Safely and responsibly revitalizing key Texas institutions, including without limitation those focused on workforce and economic development, education, health care, energy, infrastructure, and arts, culture, and entertainment;

e. Maximizing the use of federal funding and other available resources to recharge the Texas economy;

f. Restoring health care services for Texans as soon as reasonably practicable for each type of service in light of the health and safety concerns and in consultation with each applicable state regulatory agency;

g. Spurring the recovery and growth of small businesses in Texas;

h. Advancing economic growth in rural communities in Texas;

i. Ensuring fiscal responsibility and accountability in the coming phases of economic revitalization, including the expeditious and efficient deployment of resources provided by the federal government through stimulus programs; and

j. Keeping Texas the top destination for businesses looking to move or reopen.

2. Study and make recommendations, in consultation with state health officials, to safely ease restrictions on Texas businesses in the aftermath of the spread of COVID-19, including without limitation the restrictions imposed by my executive orders and those imposed by local officials; and

3. In coordination with the Office of the Governor, collaborate with key partners, including state leaders, state regulatory agencies, local governments and entities, and private-sector professionals, in studying and making recommendations of strategies and best practices for economic revitalization.

Immediate Deadlines. With Executive Order GA-16 set to expire on April 30, 2020, and given my expectation that it will not be extended in its current form, the Strike Force must provide immediate and ongoing recommendations consistent with the advisory duties outlined above, including advice regarding the safe reopening of Texas businesses in a strategic, healthy, and productive manner. This shall include recommendations about any prudent reopening measures that can be implemented between now and May 1, 2020. This advice should include the types of businesses and services to reopen, the extent to which the providers of those services may function, and any restrictions that should be placed upon those services and service providers.

Chief Operating Officer. The governor will designate a chief operating officer of the Strike Force, who will be employed by the Office of the Governor and perform all Strike Force duties as a state employee. The chief operating officer will coordinate Strike Force duties consistent with the provisions of this executive order, and act solely in an advisory capacity as it relates to Strike Force duties.

Chief Medical Advisors Working Group. The Strike Force shall include a working group consisting of chief medical advisors to advise the chief operating officer and other parts of the Strike Force concerning the health and medical evidence relevant to the Strike Force's duties. The chief medical advisors will be invited to serve by the governor. The working group and its members will assist in fulfilling the Strike Force duties, and act solely in an advisory capacity.

Working Groups. The chief operating officer may create such additional working groups, consisting of state, local, and other officials providing their advice and assistance, as the chief operating officer deems appropriate. The additional working groups should address at least the following topics: Workforce, Economic Development, and International Trade; Education; Fiscal Accountability; Energy; Arts, Culture, and Entertainment; Health Care Systems; Infrastructure; and Emergency Management and Supply Chain. These working group members will be invited to serve by the chief operating officer, and each working group will be led by one or more leaders. These working groups and their members will assist in fulfilling the Strike Force duties, and act solely in an advisory capacity.

State Officials. The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, and the Comptroller have agreed to serve as consulting members of the Strike Force. The governor will consult with the elected state officials as necessary and appropriate concerning advice and recommendations. The elected state officials will act solely in an advisory capacity as it relates to all Strike Force duties.

Meetings. The Strike Force may meet, by telephone or videoconference, at the call of the governor or the chief operating officer. No quorum requirements or meeting formalities shall be required for this advisory body or any of its subparts.

Vacancies and Additions. The governor may invite people to fill any vacancies that occur, may invite additional members, and may create and fill additional Strike Force positions as needed.

Administrative Support. The Office of the Governor shall provide administrative support for the Strike Force. All state agencies are hereby directed to cooperate with and assist the Strike Force in the performance of its duties.

Other Provisions. Any state or local government employees serving on the Strike Force do so in addition to the regular duties of their respective positions. Members of the Strike Force, other than the chief operating officer and any other employees within the Office of the Governor assigned to support the chief operating officer or the Strike Force, shall serve without salary or compensatory per diem. All Strike Force members who are providing their advice and assistance on a volunteer basis are doing so at the request and invitation of the governor and the Office of the Governor. All Strike Force members shall act solely in an advisory capacity. The criminal penalty provisions set forth in any emergency management plan under Section 418.173 of the Texas Government Code do not apply to this executive order.

This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 17th day of April, 2020.

Greg Abbott, Governor

TRD-202001508

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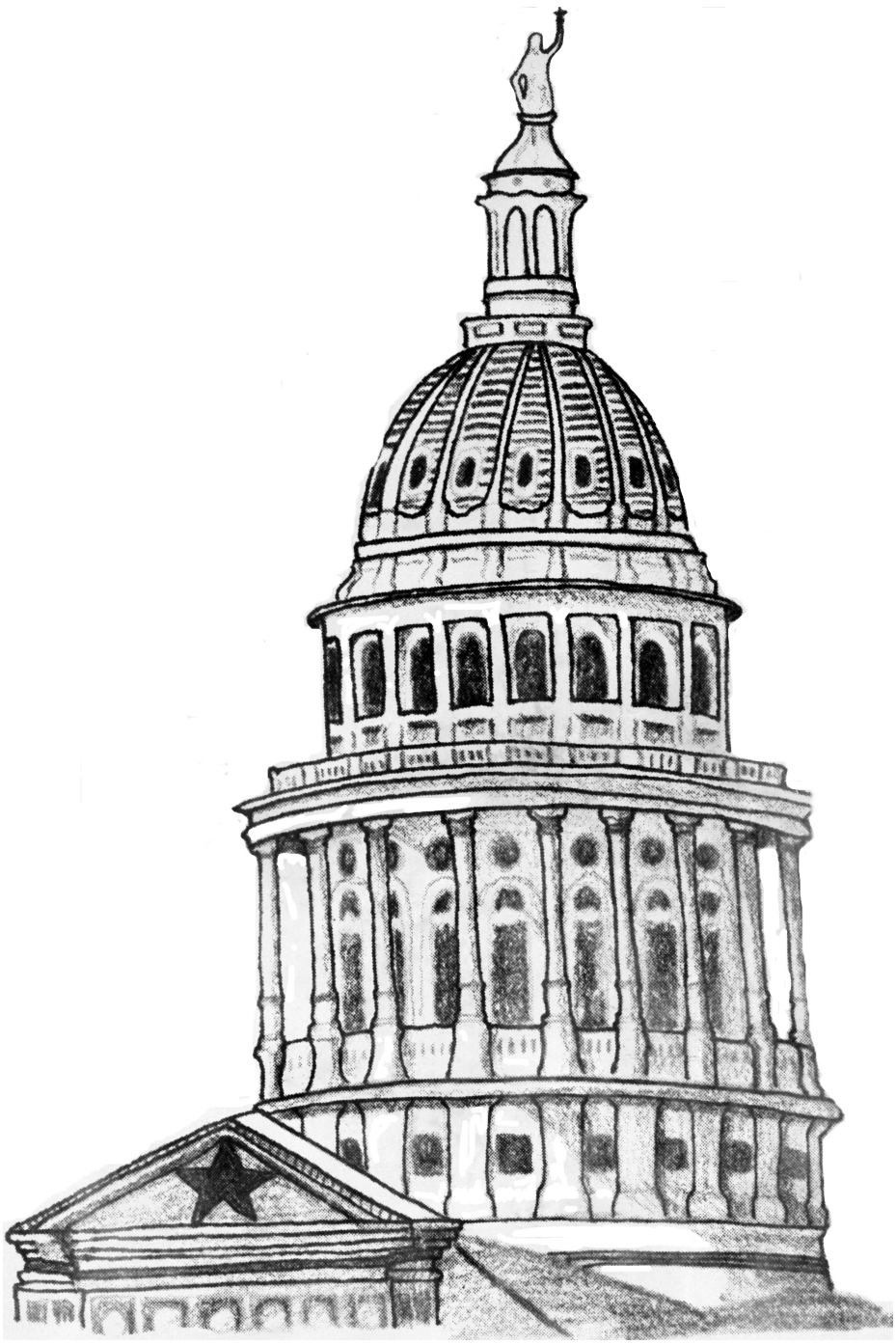

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at https://www.texas.attorneygeneral.gov/attorney-general-opinions. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: https://www.texasattorneygeneral.gov/attorney-general-opinions.)

Requests for Opinions

RQ-0346-KP

Requestor:

The Honorable Briscoe Cain

Chair, House Select Committee on Driver's License Issuance & Renewal

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Extension of driver's license expiration dates due to COVID-19 and its effect on firearms purchases (RQ-0346-KP)

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202001548

Lesley French

General Counsel

Office of the Attorney General

Filed: April 21, 2020

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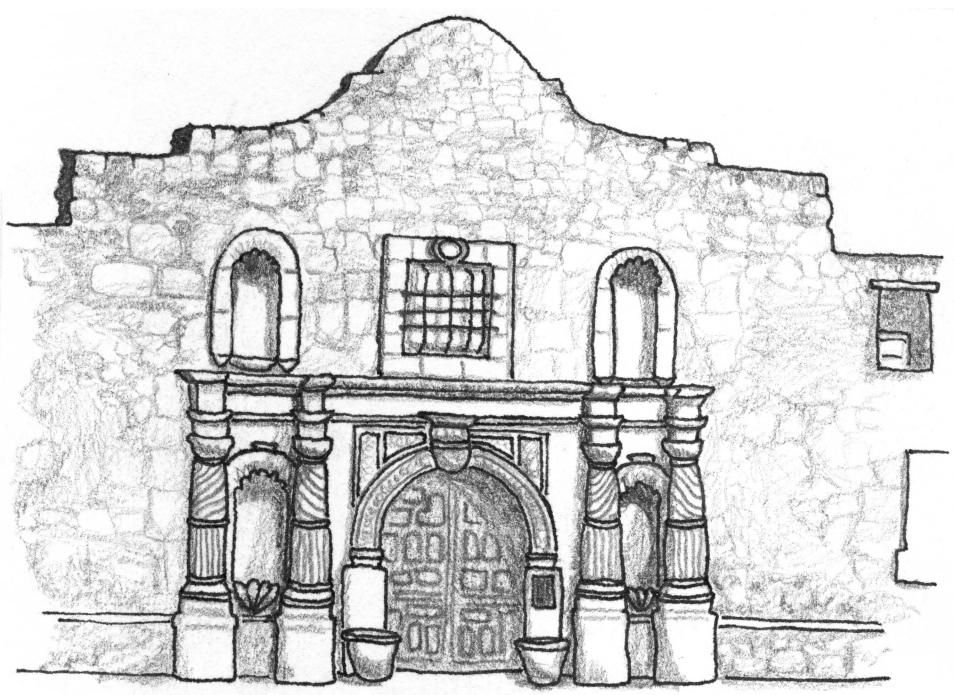

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.9

The State Board of Dental Examiners (Board) adopts on an emergency basis an amendment to 22 TAC §108.9, relating to Dishonorable Conduct, in response to the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA-15, and expands dishonorable conduct to include failure to postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's dentist.

The amended rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by unnecessary exposure of both patients and health care professionals in undertaking and performing non-urgent elective surgeries and procedures during the COVID-19 pandemic.

The amended definitions are applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until the COVID-19 disaster declaration is terminated.

The emergency rule amendment is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Dental Practice Act, Chapters 251 and 263, Texas Occupations Code.

§108.9. Dishonorable Conduct.

The dishonorable conduct section is intended to protect the public from dangerous, unethical, and illegal conduct of licensees. The purpose of this section is to identify unprofessional or dishonorable behaviors of a licensee which the Board believes are likely to pose a threat to the public. Actual injury to a patient need not be established for a licensee to be in violation of this section. Behavior constituting dishonorable conduct includes, but is not limited to:

(1) Criminal conduct--including but not limited to conviction of a misdemeanor involving fraud or a felony under federal law or the law of any state as outlined in Chapter 101 of this title.

(2) Deception or misrepresentation--engages in deception or misrepresentation:

(A) in soliciting or obtaining patronage; or

(B) in obtaining a fee.

(3) Fraud in obtaining a license--obtains a license by fraud or misrepresentation or participates in a conspiracy to procure a license, registration, or certification for an unqualified person.

(4) Misconduct involving drugs or alcohol--actions or conduct that include, but are not limited to:

(A) providing dental services to a patient while the licensee is impaired through the use of drugs, narcotics, or alcohol;

(B) addicted to or habitually intemperate in the use of alcoholic beverages or drugs;

(C) improperly obtained, possessed, or used habit-forming drugs or narcotics including self-prescription of drugs;

(D) grossly over prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances;

(E) prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to or for a person who is not his or her dental patient; or

(F) prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to a person for a non-dental purpose, whether or not the person is a dental patient.

(5) Assisting another in engaging in the unauthorized practice of dentistry or dental hygiene--holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management.

(6) Failure to comply with applicable laws, rules, regulations, and orders or remedial plans--violates or refuses to comply with a law relating to the regulation of dentists, dental hygienists, or dental assistants; fails to cooperate with a Board investigation; or fails to comply with the terms of a Board Order or remedial plan.

(7) Inability to practice safely--is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients.

(8) Discipline of a licensee by another state board--holds a license or certificate to practice dentistry or dental hygiene in another state and the examining board of that state:

(A) reprimands the person;

(B) suspends or revokes the person's license or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice.

(9) Failure to comply with Medicaid, insurance, or other regulatory laws--knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that:

(A) regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or

(B) regulates the business of insurance.

(10) Improper delegation--improperly delegates any task to any individual who is not permitted to perform the task by law, this chapter, or practice restrictions imposed by Board Order.

(11) Unprofessional conduct--engages in conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee or the dental profession.

(12) Failure to postpone all dental surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the dental surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's dentist;

(A) Provided, however, that this prohibition shall not apply to any dental procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster; or

(B) Any dental surgery or procedure performed in a licensed health care facility that has certified in writing to Texas HHSC both:

(i) that it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and

(ii) that it will not request any PPE from any public source -- whether federal, state, or local -- for the duration of the COVID-19 disaster as determined by the Governor.

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

Filed with the Office of the Secretary of State on April 21, 2020.

TRD-202001551
Casey Nichols
General Counsel
State Board of Dental Examiners
Effective date: April 21, 2020
Expiration date: June 19, 2020
For further information, please call: (512) 305-9380

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) adopts on an emergency basis the emergency amendment to 22 TAC §190.8(2)(U) for purposes of the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 15 and adds to the definition of "Unprofessional and Dishonorable Conduct" under 22 TAC §190.8(2)(U).

The amended rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by unnecessary exposure of both patients and health care professionals in undertaking and performing non-urgent elective surgeries and procedures during the COVID-19 pandemic in violation of the Executive Order.

The amended definition of unprofessional and dishonorable conduct is applicable only for purposes of the COVID-19 disaster declaration and shall only remain *effective until 11:59 p.m. on May 8, 2020, unless terminated, modified, or extended by the governor.*

The emergency rule amendment is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Texas Medical Practice Act, Chapters 151 and 164, Texas Occupations Code.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a valid practitioner-patient relationship. Establishing a practitioner-patient relationship is not required for:

(i) a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease; or

(ii) a physician to prescribe dangerous drugs and/or vaccines for post-exposure prophylaxis of disease for close contacts of a patient if the physician diagnoses the patient with one or more of the following infectious diseases listed in subclauses (I) - (VII) of this clause, or is providing public health medical services pursuant to a memorandum of understanding entered into between the board and the Department of State Health Services. For the purpose of this clause, a "close contact" is defined as a member of the patient's household or any person with significant exposure to the patient for whom post-exposure prophylaxis is recommended by the Centers for Disease Control and Prevention, Texas Department of State Health Services, or local health department or authority ("local health authority or department" as defined under Chapter 81 of the Texas Health and Safety Code). The physician must document the treatment provided to the patient's close contact(s) in the patient's medical record. Such documentation at a minimum must include the close contact's name, drug prescribed, and the date that the prescription was provided.

(I) Influenza;

(II) Invasive Haemophilus influenzae Type B;

(III) Meningococcal disease;

(IV) Pertussis;

(V) Scabies;

(VI) Varicella zoster; or

(VII) a communicable disease determined by the Texas Department of State Health Services to:

(-a-) present an immediate threat of a high risk of death or serious long-term disability to a large number of people; and

(-b-) create a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(N) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(O) delegating the performance of nerve conduction studies to a person who is not licensed as a physician or physical therapist without:

(i) first selecting the appropriate nerve conductions to be performed;

(ii) ensuring that the person performing the study is adequately trained;

(iii) being onsite during the performance of the study; and

(iv) being immediately available to provide the person with assistance and direction.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members

or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(R) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body as defined under §160.001 of the Act regarding statements used in an active investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant, witness, medical peer review committee member, or professional review body if the contact is in the normal course of business and unrelated to the investigation.

(T) failing to timely submit complete forms for purposes of registration as set out in §166.1 of this title (relating to Physician Registration) when it is the intent of the licensee to maintain licensure with the board as indicated through submission of an application and fees prior to one year after a permit expires.

(U) a violation of Texas Executive Order GA-15, issued April 17, 2020, which states: "All licensed health care professionals and all licensed health care facilities shall postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician; provided, however, that this prohibition shall not apply to either of the following:

(i) any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster; or

(ii) any surgery or procedure performed in a licensed health care facility that has certified in writing to the Texas Health and Human Services Commission both:

(I) that it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-l9 patients; and

(II) that it will not request any personal protective equipment from any public source, whether federal, state, or local, for the duration of the COVID-19 disaster."

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act. The voluntary surrender shall be considered to be based on acts that are alleged in a complaint or stated in the order of voluntary surrender, whether or not the licensee has denied the facts involved.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of §164.051(a)(7) the Act.

(5) Repeated or recurring meritorious health care liability claims. It shall be presumed that a claim is "meritorious," within the meaning of §164.051(a)(8) of the Act, if there is a finding by a judge or jury that a licensee was negligent in the care of a patient or if there is a settlement of a claim without the filing of a lawsuit or a settlement of a lawsuit against the licensee in the amount of $50,000 or more. Claims are "repeated or recurring," within the meaning of §164.051(a)(8) of the Act, if there are three or more claims in any five-year period. The date of the claim shall be the date the licensee or licensee's medical liability insurer is first notified of the claim, as reported to the board pursuant to §160.052 of the Act or otherwise.

(6) Discipline based on Criminal Conviction. The board is authorized by the following separate statutes to take disciplinary action against a licensee based on a criminal conviction:

(A) Felonies.

(i) Section 164.051(a)(2)(B) of the Medical Practice Act, §204.303(a)(2) of the Physician Assistant Act, and §203.351(a)(7) of the Acupuncture Act, (collectively, the "Licensing Acts") authorize the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any felony.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.

(iii) Because the provisions of the Licensing Acts may be based on either conviction or a form of deferred adjudication, the board determines that the requirements of the Act are stricter than the requirements of Chapter 53 and, therefore, the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) Upon the initial conviction for any felony, the board shall suspend a physician's license, in accordance with §164.057(a)(1)(A), of the Act.

(v) Upon final conviction for any felony, the board shall revoke a physician's license, in accordance with §164.057(b) of the Act.

(B) Misdemeanors.

(i) Section 164.051(a)(2)(B) of the Act authorizes the board to take disciplinary action based on a conviction, deferred

adjudication, community supervision, or deferred disposition for any misdemeanor involving moral turpitude.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(iii) For a misdemeanor involving moral turpitude, the provisions of §164.051(a)(2) of the Medical Practice Act and §205.351(a)(7) of the Acupuncture Act, may be based on either conviction or a form of deferred adjudication, and therefore the board determines that the requirements of these licensing acts are stricter than the requirements of Chapter 53 and the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) The Medical Practice Act and the Acupuncture Act do not authorize disciplinary action based on conviction for a misdemeanor that does not involve moral turpitude. The Physician Assistant Act does not authorize disciplinary action based on conviction for a misdemeanor. Therefore these licensing acts are not stricter than the requirements of Chapter 53 in those situations. In such situations, the conviction will be considered to directly relate to the practice of medicine if the act:

(I) arose out of the practice of medicine, as defined by the Act;

(II) arose out of the practice location of the physician;

(III) involves a patient or former patient;

(IV) involves any other health professional with whom the physician has or has had a professional relationship;

(V) involves the prescribing, sale, distribution, or use of any dangerous drug or controlled substance; or

(VI) involves the billing for or any financial arrangement regarding any medical service;

(v) Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act, are those which:

(I) have been found by Texas state courts to be misdemeanors of moral turpitude;

(II) involve dishonesty, fraud, deceit, misrepresentation, violence; or

(III) reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license.

(vi) Those misdemeanors found by state Texas courts not to be crimes of moral turpitude are not misdemeanors of moral turpitude within the meaning of the Act.

(C) In accordance with §164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.

(7) Violations of the Health and Safety Code. In accordance with §164.055 of the Act, the Board shall take appropriate disciplinary action against a physician who violates §170.002 or Chapter 171, Texas Health and Safety Code.

(8) For purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a substance listed in Schedule I, as established by the Commissioner of the Department of State Health Services under Chapter 481, or as established under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.) constitutes excessive use of such substance.

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

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Scott Freshour
General Counsel
Texas Medical Board
Effective date: April 22, 2020
Expiration date: August 19, 2020
For further information, please call: (512) 305-7016

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

25 TAC §417.47

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 417, Agency and Facility Responsibilities, amended §417.47, concerning an emergency rule in response to COVID-19 in order to ensure necessary state hospital staffing levels in the wake of the COVID-19 disaster. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this standard operating procedures.

To protect individuals served by the state hospitals and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency amendments to efficiently and effectively deploy staff to meet basic needs during this unprecedented time, without posing risk to the individuals served.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §552.052. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §552.052 authorizes the Executive Commissioner of HHSC to adopt rules governing training of state hospital employees.

§417.47. Training Requirements for State Mental Health Facilities.

(a) All State Hospital Employees. As required by Texas Health and Safety Code, §552.052(b), before performing the employee's duties without direct supervision, all state mental health facility (SMHF) staff members shall receive competency training and instruction on general duties. In the event of a declared disaster, the competency training, instruction, and evaluation may be modified and expedited to ensure the employee has achieved competency essential to perform the employee's duties.

(b) Direct Care Employees. Before an employee who provides direct delivery of services to a patient begins to perform direct care duties without direct supervision, a SMHF staff member shall receive training and instruction, in addition to the training outlined in subsection (a) of this section, on implementation of the interdisciplinary treatment program for each patient, a person admitted to a state hospital under the management and control of the department, for whom they will provide care.

(c) Specialized Training. Direct care employees shall receive additional training and instructional information in accordance with the specialized needs of the population being served, including services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients within a reasonable period of time after the staff member begins employment.

(d) All SMHF staff members shall receive annual refresher training on the topics outlined in subsection (a) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or in the event of a declared disaster.

(e) Direct Care Employees whose duties require delivery of services to a patient shall receive annual refresher training on the topics outlined in subsections (a) and (b) of this section throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or in the event of a declared disaster.

(f) Direct Care Employees whose duties require delivery of services on units for individuals with intellectual disabilities, medical impairments, or geriatric patients shall receive annual refresher training on the topics outlined in subsections (a), (b), and (c) of this section, throughout the staff member's employment or association with the SMHF, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training or in the event of a declared disaster.

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

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Karen Ray
Chief Counsel
Department of State Health and Services
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For further information, please call: (512) 438-2013

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

SUBCHAPTER D. CHEMICAL DEPENDENCY TREATMENT FACILITIES

26 TAC §500.41, §500.42

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 500 COVID-19 Emergency Health Care Facility Licensing, new §500.41 concerning an emergency rule in response to COVID-19 on telemedicine and telehealth in order to reduce the risk of transmission of COVID-19, and new §500.42, concerning an emergency rule in response to COVID-19 on maximum caseloads in order to permit an intensive residential program in a Chemical Dependency Treatment Facility (CDTF) to temporarily increase counselor caseloads to twenty clients per counselor. As authorized by Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this CDTF Telemedicine or Telehealth in Response to COVID-19 and CDTF Maximum Caseloads in Response to COVID-19.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting

emergency rules to temporarily permit a licensed CDTF to provide telehealth and telemedicine treatment services to clients in order to reduce the risk of transmission of COVID-19, as well as to address shortages of available medical professionals and permit an intensive residential program in a CDTF to increase counselor caseloads from 10 to 20 clients per counselor because of CDTF staff shortages.

STATUTORY AUTHORITY

The emergency rules are adopted under Government Code §2001.034 and §531.0055, and Health and Safety Code §464.009. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by health and human services system. Health and Safety Code, §464.009 authorizes the Executive Commissioner of HHSC to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

§500.41. CDTF Telemedicine or Telehealth in Response to COVID-19.

(a) In this section, telehealth service has the meaning assigned by Occupations Code §111.001(3), and telemedicine medical service has the meaning assigned by Occupations Code §111.001(4).

(b) A physician, physician assistant, nurse practitioner, registered nurse, or licensed vocational nurse (LVN) may use telemedicine medical service or telehealth service to screen a client for admission to a detoxification program as required by 25 TAC §448.801(e), provided all other requirements of that subsection are met. The physician who examines a client screened by a LVN, as required by 25 TAC §448.801(e)(4), may use telemedicine medical service or telehealth service to examine the client.

(c) The medical director or their designee (physician assistant, nurse practitioner) may use telemedicine medical service or telehealth service to conduct the examination of a client for admission to a detoxification program, as required by 25 TAC §448.902(e), provided all other requirements of that subsection are met.

(d) A counselor or counselor intern may use electronic means that meet the criteria of 25 TAC §448.911 to conduct the comprehensive psychosocial assessment of a client admitted to the facility, as required by 25 TAC §448.803, provided all other requirements of §448.803 are met, and to review information from an outside source with the client, as required by 25 TAC §448.803(f), provided all other requirements of that subsection are met.

(e) A qualified credentialed counselor, licensed professional counselor, licensed chemical dependency counselor, licensed marriage and family therapist, or licensed clinical social worker may provide outpatient chemical dependency treatment program services by electronic means under 25 TAC §448.911, provided all other requirements of that section are met.

(f) Any use of telemedicine medical service or telehealth service under this section shall comply with all applicable professional statutes and rules.

§500.42. CDTF Maximum Caseloads in Response to COVID-19.

Notwithstanding 25 TAC §448.903(f), counselor caseloads in intensive residential programs shall be limited to 20 clients for each counselor.

To the extent this emergency rule conflicts with 25 TAC Chapter 448, this emergency rule controls while it remains in effect.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001539
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: April 20, 2020
Expiration date: August 17, 2020
For further information, please call: (512) 834-4591

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §§21.4901 - 21.4904

The Texas Department of Insurance is renewing the effectiveness of new Title 28, Chapter 21, Subchapter OO, Disclosures By Out-Of-Network Providers, §§21.4901 - 21.4904, concerning disclosures by out-of-network providers, which was adopted on an emergency basis. The text of the emergency rules was originally published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 13). Under the authority of Government Code §2001.034(c), the renewal will be effective for 60 days.

Filed with the Office of the Secretary of State on April 17, 2020.

TRD-202001484
James Person
General Counsel
Texas Department of Insurance
Original effective date: January 1, 2020
Expiration date: June 28, 2020
For further information, please call: (512) 676-65844

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

SUBCHAPTER D. TRAINING

40 TAC §§3.401 - 3.403

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40

Texas Administrative Code, Chapter 3, Responsibilities of State Facilities, amended §§3.401 - 3.403, concerning emergency rules in response to COVID-19 to ensure necessary state supported living center staffing levels in the wake of the COVID-19 disaster. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these training rules.

To protect individuals served by the state supported living center and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency amendments to efficiently and effectively deploy staff to meet basic needs during this unprecedented time, without posing risk to the individuals served.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §555.024. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §555.024 authorizes the Executive Commissioner of HHSC to adopt rules governing training of state supported living center employees.

§3.401. Training for New Employees.

(a) Before an employee performs employment duties without direct supervision, the employee shall receive competency training and instruction on general duties. In the event of a declared disaster, the competency training, instruction, and evaluation may be modified and expedited to ensure the employee has achieved competency essential to perform the employee's duties [~~a facility must provide the employee with basic orientation~~].

(b) The focus of the basic orientation must be on:

(1) the uniqueness of each individual with whom the employee will work;

(2) techniques for improving the quality of life and promoting the integration, independence, person-directed choices, and health and safety of individuals; and

(3) the conduct expected of employees.

(c) The basic orientation must include instruction and information on the following topics:

(1) the general operation and layout of the facility, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability), including the right to live in the least restrictive setting appropriate to the individual's needs and abilities;

(6) respecting personal choices made by individuals;

(7) the safe and proper use of restraints;

(8) abuse, neglect, and exploitation of individuals;

(9) unusual incidents;

(10) illegal drug use in the workplace;

(11) workplace violence;

(12) sexual harassment in the workplace;

(13) preventing and treating infection;

(14) responding to emergencies, including information about first aid and cardiopulmonary resuscitation procedures;

(15) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(16) the rights of facility employees.

§3.402. Additional Training for Direct Support Professionals.

(a) Before a direct support professional performs employment duties without direct supervision, a facility must provide relevant training essential to perform the employee's duties. Direct support professionals will be provided basic instructional information on these statutorily required topics [~~that covers at least the following topics to the direct support professional~~]:

(1) implementation and data collection requirements for the individual support plan for each individual with whom the direct support professional will work;

(2) communication styles and strategies for each individual with whom the direct support professional will work;

(3) prevention and management of aggressive or violent behavior;

(4) observing and reporting changes in behavior, appearance, or health of individuals;

(5) positive behavior support;

(6) emergency response;

(7) development of individual support plans;

(8) self-determination;

(9) seizure safety;

(10) working with aging individuals;

(11) assisting individuals with personal hygiene;

(12) physical and nutritional management plans;

(13) home and community-based services, including the principles of community inclusion and participation in the community living options information process; and

(14) procedures for securing evidence following an incident of suspected abuse, neglect, or exploitation.

(b) If training on any of the following topics is relevant to working with a particular individual, a facility must provide that training to the direct support professional before performing duties related to that individual without direct supervision:

(1) using techniques for lifting, positioning, moving and increasing mobility;

(2) assisting individuals with visual, hearing, or communication impairments or who require adaptive devices and specialized equipment;

(3) recognizing appropriate food textures; and

(4) using proper feeding techniques to assist individuals with meals.

§3.403. Refresher Training.

(a) A facility must provide training on:

(1) abuse, neglect, and exploitation to an employee annually;

(2) unusual incidents to an employee annually;

(3) the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability) to a direct care professional annually and to an employee who is not a direct care professional every two years; and

(4) restraints to a direct support professional annually.

(b) During a declared disaster, trainings required by subsection (a) of this section must be provided at the earliest opportunity.

~~[(a) A facility must provide training on abuse, neglect, and exploitation to an employee annually.]~~

~~[(b) A facility must provide training on unusual incidents to an employee annually.]~~

~~[(c) A facility must provide training on the rights of individuals as specified in 40 Texas Administrative Code (TAC) Part 1, Chapter 4, Subchapter C (relating to Rights of Individuals with an Intellectual Disability) to a direct care professional annually and to an employee who is not a direct care professional every two years.]~~

~~[(d) A facility must provide training on restraints to a direct support professional annually.]~~

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

Filed with the Office of the Secretary of State on April 21, 2020.

TRD-202001546
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: April 21, 2020
Expiration date: August 18, 2020
For further information, please call: (512) 428-1929

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TEXAS
Lone Star State

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 8. ADVISORY OPINIONS

1 TAC §§8.1, 8.3, 8.5, 8.7, 8.11, 8.13, 8.15, 8.17 - 8.19

The Texas Ethics Commission (the Commission) proposes amendments to Chapter 8 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposes amending §8.1, regarding Definitions, §8.3, regarding Subject of an Advisory Opinion, §8.5, regarding Persons Eligible to Receive an Advisory Opinion; §8.7, regarding Request for an Advisory Opinion, §8.11, regarding Review and Processing of a Request, §8.13 regarding Time Period, §8.15, regarding Publication in *Texas Register;* Comments, §8.17, regarding Letter Response, and §8.19, regarding Confidentiality, and new Texas Ethics Commission §8.18, regarding No Defense to Prosecution or Civil Penalty.

Section 571.091 of the Government Code requires the Commission to "prepare a written opinion answering the request of a person subject to [certain identified] laws for an opinion about the application of any of these laws to the person in regard to a specified existing or hypothetical factual situation." The Commission is also required to "issue an advisory opinion not later than the 60th day after the date the commission receives the request." By Commission vote, the 60-day deadline can be extended twice by 30 days.

Section 571.097 of the Government Code provides a defense to prosecution or to the imposition of a civil penalty that the person reasonably relied on a written advisory opinion relating to the provision of the law the person is alleged to have violated or relating to a fact situation that is substantially similar to the fact situation in which the person is involved. Thus, an advisory opinion provides a useful function for the regulated community by providing assurance that a certain action is permissible. In 2019, the legislature passed Senate Bill 548, amending section 571.097 to state that a requestor of an opinion will have a similar defense if the requestor submits a written advisory opinion and the Commission does not issue an opinion within the 60-day period required by section 571.092. The defense applies only to acts giving rise to a potential violation of law occurring in the period beginning on the date the deadline passes and ending on the date the Commission issues the requested opinion. Thus, if a person requests an opinion and the Commission does not issue an opinion within the required 60-day period, or within the extended time period if the Commission votes to extend by 30 or 60 days, then the requestor has an absolute defense. The amendment is effective on September 1, 2019.

The passage of Senate Bill 548 prompted Commission staff to review the existing procedural rules for advisory opinions. Staff's primary concern is that a person who submits a request for an advisory opinion would have a defense to prosecution if the Commission does not meet in time to meet the 60-day deadline, or if the Commission meets to consider a draft opinion but does not adopt an opinion because of insufficient votes. At the November meeting, some of the commissioners expressed support for a rule that would automatically extend the 60-day deadline by another 60 days. The draft rules that are prepared for this agenda item include a rule (§8.13(b)) that would enact automatic extensions and numerous additional changes to clarify the advisory opinion process for both requestors and staff.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amendments and new rule are in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended and new rules.

The Executive Director has also determined that for each year of the first five years the proposed amendments and new rule are in effect, the public benefits will be clarity in the rules for submission of advisory opinion requests and issuance of advisory opinions. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new rule.

The Executive Director has determined that during the first five years that the proposed amendments and new rule are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amendments and new rule from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amendments and new rule may do so at any Commission meeting during the agenda item relating to the proposed amendments and new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amended and new rules are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed amendments and new rule affect Subchapter D of Chapter 571 of the Government Code.

§8.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: AOR number--An advisory opinion request file number assigned by the executive director to a pending advisory opinion request in accordance with this chapter.

§8.3. Subject of an Advisory Opinion.

(a) The commission may only [~~will~~] issue a written advisory opinion on the application of any of the following laws: [~~laws to a person qualified to make a request under §8.5 of this title (relating to Persons Eligible To Receive an Advisory Opinion):~~]

(1) Government Code, Chapter 302 (concerning Speaker of the House of Representatives);

(2) Government Code, Chapter 303 (concerning Governor for a Day and Speaker's Reunion Day Ceremonies);

(3) Government Code, Chapter 305 (concerning Registration of Lobbyists);

(4) Government Code, Chapter 572 (concerning Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest);

(5) Government Code, Chapter 2004 (concerning Representation Before State Agencies);

(6) Local Government Code, Chapter 159, Subchapter C, in connection with a county judicial officer, as defined by Section 159.051, Local Government Code, who elects to file a financial statement with the commission;

(7) Election Code, Title 15 (concerning Regulating Political Funds and Campaigns);

(8) Penal Code, Chapter 36 (concerning Bribery and Corrupt Influence);

(9) Penal Code, Chapter 39 (concerning Abuse of Office);

(10) Government Code, §2152.064 (concerning Conflict of Interest in Certain Transactions); and

(11) Government Code, §2155.003 (concerning Conflict of Interest).

(b) The commission may [~~will~~] not issue an advisory opinion that concerns the subject matter of pending litigation known to the commission.

(c) For purposes of this section, the term litigation includes a sworn complaint proceeding before the commission only if the Government Code Subchapters C - H, Chapter 2001, apply to the proceeding.

(d) An advisory opinion cannot resolve a disputed question of fact.

§8.5. Persons Eligible to [~~To~~] Receive an Advisory Opinion.

A person who is subject to one of the laws described in §8.3(a) of this chapter [~~title~~] (relating to Subject of an Advisory Opinion [~~Advisory Opinions~~]) may request an opinion that advises how the law applies to that person in a specific real or hypothetical factual situation.

§8.7. Request for an Advisory Opinion.

(a) A request for an advisory opinion shall describe a specified factual situation. The facts specified may be real or hypothetical. The request must provide sufficient detail to permit the commission to provide a response to the request, including the name of the person making the request and, if applicable, the name of the person on whose behalf the request is made.

(b) A request for an advisory opinion shall be:

(1) in writing; and

(2) mailed or hand-delivered [~~writing. A written request may be mailed, hand-delivered, or faxed~~] to the commission at the agency office or emailed to the commission's email address designated for receiving requests.

§8.11. Review and Processing of a Request.

(a) Upon receipt of a written request for an advisory opinion, the executive director shall [~~will~~] determine whether the request:

(1) pertains to the application of a law specified [~~request is one the commission will answer~~] under §8.3 of this chapter [~~title (relating to Subject of an Advisory Opinion)~~];

(2) meets the standing requirements of §8.5 of this chapter;

(3) meets the form requirements of §8.7 of this chapter; and

(4) cannot be answered by written response under § 8.17 of this chapter by reference to the plain language of a statute, commission rule, or advisory opinion.

(b) If the executive director determines that a request for an opinion meets the requirements of this chapter as set forth in subsection (a)(1)-(3) of this section and that the request cannot be answered by written response under §8.17 of this chapter, [~~the commission will answer the request,~~] the executive director shall [~~will~~] assign an AOR number to the request. The executive director shall notify the person making the request of the AOR number and of the proposed wording of the question to be answered by the commission.

(c) If the executive director determines that a request for an opinion does not meet the requirements of this chapter as set forth in subsection (a)(1)-(3) of this section or that the request can be answered by written response under §8.17 of this chapter, [~~request is one the commission cannot answer,~~] the executive director shall notify the person making the request of the reason the person making the request is not entitled to an advisory opinion in response to the request [~~will not be answered~~].

§8.13. Time Period.

(a) The commission shall issue an advisory opinion in response to a request that meets the requirements of this chapter not later than the 60th day after the date the commission receives the [~~written~~] request.

(b) The time available to issue an advisory opinion in response to a written request is automatically extended for 60 days pursuant to §571.092(b), Government Code. [~~For purposes of calculating the time period under subsection (a) of this section, an advisory opinion request is deemed to have been received on the date the executive director determines the request complies with §§8.3, 8.5, and 8.7 of this title (relating to Subject of an Advisory Opinion; Persons Eligible To Receive an Advisory Opinion; and Request for an Advisory Opinion) and assigns the request an AOR number.~~]

[~~(c) The authority granted by the Act, §1.29(b), is delegated to the staff of the commission.~~]

§8.15. Publication in Texas Register; Comments.

(a) Each request assigned an AOR number under this chapter shall be published in summary form in the *Texas Register.*

(b) Any [~~interested~~] person may submit written comments to the commission concerning an advisory opinion request. Comments submitted should reference the AOR number.

§8.17. Request Answered by Written [~~Letter~~] Response.

If the executive director determines that a request can be answered by reference to the plain language of a statute, [~~or a~~] commission rule, or advisory opinion: [~~if the question has already been answered by the commission, then in either case~~]

(1) the executive director shall [~~may~~] provide a written response to the person making the request that cites the language of the statute, [~~or~~] rule, or advisory opinion, [~~the prior determination,~~] as applicable; and

(2) the person making the request is not entitled to an advisory opinion in response to the request.

§8.18. No Defense to Prosecution or Civil Penalty.

A person who requests an advisory opinion does not obtain a defense to prosecution or to imposition of a civil penalty by requesting the opinion if any of the following apply:

(1) the commission is not authorized to answer the request because it does not pertain to the application of a law specified under §8.3 of this chapter;

(2) the request does not meet the standing requirements of §8.5 of this chapter;

(3) the request does not meet the form requirements of §8.7 of this chapter; or

(4) the executive director responds to the request by written response under §8.17 of this chapter.

§8.19. Confidentiality.

(a) The name of a person who requests an advisory opinion is confidential.

(b) The original request for an advisory opinion shall be placed in a confidential file. [~~No original request or copy of an original request may be removed from the agency office.~~]

(c) Confidentiality under subsection (a) of this section may be waived only if the person making the request for an advisory opinion provides a verified, written waiver of confidentiality to the executive director.

(d) If a request for a copy of an advisory opinion request is received, the executive director shall prepare a redacted version of the advisory opinion request by deleting any information that is likely to identify the person making the request. The redacted version of the request shall be provided to the person who requested a copy of the advisory opinion request.

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

Filed with the Office of the Secretary of State on April 14, 2020.

TRD-202001452
Anne Temple Peters
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 463-5800

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CHAPTER 12. SWORN COMPLAINTS

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §12.29, §12.30

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 12 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposes amending §12.29, regarding Subpoenas Issued by Commission, and adding new §12.30, regarding Subpoenas Issued by Counsel for the Respondent. The amendment and new rule are proposed to implement Senate Bill 548 from the 86th Texas Legislature.

Section 571.137 of the Government Code authorizes the Commission to issue subpoenas in connection with a preliminary review (on application by Commission staff) or a formal hearing. The 2019 regular legislative session passed Senate Bill 548, which made the following amendments:

Section 571.125. Preliminary Review Hearing: Procedure.

"(f) Counsel for the respondent may subpoena a witness to a preliminary review hearing in the same manner as an attorney may issue a subpoena in a proceeding in a county or district court."

Section 571.130. Formal Hearing: Subpoenas and Witnesses.

"(f) Counsel for the respondent may subpoena a witness to a formal hearing in the same manner as an attorney may issue a subpoena in a proceeding in a county or district court."

The bill provides no further guidance regarding the form, scope, or enforcement of such subpoenas. However, it is likely that any such subpoena must be issued in accordance with the form, service, and notice requirements of the Texas Rules of Civil Procedure ("TRCP").

In response to the bill, Commission staff considered the need for any rules to clarify such subpoenas. Staff have expressed concerns about subpoenas being issued without receiving any notice. To address that concern, staff drafted this rule that would require any subpoena and proof of service to be filed with the Commission within three days of service. The rule also includes an enforcement mechanism authorizing the Commission's presiding officer to essentially sanction a respondent for noncompliance by excluding evidence obtained with the subpoena.

The statute specifically authorizes a respondent's counsel to "subpoena a witness to [a hearing] in the same manner as an attorney may issue a subpoena in a proceeding in a county or district court." This appears, at the very least, to authorize a subpoena commanding a person to "attend and give testimony at a ... hearing." It is not entirely clear whether this would authorize a subpoena to compel a person to produce documents or other tangible items at a hearing. The subpoena and discovery rules in the TRCP often use the term "witness" broadly to refer to a person served with or responding to a subpoena.

Senate Bill 548 applies only to a complaint filed on or after September 1, 2019.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amendment and new rule

are in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended and new rule.

The Executive Director has also determined that for each year of the first five years the proposed amendment and new rule are in effect, the public benefits will be clarity in the rules for issuance of a subpoena by a respondent's attorney. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new rule.

The Executive Director has determined that during the first five years that the proposed amendment and new rule are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amendment and new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amendment and new rule may do so at any Commission meeting during the agenda item relating to the proposed amendment and new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amended and new rule are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed amendment and new rule affect §§571.125 and 571.130 of the Government Code.

§12.29. Subpoenas Issued by Commission.

(a) A subpoena issued under section 571.137 of the Government Code shall specify the date, time, place, and manner for execution of the subpoena.

(b) A subpoena issued under section 571.137 of the Government Code that requires a person to provide testimony shall be served on that person at least 10 business days before the date the subpoena is to be executed.

§12.30. Subpoenas Issued by Counsel for the Respondent.

(a) This section applies only to subpoenas issued by a respondent's counsel under section 571.125(f) (concerning the issuance of a subpoena for a witness in a preliminary review hearing) or 571.130(f) (concerning the issuance of a subpoena for a witness in a formal hearing) of the Government Code.

(b) A subpoena must be issued in the name of "The State of Texas" and must:

(1) state the sworn complaint numbers for the sworn complaints at issue in the hearing at which the witness is summoned to appear;

(2) state that the subpoena pertains to a sworn complaint proceeding before the Texas Ethics Commission;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the time and place of the preliminary review hearing or formal hearing at which the subpoena directs the person to appear;

(6) identify the respondent at whose instance the subpoena is issued and the respondent's attorney of record;

(7) specify with reasonable particularity any documents with which the person to whom the subpoena is directed shall appear;

(8) state the text of §12.31(i) of this chapter; and

(9) be signed by the attorney issuing the subpoena.

(c) A subpoena must command the person to whom it is directed to appear and give testimony at:

(1) a preliminary review hearing; or

(2) a formal hearing.

(d) A subpoena may only direct a person to appear, with or without documents, and give testimony at a preliminary review hearing or formal hearing before the commission.

(e) A subpoena may be issued only by the counsel of record for a respondent in a sworn complaint proceeding before the commission against that respondent.

(f) Service.

(1) Manner of service. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the sworn complaint proceeding, the subpoena may be served on the witness's attorney of record.

(2) Deadline for service. A subpoena must be served upon the person required to appear at least 21 days before the preliminary review hearing or formal hearing at which the person is required to appear. The subpoena and proof of service must be filed with the commission within three days of its service on the person required to appear.

(3) Proof of service. Proof of service must be made by filing either:

(A) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(B) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

(g) Response.

(1) Except as provided in this subsection, a person served with a subpoena must comply with the command stated therein unless discharged by the commission or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of hearing from day to day until discharged by the commission or the party summoning the witness.

(2) If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must desig-

nate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(3) A person commanded to appear with documents must produce the documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(4) A person commanded to appear at a hearing must file any motion to quash the subpoena or objection to a requirement to appear with certain documents with the commission no later than the 14th day before the hearing at which the person is directed to appear. Commission staff may move to quash a subpoena or object to appearance with certain documents in the same manner as the person commanded to appear by the subpoena. The filer of a motion to quash or objection to a requirement to appear with certain documents must serve the motion or objection on the proponent of the subpoena in person, by mail, by commercial delivery service, by fax, by email, or by other such manner as the presiding officer of the commission may direct, no later than the deadline for filing the motion to quash or objection to appearance with documents with the commission. After affording commission staff and the person commanded to appear an opportunity to move to quash the subpoena or object to appearance with certain documents, and affording the proponent of the subpoena an opportunity to respond to the motion to quash or objection to appearance with documents, the commission's presiding officer shall rule on a motion to quash or objection to appearance with documents.

(5) A person commanded to attend and give testimony, or to produce documents or things, at a preliminary review hearing or formal hearing may object to giving testimony or producing documents at the time and place specified for the hearing, rather than under subsection (g)(4) of this section.

(6) A party's appearance with a document in response to a subpoena directing the party to appear with the document authenticates the document for use against that party in any proceeding before the commission unless the party appearing with the document objects to the authenticity of the document, or any part of it, at the time of the party's appearance, stating the specific basis for objection. An objection must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity. The requirement that the commission provide a reasonable opportunity to establish the document's authenticity may be satisfied by the opportunity to present a witness to authenticate the document at a subsequent hearing before the commission.

(h) A counsel for a respondent issuing a subpoena must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on a motion to quash or objection to appearance with documents, the presiding officer must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The presiding officer may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

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

Filed with the Office of the Secretary of State on April 14, 2020.

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Anne Temple Peters
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 463-5800

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1 TAC §12.34

The Texas Ethics Commission (the Commission) proposes new Texas Ethics Commission Rules §12.34, regarding Agreed Orders, of Subchapter A of Chapter 12, of Title 1, Part 2, of the Texas Administrative Code.

Historically, the Commission has entered into three types of agreed orders to resolve sworn complaints filed with the Commission: (1) an assurance of voluntary compliance or "AVOC," (2) a notice of reporting error or "NORE," and (3) an agreed order and resolution. Most agreed orders are AVOCs or resolutions. Staff consensus is that a rule setting out the types of agreed orders that are typically issued by the Commission would help in the process of negotiating with respondents to settle complaints and would help ensure consistency in proposing agreed orders.

The rule does not limit the Commission to proposing only these three types of agreed orders, but merely lists the three types of orders that the Commission has historically issued. The rule does not address dismissal orders or other final orders that do not require an agreement between the Commission and a respondent.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the new rule.

The Executive Director has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits will be clarity in the types of agreed orders issued by the Commission in response to a sworn complaint. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The Executive Director has determined that during the first five years that the proposed new rule is in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed new rule may do so at any Commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

Statutory authority

The new rule is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The proposed new rule affects Subchapter E of Chapter 571 of the Government Code.

§12.34. Agreed Orders.

(a) The commission may enter into an agreed order with a respondent to resolve and settle a complaint filed against the respondent, including an assurance of voluntary compliance, a notice of reporting error, or an agreed order and resolution.

(b) An assurance of voluntary compliance:

(1) resolves a sworn complaint:

(A) with no determination that a violation within the jurisdiction of the commission has occurred, if entered into before a preliminary review hearing is completed; or

(B) with a determination that all violations within the jurisdiction of the commission, when viewed as a whole in consideration of any mitigating action taken by the respondent, are technical or de minimis; and

(2) may include a civil penalty.

(c) A notice of reporting error resolves a complaint with a determination that all violations within the jurisdiction of the commission are reporting errors that do not materially defeat the purpose of disclosure and may include a civil penalty in the form of an assessment fee.

(d) An agreed order and resolution resolves a sworn complaint with a determination that one or more violations within the jurisdiction of the commission occurred and may include a civil penalty.

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

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Anne Temple Peters
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 463-5800

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CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 12 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposed amending §12.83, regarding Preliminary Review in Subchapter C, and §12.84, regarding Notice of Preliminary Review Hearing, in Subchapter D.

These amended rules address the Commission's sworn complaint procedures in response to Senate Bill 548 (SB 548), enacted in the 2019 legislative session. Section 571.1242, Texas Government Code, as amended by SB 548, requires the Commission to either propose an agreement to settle a complaint or dismiss the complaint within 120 days after receiving the respondent's response to a notice of a complaint or the respondent's response to written questions, whichever is later. Section 571.1242 also requires the Commission to set a complaint for a preliminary review hearing "at the next [C]ommission meeting for which notice has not yet been posted" if a respondent rejects a proposed settlement during preliminary review.

The bill repealed the previous requirement that the Commission set a complaint for a preliminary review hearing if it is not resolved within 30 or 75 business days, depending on the category of the alleged violations in the complaint, of the respondent receiving the notice of the complaint.

The proposed amended rules are intended to clarify how these new requirements apply.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amended rules are in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended rules.

The Executive Director has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefits will be clarity in the sworn complaint process. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The Executive Director has determined that during the first five years that the proposed amended rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.83

The amended rule is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The amended rule affects Subchapter E of Chapter 571 of the Government Code.

§12.83. Preliminary Review.

(a) A complainant or respondent must respond to written questions [~~submitted to the respondent pursuant to section 571.1243 of the Government Code~~] not later than 15 business days after receiving [~~the~~

~~respondent receives~~] the written questions. The executive director may grant an extension of the time period for good cause shown.

(b) If the commission staff submits written questions to a respondent [~~pursuant to section 571.1243 of the Government Code~~], the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled [~~time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code, as applicable, is increased by the number of business days during the period~~] beginning on the date the commission sends the written questions and resets [~~ending~~] on the date the commission receives the respondent's written response.

(c) If the commission staff applies to the commission for the issuance of a subpoena pursuant to section 571.137(a-1) of the Government Code, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled [~~time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code as applicable, is increased by the number of business days during the period~~] beginning on the date the staff applies to the commission for the subpoena and resets [~~ending~~] on either:

(1) the date the commission rejects the staff's application for a subpoena;

(2) the date the person to whom the subpoena is directed complies with the subpoena; or

(3) the date the commission receives a final ruling on a person's failure or refusal to comply with a subpoena that is reported [~~reports~~] to a district court pursuant to section 571.137(c) of the Government Code.

(d) If the commission staff proposes to a respondent an agreement to settle a complaint that would be effective upon approval by the commission and the respondent, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is met. If a respondent approves a proposed agreement, commission staff must submit the proposed agreement to the commission to seek final approval at the next scheduled commission meeting. If a respondent rejects a proposed agreement, the matter shall be set for a preliminary review hearing at the next commission meeting for which notice has not yet been posted. If a respondent rejects a proposed agreement within 45 days before the date of a commission meeting, the matter shall be set for a preliminary review hearing at the next commission meeting thereafter.

(e) [~~(d)~~] During a preliminary review, commission staff may present documents or evidence, make recommendations, or otherwise communicate with commissioners outside the presence of the respondent for the purpose of investigating and resolving a sworn complaint.

(f) [~~(e)~~] Commission staff may not communicate with a commissioner outside the presence of the respondent for the purpose of influencing a decision on a pending sworn complaint after the complaint has been scheduled for a preliminary review hearing and notice of the hearing has been sent to the respondent.

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

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Anne Temple Peters
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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SUBCHAPTER D. PRELIMINARY REVIEW HEARING

1 TAC §12.84

The amended rule is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 571 of the Government Code.

The amended rule affects Subchapter E of Chapter 571 of the Government Code.

§12.84. Notice of Preliminary Review Hearing.

(a) Commission staff shall provide notice of a preliminary review hearing to a respondent and complainant at least 45 days before the date of the hearing and must include:

(1) the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the factual matters asserted.

(b) Commission staff shall provide to a respondent at least 30 days before the date of the hearing:

(1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and

(2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(c) The respondent shall provide to commission staff the contents described by subsections (b)(1) and (b)(2) of this section at least 30 days before the date of the hearing. [~~The contents must be received by commission staff at least 14 days before the date of the hearing.~~] If a respondent or commission staff fails [~~fail~~] to comply with this section, the commission may reschedule the hearing or proceed with the hearing and exclude at the hearing evidence, documents, and testimony provided by the respondent or commission staff, as applicable, but such failure may be excused upon a showing of good cause.

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

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Anne Temple Peters
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Texas Ethics Commission
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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 24 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposes amending §20.1, regarding Definitions. The amendment is proposed to implement House Bill 2586 ("HB 2586") from the 86th Texas Legislature, which allows, under certain circumstances, "hybrid" political committees to accept corporate or labor organization contributions to fund direct campaign expenditures.

House Bill 2586 from the 86th legislative session, which went into effect on September 1, 2019, allows, under certain circumstances, "hybrid" political committees to accept corporate or labor organization contributions to fund direct campaign expenditures.

The rule amendments address "hybrid" and "direct campaign expenditure-only" committees, which are concepts introduced by the new legislation. To simplify the rules, definitions for each type of committee would be helpful. The definitions of "hybrid committee" and "direct campaign expenditure-only committee" merely copy the statutory language that describes these types of committees.

The proposed amended rule should be read in conjunction with an amendment to Ethics Commission §24.18 and new §22.35 and §24.19, which are proposed contemporaneously with this amendment.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended rule.

The Executive Director has also determined that for each year of the first five years the proposed amendment is in effect, the public benefits will be clarity in the definitions used in campaign finance law. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The Executive Director has determined that during the first five years that the proposed amendment is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; expand, repeal or limit an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amendment may do so at any Commission meeting during the agenda item relating to the proposed amendment. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The amended rule is proposed under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed amendment affects Title 15 of the Election Code.

§20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (21) (No change.)

(22) Hybrid committee--A political committee that, as provided by section 252.003(a)(4) (relating to contents of a general-purpose committee's campaign treasurer appointment) or 252.0031(a)(2) (relating to a specific-purpose committee's campaign treasurer appointment) of the Election Code, as applicable, has filed a campaign treasurer appointment that includes an affidavit stating that:

(A) the committee is not established or controlled by a candidate or an officeholder; and

(B) the committee will not use any political contribution from a corporation or a labor organization to make a political contribution to:

(i) a candidate for elective office;

(ii) an officeholder; or

(iii) a political committee that has not filed an affidavit in accordance with this section.

(23) Direct campaign expenditure-only committee--A political committee, as authorized by section 253.105 of the Election Code (relating to political contributions to direct campaign expenditure-only committees) to accept political contributions from corporations or labor organizations, that:

(A) is not established or controlled by a candidate or an officeholder;

(B) makes or intends to make direct campaign expenditures;

(C) does not make or intend to make political contributions to:

(i) a candidate;

(ii) an officeholder;

(iii) a specific-purpose committee established or controlled by a candidate or an officeholder; or

(iv) a political committee that makes or intends to make political contributions to a candidate, an officeholder, or a specific-purpose committee established or controlled by a candidate or an officeholder; and

(D) has filed an affidavit with the commission stating the committee's intention to operate as described by subparagraphs (B) and (C) of this paragraph.

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

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Anne Temple Peters
Executive Director
Texas Ethics Commission
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CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.35

The Texas Ethics Commission (the Commission) proposes an addition to Texas Ethics Commission rules in Chapter 24 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposes new §22.35, regarding Corporate Contributions to Certain Political Committees. The new rule is proposed to implement House Bill 2586 ("HB 2586") from the 86th Texas Legislature, which allows, under certain circumstances, "hybrid" political committees to accept corporate or labor organization contributions to fund direct campaign expenditures.

HB 2586 allows for the creation of what is referred to in campaign finance law as a hybrid political action committee, which may accept unlimited contributions from corporations and labor organizations to make direct campaign expenditures (i.e. independent expenditures), while using other non-corporate contributions to contribute to candidates.

Proposed §22.35 would require hybrid PACs, direct campaign expenditure-only committees, and general-purpose committees that accept contributions for administrative or solicitation expenses, to keep corporate or labor organization contributions in a separate account, to ensure that corporate contributions given to political committees, including hybrid PACs, are not given to candidates, officeholders, or their specific-purpose committees. The proposed rule also clarifies that corporate and labor organization contributions generally may not be used to make a political contribution.

This new rule should be read in conjunction with new Ethics Commission §24.19 and amendments to Ethics Commission §20.1 and §24.18, which are proposed contemporaneously with this new rule.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the rule.

The Executive Director has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits will be clarity in how to report contributions to hybrid political action committees. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The Executive Director has determined that during the first five years that the proposed new rule is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy. This proposal does create a new regulation; political committees would be required to keep corporate and labor organization contributions in a separate bank account.

The Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed new rule may do so at any Commission meeting during the agenda item relating to the proposed new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The new rule is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Title 15 of the Election Code.

The proposed new rule affects Title 15 of the Election Code.

§22.35. Corporate Contributions to Certain Political Committees.

(a) A political committee that accepts a monetary political contribution from a corporation or labor organization shall maintain the contribution in a separate account for political contributions from corporations and labor organizations.

(b) A political committee that accepts a political contribution from a corporation or labor organization shall not use the contribution to make a political contribution to:

(1) a candidate for elective office;

(2) an officeholder; or

(3) a political committee other than a hybrid committee, a direct campaign expenditure-only committee, or a political committee that supports or opposes measures exclusively.

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

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Anne Temple Peters
Executive Director
Texas Ethics Commission
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CHAPTER 24. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES APPLICABLE TO CORPORATIONS AND LABOR ORGANIZATIONS

1 TAC §24.18, §24.19

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 24 of Title 1, Part 2, of the Texas Administrative Code. Specifically, the Commission proposes amending §24.18, regarding Designation of Contribution for Administrative Purposes, and adding new §24.19, regarding Affidavit Required by a Political Committee Making a Direct Campaign Expenditure from a Political Contribution Accepted from a Corporation or Labor Organization. The amendment and new rule are proposed to implement House Bill 2586 ("HB 2586") from the 86th Texas Legislature, which allows, under certain circumstances, "hybrid" political committees to accept corporate or labor organization contributions to fund direct campaign expenditures.

The proposed amendment to Ethics Commission §24.18 creates a presumption in most cases that corporate money given to a political committee is deemed designated "as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee." The proposed amendment exempts hybrid PACs from this rule so that hybrid PACs may also use corporate contributions to fund direct campaign expenditures, as allowed by HB 2586. The proposed amendment also adds a presumption that a corporate contribution to a political committee is deemed designated for permissible administrative purposes if it is deposited in a separate segregated account.

The proposed new Ethics Commission rule, §24.19, is added primarily for clarity. It restates the new statutory requirement that the affidavit must be included in a political committee's campaign treasurer appointment before using a political contribution from a corporation or labor organization to make a direct campaign expenditure in connection with a campaign for an elective office. The second sentence is the substance of the rule, which states that the requirement to file a "Hybrid PAC affidavit" also applies to a direct campaign expenditure only committee. It should be read in conjunction with amendments to Ethics Commission §20.1 and §24.18, and new rule §22.35, which are proposed contemporaneously with this amendment.

The proposed amended and new rule should be read in conjunction with an amendment to Ethics Commission §20.1 and new §22.35, which are proposed contemporaneously with this amendment and new rule.

Anne Temple Peters, Executive Director, has determined that for the first five-year period the proposed amendment and new rule are in effect, there will be no additional costs or loss or increase in revenue to the state or local governments expected as a result of enforcing or administering the amended and new rule.

The Executive Director has also determined that for each year of the first five years the proposed amendment and new rule are in effect, the public benefit will be clarity in how hybrid political action committees should handle receipt of corporate or labor organization contributions. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new rule.

The Executive Director has determined that during the first five years that the proposed amendment and new rule are in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amendment and new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amendment and new rule may do so at any Commission meeting during the agenda item relating to the proposed amendment and new rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

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

The amended and new rule are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Title 15 of the Election Code.

The proposed amendment and new rule affect Title 15 of the Election Code.

§24.18. Designation of Contribution for Administrative Purposes.

(a) Any of the following will serve to designate a political expenditure in the form of a political contribution made by a corporation or labor organization [~~corporate expenditure~~] as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee:

(1) A contemporaneous written instruction that the contribution [~~expenditure~~] is restricted to the administration, maintenance, or operation of the committee accepting the contribution; [~~expenditure;~~]

(2) The negotiable instrument conveying the contribution contains language indicating that the entity is a corporation, including but not limited to "Inc.," "Incorporated," "Corp.," or "Corporation;" [~~or~~]

(3) The general-purpose committee accepting the contribution reports the contribution as monetary contribution or monetary support from a corporation or labor organization on the committee's campaign finance report ; or[~~.~~]

(4) The general-purpose committee accepting the contribution deposits the contribution into a separate segregated account for political contributions from corporations and labor organizations.

(b) Subsection (a) of this section shall not be read to restrict a hybrid committee, a direct campaign expenditure-only committee, or a political committee that supports or opposes measures exclusively from using a contribution from a corporation or labor organization to make a direct campaign expenditure.

§24.19. Affidavit Required by a Political Committee Making a Direct Campaign Expenditure from a Political Contribution Accepted from a Corporation or Labor Organization.

A political committee, including a direct campaign expenditure-only committee, must include in its campaign treasurer appointment the affidavit described by section 252.003(a)(4) (relating to contents of a general-purpose committee's campaign treasurer appointment) or 252.0031(a)(2) (relating to contents of a specific-purpose committee's campaign treasurer appointment) of the Election Code, as applicable, before using a political contribution from a corporation or labor

organization to make a direct campaign expenditure in connection with a campaign for an elective office.

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

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Anne Temple Peters
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 31, 2020
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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.27

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.27, concerning fees that must be paid in connection with a proposed change of control of a money transmission or currency exchange business. The amended rule is proposed to correct an error by replacing language that was inadvertently deleted in a previous rule action.

House Bill 2458, which was passed in the 86th Regular Session of the Texas Legislature, removed all statutory references to licensed depository agents of the Texas Bullion Depository. In August 2019, the department recommended amendments to multiple rules within Title 7, Texas Administrative Code Chapter 33 to implement HB 2458 by deleting all references to depository agents. The language proposed and approved for deletion in §33.27 inadvertently included all of subsection (g), concerning fees that are required for change of control applications submitted by all money services businesses, not just for applications submitted by depository agents. The Finance Commission approved the amendments for publication in the *Texas Register,* and the amendments were published August 30, 2019. No comments were received during the 30-day comment period. The amendments were adopted on the consent agenda at the Finance Commission meeting on October 18, 2019, and became effective on November 7, 2019. This action is necessary to reinstate the portion of §33.27 that was inadvertently deleted in that prior rule action.

Mark Largent, Director of Corporate Activities, Texas Department of Banking, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Largent also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that the department will be able to appropriately allocate resources necessary to process change of control applications for money services businesses.

For each year of the first five years that the rule will be in effect, there will be minimal economic costs to persons required to comply with the rule as proposed; these costs will be the same as before the rule was inadvertently deleted.

For each year of the first five years that the rule will be in effect, the rule will not:

-- create or eliminate a government program;

-- require the creation of new employee positions or the elimination of existing employee positions;

-- require an increase or decrease in future legislative appropriations to the agency;

-- require an increase or decrease in fees paid to the agency;

-- create a new regulation;

-- expand, limit or repeal an existing regulation;

-- increase or decrease the number of individuals subject to the rule's applicability; and

-- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on June 1, 2020. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Texas Finance Code (Finance Code), §151.102, which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to recover the cost of maintaining and operating the department and the cost of administering and enforcing this chapter and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to achieve the purposes of the chapter.

Finance Code, §151.605(c)(3), is affected by the proposed amended section.

§33.27. What Fees Must I Pay to Get and Maintain a License?

(a) - (f) (No change.)

(g) What fees must I pay in connection with a proposed change of control of my money transmission or currency exchange business?

(1) You must pay a non-refundable $1,000 fee at the time you file an application requesting approval of your proposed change of control.

(2) You must pay a non-refundable $500 fee to obtain the department's prior determination of whether a person would be considered a person in control and whether a change of control application must be filed. If the department determines that a change of control application is required, the prior determination fee will be applied to the fee required under paragraph (1) of this subsection.

(3) If the department's review of your change of control application or prior determination request requires more than eight em-

ployee hours, you must pay an additional review fee of $75 per employee hour for every hour in excess of eight hours.

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 151, and this chapter.

(h) [~~(g)~~] What other fees must I pay?

(1) - (4) (No change.)

(i) [~~(h)~~] How and when do I need to pay for the fees required by this section?

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

(4) You must pay the filing fees required by subsection (g) of this section at the time you file your proposed change of control or prior determination request. You must pay any required additional fees within 10 days of receipt of the department's written invoice.

(5) [~~(4)~~] You or another person must pay the investigation fee required under subsection (f) of this section within 10 days of receipt of the department's written invoice.

(6) [~~(5)~~] If you owe a late fee as provided by subsection (h)(1) [~~(g)(1)~~] of this section, you must pay this fee immediately upon receipt of the department's written invoice.

(7) [~~(6)~~] The department will bill you for any additional examination fees required under subsection (h)(2), (3) or (4) [~~(g)(2), (3) or (4)~~] of this section by written invoice. You must pay this additional examination fee within 10 days of receipt of the department's written invoice.

(8) [~~(7)~~] A fee is considered paid as of the date the department receives payment.

(j) [~~(i)~~] What if I cannot afford the annual assessment?

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

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

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TRD-202001485
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 475-1301

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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.73

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to 7 Texas Administrative Code §77.73.

Background and Purpose

Section 77.73 governs when a state savings bank must perform an appraisal or evaluation of real estate it acquires in satisfaction or partial satisfaction of indebtedness. The proposed amendments, if adopted, would raise the threshold for which a state savings bank may elect to perform an evaluation in lieu of a formal appraisal by a certified or licensed appraiser. Specifically, the proposed amendments, if adopted, would allow a state savings bank to conduct an evaluation on real property valued at $400,000 or less, raising the existing threshold amount from $250,000. The amendments are proposed to mirror and conform to similar amendments adopted jointly by the United States Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve (Board), and the Federal Deposit Insurance Corporation (FDIC; the OCC, Board, and FDIC, collectively, the federal banking agencies; the amendments, collectively, the federal amendments) to their regulations at 12 C.F.R. §§34.43, 225.63, and 323.3, respectively. The department incorporates by reference the extensive analysis and discussion by the federal banking agencies in adopting the federal amendments, published in the *Federal Register* (Real Estate Appraisals, 84 Fed. Reg. 53,579 (October 8, 2019)). The federal amendments became effective on January 1, 2020. Until the federal amendments were adopted, the previous federal appraisal/evaluation threshold amount of $250,000 stood unchanged since 1994. The similar requirements of existing §77.73, meanwhile, have not changed since January 6, 2011. As was aptly discussed by the federal banking agencies in adopting the federal amendments, since 1994, residential real estate prices have risen significantly. In adopting the federal amendments, the federal banking agencies cited data from the Standard & Poor's Case-Shiller Home Price Index (Case-Shiller), estimating that a residential property sold for $250,000 on June 30, 1994 would have sold for $643,750 on March 31, 2019. Meanwhile, according to data from the Federal Housing Finance Agency (FHFA), a residential property sold for $250,000 on June 30, 1994 would have sold for $621,448 in March 2019. The federal banking agencies also reviewed how the 1994 $250,000 appraisal/evaluation threshold amount compared to general measures of inflation according to the Consumer Price Index (CPI) and concluded that $250,000 of consumer cost as of July 1, 1994 would equate to a relative consumer cost of $429,240 as of March 2019. The federal banking agencies also considered estimates for the most recent low point in housing prices in 2011 and determined that a residential property sold for $250,000 on June 30, 1994 would have sold for $445,152 if instead sold on December 31, 2011, according to Case Shiller, and $414,629, according to the FHFA. Under the CPI, meanwhile, a consumer cost of $250,000 on July 1, 1994 would equate to a relative consumer cost of $379,997 in December 2011. Depending on its loans and investments, a state savings bank could acquire real estate subject to the rule that is located in Texas or outside of the state. However, the majority of regulated state savings banks have branches strictly in Texas with operations concentrated in Texas. As a result, for additional context, the department also considered available datasets specific to Texas. According to the FHFA's data specific to the entirety of Texas, a home sold for $250,000 on June 30, 1994 would have sold for $735,950 on December 31, 2019; and, on December 31, 2011, $441,025. According to

the Case-Shiller index specific to the Dallas, Texas metropolitan statistical area (the only dataset of Case-Shiller pertaining to Texas), a home sold for $250,000 in January 2000 (the oldest available data point) would have sold for $482,025 in December 2019. The department also considered the Texas A&M Real Estate Center's Texas Home Price Index (HPI), which measures home price appreciation within nine metropolitan statistical areas around Texas. The HPI datasets have different initial report dates for each metropolitan statistical area (MSA), none of which relates back to 1994. As a result, the department performed a hybrid analysis of HPI's data and of FHFA's data specific to each MSA (or the closest proximity thereto) by first calculating the estimated appreciation of costs from June 30, 1994 to the initial report date for each of the HPI's MSAs utilizing the FHPA's data, and then carrying that figure forward utilizing the HPI's appreciation figures. Both the FHFA and HPI utilize a geometric modeling format but, according to the Texas A&M Real Estate Center, the HPI tends to have a flatter curve due to differences in the underlying data from which the modeling is performed (the FHPA is limited to data from conventional loans while the HPI is not so limited). As a result, when considering the following results, the farther back in time the HPI data extends, the flatter and less appreciated the result, and, conversely, a more recent start date of HPI data resulted in higher appreciation figures due to increased reliance on FHPA data. The results of the department's hybrid analysis of how much a home initially sold in Texas on June 30, 1994 for $250,000 would have sold for on December 31, 2019, are as follows: (i) Amarillo MSA (oldest HPI data point March 31, 2004) - $448,106; (ii) Austin/Round Rock MSA (oldest HPI data point March 31, 1999) - $573,592; (iii) Dallas/Fort Worth/Arlington MSA (oldest HPI data point March 31, 2005) - $522,020; (iv) Dallas/Plano/Irving MSA (oldest HPI data point March 31, 2005) - $536,889; (v) El Paso MSA (oldest HPI data point March 31, 2004) - $407,030; (vi) Fort Worth/Arlington MSA (oldest HPI data point March 31, 2005) - $523,425; (vii) Houston/The Woodlands/Sugar Land MSA (oldest HPI data point March 31, 2000) - $493,827; (viii) San Antonio/New Braunfels MSA (oldest HPI data point March 31, 2013) - $525,153; (ix) Sherman/Denison MSA (oldest HPI data point March 31, 2014) - $609,033. Taking the foregoing into consideration, the department concurs with the federal banking agencies in asserting that the proposed amendments raising the appraisal/evaluation threshold take a conservative approach, and compliance with the amended rule should not result in unsafe or unsound banking practices by state savings banks.

Summary of Changes

As discussed *supra,* subsections (e) and (g) of §77.73 are amended to raise the appraisal/threshold amount from $250,000 to $400,000. A new final sentence is added to subsection (e) allowing the commissioner to extend the deadline to obtain an appraisal or evaluation for good cause shown. A new subsection (i) is proposed, requiring a state savings bank to perform an appraisal or evaluation in accordance with federal regulations.

Fiscal Impact on State and Local Government

Stephany Trotti, deputy commissioner for the department (deputy commissioner), has determined that for the first five-year period the rule is in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The deputy commissioner has further determined that for the first five-year period the rule is in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the rule.

Public Benefits / Costs to Regulated Persons

The deputy commissioner has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to have a rule that is consistent with the requirements of federal law, thereby reducing regulatory complexity in the broader banking industry, and putting state savings banks in a similar position as other federally insured depository institutions, thereby fostering a competitive environment for regulated state savings banks. As discussed *infra.,* the proposed amendments also have the potential to reduce costs to regulated persons which may, in turn, confer a reduction of costs on those members of the public who are borrowers and customers of or otherwise invested in a regulated state savings bank.

The deputy commissioner has further determined that for the first five years the rule is in effect, there are no costs anticipated for persons required to comply with the rule. The proposed amendments have the potential to reduce costs to regulated persons by increasing the number of properties for which a state savings bank is eligible to conduct an evaluation in lieu of a formal appraisal. An evaluation, unlike an appraisal, need not be performed by a certified or licensed appraiser, or in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). As a result, an evaluation is typically less costly than an appraisal. Specifically, according to data collected and feedback received by the federal agencies in response to proposing the federal amendments, the costs for an evaluation may be less than one-half or potentially even twenty percent of that for a formal appraisal by a certified or licensed third party fee appraiser. An evaluation also typically includes less information than a formal appraisal, thereby requiring less time to compile and complete, and, to the extent a state savings bank utilizes staff to conduct appraisals, has the potential to reduce such staffing needs and costs. The department welcomes comments and feedback in response to this proposal concerning the potential costs to regulated state savings banks (including cost savings), and specifically requests information concerning the cost of an evaluation versus an appraisal performed by a third party fee appraiser's office, and the potential impact on staff resources for those state savings banks utilizing staff to conduct appraisals.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed amendments are in effect, the department has determined the following: (1) the rule does not create or eliminate a government program; (2) implementation of the rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency; (5) the rule does not create a new regulation; (6) the rule does not expand or eliminate an existing regulation but does limit an existing regulation; (7) the rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the rule does not positively or adversely affect this state's economy.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The deputy commissioner has determined the rule will not have an adverse economic effect on small or micro-businesses, or rural communities because there are no costs or other adverse economic effects to persons who are required to comply with the rule. As a result, the department asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

The deputy commissioner has determined the proposed amendments, if adopted, may indirectly have an adverse economic impact on small and micro-businesses that conduct real estate appraisals. Given that the proposed amendments, if adopted, have the potential to reduce the number of real estate appraisals performed by regulated state savings banks the proposed amendments may, if adopted, result in lost business opportunities for small or micro-businesses conducting such appraisals; including, potentially, persons regulated by the Texas Appraiser Licensing Certification Board (TALCB). However, the deputy commissioner, acting in accordance with guidelines established by the Office of the Attorney General as provided by Government Code §2006.002(g), has determined that such potential adverse economic impact concerns persons not regulated by the department and thus is only indirectly related to the rule, and does not require the additional analysis for a direct adverse economic effect contemplated by Government Code §2006.002(c). However, the deputy commissioner further determined that, while there is the potential for an adverse economic impact on small or micro-businesses conducting appraisals for regulated state savings banks due to lost business opportunity, such loss in opportunity is unrelated to the businesses' status as small or micro-businesses, and businesses other than a small or micro-business performing appraisals will be similarly affected proportionate to the amount of work derived from appraisals performed for regulated state savings banks. The very nature and purpose of the rule is to afford greater flexibility for regulated state savings banks to conduct evaluations in lieu of appraisals which entails a potential reduction in the number of appraisals performed that cannot be avoided entirely. Moreover, any potential alternative methods to reduce the potential adverse economic impact on small or micro-businesses would inherently involve an appraisal/evaluation threshold amount lower than the amount proposed; but, the department asserts the purposes of the rule are best achieved by mirroring and conforming to the appraisal/evaluation threshold adopted by the federal banking agencies, which has the tendency to reduce regulatory complexity in the broader banking industry. The department further asserts the public benefits of the proposed rule, as discussed *supra,* outweigh any potential adverse impact on small and micro-businesses.

Local Employment Impact Statement

The deputy commissioner has determined no local economies are substantially affected by the rule and, as such, the department is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Takings Impact Assessment

The department has determined there are no private real property interests affected by the rule; thus, the department asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Public Comments

Written comments regarding the amendments may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to smlinfo@sml.texas.gov with the subject line "Public Comment - Real Estate Appraisals." All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302 which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate state savings banks and to protect public investment in state savings banks, including for those specific subject matters outlined in paragraphs (4), (11), and (16) of that subsection.

This proposal affects the statutes administered and enforced by the department's commissioner, Caroline C. Jones, with respect to state savings banks, contained in Finance Code, Subtitle C. No other statute is affected by this proposal.

§77.73. Investment in Banking Premises and Other Real Estate Owned.

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

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings bank must substantiate the market value of the real estate by obtaining an appraisal within sixty (60) days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is [~~less than~~] $400,000 [~~$250,000~~] or less. The commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) (No change.)

(g) An evaluation shall be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal shall be made at least once every three years on real estate with a recorded book value in excess of $400,000 [~~$250,000~~].

(h) (No change.)

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the Federal Deposit Insurance Corporation in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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

Filed with the Office of the Secretary of State on April 20, 2020.

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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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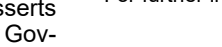
For further information, please call: (512) 475-1350



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

The Finance Commission of Texas (commission) proposes amendments to §90.104 (relating to Non-Standard Contract Filing Procedures), §90.202 (relating to Contract Provisions), §90.203 (relating to Model Clauses), §90.204 (relating to Permissible Changes), §90.302 (relating to Contract Provisions), §90.303 (relating to Model Clauses), §90.304 (relating to Permissible Changes), §90.404 (relating to Permissible Changes), §90.504 (relating to Permissible Changes), and §90.604 (relating to Permissible Changes), in 7 TAC, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

In general, the purpose of the proposed amendments to 7 TAC Chapter 90 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 90 was published in the *Texas Register* on January 31, 2020 (45 TexReg 775). The commission received no comments in response to that notice.

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

The proposed amendments are intended to clarify requirements for submitting a non-standard plain language contract, and to provide additional model clauses that licensees may use in contracts for regulated loans under Texas Finance Code, Chapter 342, Subchapter E or F.

The proposed amendments to §90.104(c) provide clarity on the process for submitting a non-standard plain language contract for a regulated loan. These amendments specify that the contract must be submitted in accordance with the OCCC's instructions, and that PDF submissions must be text-searchable, must meet a size requirement, and may not be locked in a manner that prohibits comparison of different versions of the contracts. These amendments are intended to enable OCCC staff to efficiently and effectively review non-standard plain language contract submissions. If a PDF submission is not text-searchable (e.g., scanned paper contract or image-only PDF), or if the PDF has security restrictions that prohibit comparison, this prevents OCCC staff from efficiently and effectively reviewing contracts.

Proposed amendments at §90.202(22) and §90.302(22) would specify that the contract for a Subchapter E or Subchapter F loan may include a credit reporting clause. Proposed amendments at §90.203(28) and §90.303(23) include the text of the model credit reporting clause. This text is based on Model Notice B-1 in the Consumer Financial Protection Bureau's Regulation V, 12 C.F.R. pt. 1022, app'x B, which states: "We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report." Proposed amendments would also add this clause to the model Subchapter E and Subchapter F model contracts attached as figures to §90.204 and §90.304.

In §90.203(b)(7), proposed amendments would update rate bracket amounts for loans under Subchapter E. These amounts are updated annually in the Texas Credit Letter, as provided by Texas Finance Code, §341.203 and §342.201. The updated dollar amounts in the proposed amendments are the amounts that will be in effect starting July 1, 2020, as described in the February 4, 2020 issue of the Texas Credit Letter. In addition, a proposed amendment at §90.203(b)(7)(A) specifies that the clauses in paragraph (A) are for transactions using the add-on method and the scheduled installment earnings method.

Proposed amendments to §90.204, §90.304, §90.404, §90.504, and §90.604 would add the phrase "Model Contracts" to the rule titles. These rules include model plain language contracts as attached figures. The amendments to the rule titles will help readers locate model contracts.

When the OCCC circulated a precomment draft of these rule amendments, the precomment draft included a model servicing and collection contact clause for Subchapter E and F loans, stating: "You may try to contact me at any mailing address, e-mail address, or phone number I give you, as the law allows. You may try to contact me in writing (including mail, e-mail, and text messages) and by phone (including prerecorded or artificial voice messages and automatic telephone dialing systems)." This clause was based on the federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. §227(b)(1)(A) - (B), which generally prohibits creditors and other persons from calling a residential telephone line using an automatic telephone dialing system or an artificial or prerecorded message without the prior express consent of the called party. In response to the precomment draft, a precommenter expressed concern about whether this clause would be sufficient to constitute prior express consent under the TCPA and its implementing rule that defines the term "prior express consent," 47 C.F.R. §64.1200(f)(8). The precommenter stated that consent under the TCPA is not suited to be included in the promissory note, and that this model clause could lead to risk and liability for lenders. The precommenter also noted that the TCPA is an area of significant litigation, with "uncertain federal guidance and varying court opinions across the country." In response to this precomment, the servicing and collection contacts clause is not included in this proposal. However, the OCCC and the commission invite further comments from stakeholders about whether a TCPA consent would be appropriate as a model clause for plain language contracts, and if so, what the content of the consent should be.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules and will aid licensees in preparing contracts that clearly disclose information to borrowers in plain language.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. All new model contract clauses added by the amendments are optional, and licensees may continue using currently compliant plain language contracts if they choose to do so. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not re-

quire an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposed rule changes do not create a new regulation. The proposal would expand existing regulations by specifying requirements for submitting contracts, and providing additional model clauses that lenders may use at their option. The proposed rule changes do not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register.* no further written comments will be considered or accepted by the commission.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §90.104

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

§90.104. Non-Standard Contract Filing Procedures.

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is written in plain language.

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

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted in accordance with the OCCC's instructions and the following requirements:

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

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

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

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level scores for Chapter 342 contract filings are:

(A) grade 8 for Subchapter F (signature loans);

(B) grade 9 for Subchapter E (secured installment loans);

(C) grade 10 for Subchapter G, computed by scoring the note and security document in one continuous Microsoft Word document (home equity loans, second lien purchase money loans, and second lien home improvement contracts).

(d) Contact person. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, of the contact person for that filing. If the contracts are submitted by anyone other than the licensee itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

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

Filed with the Office of the Secretary of State on April 17, 2020.

TRD-202001495
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 936-7660

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SUBCHAPTER B. SECURED CONSUMER INSTALLMENT LOANS (SUBCHAPTER E)

7 TAC §§90.202 - 90.204

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

§90.202. Contract Provisions.

A Chapter 342, Subchapter E contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the

contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter E contract may contain the following provisions:

(1) - (21) (No change.)

(22) A credit reporting clause;

(23) [~~(22)~~] A savings clause stating that if any part of the contract is invalid, the rest of the contract remains valid; and

(24) [~~(23)~~] OCCC notice.

§90.203. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) Model clauses for a Chapter 342, Subchapter E secured consumer installment loan contract.

(1) - (6) (No change.)

(7) Finance charge earnings and refund method. The model finance charge earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter. The model finance charge earnings and refund method clause options read:

(A) For contracts using the add-on interest method and the scheduled installment earnings method, Texas Finance Code, §342.201(a):

(i) For use when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:
Figure: 7 TAC §90.203(b)(7)(A)(i)
[~~Figure: 7 TAC §90.203(b)(7)(A)(i)~~]

(ii) For use when the administrative fee is financed:
Figure: 7 TAC §90.203(b)(7)(A)(ii)
[~~Figure: 7 TAC §90.203(b)(7)(A)(ii)~~]

(B) (No change.)

(C) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(e):

(i) For use when the interest charge is computed by applying a daily rate to brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:
Figure: 7 TAC §90.203(b)(7)(C)(i)
[~~Figure: 7 TAC §90.203(b)(7)(C)(i)~~]

(ii) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:
Figure: 7 TAC §90.203(b)(7)(C)(ii)
[~~Figure: 7 TAC §90.203(b)(7)(C)(ii)~~]

(iii) - (iv) (No change.)

(D) (No change.)

(E) For contracts using the true daily earnings method, Texas Finance Code, §342.201(e):

(i) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:
Figure: 7 TAC §90.203(b)(7)(E)(i)
[~~Figure: 7 TAC §90.203(b)(7)(E)(i)~~]

(ii) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:
Figure: 7 TAC §90.203(b)(7)(E)(ii)
[~~Figure: 7 TAC §90.203(b)(7)(E)(ii)~~]

(iii) - (iv) (No change.)

(8) - (27) (No change.)

(28) Credit reporting. The Fair Credit Reporting Act, 15 U.S.C. §1681s-2(a)(7), generally requires a creditor to provide a notice to a consumer before furnishing negative information to a credit bureau. The model clause for credit reporting reads: "You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report."

§90.204. Model Contracts; Permissible Changes.

(a) A licensee may consider making the following types of changes to the secured consumer installment loans plain language model clauses:

(1) - (6) (No change.)

(7) A sample model contract using the scheduled installment earnings method is presented in the following example.
Figure: 7 TAC §90.204(a)(7)
[~~Figure: 7 TAC §90.204(a)(7)~~]

(8) A sample model contract using the true daily earnings method is presented in the following example.
Figure: 7 TAC §90.204(a)(8)
[~~Figure: 7 TAC §90.204(a)(8)~~]

(9) (No change.)

(b) (No change.)

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

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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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SUBCHAPTER C. SIGNATURE LOANS (SUBCHAPTER F)

7 TAC §§90.302 - 90.304

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules

governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

§90.302. Contract Provisions.

A Chapter 342, Subchapter F contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A Chapter 342, Subchapter F contract may contain the following provisions.

(1) - (21) (No change.)

(22) A credit reporting clause;

(23) [~~(22)~~] OCCC notice;

(24) [~~(23)~~] An arbitration agreement; and

(25) [~~(24)~~] A savings clause stating that if any part of the contract is invalid, all other parts remain valid.

§90.303. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter F signature loan contract.

(1) - (22) (No change.)

(23) Credit reporting. The Fair Credit Reporting Act, 15 U.S.C. §1681s-2(a)(7), generally requires a creditor to provide a notice to a consumer before furnishing negative information to a credit bureau. The model clause for credit reporting reads: "You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report."

§90.304. Model Contracts; Permissible Changes.

(a) A licensee may consider making the following types of changes to the signature loans plain language model clauses:

(1) - (6) (No change.)

(7) A sample model contract using the add-on method is presented in the following example:
Figure: 7 TAC §90.304(a)(7)
[~~Figure: 7 TAC §90.304(a)(7)~~]

(8) A sample model contract using the scheduled installment earnings method is presented in the following example:
Figure: 7 TAC §90.304(a)(8)
[~~Figure: 7 TAC §90.304(a)(8)~~]

(9) A sample model contract using the true daily earnings method is presented in the following example:
Figure: 7 TAC §90.304(a)(9)
[~~Figure: 7 TAC §90.304(a)(9)~~]

(10) (No change.)

(b) (No change.)

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

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

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SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

7 TAC §90.404

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

§90.404. Model Contracts; Permissible Changes.

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

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

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SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

7 TAC §90.504

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

§90.504. Model Contracts; Permissible Changes.

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

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

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SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

7 TAC §90.604

The amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts, and to adopt model plain language contracts. In addition, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 342.

§90.604. Model Contracts; Permissible Changes.

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

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

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

The Public Utility Commission of Texas (commission) proposes the repeal of 16 TAC §24.41, relating to Cost of Service, and the adoption of new 16 TAC §24.41, relating to Cost of Service, adoption of new 16 TAC §24.238, relating to Fair Market Value, and amendments to 16 TAC §24.239, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental, and 16 TAC §24.243, relating to Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility. Proposed new rule §24.238 will implement House Bill 3542, passed in the 86th Legislature, Regular Session, and effective on September 1, 2019, which established a fair market valuation process that may be used by a Class A or Class B water or sewer utility that is acquiring another utility or the facilities of another utility. Proposed new rule §24.41 incorporates relevant aspects of proposed new rule §24.238 and will replace existing §24.41. New rule §24.41 also includes clarifying changes. The proposed amendments to §24.239 incorporate relevant aspects of proposed new rule §24.238. The commission proposes additional clarification revisions to §§24.239 and 24.243.

Growth Impact Statement

The commission provides the following governmental growth impact statement for the proposed repeal, new rules and amendments, as required by Texas Government Code §2001.0221. The commission has determined that for each year of the first five years that the proposed repeal, new rules and amendments are in effect, the following statements will apply:

(1) the proposed repeal, new rules and amendments will not create a government program and will not eliminate a government program;

(2) implementation of the proposed repeal, new rules and amendments will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of proposed repeal, new rules and amendments will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed repeal, new rules and amendments will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed repeal, new rules and amendments will not create a new regulation;

(6) the proposed repeal, new rules and amendments will not repeal any existing regulation;

(7) the proposed repeal, new rules and amendments will not change the number of individuals subject to the rules' applicability; and

(8) the proposed repeal, new rules and amendments will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed repeal, new rules and amendments. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed repeal, new rules and amendments will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Heidi Graham, Director of Water Utility Engineering Section, Infrastructure Division, has determined that for the first five-year period the proposed repeal, new rules and amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Graham has also determined that for each year of the first five years the proposed repeal, new rules and amendments are in effect, the anticipated public benefits expected as a result of the adoption of the proposed repeal, new rules and amendments will be implementation of recent legislation and the addition of a new process for valuing certain utility acquisitions. Ms. Graham has further determined that the probable economic cost to persons required to comply with the proposed repeal, new rules and amendments will be negligible under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed repeal, new rules and amendments are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on June 23, 2020. The request for a public hearing must be received by June 15, 2020. If no request for hearing is filed, Commission staff will cancel the public hearing and make a filing in this project.

Public Comments

Comments on the proposed new section and amendments may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, Texas 78711-3326, by June 1, 2020. Reply comments may be submitted by June 15, 2020. Sixteen copies of comments to the proposed new rule and amendments are required to be filed by 16 TAC §22.71(c); however, interested persons should submit comments in accordance with applicable orders issued by the commission in Project 50664, Issues Related to the State of Disaster for Coronavirus Disease 2019. Comments should be organized in a manner consistent with the organization of the proposed rule and amendments. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rules. All comments should refer to Project No. 49813.

SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.41

Statutory Authority

The repeal is proposed under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.305.

§24.41. Cost of Service.

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

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TRD-202001503
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 936-7244

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16 TAC §24.41

Statutory Authority

The new rule is proposed under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.305.

§24.41. Cost of Service.

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on rate base.

(b) Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's test year expenses as adjusted for known and measurable changes will be considered. A change in rates must be based on a test year as defined in §24.3(37) of this title, relating to Definitions of Terms. Payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense are not allowed as an expense for cost of service except as provided in Texas Water Code (TWC) §13.185(e).

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, may include, but are not limited to, the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service.

(B) Depreciation expense based on original cost and computed on a straight-line basis over the useful life of the asset as approved by the commission.

(i) Depreciation expense is allowed on all currently used and useful depreciable utility property owned by the utility and

depreciable utility plant, property and equipment retired by the utility, subject to the requirements of subparagraph (c)(2)(C) of this section. Depreciation expense is not allowed for property provided under explicit customer agreements or funded by customer contributions in aid of construction. Depreciation expense is allowed for all currently used and useful developer or governmental entity contributed property. A utility must calculate depreciation on a straight-line basis over the expected or remaining life of the asset, but is not required to use the remaining life method if salvage value is zero. A utility that does not use group depreciation and proposes to change the useful life of an asset with an accumulated depreciation balance must not change the accumulated depreciation balance and must adjust depreciation expense going forward based on the changed useful life.

(ii) The depreciation accrual for all assets must account for expected net salvage value in the calculation of the depreciation rate and actual net salvage value related to retired plant. The utility must submit sufficient evidence with the application establishing that the estimated salvage value, including removal costs, is reasonable. For a utility that uses group accounting, salvage value will be applied to the asset group in depreciation studies. For a utility that uses itemized accounting, salvage value will be applied to specific assets.

(C) Assessments and taxes other than income taxes.

(D) Federal income taxes on a normalized basis. Federal income taxes must be computed according to the provisions of TWC §13.185(f), if applicable.

(E) Funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership.

(F) Advertising, contributions and donations. The actual test year expenditures for advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service must not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the utility for services rendered to the public. The following expenses are the only expenses that may be included in the calculation of the three-tenths of 1.0% (0.3%) maximum:

(i) funds expended advertising methods of conserving water;

(ii) funds expended advertising methods by which the consumer can achieve a savings in total utility bills; and

(iii) funds expended advertising water quality protection.

(G) Credit card and electronic payment processing fees. Expenditures or fees charged by banks or companies for accepting and processing credit card, debit card or other forms of electronic payment from customers for water and sewer utility service may be allowed as a cost of service.

(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A) - (F) of this paragraph;

(H) interest expense of processing a refund or credit of sums collected in excess of the rate ordered by the commission;

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and

(J) the costs of purchasing groundwater from any source if:

(i) the source of the groundwater is located in a priority groundwater management area; and

(ii) a wholesale supply of surface water is available.

(c) Return on rate base. The return on rate base is the rate of return times rate base.

(1) Rate of return. The commission will allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and will fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(B) The commission will consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt, plus adjustments for premiums, discounts, and refunding and issuance costs.

(ii) Equity capital. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital must be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(C) The commission will consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.

(D) The commission may consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital.

(2) Rate base. The rate of return is applied to the rate base. Assets retired before June 19, 2009, must be removed from rate base before the rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:

(A) If a utility or its facilities were valued using the process for establishing fair market value in Texas Water Code (TWC) §13.305, the dollar value of the "ratemaking rate base," as defined in TWC §13.305(a)(2) and §24.238(b)(4) of this title, relating to Fair Market Valuation, less accumulated depreciation.

(i) The installation date of the ratemaking rate base is the filing date of the commission's final order approving the acquisition of the ratemaking rate base in an application filed under TWC §13.301.

(ii) The ratemaking rate base will include an accrual for Allowance for Funds Used During Construction (AFUDC), as defined in §24.238(b)(2) of this title, relating to Fair Market Valuation, for any post-acquisition improvements to the ratemaking rate base. The accrual will begin on the date the improvement cost was incurred and end on the earlier of:

(I) the fourth anniversary of the date the improvement was placed in service; or

(II) the filing date of the commission order in which the ratemaking rate base is first approved by the commission as part of the rate base set in a base rate proceeding.

(iii) For book and ratemaking purposes, depreciation on any post-acquisition improvement to the ratemaking rate base will be deferred and considered in the utility's next base rate proceeding.

(iv) Transaction and closing costs associated with the acquisition will be reviewed in the acquiring utility's first base rate proceeding after the transaction has been concluded.

(B) Original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility in providing service.

(C) Original cost, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the utility.

(i) For original cost under this subparagraph or subparagraph (B) of this paragraph, the commission may adjust rate base and the rate of return on equity associated with the cost of plant and equipment that has been estimated by trending studies or other methods not based on or verified by historical records.

(ii) Original cost in this subparagraph or subparagraph (B) of this paragraph is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the current owner or by a predecessor. Assets may be booked in itemized or group accounting, but all accounting for assets and their retirements must be supported by an approved accounting system.

(iii) On all assets retired from service, the original cost of an asset must be the book cost less net salvage value. If a utility calculates annual depreciation expense for an asset with allowance for salvage value, then it must account for the actual salvage amounts when the asset is actually retired. The utility must include the actual salvage calculation in its net plant calculation in the first full rate change application, excluding alternative rate method applications as described in §24.75 of this title, relating to Alternative Rate Methods, it files after the date on which the asset was removed from service, even if it was not retired during the test year. Recovery of investment on assets retired from service before the estimated useful life or remaining life of the asset must be combined with over-accrual of depreciation expense for those assets retired after the estimated useful life or remaining life and the net amount must be amortized over a reasonable period of time taking into account prudent regulatory principles.

(iv) Accelerated depreciation is not allowed.

(v) For a utility that uses group accounting, all mortality characteristics, both life and net salvage, must be supported by an engineering or economic based depreciation study for which the test year for the depreciation is no more than five years old in comparison to the rate case test year. The engineering or economic based depreciation study must include:

(I) investment by homogenous category;

(II) expected level of gross salvage by category;

(III) expected cost of removal by category;

(IV) the accumulated provision for depreciation as appropriately reflected on the company's books by category;

(V) the average service life by category;

(VI) the remaining life by category;

(VII) the Iowa Dispersion Pattern by category; and

(VIII) a detailed narrative identifying the specific factors, data, criteria and assumptions that were employed to arrive at the specific mortality proposal for each homogenous group of property.

(vi) Reserve for depreciation under this subparagraph or subparagraph (B) of this paragraph is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life or remaining life of the asset. Depreciation must be computed on a straight-line basis over the expected useful life or remaining life of the item or facility regardless of whether the salvage value is zero or not zero.

(I) If individual accounting is used, the following requirements apply to retirements:

(-a-) Accumulated depreciation must be calculated based on book cost less net salvage value of the asset.

(-b-) The utility must provide evidence establishing the original cost of the asset, the cost of removal, salvage value, any other amounts recovered; the useful life of the asset, or remaining life as may be appropriate; the date the asset was taken out of service; and the accumulated depreciation up to the date it was taken out of service.

(-c-) The utility must show that it used due diligence in recovering maximum salvage value of a retired asset.

(-d-) The utility must continue booking depreciation expense until the asset is actually retired, and the reserve for depreciation must include any additional depreciation expense accrued past the estimated useful or remaining life of the asset.

(-e-) The retirement of a plant asset from service is accounted for by crediting the book cost to the utility plant account in which it is included. Accumulated depreciation must also be debited with the original cost and the cost of removal and credited with the salvage value and any other amounts recovered.

(-f-) Retired assets must be specifically identified.

(-g-) The requirements relating to the accounting for the reasonableness of retirement decisions for individual assets and the net salvage value calculations for individual assets apply only to a utility using itemized accounting.

(II) For a utility that uses group accounting, the depreciation study must provide the information in subclause (I) except

that retirements may be accounted for by category. Retired assets must be reported for the asset group in depreciation studies.

(III) TWC §13.185(e) applies to utility business transactions with affiliated interests involved in the retirement, removal, or recovery of assets.

(IV) For assets retired after June 19, 2009, the retired assets must be included in the utility's first application for a rate change after the date the asset was retired and must be specifically identified if the utility uses itemized accounting.

(vii) the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC §13.185(e);

(viii) utility property funded by written customer agreements or customer contributions in aid of construction such as surcharges must not be included in original cost or invested capital.

(D) Working capital allowance to be composed of, but not limited to the following:

(i) reasonable inventories of materials and supplies held specifically for purposes of permitting efficient operation of the utility in providing normal utility service.

(ii) reasonable prepayments for operating expenses. Prepayments to affiliated interests are subject to the standards set forth in TWC §13.185(e); and

(iii) a reasonable allowance for cash working capital. The following will apply in determining the amount to be included in invested capital for cash working capital:

(I) Cash working capital for utilities must not exceed one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

(II) For Class C and Class D utilities, one-eighth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass-through provision or through charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.

(III) For Class B utilities, one-twelfth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, expenses recovered through a pass-through provision or charges other than base rate and gallonage charges, and prepayments will be considered a reasonable allowance for cash working capital.

(IV) For Class A utilities, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(-a-) The lead-lag study will use the cash method. All non-cash items, including but not limited to depreciation, amortization, deferred taxes, prepaid items, and return, including interest on long-term debt and dividends on preferred stock, will not be considered.

(-b-) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.

(-c-) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the utility.

(-d-) All funds received by the utility except electronic transfers will be considered available for use no later than the business day following the receipt of the funds in any repository of the utility, e.g., lockbox, post office box, branch office. All funds received by electronic transfer will be considered available the day of receipt.

(-e-) The balance of cash and working funds included in the working cash allowance calculation will consist of the average daily bank balance of all non-interest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense must be calculated by measurement of the interval between the midpoint of the annual service period and the actual payment date of the utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount must be included in rate base.

(V) If cash working capital is required to be determined by the use of a lead-lag study under subclause (IV) of this clause and either the utility does not file a lead-lag study or the utility's lead-lag study is determined to be unreliable, in the absence of persuasive evidence that suggests a different amount of cash working capital, zero will be presumed to be the reasonable level of cash working capital.

(VI) A lead lag study completed within five years of the application for a rate or tariff change is adequate for determining cash working capital unless sufficient persuasive evidence suggests that the study is no longer valid.

(VII) Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), (III) and (V) of this clause.

(3) Deduction of certain items from rate base. In the consideration of applications filed under TWC §13.187 or §13.1871, the commission will deduct certain items from rate base, including but not limited to the following:

(A) accumulated reserve for deferred federal income taxes;

(B) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(C) contingency and property insurance reserves;

(D) contributions in aid of construction; and

(E) other sources of cost-free capital, as determined by the commission.

(4) Construction work in progress (CWIP). The inclusion of CWIP is an exceptional form of relief. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include CWIP in rate base to the extent that the utility has proven that:

(A) the inclusion is necessary to the financial integrity of the utility; and

(B) major projects under construction have been efficiently and prudently planned and managed.

(5) Requirements for post-test year adjustments.

(A) A post-test year adjustment to test year data for known and measurable rate base additions may be considered only if:

(i) the addition represents a plant which would appropriately be recorded for investor-owned utilities in National Association of Regulatory Utility Commissioners (NARUC) account 101 or 102;

(ii) the addition comprises at least 10% of the utility's requested rate base, exclusive of post-test year adjustments and CWIP;

(iii) the addition is in service before the rate year begins; and

(iv) the attendant impacts on all aspects of a utility's operations, including but not limited to, revenue, expenses and invested capital, can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(B) Each post-test year plant adjustment described by subparagraph (A) of this paragraph will be included in rate base at the reasonable test year-end CWIP balance, if the addition is constructed by the utility, or the reasonable price, if the addition represents a purchase, subject to original cost requirements, as specified in TWC §13.185.

(C) Post-test year adjustments to historical test year data for known and measurable rate base decreases will be allowed only if:

(i) the decrease represents:

(I) plant which was appropriately recorded in NARUC account 101 or 102;

(II) plant held for future use;

(III) CWIP, not including mirror CWIP; or

(IV) an attendant impact of another post-test year adjustment.

(ii) the decrease represents a plant that has been removed from service, sold, or removed from the utility's books prior to the rate year; and

(iii) the attendant impacts on all aspects of a utility's operations, including but not limited to, revenue, expenses and invested capital, can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably result as a consequence of the post-test year adjustment being proposed.

(d) Recovery of positive acquisition adjustments.

(1) When a utility acquires plant, property, or equipment for which commission approval is required under §24.239 of this title, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental, a positive acquisition adjustment will be allowed to the extent that the acquiring utility proves that:

(A) the property is used and useful in providing retail water or sewer service at the time of the acquisition or as a result of the acquisition;

(B) reasonable, prudent, and timely investments will be made, if required, to bring the system into compliance with all applicable rules and regulations;

(C) as a result of the transaction:

(i) the customers of the system being acquired will receive higher quality or more reliable retail water or sewer service or that the acquisition was necessary so that customers of the acquiring utility's other systems could receive higher quality or more reliable retail water or sewer service;

(ii) regionalization of retail public utilities, meaning a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service, was achieved; or

(iii) the acquiring utility will become financially stable and technically sound as a result of the acquisition, or the system being acquired that is not financially stable and technically sound will become a part of a financially stable and technically sound utility;

(D) any and all transactions between the buyer and the seller entered into as a part or condition of the acquisition are fully disclosed to the commission and were conducted at arm's length;

(E) the actual purchase price is reasonable in consideration of the condition of the plant, property, and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and the amount of contributions in aid of construction in the system being acquired; and

(F) the rates charged by the acquiring utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.

(2) The owner of the acquired retail public utility and the final acquiring utility must not be affiliated. In a multi-stage transaction in which a purchase of voting stock or acquisition of controlling interest transaction under §24.243 of this chapter, relating to Purchase of Voting Stock or Acquisition of Controlling Interest in a Utility, is followed by a transfer of assets in what is essentially a single sales transaction, a positive acquisition adjustment is allowed only where the multi-stage transaction was fully disclosed to the commission in the application for approval of the initial stock or change of controlling interest transaction.

(3) The amount of the acquisition adjustment approved by the regulatory authority must be amortized using a straight-line method over a period equal to the weighted average remaining useful life of the acquired plant, property, and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

(4) The authorization for and the amount of an acquisition adjustment will be determined only as a part of a rate change application.

(5) The acquisition adjustment will be included in rates only as a part of a rate change application.

(e) Negative acquisition adjustment. When a utility acquires plant, property, or equipment under §24.239 of this chapter, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental, and the original cost of the acquired property less depreciation exceeds the actual purchase price, the utility must record the negative acquisition adjustment separately from the original cost of the acquired property. For purposes of ratemaking, the following will apply:

(1) If a utility acquires plant, property, or equipment from a nonfunctioning retail public utility through a sale, transfer, or merger, receivership, or the utility is acting as a temporary manager, a negative acquisition adjustment must be recorded and amortized on the utility's books with no effect on the utility's rates.

(2) If a utility acquires plant, property, or equipment from a retail public utility through a sale, transfer, or merger and paragraph (1) of this subsection does not apply, the commission may recognize the negative acquisition adjustment in the ratemaking proceeding, by or-

dering the amortization of the negative acquisition adjustment through a bill credit for a defined period of time or by other means determined appropriate by the commission. Except for good cause found by the commission, the negative acquisition adjustment will not be used to reduce the balance of invested capital.

(3) Notwithstanding paragraph (2) of this subsection, the acquiring utility may show cause as to why the commission should not account for the negative acquisition adjustment in the ratemaking proceeding.

(f) Subsections (d) and (e) of this section do not apply to plant, property, or equipment acquired through a transaction based on the fair market valuation process set forth in §24.238 of this title, relating to Fair Market Valuation.

(g) Intangible assets will not be allowed in rate base unless the requirements in paragraphs (1), (2) and (3) of this subsection are met. If the requirements in paragraphs (1) and (2) of this subsection are met, but the requirement in paragraph (3) of this subsection is not met, the amount will be amortized over a reasonable period and the amortization will be allowed in the cost of service as a non-recurring expense. Unamortized amounts will not be included in rate base. The requirements are as follows:

(1) The amount requested has been verified by documentation as to amount and exact nature;

(2) Testimony establishes the reasonableness and necessity and benefit of the expense to the customers; and

(3) Testimony establishes how the amount is properly considered an actual asset purchased or installed, or a source of supply, such as water rights.

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

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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

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SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.238, 24.239, 24.243

Statutory Authority

The new rule and amendments are proposed under Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Texas Water Code §§13.041(b) and 13.305.

§24.238. Fair Market Valuation.

(a) Applicability. This section applies to a voluntary arm's length transaction between an acquiring utility and a retail public utility under TWC §13.305 for which approval is required under TWC §13.301. This section does not apply to a transaction between a utility and its affiliate.

(b) Definitions. In this section, the following words and terms have the following meanings, unless the context indicates otherwise.

(1) Acquiring utility--A Class A or Class B utility that is acquiring a selling utility, or the facilities of a selling utility.

(2) Allowance for funds used during construction (AFUDC)--An accounting practice that recognizes the capital costs, including debt and equity funds, that are used to finance a transferee's construction costs of an improvement to a purchased asset.

(3) Fair Market Value--The average of the three appraisals conducted under subsection (f) of this section.

(4) Ratemaking rate base--The dollar value of the selling utility or the sold facilities of a selling utility that is incorporated into the rate base of the acquiring utility for post-acquisition purposes. The ratemaking rate base is the lesser of the purchase price negotiated by an acquiring utility and a selling utility or the fair market value. The ratemaking rate base does not include transaction and closing costs.

(5) Selling utility--A retail public utility that is being purchased by an acquiring utility or is selling facilities to an acquiring utility.

(c) List of qualified utility valuation experts. The commission will maintain a list of qualified utility valuation experts to perform appraisals to determine a fair market value of a selling utility or facilities of a selling utility.

(1) A utility valuation expert may request to be included on the commission's list by submitting, under the control number designated for that purpose, the required information.

(2) The request filed by the utility valuation expert must include:

(A) The expert's name, mailing address, telephone number, and email address;

(B) The name of the company with which the expert is employed or associated, or the name under which the expert conducts business;

(C) The names of the principal officers of the company with which the expert is employed or associated, if applicable;

(D) The name and mailing addresses of any affiliates of the company with which the expert is employed or associated, if applicable; and

(E) A detailed description of the utility valuation expert's qualifications, such as professional licensing, certifications, training or past experience conducting economic evaluations of water and sewer utilities.

(3) The utility valuation expert must update the information in its request on file with the commission within 10 working days of a material change to the information.

(4) A utility valuation expert who wishes to be removed from the list maintained by the commission under this subsection must file a letter with the commission requesting to be removed from the list. This letter must be filed under the control number designated for that purpose. The commission will acknowledge the removal request in writing.

(d) Notice of intent to determine fair market value.

(1) A selling utility and an acquiring utility that agree to use the fair market valuation process described in subsection (f) of this section must file a notice of intent to determine fair market value in the control number designated for that purpose.

(2) The notice of intent must include the following:

(A) The name and certificate of convenience and necessity (CCN) number of the acquiring utility. If the acquiring utility holds multiple CCN numbers, the acquiring utility must provide all the CCN numbers.

(B) The name and contact information of the acquiring utility's representative.

(C) The number of connections served by the acquiring utility.

(D) The name and CCN number of the selling utility.

(E) The name and contact information of the selling utility's representative.

(F) The number of connections served by the selling utility.

(G) The estimated closing date of the planned acquisition.

(H) A list of the utility valuation experts on the commission's list of qualified experts who, as of the date of the notice of intent, are precluded under subsection (e)(2)(B) of this section from performing an appraisal of the transaction.

(3) The notice of intent must not include the purchase price agreed upon by the acquiring utility and the selling utility.

(e) Selection of utility valuation experts.

(1) The commission's executive director or the executive director's designee will select three utility valuation experts from the list maintained under subsection (c) of this section no later than 30 days after the filing of a notice of intent to determine fair market value that meets the requirements of subsection (d) of this section.

(2) The utility valuation experts selected under paragraph (1) of this subsection may not:

(A) derive material or financial benefit from the sale other than fees for services rendered; or

(B) be or have been within the year preceding the date the service contract is executed a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(3) The commission's executive director or the executive director's designee will base its selection of utility valuation experts on the following:

(A) Qualifications of the utility valuation expert.

(B) Availability of the utility valuation expert during the required time frame.

(C) Absence of conflicts of interest described in paragraph (2) of this subsection.

(D) Other factors relevant to a utility valuation expert's ability to perform an appraisal under this section.

(4) If the acquiring utility and any of the utility valuation experts selected under subsection (e)(1) of this subsection are unable to reach agreement on the terms and conditions for performing the appraisal, including the amount of the service fee, the acquiring utility or utility valuation expert may submit a request for selection of a different utility valuation expert under the control number designated for that purpose. If the commission's executive director or the executive director's designee selects a different utility valuation expert, the time period for all utility valuation expert to submit a report under subsection (f)(5) of this section begins when the different utility valuation expert is selected.

(f) Determination of fair market value.

(1) The three utility valuation experts selected under subsection (e) of this section jointly must retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility or the facilities to be sold to the acquiring utility.

(A) The engineer may not be or have been within one year preceding the date the service contract is executed a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(B) The engineer must provide the following information to the valuation experts:

(i) Qualifications that demonstrate the engineer's ability to provide the requested assessment;

(ii) The engineer's fees for other similar assessments; and

(iii) Other relevant information requested by the utility valuation experts.

(C) The engineer's assessment must include a separate assessment for each type of facility based on the applicable National Association of Regulatory Utility Commissioners (NARUC) account for the facility.

(D) The fee charged by the engineer must be shared and paid equally by the three utility valuation experts and may be included as part of the utility valuation expert compensation under subsection (k) of this section.

(2) Each utility valuation expert must perform an independent appraisal of the selling utility in compliance with Uniform Standards of Professional Appraisal Practice, using the cost, market, and income approaches in accordance with subsections (g) - (i) of this section.

(3) The appraisal must not take into account the original sources of funding, including developer contributions or customer contributions in aid of construction, for any of the utility plant that is assessed by the engineer or the utility valuation experts.

(4) The appraisal must not take into account the purchase price negotiated by the acquiring utility and the selling utility.

(5) Each utility valuation expert must submit a completed report to the acquiring utility and the selling utility no later than 120 days after the date the commission's executive director or the executive director's designee selects the utility valuation expert under subsection (e) of this section.

(6) The ratemaking rate base established under this section will be the rate base for the system or facilities acquired in the transaction. Nothing in this section alters the requirements for multiple system consolidation in §24.25(k) of this title, relating to Form and Filing of Tariffs.

(g) Cost Approach.

(1) A cost approach appraisal performed under this section must be based on one of the following:

(A) the investment required to replace or reproduce future service capability; or

(B) the original cost of the facilities as adjusted for depreciation.

(2) A cost approach appraisal performed under this section must:

(A) incorporate the results of the assessment performed by the engineer selected under subsection (f)(1) of this section;

(B) exclude from consideration overhead costs, future improvements, and going concern value; and

(C) use a consistent rate of inflation for all classes of assets unless use of different rates is reasonably justified.

(h) Income Approach.

(1) An income approach appraisal performed under this section must be based on one of the following:

(A) capitalization of earnings or cash flow; or

(B) the discounted cash flow method.

(2) An income approach appraisal performed under this section must exclude consideration of the following:

(A) going concern value;

(B) future capital improvements; and

(C) erosion of cash flow or erosion on return.

(3) An income approach appraisal performed under this section must be supported by the following:

(A) an explanation of how the capitalization rate was calculated, if a capitalization rate was used;

(B) an explanation of the basis for the discount rates used; and

(C) an explanation of the capital structure, cost of equity and cost of debt used.

(i) Market Approach.

(1) A market approach appraisal performed under this section must be based on the following:

(A) the current connection count of the selling utility at the time of the appraisal;

(B) use of a proxy group that includes companies that have made acquisitions that were not based on a fair market valuation methodology; or

(C) comparable sales that did not include the value of future capital improvement projects in the selling price.

(2) A market approach appraisal performed under this section must not consider the following:

(A) a net book financials multiplier or speculative growth adjustments;

(B) the value of future capital improvement projects; or

(C) a value or adjustment for the goodwill of the selling utility.

(j) Contents of Utility Valuation Expert Report. A report submitted under paragraph (f)(5) of this section must include:

(1) a copy of the service contract executed by the utility valuation expert and the acquiring and selling utilities;

(2) the fee charged by the utility valuation expert along with documentation supporting the amount of the fee;

(3) a detailed list of the utility plant assessed by the engineer;

(4) an explanation of how the cost, market, and income approaches were incorporated into the calculation of the fair market value of the selling utility or the selling utility's facilities; and

(5) a notarized affidavit stating that:

(A) the appraisals described in the report were conducted in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice;

(B) the utility valuation expert will not derive material or financial benefit from the sale other than the fee for services rendered; and

(C) the utility valuation expert is not currently and was not within the year preceding the date of the contract for service executed between the utility valuation expert and the acquiring and selling utilities, a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(k) Transaction and closing costs.

(1) A fee paid to a utility valuation expert to perform an appraisal under subsection (f) of this section may be included in the transaction and closing costs associated with a transaction approved under §24.239 of this title, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental.

(2) The commission will review the transaction and closing costs, including fees paid to utility valuation experts, in the rate case in which the acquiring utility requests rate recovery of those costs. The fee amounts included in transaction and closing costs that are recoverable in the acquiring utility's rates may not exceed the lesser of:

(A) five percent of the fair market value; or

(B) the fee amounts approved by the commission in the rate case in which the acquiring utility requests rate recovery of the transaction and closing costs.

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

(a) Application for approval of transaction. Any water supply or sewer service corporation, or water and sewer utility, owned by an entity required [~~by law~~] to possess a certificate of convenience and necessity (CCN) must [~~shall~~], and a retail public utility that possesses a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days before the effective date of the transaction. The 120-day period begins on the most recent of:

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

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

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

shown. [The notice shall be on the form required by the commission and the intervention period shall not be less than 30 days unless good cause is shown. Public notice may be waived by the commission for good cause shown.]

(c) Notice.

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

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

(B) a description of the requested area;

(C) the following statement: "Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is dated 30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer. If you wish to intervene, the commission must receive your letter requesting intervention or motion to intervene by that date."; and

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

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

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

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

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

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

[(c) Unless notice is waived by the commission for good cause shown, proper notice shall be given to affected customers and to other affected parties as determined by the commission and on the form prescribed by the commission which shall include the following:

(1) the name and business address of the current utility holding the CCN (transferor) and the retail public utility or person which will acquire the facilities or CCN (transferee);

(2) a description of the requested area; and

(3) the following statement: "Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date."]

(d) Requirements for application with fair market valuation.

(1) An application filed under this section for approval of a transaction that includes a fair market valuation of the transferee or the transferee's facilities that was determined using the process established in §24.238 of this title, relating to Fair Market Valuation must include:

(A) copies of the three appraisals performed under §24.238(f);

(B) the purchase price agreed to by the transferor and transferee;

(C) the transaction and closing costs incurred by the transferee that will be requested to be included in the transferee's rate base; and

(D) if applicable, a copy of the transferor's commission-approved tariff that contains the rates in effect at the time of the acquisition.

(2) The commission will review the transaction and closing costs, including fees paid to appraisers, in the rate case in which the transferee requests rate recovery of those costs.

[(d) The commission may waive notice under this subsection if the requested area does not include unserved area, or for good cause shown. If notice is not waived by the commission, the transferee shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.]

[(e) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located.]

[(f) The commission may allow published notice in lieu of individual notice as required in this subsection.]

(e) [(g)] A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system [(transferee)] must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.227(a) of this title, [(]relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity[)].

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

(g) [(i)] The commission will [shall], with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisi-

tion, lease, or rental to determine whether the transaction will serve the public interest. If the commission decides to hold a hearing, or if the transferee fails either to file the application as required or to provide public notice, the transaction proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.

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

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

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

(3) the transferee has a history of:

(A) noncompliance with the requirements of the Texas Commission on Environmental Quality (TCEQ) [~~TCEQ~~], the commission, or the Texas Department of State Health Services; or

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

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

(5) there are concerns that the transaction does not serve the public interest based on consideration of [~~. It is in the public interest to investigate~~] the following factors:

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

(A) [~~(B)~~] the adequacy of service currently provided to the requested area;

(B) [~~(C)~~] the need for additional service in the requested area;

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

(D) [~~(E)~~] the ability of the transferee to provide adequate service;

(E) [~~(F)~~] the feasibility of obtaining service from an adjacent retail public utility;

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

(G) [~~(H)~~] [~~the~~] environmental integrity; [~~and~~]

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

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

(i) [~~(k)~~]If [~~Unless~~] the commission does not require [~~requires that~~] a public hearing [~~be held~~], the sale, transfer, merger, consolidation, acquisition, lease, or rental may be completed as proposed:

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

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

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

(k) [~~(m)~~] If there are outstanding customer deposits, within 30 days of the actual effective date of the transaction, the transferor and the transferee must [~~shall~~] file with the commission the following[~~, under oath, in addition to other~~] information supported by a notarized affidavit [~~, a list showing the following~~]:

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

(2) the date such deposit was made;

(3) the amount of the deposit; and

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

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

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

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

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

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

(1) the purchase of replacement property;

(2) a transaction under TWC §13.255; or

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

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

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

§24.243. Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility.

(a) A utility may not purchase voting stock, and a person may not acquire a controlling interest, in a utility doing business in this state unless the utility or person files a written application with the commission no later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as:

(1) a person or a combination of a person and the person's family members that possess at least 50% of a utility's voting stock; or

(2) a person that controls at least 30% of a utility's voting stock and is the largest stockholder.

(b) A person acquiring a controlling interest in a utility is [shall be] required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and to the person's certificated service area, if any.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require the person to provide financial assurance to ensure continuous and adequate utility service is provided to the service area. The commission will [shall] set the amount of financial assurance. The form of the financial assurance must [shall] be as specified in §24.11 of this title [(]relating to Financial Assurance[)]. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(d) The commission may require a public hearing on the transaction if a criterion prescribed by §24.239(k) [§24.239(j)] of this title [(]relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental[)] applies.

(e) Unless the commission requires that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60 day period; or

(2) at any time after the commission notifies the person or utility that a hearing will not be required [requested].

(f) If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase of voting stock or acquisition of a controlling interest may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

(g) The utility or person must [shall] notify the commission within 30 days after the date that the transaction is completed.

(h) Within 30 days of the commission order that allows a utility's purchase of voting stock or a person's acquisition of a controlling interest to proceed as proposed, the utility purchasing voting stock or the person acquiring a controlling interest must [shall] file a written update on the status of the transaction. A written update must [shall] also be filed every 30 days thereafter, until the transaction has been completed.

(i) The commission's approval of a utility's purchase of voting stock or a person's acquisition of a controlling interest in a utility expires 180 days after the date of the commission order approving the transaction as proposed. If the transaction has not been completed within the 180-day time period, and unless the utility purchasing voting stock or the person acquiring a controlling interest has requested and received an extension for good cause from the commission, the approval is void.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001505
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1008

The Texas Education Agency (TEA) proposes new §61.1008, concerning the school safety allotment. The proposed new rule would reflect changes made by Senate Bill (SB) 11, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §42.168, added by SB 11, 86th Texas Legislature, 2019, directs the commissioner to adopt rules and take action as necessary to implement and administer the school safety allotment. The allotment provides additional funding for a school district in the amount provided by appropriation for each

student in average daily attendance. Funds allocated for that purpose must be used to improve school safety and security, including costs associated with: (1) securing school facilities; (2) providing security for the district; (3) school safety and security training and planning; and (4) providing programs related to suicide prevention, intervention, and postvention.

House Bill 3, 86th Texas Legislature, 2019, passed independently of SB 11, transferred many Foundation School Program formulas to TEC, Chapter 48. Proposed new 19 TAC §61.1008 would implement TEC, §42.168, by explaining that the school safety allotment will be treated as if it is located in TEC, Chapter 48. It is anticipated that the legislature will transfer TEC, §42.168, to TEC, Chapter 48, when it convenes in 2021.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what the authorizing statute requires. The rulemaking itself would not require an increase in future legislative appropriations to the agency, but SB 11 does require an increase in future legislative appropriations to the agency estimated to be $49,672,915 in fiscal year 2020 and $50,327,085 in fiscal year 2021 by the General Appropriations Act.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, the proposed rule would create a new regulation to implement the school safety allotment. The rulemaking itself would not require an increase in future legislative appropriations to the agency, but SB 11 does require an increase in future legislative appropriations to the agency estimated to be $49,672,915 in fiscal year 2020 and $50,327,085 in fiscal year 2021 by the General Appropriations Act.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require a decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be implementation of legislative changes that help school districts provide a safe and secure environment through the school safety allotment. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 1, 2020, and ends June 15, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 1, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §42.168, as added by Senate Bill 11, 86th Texas Legislature, 2019, authorizes the school safety allotment.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §42.168, as added by Senate Bill 11, 86th Texas Legislature, 2019.

§61.1008. School Safety Allotment.

The school safety allotment calculated under Texas Education Code (TEC), §42.168, is treated as an allotment under TEC, Chapter 48, Subchapter C.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001512
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 475-1497

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CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE AND CAREER READINESS

19 TAC §74.1005

The Texas Education Agency (TEA) proposes new §74.1005, concerning college and career funding and reimbursements. The proposed new rule would address the career and technology education allotment, the college preparation assessment reimbursement, and the industry-based certification examination reimbursement.

BACKGROUND INFORMATION AND JUSTIFICATION: House Bill (HB) 3, 86th Texas Legislature, 2019, added Texas Education Code (TEC), §48.155 and §48.156, which establish reimbursements for school districts for college preparation assessments and certification examinations. In addition, HB 3 established in TEC, §48.106(a)(1), a weighted annual allotment for approved career and technical education (CTE) courses.

Proposed new 19 TAC §74.1005 would implement HB 3, as follows.

The proposed new rule would describe the eligibility of school districts and charter schools to receive career and technology education allotment funding under TEC, §48.106(a)(1) and (2)(A)-(C), for approved CTE courses, advanced CTE courses, Pathways in Technology Early College High School (P-TECH) campuses, and New Tech Network campuses.

The proposed new rule would also detail eligibility for certain district reimbursements. The certification examination reimbursement would apply to certifications identified on the TEA industry-based certification list for public school accountability for students in Grades 9-12 who pass an examination beginning in the 2019-2020 school year. The college preparation assessment reimbursement would allow districts to be reimbursed for the amount of fees paid by the district for the state negotiated rate for the SAT®, ACT®, or Texas Success Initiative Assessment. Under the proposed new rule, a district would only be reimbursed for one industry-based certification examination per student and one college preparation assessment per student.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would require the creation of new employee positions, would create a new regulation, and would positively affect the state's economy. In order to comply with new TEC, §48.155 and §48.156, TEA will need one new full-time employee to monitor, process, and reconcile reimbursements for college preparation assessments and industry-based certifications. The proposal would create a new regulation to implement the requirements of recently enacted legislation. The Texas economy will be positively affected as a result because more students will earn industry-based certifications, which will lead to a more skilled and prepared labor force.

The proposed rulemaking would not create or eliminate a government program; would not require the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be implementing newly enacted legislation and providing school districts with support to monitor, process, and reconcile reimbursements for college preparation assessments and industry-based certifications. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact; however, school districts and open-enrollment-charter schools would be required to follow Public Education Information Management System (PEIMS) reporting requirements to be eligible for funding and reimbursements. The PEIMS data collection element related to industry-based certifications is E1632. The PEIMS data collection element related to New Tech campus designations is E1647.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 1, 2020, and ends June 15, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 1, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §29.190(a)(2) and (a-1), as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that a student is entitled to one subsidy for a certification examination if the student passes a certification examination to qualify for a license or certificate that is an industry certification for purposes of TEC, §39.053(c)(1)(B)(v); TEC, §39.0261(a)(3), as amended by HB 3, 86th Texas Legislature, 2019, which defines the time period for a student to take the college preparation assessment at state cost and includes

the assessment instruments designated by the Texas Higher Education Coordinating Board under TEC, §51.334; TEC, §48.106(a)(1), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which establishes an annual allotment for approved career and technical education courses equal to the basic allotment multiplied by a weight of 1.35; TEC, §48.155, as added by HB 3, 86th Texas Legislature, 2019, which establishes the college preparation assessment reimbursement for a school district in the amount of fees paid by the district for the administration of one assessment instrument per student under TEC, §39.0261(a)(3); and TEC, §48.156, as added by HB 3, 86th Texas Legislature, 2019, which establishes the certification examination reimbursement for school districts in the amount of a subsidy paid by the district for one certification examination per student under TEC, §29.190(a)(2) and (a-1).

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.190(a)(2) and (a-1) and §39.0261(a)(3), as amended by House Bill (HB) 3, 86th Texas Legislature, 2019; §48.106(a)(1), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019; and §48.155 and §48.156, as added by HB 3, 86th Texas Legislature, 2019.

§74.1005. College and Career Funding and Reimbursements.

(a) Applicability. The provisions of this section apply to school districts and open-enrollment charter schools.

(b) Eligibility for funding.

(1) A district is eligible to receive funding under Texas Education Code (TEC), §48.106(a)(1), for students in Grades 7-12 who take an approved career and technical education (CTE) course designated with an "H" in the CTE Course column of the Texas Education Data Standards, Section 4, Service-ID (CO22) code table.

(2) A district is eligible to receive funding under TEC, §48.106(a)(2)(A), for an advanced CTE course identified as Level 3 or Level 4 in a statewide CTE program of study.

(3) A district is eligible to receive funding under TEC, §48.106(a)(2)(B), for a campus that has been designated by Texas Education Agency (TEA) as a Pathways in Technology Early College High School (P-TECH) for the current school year.

(4) A district is eligible to receive funding under TEC, §48.106(a)(2)(C), for a campus that has an active agreement with the New Tech Network as defined by the New Tech Network for the current school year.

(c) Eligibility for reimbursement.

(1) A district is eligible to receive a certification examination reimbursement for a certification identified on the TEA list of industry-based certifications (IBCs) for public school accountability, pursuant to §74.1003 of this title (relating to Industry-Based Certifications for Public School Accountability).

(A) A district is eligible to receive the certification examination reimbursement for students in Grades 9-12 who pass an examination beginning in the 2019-2020 school year.

(B) Examinations must be taken between September 1 and August 31 of any school year.

(C) A district is eligible for reimbursement for a student's first examination reported in the Texas Student Data System Public Education Information Management System with an associated dollar amount.

(2) A district is eligible to receive a reimbursement for a college preparation assessment administered under TEC, §39.0261(a)(3)(A), for the amount of fees paid by the district for the state negotiated rate for the SAT® or ACT® for students in spring of their junior year or during their senior year.

(A) Assessment reimbursement only includes the basic SAT® and ACT® test. Other additional costs or fees such as writing tests, subject area tests, or late fees are not eligible for reimbursement.

(B) A student must take the assessment between January of Grade 11 through graduation.

(3) A district is eligible to receive a reimbursement for a college preparation assessment administered under TEC, §39.0261(a)(3)(B), for the amount of fees paid by the district for the Texas Success Initiative Assessment for students in spring of their junior year or during their senior year.

(A) Assessment reimbursement includes both the reading and mathematics portions of the examination. Neither portion is eligible for reimbursement on its own, and additional costs and fees such as writing tests and late fees are not eligible for reimbursement.

(B) A student must take the assessment between January of Grade 11 through graduation.

(4) A district may only be reimbursed under this subsection for one IBC examination per student and one college preparation assessment per student.

(5) A district must submit reimbursement requests and data in accordance with instructions provided by TEA within the published timeline.

(d) Final decisions. Reimbursement decisions are final and may not be appealed.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 1, 2020, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning the accountability rating system. The

proposed amendment would adopt in rule applicable excerpts of the *2020 Accountability Manual.*

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The proposed amendment to 19 TAC §97.1001 would adopt excerpts of the *2020 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-11 of the *2020 Accountability Manual,* specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.057.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered would be updated to align with 2020 accountability and present tense would be applied throughout.

Chapter 1 gives an overview of the entire accountability system. The description of the Accountability Policy Advisory Committee would be updated to note that the committee makes their own recommendations to address policy issues. The description of a *Not Rated* rating would be moved from the Single-Campus Districts section to the Rating Labels section and expanded upon. The label *Not Rated: Declared State of Disaster* would be added to indicate that due to extraordinary public health and safety circumstances, the closure of schools during the state's testing window inhibited the ability of the state to accurately measure district and campus performance. The school types chart would be updated to reflect numbers for 2020.

Chapter 2 describes the Student Achievement domain. The section describing the inclusion of substitute assessments would be updated to state that results from fall 2019 and spring 2020 would not be included. Unschooled asylee, refugee, and students with interrupted formal education (SIFE) inclusion language would be updated to note that these results are included beginning with the student's second year of enrollment in U.S. schools. Clarifying language regarding rounding within the State of Texas Assessment of Academic Readiness (STAAR®) component would be added. The list of College, Career, and Military Readiness (CCMR) indicators would be reorganized to align with other Performance Reporting products. The list of career and technical education courses aligned with an industry-based certification (IBC) would be updated in response to the expansion of the IBC list.

Chapter 3 describes the School Progress domain. Language referencing House Bill 22, 85th Texas Legislature, 2017, would be removed. Unschooled asylee, refugee, and SIFE inclusion language would be updated to note that these results are included beginning with the student's second year of enrollment in U.S. schools. The language describing small numbers analysis for the Academic Growth domain would be updated to indicate that three years would be used. The section describing the inclusion of substitute assessments would be updated to state that results from fall 2019 and spring 2020 would not be included. A sentence reiterating that English learners in their second year in U.S. schools are included would be removed, as it is redundant.

Chapter 4 describes the Closing the Gaps domain. The construction of this domain is based on the need to align to the language of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA). Clarifying language would be added to the minimum size section, noting that a district or campus must meet minimum size for at least five indicators in the Academic Achievement component to be evaluated. Clarifying language would be added to the Current and Former Special Education Students and Current and Monitored English Learners sections regarding the sources used to identify students as such. Unschooled asylee, refugee, and SIFE inclusion language would be updated to note that these results are included beginning with the student's second year of enrollment in U.S. schools. The section describing the inclusion of substitute assessments would be updated to state that results from fall 2019 and spring 2020 would not be included. A sentence describing the minimum number of indicators needed to be evaluated would be added to each section describing the minimum size criteria. The language describing small numbers analysis for the Academic Growth domain would be updated to indicate that three years would be used. Language would be added to note changes to the graduation rate methodology if the amendment submitted to the U.S. Department of Education is approved. Texas English Language Proficiency Assessment System (TELPAS) Alternate would be added to the English Language Proficiency component descriptions as well as a shift to use 2018 TELPAS composite ratings if 2019 composite ratings are not available. The list of CCMR indicators would be reorganized to align with other Performance Reporting products. Clarifying language would be added to note that only summer 2019 substitute assessments would be included as participants. Additional language would be added to the middle school example calculation to illustrate how to proportionally distribute component weights.

Chapter 5 describes how the overall ratings are calculated. Language would be added to note that the following provision would not apply if the triggering campus is an alternative education accountability campus with a domain or overall rating of *D.* A district may not receive an overall or domain rating of *A* if the district includes any campus with a corresponding overall or domain rating of *D* or *F.* In this case, the highest scaled score a district can receive for the overall or in the corresponding domain is an 89. The formatting would be updated for the campus School Progress, Part B: Relative Performance Lookup Tables.

Chapter 6 describes distinction designations. Clarifying language would be added stating that a campus may earn a distinction based on a sole indicator other than attendance. An indicator that evaluates Grade 8 Algebra I end-of-course performance would be added to the mathematics distinction section. The Top 25 Percent distinction methodology language would be updated to state the use of the raw score rather than the scaled score.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. The Pairing section would be updated to state that traditional campuses may not be paired with AEA campuses. A section regarding magnet campuses and programs would be added to detail the attribution of assessment results. Clarifying language would be added to the AEA of choice description. Language describing the AEA

registration process would be revised to note that if a campus was registered in 2019 using the at-risk safeguard and it does not meet the at-risk enrollment criterion in 2020, the campus would not be eligible for AEA and would not be re-registered in 2020. Language would be added stating that campuses that were not registered in 2019 but meet eligibility requirements for AEA in 2020 would be automatically registered along with the requirement for a district to rescind the registration if they do not wish for the campus to be evaluated under AEA provisions. The number of at-risk criteria would be updated from thirteen to fourteen to reflect statutory changes.

Chapter 8 describes the process for appealing ratings. A deadline of June 5, 2020, for TELPAS rescore requests and a deadline of June 19, 2020, for STAAR® rescore requests would be added. Additionally, rescore requests submitted after the deadline would not be considered during the appeals process. Language would be added stating that all preliminary ratings are subject to change due to an investigation or an appeal. The *Local Accountability System Manual* would be changed to *Local Accountability System Guide.* A paragraph describing special program campuses would be added to the Special Circumstance Appeals section, and a paragraph describing rescoring would be removed. Clarifying language would be added to note that distinction designations would not be reprocessed for districts and campuses that receive a granted appeal for an *A-D* rating. The example of a satisfactory appeal would be updated to reflect a satisfactory appeal recently received. A sentence would be added to state that certain appeal requests may lead to audits and/or investigations.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. The reference to House Bill 22, 85th Texas Legislature, 2017, would be removed. Language would be added stating that due to the lack of 2020 accountability ratings, the campuses identified for Public Education Grant (PEG) based on 2019 ratings would remain on the 2021-2022 PEG List. The Campus Intervention Requirements under the TEC, Chapter 39A, section would be revised to reference TEC, Chapter 39A, rather than TEC, §39A.101, and to address campuses with a *D* rating. The Actions Required Due to Low Ratings or Low Accreditation Status sections would be updated to include *D* ratings along with *F* ratings. Language would be added to the Campus Intervention Requirements section and the Actions Required Due to Low Ratings section noting that when a district or campus receives a rating of *Not Rated, Not Rated: Declared State of Disaster,* or *Not Rated: Data Integrity Issues,* the district or campus shall continue to implement the previously ordered sanctions and interventions. If a campus has been ordered to prepare a turnaround plan and then receives a rating of *Not Rated, Not Rated: Declared State of Disaster,* or *Not Rated: Data Integrity Issues,* that campus is strongly encouraged, but not required, to implement the approved turnaround plan. Language would be revised to clarify the policy for updating campus identification numbers.

Chapter 10 provides information on the federally required identification of schools for improvement. Language and charts would be revised to detail changes to additional targeted support, targeted support and improvement, and comprehensive support and improvement identification methodology, if the submitted ESSA amendment is approved. Language would be revised to note that all students, former education, continuously enrolled, and non-continuously enrolled student groups would not be evaluated for additional targeted and targeted support and improvement. For targeted support and improvement and additional targeted support sections, minimum size requirement language would be removed for the all students group, as it would not be evaluated. Language regarding the exit criteria for comprehensive support and improvement would be revised to clarify that campuses must have an improved Closing the Gaps domain letter grade by the end of the second year.

Chapter 11 describes local accountability systems. Language would be added to clarify that local accountability plans may vary by campus type and by school group but must apply equally to all campuses by type and group. Language noting that an independent panel consisting of representatives from current participating districts would participate in the review process would be removed. The *Local Accountability System Manual* would be replaced with the *Local Accountability System Guide.* References to a "what if" rating would be removed. Language indicating that districts must submit scaled scores for each component would be added.

FISCAL IMPACT: Jeff Cottrill, deputy commissioner for academics standards and engagement, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by providing for an additional rating type related to disasters.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be continuing to inform the public of the existence of annual manuals specifying rating procedures for the

public schools by including this rule in the *Texas Administrative Code*. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 1, 2020, and ends June 1, 2020. A public hearing on the proposal is scheduled for 8:30 a.m. on May 22, 2020. The public may participate in the hearing virtually by linking to the meeting at https://zoom.us/meeting/register/vpYsd-6hqTMux0hZ13YSgJo32h9UFjPK4w. Parties interested in testifying must register online between 8:15 a.m. and 9:00 a.m. on the date of the hearing and are encouraged to also send written testimony to performance.reporting@tea.texas.gov. The hearing will conclude once all who have registered have been given the opportunity to comment. Questions about the hearing should be directed to Performance Reporting at (512) 463-9704.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; and TEC, §12.104(b)(3)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); and 12.104(b)(3)(L).

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2020 [~~2019~~] are based upon specific criteria and calculations, which are described in excerpted sections of the 2020 [~~2019~~] *Accountability Manual* provided in this subsection.
Figure: 19 TAC §97.1001(b)
[~~Figure: 19 TAC §97.1001(b)~~]

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001514
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.3

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.3, concerning the requirements for licensure by credentials. This amendment will remove the requirement that an applicant must submit an application to

the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §101.3, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicably will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§101.3. Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for licensure by credentials must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Is currently licensed as a dentist in good standing in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board;

(3) Has practiced dentistry:

(A) For a minimum of three years out of the five years immediately preceding application to the Board, pursuant to section 256.101(a-1) of the Dental Practice Act; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school for a minimum of five years immediately preceding application to the Board;

(4) Is endorsed by the state board of dentistry in the jurisdiction in which the applicant practices at the time of the application. Such endorsement is established by providing a copy under seal of the applicant's current license and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations;

(6) Has met the requirements of §101.8 of this title (relating to Persons with Criminal Backgrounds) and has completed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action[~~. Additionally, no more than six months before submitting an application to the Board, an applicant under this section shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification~~]; and

(7) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) Practice experience described in subsection (a)(3) of this section must be subsequent to applicant having graduated from a CODA-accredited dental school.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001520

Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

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22 TAC §101.4

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.4, concerning the requirements for temporary licensure by credentials. This amendment will remove the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. The amendment also clarifies that biennual not annual renewals are required. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §101.4, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicably will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§101.4. Temporary Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary licensure by credentials must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations;

(3) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board;

(4) Is endorsed by the state board of dentistry in the jurisdiction in which the applicant practices at the time of the application. Such endorsement is established by providing a copy under seal of the applicant's current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. For applications filed after August 31, 2002, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification;

(6) Is currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement; and

(7) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) A license granted under this section is valid only for practice as an employee of a non-profit corporation. If a dentist holding a temporary license under this section becomes employed by a non-profit corporation other than the non-profit corporation named in the application, the licensee must notify the Board of the change in employment within fifteen days of such change.

(c) A dentist holding a temporary license issued under this section may renew the license by submitting an [~~annual~~] application and paying all required fees.

(d) A dentist holding a temporary license may obtain a license under the provision of §101.3 of this chapter (relating to Licensure by Credentials) when the dentist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §101.3 of this chapter and the application fee charged under this section.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001522
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

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22 TAC §101.14

The State Board of Dental Examiners (Board) proposes new rule §101.14 concerning Exemption from Licensure for Certain Military Spouses. The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §101.14, Exemption from Licensures for Certain Military Spouses regarding dentists, allows qualified military spouses to practice dentistry without obtaining a license to practice dentistry during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed new rule may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

This rule implements the requirements of SB 1200 of the 86th Legislature and Texas Occupations Code §55.0041.

§101.14 Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military spouse to practice dentistry in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active license to practice dentistry in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice dentistry in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's dental license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001524
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

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22 TAC §101.15

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §101.15, concerning Reinstatement of a Cancelled License. This rule will clarify the Board's considerations when reviewing an application for licensure for an applicant who previously held a Texas license that expired and was subsequently cancelled.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§101.15. Reinstatement of a Cancelled License.

(a) The Board may reinstate a cancelled Texas dental license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) An applicant who, at the time of application for reinstatement, is practicing dentistry in another state, or territory outside of the United States, or had practiced dentistry actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) An applicant who has not actively practiced for at least two years immediately preceding the request for reinstatement of a cancelled license must submit proof that the applicant has taken and passed the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board as required by §101.2 of this chapter (relating to Licensure by Examination) pursuant to §257.002(d) of the Dental Practice Act.

(3) An applicant who applies to reinstate a cancelled license must comply with all other applicable provisions of the Dental Practice Act and Board rules.

(4) An applicant who applies to reinstate a cancelled license must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time the license was cancelled.

(5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reinstate a cancelled license.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001526
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.3

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §103.3, concerning the requirements for licensure by credentials. This amendment will remove the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §103.3, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicably will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§103.3. Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by credentials must present proof that the applicant:

(1) Is currently licensed as a dentist or dental hygienist in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a dental hygiene clinical examination administered by another state or regional examining board;

(2) Has practiced dentistry or dental hygiene:

(A) For a minimum of three years out of the five years immediately preceding application to the Board; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school for a minimum of five years immediately preceding application to the Board;

(3) Is endorsed by the state board of dentistry that has jurisdiction over the applicant's current practice. Such endorsement is established by providing a copy under seal of the applicant's current license and by a certified statement that the applicant has current good standing in said jurisdiction;

(4) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. [~~Additionally, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification.~~]

(b) Practice experience described in subsection (a)(2) of this section must be subsequent to applicant having graduated from a CODA-accredited dental or dental hygiene school.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001527
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

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22 TAC §103.4

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §103.4, concerning the requirements for temporary licensure by credentials. This amendment will remove the requirement that an applicant must submit an application to the Professional Background Information Services (PBIS), a third party vendor, for determination of a successful background verification. The amendment also clarifies that biennual not annual renewals are required. This rulemaking resulted from Board staff's effort to reduce licensure costs and streamline the application process for applicants. Board staff is equipped to complete Level II background verification.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §103.4, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicably will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§103.4. Temporary Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary dental hygienist licensure by credentials must present proof that the applicant:

(1) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a dental hygiene clinical examination administered by another state or regional examining board;

(2) Is endorsed by the state board of dentistry that has jurisdiction over the current practice. Such endorsement is established by providing a copy under seal of the applicant's current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

(3) Is currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement;

(4) Has completed 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB)

Clearinghouse for Disciplinary Action. [~~Additionally, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification.~~]

(b) A license granted under this section is valid only for practice as an employee of the non-profit corporation named on the application.

(c) A dental hygienist holding a temporary license issued under this section may renew the license by submitting a [~~an annual~~] renewal application and paying all required fees.

(d) A dental hygienist holding a temporary license may obtain a license under the provisions of §103.3 of this chapter (relating to Licensure by Credentials) when the dental hygienist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §103.3 of this chapter and the application fee charged under this section.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001528
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

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22 TAC §103.10

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §103.10, concerning Exemption from Licensure for Certain Military Spouses. The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule 22 TAC §103.10, Exemption from Licensures for Certain Military Spouses, regarding dental hygienists, allows qualified military spouses to practice as a dental hygienist without obtaining a dental hygienist license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed new rule may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

This rule implements the requirements of SB 1200 of the 86th Legislature and Texas Occupations Code §55.0041.

§103.10. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military spouse to practice as a dental hygienist in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active dental hygienist license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice as a dental hygienist in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board shall verify whether the military spouse's license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board shall determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001529
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

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22 TAC §103.11

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §103.11 concerning Reinstatement of a Cancelled License. This rule will clarify the Board's considerations when reviewing an application for licensure for an applicant who previously held a Texas license that expired and was subsequently cancelled.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

Legal counsel for the Board has reviewed the proposed rule and has found it to be within the Board's authority to adopt.

§103.11 Reinstatement of a Cancelled License

The Board may reinstate a cancelled Texas dental hygiene license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) An applicant who, at the time of application for reinstatement, is practicing dental hygiene in another state, or territory outside of the United States, or had practiced dental hygiene actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support;

(E) proof of completion of 12 hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the

requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) An applicant whose license has been expired for one year or more, who has not actively practiced for at least two years immediately preceding the request for reinstatement of a cancelled license, must submit proof that the applicant has taken and passed the appropriate clinical examination administered by a regional examining board designated by the Board as required by §103.2 of this chapter (relating to Licensure by Examination) pursuant to §257.002(d) of the Dental Practice Act.

(3) An applicant who applies to reinstate a cancelled license must comply with all other applicable provisions of the Dental Practice Act and Board rules.

(4) An applicant who applies to reinstate a cancelled license must have been in compliance or satisfied all conditions of any Board order that may have been in effect at the time the license was cancelled.

(5) The Board may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reinstate a cancelled license.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001530
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.7

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §114.7 concerning Exemption from Licensure for Certain Military Spouses. The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule 22 TAC §114.7, Exemption from Licensures for Certain Military Spouses regarding dental assistants, allows qualified military spouses to practice as a dental assistant without obtaining a registration to practice as a dental assistant during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active registration in good standing in another state with substantially equivalent requirements for registration as Texas.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed new rule may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

This rule implements the requirements of SB 1200 of the 86th Legislature and Texas Occupations Code §55.0041.

§114.7. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military spouse to practice as a dental assistant in Texas without obtaining a registration in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active registration to practice as a dental assistant in another state, territory, Canadian province, or country that:

(A) has registration requirements that are determined by the board to be substantially equivalent to the requirements for registration in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice as a dental assistant in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board shall verify whether the military spouse's dental assistant registration in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board shall determine whether the registration requirements in that jurisdiction are substantially equivalent to the requirements for registration in Texas.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001531
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: May 31, 2020
For further information, please call: (512) 305-9380

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 56. SKIMMERS

1 TAC §§56.1 - 56.6

The Office of the Attorney General withdraws the proposed new §§56.1 - 56.6, which appeared in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6461).

Filed with the Office of the Secretary of State on April 17, 2020.

TRD-202001502
Lesley French
General Counsel
Office of the Attorney General
Effective date: April 17, 2020
For further information, please call: (512) 475-3210

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 178. COMPLAINTS

22 TAC §178.4

The Texas Medical Board withdraws the emergency adoption of the amendment to §178.4, which appeared in the April 3, 2020, issue of the *Texas Register* (44 TexReg 2277).

Filed with the Office of the Secretary of State on April 22, 2020.

TRD-20201553
Scott Freshour
General Counsel
Texas Medical Board
Effective date: April 22, 2020
For further information, please call: (512) 305-7016

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CHAPTER 187. PROCEDURAL RULES

SUBCHAPTER F. TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

22 TAC §187.57

The Texas Medical Board withdraws the emergency adoption of the amendment to §187.57, which appeared in the April 3, 2020, issue of the *Texas Register* (45 TexReg 2278).

Filed with the Office of the Secretary of State on April 22, 2020.

TRD-202001554
Scott Freshour
General Counsel
Texas Medical Board
Effective date: April 22, 2020
For further information, please call: (512) 305-7016

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ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 27. COMMUNITY FIRST CHOICE

1 TAC §354.1369

The Texas Health and Human Services Commission (HHSC) adopts new §354.1369, concerning Attendant Base Wage. New §354.1369 is adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 823). Therefore, the rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rule is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of this new rule, the minimum hourly base wage for a personal attendant was referenced in multiple rules. The Executive Commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, so that the base wage requirements for all of HHSC's programs and services will be contained in that one section. New §354.1369, Attendant Base Wage, requires that providers of Community First Choice (CFC) personal assistance services and CFC Habilitation pay a personal attendant at least the base wage specified in new §355.7051. Elsewhere in this issue of the *Texas Register,* HHSC is amending rules in Title 40, Chapters 9, 41, 44, and 49, and Title 1, Chapter 363, to cross-reference new §355.7051 and remove specific base wage provisions or superseded cross-references to base wage requirements.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed new rule from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rule and HHSC's responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH's support of the rule.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TAHCH's support of the rule.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the rule in response to this comment.

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and (Texas Government Code §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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 April 20, 2020.

TRD-202001532
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 10, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER H. BASE WAGE REQUIREMENTS FOR PERSONAL ATTENDANTS

1 TAC §355.7051

The Texas Health and Human Services Commission (HHSC) adopts new §355.7051, concerning Base Wage for a Personal Attendant, in new Subchapter H, Base Wage Requirements for Personal Attendants. New §355.7051 is adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 825). Therefore, the rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rule is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of this new rule, the minimum hourly base wage for a personal attendant was referenced in multiple rules. The executive commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, so that the base wage requirements for all of HHSC's programs and services will be contained in this one section. Elsewhere in this issue of the *Texas Register,* the executive commissioner is amending or adding new rules in Title 40, Chapters 9, 41, 44, and 49, and Title 1, Chapter 354 and 363, to cross-reference the base wage requirements in new §355.7051 and remove specific base wage provisions or superseded cross-references to base wage requirements.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed new rule from five entities: Texas Association for Home Care & Hospice, ADAPT of Texas, El Paso Desert ADAPT, Personal Attendant Coalition of Texas (PACT), and Raise it. Texas Association for Home Care & Hospice expressed support for the proposed rule project, while ADAPT of Texas, El Paso Desert ADAPT, PACT, and Raise it expressed opposition to the project. A summary of comments relating to the rule and HHSC's responses follow.

Comment: Four commenters urged that the base wage for a personal attendant be raised from $8.11 per hour to at least $15.00 per hour.

Response: The base wage is limited by available appropriations and was increased to $8.11 per hour as a result of Rider 45. HHSC made no revisions to the new rule in response to this comment.

Comment: One commenter stated that §355.7051 falls short of employing means of improving the recruitment and retention of community attendants.

Response: This comment is outside the scope of this rule project and, therefore, no revisions were made to this rule in response to the comment. HHSC is in the process of developing a state workforce strategic plan to improve the retention and recruitment of community attendants per Rider 157 of the 2020-21 GAA, Article II, Special Provisions, H.B. 1, 86th Legislature, Regular Session, 2019.

Comment: One commenter stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates the commenter's support of the rule.

Comment: One commenter expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates the commenter's support of the rule.

Comment: One commenter expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The commenter suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the rule in response to this comment.

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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 April 20, 2020.

TRD-202001533
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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CHAPTER 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM

SUBCHAPTER F. PERSONAL CARE SERVICES

1 TAC §363.603

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §363.603, concerning Provider Participation Requirements. The amendment to §363.603 is adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 828). Therefore, the rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of this amendment, the minimum hourly base wage for a personal attendant was referenced in multiple rules. The executive commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, so that the base wage requirements for all of HHSC's programs and services will be contained in that one section. As a result of this consolidation, the executive commissioner is, at the same time, amending §363.603 and amending or adding new rules in Title 40, Chapters 9, 41, 44, and 49, and Title 1, Chapter 354, to cross-reference the base wage requirements in new §355.7051 and remove specific base wage provisions or superseded cross-references to base wage requirements.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed amendment from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rule and HHSC's responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH's support of the amendment.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TAHCH's support of the amendment.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the amendment in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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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Karen Ray
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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS REGULATED BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER

SUBCHAPTER A. APPLICATION PROCEDURES

7 TAC §2.104, §2.106

The Finance Commission of Texas (commission) adopts amendments to §2.104 (relating to Application and Renewal Fees) and §2.106 (relating to Denial, Suspension, or Revocation Based on Criminal History), in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

The commission adopts the amendments to §2.104 without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1283). The rule will not be republished.

The commission adopts the amendments to §2.106 with changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1283). The rule will be republished. The change addresses a recommendation from the staff of the Texas Register, as discussed below.

The commission received no written comments on the proposal.

In general, the purpose of the amendments to 7 TAC Chapter 2 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 2 was published in the *Texas Register* on December 27, 2019 (44 TexReg 8343). The commission received no comments in response to that notice.

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

The amendments are intended to reduce costs for individual residential mortgage loan originators (RMLOs), to ensure consistency with current licensing procedures and processes, and to make technical corrections.

The amendments to §2.104 would lower the RMLO application and annual renewal fees from $300 to $200, resulting in lower costs to individual RMLOs. These amendments are intended to reduce barriers for individuals to engage in the licensed occupation of being an RMLO regulated by the OCCC.

The amendments to §2.106 relate to the OCCC's review of the criminal history of an RMLO applicant or licensee. The OCCC is authorized to review criminal history of RMLO applicants and licensees under Texas Occupations Code, Chapter 53, and Texas Finance Code, Chapter 180 (the Texas SAFE Act). Amendments to subsection (c)(1) list the types of crimes that directly relate to the duties and responsibilities of being a regulated lender, as provided by Texas Occupations Code, §53.025(a). Other amendments to §2.106 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between element of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §2.106 would implement these statutory changes from HB 1342. Other amendments to §2.106 include technical corrections, clarifying changes, and updates to citations.

In the original proposal, §2.106(b)(2) was only amended to delete the phrase "from prosecution, law enforcement, and correctional authorities" in accordance with HB 1342. After the proposal was submitted to the Texas Register, staff of the Texas Register recommended adding the phrase "of this section" to §2.106(b)(2). Based on this recommendation, the adopted text of §2.106(b)(2) states: "(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation."

The rule amendments are adopted under Texas Finance Code, §180.061, which authorizes the commission to adopt rules relating to criminal background checks for RMLOs, as well as rules relating to payment of RMLO application and renewal fees. In addition, Texas Finance Code, §180.004(b) authorizes the commission to implement rules to comply with Texas Finance Code, Chapter 180. The amendments to §2.106 are also adopted under Texas Occupations Code, §53.025, which requires each state licensing authority to issue guidelines relating to review of criminal history.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 53 and Texas Finance Code, Chapter 180.

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

(a) Criminal history record information. After an applicant submits a complete application to NMLS, including a set of fingerprints, and pays the fees required under §2.104 of this title (relating to Application and Renewal Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprint information has been initially processed.

(b) Disclosure of criminal history by applicant. The applicant must disclose all criminal history information required to file a complete application with NMLS. Failure to provide any information required by NMLS or requested by the OCCC reflects negatively on the applicant's character and general fitness to hold a license. The OCCC may request additional criminal history information from the applicant, including the following:

(1) nformation about arrests, charges, indictments, and convictions;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

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

(1) Originating residential mortgage loans involves making representations to borrowers regarding the terms of the loan and collecting charges in a legal manner. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves the misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense; and

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

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

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

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

(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a licensee; and

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

(3) If a criminal conviction directly relates to the duties and responsibilities of the license, the OCCC will consider the following factors in determining whether to deny a license application, or suspend or revoke a license, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation.

(d) Crimes related to financial responsibility, character, or general fitness. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that relates to financial responsibility, character, or general fitness to hold a license, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A). If the applicant or licensee has been convicted of an offense described by subsections (c)(1), (f)(1), or (f)(2) of this section, this reflects negatively on the applicant or licensee's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the applicant will operate lawfully and fairly. The OCCC will consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3);

(2) a conviction for, or plea of guilty or nolo contendere to, a felony during the preceding seven years or a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, as provided by Texas Finance Code, §180.055(a)(2) and §180.201(2)(A);

(3) a material misstatement or failure to provide information in a license application, as provided by Texas Finance Code, §180.201(2); and

(4) any other information indicating that the financial responsibility, character, or general fitness of the applicant or licensee do not command the confidence of the public or do not warrant the determination that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of Texas Finance Code, Chapter 180 and other appropriate regulatory laws of this state, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A).

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

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TRD-202001493
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
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For further information, please call: (512) 936-7660

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §§25.7, 25.10, 25.11, 25.13, 25.17, 25.19, 25.24, 25.25, and 25.31, concerning contract forms and regulation of licensees. The amended rules are adopted without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1286) and will not be republished.

Texas Government Code (Government Code) §2001.039 requires a state agency to review each of its rules every four

years and either readopt, readopt with amendments, or repeal rules based upon the agency's review and determination as to whether the reasons for initially adopting the rules continue to exist. On June 21, 2019, Chapter 25 was readopted without amendments pursuant to Government Code §2001.039. At the time it was presented to the commission, staff stated that certain amendments which were necessary would be proposed at a later date.

On August 19, 2019, Chapter 25 was amended in response to a legislative directive that the commission by rule prescribe the term of a permit to sell prepaid funeral benefits. As a result of the amendments, permits are no longer renewed, but are effective until revoked by the department or surrendered by the permit holder. However, §§25.17, 25.19, 25.24, 25.25, and 25.31 still refer to the "renewal" of the permits. Thus, amendments to these sections are now adopted.

These amendments eliminate all remaining references to the requirement that these permits be renewed.

Amendments to §§25.7, 25.10, 25.11, and 25.13 are adopted to update citations, correct typographical errors and eliminate outdated language.

The department received no comments regarding the proposed amendments.

SUBCHAPTER A. CONTRACT FORMS

7 TAC §25.7

The amendments are adopted pursuant to Texas Finance Code (Finance Code) §154.051, which provides that the commission may adopt rules necessary or reasonable to supervise and regulate prepaid funeral services.

Finance Code, Chapter 154, Subchapters C and H are affected by the amendments to Chapter 25, Subchapters A and B.

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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TRD-202001481
Catherine Reyer
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1301

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SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §§25.10, 25.11, 25.13, 25.17, 52.19, 25.24, 25.25, 25.31

Amendments to Chapter 25, Subchapter B, §§25.10, 25.11, 25.13, 25.17, 25.19, 25.24, 25.25, and 25.31 are adopted under Texas Finance Code (Finance Code), §154.051, which provides that the commission may adopt rules necessary or reasonable to supervise and regulate prepaid funeral services.

Finance Code, Chapter 154, Subchapters C and H are affected by the adopted amendments to Chapter 25, Subchapter B.

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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TRD-202001482
Catherine Reyer
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1301

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.201

The Finance Commission of Texas (commission) adopts amendments to §86.201 (relating to Documentary Fee) in 7 TAC, Chapter 86, concerning Retail Creditors.

The commission adopts the amendments without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1288). The rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §86.201 is to implement changes resulting from the commission's review of 7 TAC Chapter 86 under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 86 was published in the *Texas Register* on December 27, 2019 (44 TexReg 8343). The commission received no comments in response to that notice.

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

The amendments to §86.201 are intended to provide clarity and to update a statutory citation. New subsection (a) would add a purpose statement to specify which vehicles the rule applies to. An amendment at subsection (b)(1) would amend a citation to the statutory definition of "all-terrain vehicle" in the Texas Transportation Code. This definition was moved to Texas Transportation Code, §551A.001(1) by HB 1548, which the Texas Legislature enacted during the 2019 legislative session.

These amendments are adopted under Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to implement and enforce the statutory provision authorizing a documentary fee for certain retail installment transactions under Texas Finance Code, Chapter 345. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 345.

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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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7659

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.10

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 1, 2020, issue of the Texas Register.)

The Texas State Library and Archives Commission (commission) adopts amendments to §6.10, Texas State Records Retention Schedule. The amendments are adopted with changes to the proposed text as published in February 14, 2020, issue of the *Texas Register* (45 TexReg 981) and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS. The amendments are adopted, in part, to implement a management action adopted by the Sunset Advisory Commission in its Staff Report with Final Results, 2018-2019 (86th Legislature). Recommendation 2.6 requires the Commission to update the Texas State Records Retention Schedule by April 2020. Following Sunset's adoption of this recommendation, the commission created a workgroup of records managers and analysts to collaborate on updating the State Records Retention Schedule. The group met for five months, from June to October, examining each series and evaluating everything from the accuracy of the description to the possibility of bucketing with other series to make for a more concise general schedule. The draft schedule was circulated among state agency records management officers for review and informal comment. Based on the feedback received, the commission then formally proposed amendments to the schedule in February of this year.

In general, the amendments revise record series for accuracy, clarity, and applicability as well as combine similar record series to streamline the schedule for improved usage by state agencies. Amendments also remove obsolete and unnecessary language, update and correct statutory references, and clarify language as appropriate.

SUMMARY OF COMMENTS. The Commission received comments from Deborah McFadden, City of Fort Worth; the Texas State Board of Dental Examiners; Angela Ossar, Office of the Governor; Erinn Barefield, University of Texas Medical Branch; Jenny Alexander, Health and Human Services Commission; and Angela Pardo and Laurel Parke, State Office of Administrative Hearings. These commenters submitted a total of 408 comments.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 3.2.002 Employee Earnings Records.

RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.1.003 Delivery Reports.

RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.1.011 Photocopier and Telefax Usage Logs & Reports.

RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.2.022 Utility Usage Reports.

RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.2.024 Material Specifications.

RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.2.027 Space Utilization Reports.

RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. Several commenters commented on a similarity in context, scope, and retention period of RSINs 3.1.011 Employee Insurance Records and 3.1.031 Employee Benefits - Other than Health Insurance and suggested the series be combined.

RESPONSE. The commission agrees with these comments and has combined all employee benefit and insurance records under RSIN 3.1.011. RSIN 3.1.031 has been deleted.

COMMENT. An official from Health and Human Services commented that records under RSIN 3.1.031 should only be kept for two years after their first open enrollment period, stating that after initial hire, these records are maintained by the Employees Retirement System of Texas.

RESPONSE. In response to other comments, the commission has deleted this series and combined all records of selection by employees of insurance options and other benefits in RSIN 3.1.011 (Employee Benefits). The commission declines to

amend the AC Definition, as records of enrollment selections are likely to be referenced during term of employment; agencies may already dispose of forms once they have been superseded.

COMMENT. An official from the Office of the Governor commented that RSIN 5.2.020 Supply Usage Records should be deleted, stating these records are transitory.

RESPONSE. The commission disagrees that supply usage records are transitory information, as they may be used when conducting inventories. The commission deleted this series as an individual records series, but amended the description of RSIN 5.2.006 (Inventory and Property Control Records) to include usage records.

COMMENT. An official from University of Texas Medical Branch commented on a similarity in context, scope, and retention period of RSINs 5.2.024 Material Specifications and 5.2.025 Equipment Descriptions and Specifications and suggested the series be combined.

RESPONSE. The commission agrees with this comment and has made the recommended change combining both series under RSIN 5.2.024 Material Specifications and deleting RSIN 5.2.025 Equipment Descriptions and Specifications.

COMMENT. Several commenters commented on a similarity in context, scope, and retention period of RSINs 5.5.001 Billing Detail - Telecommunications and 5.5.002 Telephone Activity Records, and suggested 5.5.001 be combined in the financial record series.

RESPONSE. The commission agrees with this comment and has combined RSIN 5.5.001 (Billing Detail - Telecommunications) and RSIN 5.5.002 (Telephone Activity Records). A cross-reference to RSIN 4.1.001 (Accounts Payable Information) has been added for clarification.

COMMENT. An official from University of Texas Medical Branch commented suggesting the increase of the retention period for RSIN 5.2.019 Service Orders to match the local government schedule retention period.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change at this time.

COMMENT. Several commentators commented with questions or concerns regarding the increase in retention period of fiscal record series from FE+3 to FE+5, specifically RSINs 4.1.001 Accounts Payable, 4.1.009 Accounts Receivable Information, 4.5.002 Fiscal Management Reports, 4.5.009 USAS Reports - Annual, and 4.8.001 Banking Records. The commenters generally cited the increase in financial and administrative burdens the increased retention period would create.

RESPONSE. The commission agrees that increasing the retention period of many series in Category 4 would be unduly burdensome for state agencies, in terms of storage costs and retention responsibilities. Therefore, the retention periods for RSINs 4.1.001, 4.1.009, 4.5.009, 4.8.001, and 4.9.001 will remain at FE+3 and not increased to FE+5. However, the commission believes that the value in retaining Investment Transaction Files and Fiscal Managements Reports outweighs the potential increase in financial and administrative burden an additional two-year retention period might add. A retention period of FE+5 would result in these records being kept over two legislative sessions. Therefore, the retention periods for RSINs 4.1.006 and 4.5.002 will remain at FE+5 as proposed.

COMMENT. An official from University of Texas Medical Branch commented suggesting the addition of a new record series for surveillance videos.

RESPONSE. The commission agrees with this comment and has created the suggested new series under RSIN 5.1.018, with a retention period of AV. While this is a new retention series, it should not impose any new burden on governmental entities as the agencies will be able to make their own determinations regarding how long the video is administratively valuable, and have likely been doing so already.

COMMENT. An official from University of Texas Medical Branch commented that the reference in the archives note of RSIN 1.1.023 Organization Charts should be changed to "Texas State Library and Archives **Commission**," not division. They also recommended a reference be added that disposition logs need not be submitted for minor changes.

RESPONSE. The commission has fixed the typographical error in the archives note as suggested. The commission declines to make the remaining suggested change, as Organization Charts is an archival series and as such, disposition of prior versions must be documented on disposition logs.

COMMENT. An official from University of Texas Medical Branch commented with a formatting suggestion regarding blank "title" series for record series with subseries.

RESPONSE. The commission agrees with this comment and has eliminated all "empty" RSINs.

COMMENT. An official from University of Texas Medical Branch commented with a formatting suggestion regarding removing blank lines indicating where record series were removed from the schedule.

RESPONSE. The commission agrees with this comment and has removed all blank table rows.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent paragraph spacing between lines in the schedule.

RESPONSE. The commission agrees with this comment and has revised formatting of schedule with consistent paragraph spacing.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent ordering of information in the remarks section of record series across the schedule.

RESPONSE. The commission agrees with this comment and has revised formatting of schedule with consistent order of remarks.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent use of acronyms across the schedule.

RESPONSE. The commission agrees with this comment and has added relevant acronyms for ease of searching.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent capitalization of "RETENTION NOTE," "CAUTION, "ARCHIVES NOTE," and "See RSIN" across the schedule.

RESPONSE. The commission agrees with these comments and has amended all "Retention Notes" as "CAUTION" notes

and made the recommended change to "See RSIN" across the schedule.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent use of commas or semicolons when implementing a list.

RESPONSE. The commission disagrees with this comment and declines to make the change. The commission follows the advice of the Chicago Manual of Style, which allows for the use of semicolons depending on the nature of the list, for example, if list items are complex or contain commas.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent and accurate page numbers across the schedule.

RESPONSE. The commission agrees with this comment and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding a reference on the Amendment Notice Page.

RESPONSE. The commission has deleted the bullet note from the Amendment Notice, as bullets have not been used in previous versions of the schedule.

COMMENT. An official from University of Texas Medical Branch commented with suggestions regarding formatting and removing the legal citation for RSINs 2.1.007 Computer Software Programs, 2.1008 Computer Hardware Documentation, and 2.1.009 Hardware and Software Technical Documentation.

RESPONSE. The commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods. Additionally, the commission has made the recommended formatting change as suggested.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions for RSIN 1.2.001 Destruction Authorizations to remove "e.g." and define the "TSLAC" acronym.

RESPONSE. The commission declines to make the first suggested change, as the use of "e.g." is necessary to illustrate that the example form number does not exclude other types of forms from this series. The commission declines to make the second suggested change, as it does not add any additional clarity to the text as proposed.

COMMENT. Several commentators commented regarding classification of training materials related to RSINs 1.1.043 Training Materials and 3.3.030 Training Administration Records suggesting further clarification be added as well as redefinition of AC.

RESPONSE. The commission agrees that these two series contain redundant record types. RSIN 1.1.043 has been edited to only include non-personnel training, and RSIN 3.3.030 has been edited to only include internal personnel training. In addition, the definition of AC has been clarified to mean close of training session, after training materials superseded, or termination of training program, as applicable. Additionally, cross-references have been added to the relevant record series for clarity.

COMMENT. An official from the Office of the Governor commented regarding the inclusion of "information resources strategic plan" in the description of RSIN 1.1.055 Strategic Plans.

RESPONSE. The commission agrees with this comment and has edited the series description for clarification.

COMMENT. An official from the Office of the Governor commented regarding clarification of description for RSIN 2.1.007 Software Programs because software programs that are licensed for use by an agency are not state records.

RESPONSE. The commission agrees with this comment and has amended the series description to include agency-developed automated applications.

COMMENT. An official from the Office of the Governor commented suggesting the exclusion of RSIN 2.2.001 System Monitoring Records from the disposition documentation requirement.

RESPONSE. The commission has added a remark that monitoring files that are automatically overwritten need not be included in disposition logs. Printed monitoring logs, or logs that are not automatically overwritten, must still be included on disposition logs.

COMMENT. Several commentators commented regarding the clarification of RSIN 3.4.004 Overtime Schedules and Authorizations, including changing the description to specify the series covers only the authorizations to work overtime (and possibly comp time), not the records of time worked. Commenters also suggested reverting the title to the original.

RESPONSE. The commission agrees with most of these comments and has amended the series description to include records created to schedule time worked outside of or in addition to their regular working hours. A cross-reference has also been added for RSIN 3.4.006 (Timekeeping Records). The commission disagrees with the comment to revert the title and declines to make the suggested change, as the series description has been amended to provide clarity.

COMMENT. Several commentators commented to suggest adding distinct titles to the following series' subseries: RSINs 3.1.013 Employment Contracts, 3.1.040 Employee Drug Testing and Screening Records, 5.1.001 Contract Administration Files, and 5.1.013 Insurance Policies, 5.3.007 Bid Documentation.

RESPONSE. The commission agrees with these comments and has given all series unique titles.

COMMENT. An official from University of Texas Medical Branch commented to suggest the addition of the FMLA citation to RSIN 3.4.007 Time Off and/or Sick Leave as well as inquire about the fiscal year retention period.

RESPONSE. The commission has added the relevant citation to the series' remarks regarding fiscal year requirements and the commission agrees with the addition of the FMLA citation and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented to suggest clarification of the descriptions for RSINs 3.3.027 Aptitude and Skills Tests and 3.3.028 Aptitude and Skills Tests (Test Papers).

RESPONSE. The commission agrees with this comment and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented to suggest clarification of the descriptions for RSINs 3.3.027 Aptitude and Skills Tests and 3.3.028 Aptitude and Skills Tests (Test Papers).

RESPONSE. The commission agrees with this comment and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented to point out that the retention period for RSIN 3.3.004 Benefit Plans does not match the citation requirements.

RESPONSE. The commission agrees with this comment and has amended the retention period to match citation.

COMMENT. An official from University of Texas Medical Branch commented to recommend shortening the title of RSIN 3.3.023 Reimbursable Activities, Requests and Authorizations to Engage to in to "Reimbursable Activity Records" to be more concise.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented to recommend altering the definition of AC for RSINs 3.2.001 Employee Deduction Authorizations, 3.2.005 W-4 Forms, and 3.2.008 Direct Deposit Application/Authorizations in order to be clearer and more accurate and provided recommended changes.

RESPONSE. The commission agrees with these comments and has made the recommended changes.

COMMENT. Officials from the State Office of Administrative Hearings commented that the proposed amendment to RSIN 3.1.042 ADA Accommodation Requests is inconsistent with the retention period of RSIN 3.1.001 Applications for Employment - Not Hired. An ADA Accommodation Request for an applicant that is not hired has a retention period of 3 years while an application for employment for someone not hired has a retention period of 2 years. The commenter recommended having one standard for both series.

RESPONSE. The commission agrees with the comment and is reducing the retention period from 3 years to 2 years in line with 29 C.F.R. §1602.31. There is now a standard retention period for both series.

COMMENT. An official from University of Texas Medical Branch commented recommending changes to the a, b, and c subseries of RSIN 3.1.040 Employee Drug Testing and Screening Records by suggesting the addition of a caution note that these records should be kept as medical records and filed separately from personnel files, the addition of a caution note that pre-employment drug screening records should be kept with selection records per RSIN 3.1.014 Employment Selection Records, and the addition of a complimenting consent form signed by employee for release of information or understanding and agreeing that a test can be done.

RESPONSE. The commission declines to make the suggested changes since medical records already have a separate retention period than other personnel records. A cross-reference to these series has been added to RSIN 3.1.014 Employment Selection Records. Consent forms for releases of information are already included in RSIN 3.1.041 (Employee Acknowledgement and Agreement Forms) to provide clarification.

COMMENT. An official from University of Texas Medical Branch recommended altering the title of RSIN 3.1.036 Apprenticeship Records in order to be clearer and more accurate and provided recommended change.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with changes to RSIN 3.1.014 Employment Selection Record, including adding a reference note to see RSIN 3.3.028 for pre-employment skills tests, or add pre-employment skills tests to description and removing it from RSIN 3.3.028 description; adding a reference to RSIN 3.1.036 for apprenticeship records; and adding a cross reference to drug screening, RSIN 3.1.040.

RESPONSE. The commission agrees with the comment to add a reference to RSIN 3.3.028 and the change has been made. The commission declines to add a cross-reference to RSIN 3.1.036 (Apprenticeship Records), as that series is for summary records. The commission agrees with the recommendation to add a cross-reference to RSIN 3.1.040 (Employee Drug Testing and Screening Records) and amend the series description, and it has made the suggested change.

COMMENT. An official from University of Texas Medical Branch suggested changing the retention of RSIN 3.1.014 Employment Selection Records to AC+2; AC = hiring decision made, or position closed.

RESPONSE. The commission declines to make the suggested change, but it has amended the series retention period to AC+2, where AC = Date of the making of the record or the personnel action involved, whichever occurs later. This change is consistent with the language of 29 C.F.R. §1602.31.

COMMENT. An official from University of Texas Medical Branch suggested removing the citation from RSIN 3.1.013a/b Employment Contracts if there is no guidance for retention. Possibly include SB20 reference.

RESPONSE. The commission agrees with this comment and has added "SB20 (84th Leg.)" to the legal citation to explain why the retention period is lower for contracts executed prior to 9/1/15.

COMMENT. An official from University of Texas Medical Branch suggested changing the retention of RSIN 3.1.001 Applications for Employment - Not Hired to "AC+2; AC = Hiring decision made, or position closed.

RESPONSE. The commission declines to make the suggested change, but it has amended the series retention period to AC+2, where AC = Date of the making of the record or the personnel action involved, whichever occurs later. This change is consistent with the language of 29 C.F.R. §1602.31.

COMMENT. An official from University of Texas Medical Branch suggested moving RSIN 2.1.012 Biennial Information Security Plan from the 2.1 Automated Applications category to a different category where it functionally fits.

RESPONSE. The commission agrees with this comment and has moved the record series under category 2.2 Computer Operations and Technical Support and changed the series RSIN to 2.2.018.

COMMENT. An official from University of Texas Medical Branch suggested altering the description of RSIN 1.3.002 Publication Development Files to include that this series is used to create RSIN 1.3.001 State Publications. Example: ""¦.photo negatives, prints, flats, etc. that are used to create State Publications."

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch suggested altering the title and description of RSINs 1.2.016 Disaster Recovery Service Approval Form (RMD 113) and 1.2.015 Disaster Recovery Service Transmittals (RMD 109) to remove specific mentions of TSLAC forms, RMD 113 and 109, and provided recommended changes.

RESPONSE. The commission agrees with these comments and has made the recommended changes to series titles and descriptions for clarification.

COMMENT. An official from University of Texas Medical Branch suggested altering RSIN 1.2.005 Records Retention Schedule to reference the SLR 105 form since all state agencies must use this form to submit their retention schedule.

RESPONSE. The commission agrees with these comments and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch suggested returning to the original description of RSIN 1.2.003 Forms History and Maintenance to use "including" instead of "e.g." for better flow.

RESPONSE. The commission declines to make the suggested stylistic change as suggested but has edited the series description for clarity.

COMMENT. An official from Health and Human Services commented that RSIN 1.1.077 Release of Records Documentation seems problematic in light of HIPAA and suggested adding a note that information released under other statutes may have additional retention requirements. The commenter also suggested including "Not through Public Information Act" for clarity.

RESPONSE. The commission agrees with the first comment and has made the recommended change. The commission disagrees that adding "Not through the Public Information Act" adds clarity to the text and declines to make that suggested change. The commission believes the description provides the necessary clarity.

COMMENT. An official from University of Texas Medical Branch commented with concerns about combining working files records into RSIN 1.1.070 Agency Rules, Policies, and Procedures and the definition of AC, which would require maintaining all working copies and drafts until the termination of the policy or procedure, and that policy/procedure is updated annually, then this retention period is now requiring agencies to keep all working copies and drafts indefinitely while the policy is still active. They question the continued relevance of working copies in this context.

RESPONSE. The commission agrees with this comment and has amended the AC Definition to "AC = Until superseded, or termination of program, rules, policies, or procedures, whichever applicable."

COMMENT. An official from University of Texas Medical Branch commented with suggested changes to RSIN 1.1.038 Customer Surveys, including adding an additional trigger to the AC definition since not all surveys end in a summary report and revising the retention period to reflect that surveys are raw data used to make up the summary report and do not need to be maintained for the same retention period as the final summary report.

RESPONSE. The commission has amended the AC Definition to clarify retention period as suggested. The commission declines to change the retention period, as this series is not equivalent to "raw data"; it includes actual surveys and survey collection materials, so it is more substantive than RSIN 1.1.065 (Reports and Studies [Non-Fiscal] - Raw Data).

COMMENT. Officials from State Office of Administrative Hearings commented with concerns about the proposed addition of "other feedback" to the description of RSIN 1.1.006 Complaint and Feedback Records as overly-broad and susceptible to the creation of confusion, misapplication, and inconsistency in identifying records that fall under this series. This proposed amendment elicits the following questions: How will this impact feedback provided through customer surveys per RSIN 1.1.038 Customer Surveys? Will this change the retention period for a survey instrument containing feedback (i.e., from a retention period of AC to AC+2)?

RESPONSE. The commission agrees with this comment and has amended the series description to only include unsolicited customer feedback that does not fall into other record series such as RSIN 1.1.038 Customer Surveys.

COMMENT. An official from University of Texas Medical Branch commented with concerns about the changed title of RSIN 1.1.007 Correspondence - High-Level stating that while high level correspondence is a better title than administrative correspondence, it still leaves a lot of interpretation to the agencies regarding the meaning of high level. The commenter suggested using Correspondence - Executive as an alternative. The commenter also recommended changing the archives note reference to new series title.

RESPONSE. After reviewing this comment, the commission believes the best way to clarify this series is to not amend the series title as originally proposed, and instead keep the title as "Administrative Correspondence." However, the commission has amended the series description to provide clarity on the definition of "Administrative Correspondence."

COMMENT. An official from University of Texas Medical Branch commented with recommendations to add a caution note to RSIN 4.5.002 Fiscal Management Reports that states there might be additional retention requirements for some reports similar to grants note. External entities that require specific reports and information to be submitted might have very specific requirements that are longer than required retention period.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from Health and Human Services commented with a request to clarify the note in the Remarks of RSIN 4.5.003 Annual Financial Reports, which refers to the Texas Administrative Code, and add a pinpoint cite which would be helpful consistent with the pinpoint cites throughout the rest of the document.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from Health and Human Services commented with an error in the description of RSIN 4.5.010 Unclaimed Property Reports and Documentation where there's a reference to "treasurer" when it should be "comptroller."

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a request to clarify the description of RSIN 4.7.003 Uncollectable Accounts.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a request to add a reference to other funding sources in the description of RSIN 4.7.008 Grant Records.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a request to clarify the description/remarks of RSIN 5.1.001 Contract Administration Files and remove the reference to performance bonds as well as a request to remove the government code citation since it does not reference the AC+4 retention period.

RESPONSE. The commission agrees with the first comment and has updated cross-references. The commission agrees with this comment and has added "SB20 (84th Leg.)" to the legal citation to explain why the retention period is lower for contracts executed prior to 9/1/15.

COMMENT. An official from University of Texas Medical Branch commented with a request to clarify the description of RSIN 5.1.010 Licenses and Permits for Non-vehicles to describe what the series does include, not what it does not include.

RESPONSE. The commission agrees with this comment and has amended the series description and added a caution note for clarification.

COMMENT. An official from University of Texas Medical Branch commented with a request to flesh out the descriptions of RSIN 5.1.013 subseries based on the local schedule descriptions for these records.

RESPONSE. The commission agrees with these comments and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented with requests to clarify the RSINs 5.2.002 Building Construction Project Files and 5.2.003 Building Plans and Specifications subseries by adding a reference to the remarks of 5.2.002 to point to RSIN 5.3.007 Bid Documentation, updating the descriptions of 5.2.002 and 5.2.003, and posed a question regarding classification of bid documentation associated with building construction projects.

RESPONSE. The commission agrees with these comments and has made the recommended changes. Records always should be classified under the longest applicable record series.

COMMENT. An official from University of Texas Medical Branch commented with recommendation to remove the archives note in RSIN 5.2.003a Building Plans and Specifications since there is an "R" in the archival field and not in the archival field for 5.2.003b.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a clarifying question regarding the inclusion of maintenance in the description when maintenance records has its own separate series.

RESPONSE. The commission has amended the descriptions of both series and added a cross-reference to RSIN 5.2.006 (Inventory and Property Control Records) to clarify that RSIN 5.2.006 is for general maintenance records and RSIN 5.2.008 (Equipment History File) is for individual equipment maintenance logs.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to either clarify the title of RSIN 5.2.008 Equipment History File or combine with record series counterpart for vehicles.

RESPONSE. The commission has changed the series title as suggested. COMMENT. An official from University of Texas Medical Branch commented with suggestions to change the title or the description of RSINs 5.2.010 Equipment Manuals and 5.2.011 Equipment Warranties to include "vehicles".

RESPONSE. The commission has added vehicle manuals to the series description of RSIN 5.6.007 (Vehicle Titles & Registrations) for clarification.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a caution note to RSIN 5.2.022 Utility Usage Reports to account for agencies that operate their own utilities.

RESPONSE. The commission has added a caution note to this series that excludes records for state agencies that operate their own utilities.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add additional legal citations to RSIN 5.3.003 Freight Claims, 43 TAC 218.61(d) and 49 USC 14706(e), which discusses the statute of limitations of 2 years for someone to bring civil action after resolution of claim.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a caution note to RSIN 5.3.004 Shipping Information mentioning that shipping information for dangerous or hazardous goods could have a longer retention period.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to clarify the descriptions and legal citations of RSIN 5.3.007 Bid Documentation subseries to reflect the specific timeframes of the retention period application and reference the senate bill that led to the change in retention.

RESPONSE. The commission agrees with the comments regarding the descriptions and has made the recommended changes. The commission agrees with this comment and has added "SB20 (84th Leg.)" to the legal citation to explain why the retention period is lower for contracts executed prior to 9/1/15.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a legal citation to the remarks of RSIN 5.4.001 Occupational Accident Reports and Associated Documentation, 28 TAC 120.1(c), which references to follow the CFR, but also lists employer responsibility including the record of all injuries - with list of required items.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add examples from the legal citation to the description of RSIN 5.4.007 Hazardous Materials Training Records-- "Date of class, roster of attendees, subjects covered, and instructors".

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a legal citation to the description of RSIN 5.4.013 Continuity of Operations Plan-- "per Texas Labor Code, 412.054"-- since this citation is requiring agencies to create a disaster plan.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to clarify RSIN 5.4.014 subseries by altering the descriptions and definition of AC.

RESPONSE. The commission agrees with these comments and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to clarify RSIN 5.4.016a Hazardous Materials - Exposure/ Survey Records by altering the definition of AC.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. Officials from the State Office of Administrative Hearings commented with recommendations to combine RSINs 5.4.018 Annual Audit Plan and 5.4.019 Audit Peer Review - Working Papers within Category 1 as these records seem closely related to RSIN 1.1.002 Audits.

RESPONSE. The commission declines to make the suggested change as audit plans and peer reviews comprise a distinct set of records. To assist with the distinction, the commission has added clarifying cross-references to RSIN 1.1.002 (Audits), RSIN 5.4.018 (Annual Audit Plan), and RSIN 5.4.019 (Audit Peer Review - Working Papers).

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to include a reference to Log of PBX or operator call transfers in the description of RSIN 5.5.002 Telephone Activity Records as having key search terms within descriptions helps users actually find the records.

RESPONSE. The commission has added the term "call transfers" to series description to improve clarity.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a new record series to cover training sign in sheets, rosters, evaluations, registrations, etc., stating these types of records would not be included with the course content materials listed under 3.3.030 and 1.1.043. The commenter stated that these types of records would not meet the US retention period because each training course would be unique and would need a retention not connected to the class information being superseded.

RESPONSE. The commission had amended the description of RSINs 3.3.030 and 1.1.043 to include the types of information described in this comment and amended the AC definition for clarification.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to change the retention period of RSIN 1.1.023 Organizational Charts from US to AC; AC= Until superseded or obsolete.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the current retention period is sufficient and functionally equivalent to the suggested retention period.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to keep the retention period of RSIN 1.2.006 Records Transmittal Forms at AC+2.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change; with an AV retention period, state agencies are given more latitude in determining the appropriate retention period.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to keep the retention period of RSIN 1.2.006 Records Transmittal Forms at AC+2, change the remarks to include that form RMD 101 is obsolete, and recommend that TSLAC still be providing retention guidance on commonly used records series such as this. Even though the TSLAC form is obsolete, other agencies might have their own internal way of documenting records transmittal information for storing records.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as TSLAC is still providing guidance that this needs to be a record series maintained by state agencies; with an AV retention period, state agencies are given more latitude in determining the appropriate retention period. State agencies that use the State Records Center, for example, may not have to keep these records as long as state agencies using other vendors, as TSLAC keeps this data permanently in TexLinx (see TSLAC AIN 5E.028).

COMMENT. An official from University of Texas Medical Branch commented with suggestions to generalize the title and description of RSIN 1.2.011 Record Center Storage Approval Forms (RMD 106) by removing (RMD 106), change the retention period back to US or AC, and make the record series not obsolete.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as this series specifically refers to State Records Center storage authorizations, and it is not meant to cover general authorizations for other vendors; these general authorizations should be classified under RSIN 5.1.001a/b (Contract Administration Files). The obsolete series must remain on the schedule until the next revision, for any agencies that are still maintaining obsolete forms.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add a cross reference pointing to RSIN 3.1.036 for apprenticeship records in the remarks of RSINs 3.1.001 Applications for Employment - Not Hired and 3.1.002 Applications for Employment - Hired.

RESPONSE. The commission declines to make the suggested change, as RSIN 3.1.036 (Apprenticeship Records) is for summary records.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add "State Board, Commission, Committee and/or Council" to the beginning of each record series title for RSINs 1.1.058, 1.1.061, and 1.1.062.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as it does not add clarity to the text as proposed.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to remove current citations that don't require a retention period and include in text of description as well as add reference to citations to document the requirement for the creation of the security plan for RSIN 2.1.012 Biennial Information Security Plan.

RESPONSE. The commission declines to make the suggested changes as the commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods. The commission declines to make the suggested change to add a reference, as it does not add clarity to the text as proposed.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to remove citation reference from RSIN 3.1.042 ADA Accommodation Requests because not relevant to retention instructions. Possibly move citation reference to description.

RESPONSE. The commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to keep retention period at AC+5 until it can be confirmed that the manual is not requiring it for RSIN 3.2.009 State Deferred Compensation Records.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the Manual instructions regarding vendor requirements apply to ERS's use of vendors; most state agencies may access records through CAPPS. Agencies that do utilize vendors for State Deferred Compensation may add custom series to their individual schedules.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion maintain reference to manual in description of RSIN 3.2.009 State Deferred Compensation Records if it is providing guidance or requirements on a retention period.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the referenced Manual cannot be accessed widely outside of agency HR departments and is not a publicly available reference.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to change title of RSIN 3.3.001a Affirmative Action Plans - Employees to include both employees and apprenticeship programs per citation.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to include "request" and "authorizations" in description not title of RSIN 3.3.023 Reimbursable Activities, Requests and Authorizations to Engage in.

RESPONSE. The commission declines to make the suggested change, as it does not improve clarity.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a cross reference in the remarks of RSIN 3.3.025 Job Procedure Records pointing to either RSIN 3.3.024 or RSIN 1.1.070 identifying how they are different.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the series description makes it clear that this series is for "position-by-position" procedures, while RSIN 1.1.070 (Agency Rules, Policies, and Procedures) is for agency-wide procedures.

COMMENT. An official from University of Texas Medical Branch commented with questions about record series item number styling and assignment for RSINs 3.3.027, 3.3.028 and suggested changing the RSIN to 3.3.027a - Aptitude and Skills Tests - Master Copy and 3.3.028b - Aptitude and Skills Tests - Completed Test Papers, as well as RSINs 1.1.020 and 1.1.021.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as historical RSINs should not be changed unless there is a compelling need.

COMMENT. An official from University of Texas Medical Branch questioned why work schedules are included in description of RSIN 3.4.006 Time and Attendance Records when they are also included in RSIN 3.3.020, which has an AV retention. The commenter suggested removal or rewording of this series.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as RSIN 3.3.020 (Work Schedules/Assignments) is meant to cover general work schedules and assignments, while this series is meant to document actual time worked by individuals, as well as deviation from work schedules. Actual time worked does not necessarily correspond with assigned work schedules.

COMMENT. An official from University of Texas Medical Branch commented suggesting combining RSINs 3.4.006 Time and Attendance Records and 3.4.007 Time Off and/or Sick Leave Requests.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as state agencies in Texas usually maintain the records in these series in two different systems that must be managed separately; the two types of records are typically managed by different custodians (i.e. HR manages time and attendance records, while supervisors manage leave requests).

COMMENT. An official from University of Texas Medical Branch commented suggesting changing the retention of RSIN 5.1.004 Mail and Telecommunication Listings from US to AC; AC= Significant change or list obsolete.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change as it is unnecessary. The existing retention period of US is sufficient and functionally equivalent to the suggested retention period.

COMMENT. An official from University of Texas Medical Branch commented suggesting combination of RSIN 5.4.001 Occupational Accident Reports and Associated Documentation and RSIN 5.1.014 and creation of 3 sub parts for Accident Reports: 5.4.001a - Accident Reports - Occupational; 5.4.001b - Accident Reports - Adults; and 5.4.001c - Accident Reports - Minors.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the proposed new series do not add clarification and instead could overcomplicate the retention period.

COMMENT. An official from University of Texas Medical Branch commented suggesting changing description reference from SORM back to TDI in RSIN 5.4.001 since 28 TAC 120.1 is a regulation of the Texas Department of Insurance. The commenter stated that while a report might also go to SORM, TDI is who is requiring it.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as SORM is the agency to which reports are submitted, so this provides useful context for records managers.

COMMENT. An official from University of Texas Medical Branch commented suggesting changing the legal citation, description, and remarks of RSIN 5.4.007 Hazardous Materials Training Records to reference the shorter retention requirement of asbestos training material.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the series is meant to be broad enough to cover all hazardous substances.

COMMENT. An official from University of Texas Medical Branch commented suggesting adding a sub category - 5.4.011b to accommodate "Visitor Control Registers - Registration Logs" or add it to the description of series to be included under RSIN 5.4.011, as well as adding a series for a log maintained to document specific information on Representations before State Agency Visitors. The information collected on these visitors must be reported to the Texas Ethics Commission (TEC) per Chapter 2004, Government Code.

RESPONSE. The commission disagrees with this comment and declines to make the suggested changes, as this series already includes "logs" and "registers" in the description and this specific log is already covered under RSIN 1.1.053 (Visitor Control Registers).

COMMENT. An official from University of Texas Medical Branch commented suggesting a change to the description of RSIN 5.4.012 Security Access Records- "Records relating to the request for and issuance of keys, "¦..".

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as key requests are already included in the series description with the term "signed statements."

COMMENT. An official from University of Texas Medical Branch commented suggesting multiple changes and updates to RSIN 5.4.015 Hazardous Materials - Administrative Records, including moving the series under 5.2 Facilities, changing the title to "Asbestos Management Records" and specifying the description accordingly, and removing the 29 CFR 1910.1001 and 1910.1020(d)(ii) citations as they reference asbestos removal and for exposure records, but the retention guidance does not apply to abatement or this series.

RESPONSE. The commission disagrees with this comment and declines to make the suggested changes-- any series dealing with hazardous materials (even if related to building records) should be in the Risk Management category, this series is meant to be broad enough to cover all hazardous substances, and the commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods. One of the goals of these amendments was to streamline and modernize the schedule and provide for more efficient use.

COMMENT. An official from University of Texas Medical Branch commented suggesting multiple changes and updates to RSIN 5.4.016 Hazardous Materials - Exposure/ Survey Records, including breaking the series into specific series per the citations and creating additional record series to accommodate the rules listed in 29 CFR 1910.1020, changing the description and the record series title since the citation doesn't reference exposure records, and adding the following citations: 29 CFR 1910.1020(d)(1)(ii). (30 yr. retention for exposure), 29 CFR 1910.1020(d)(1)(I) (Term of employment + 30 yrs. for employee medical record), and 29 CFR 1910.1020(d)(1)(iii); 29 CFR 1910.1001(m)(1)(iii); (30 year retention for monitoring employee exposure measurements to asbestos).

RESPONSE. The commission disagrees with these comments as the commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods. While shorter retention periods are specified in citation, the 30 year retention period has been selected to simplify the retention requirements of the complex law. The commission declines to make the suggested change off adding legal citations and creating new series, as the proposed new series do not add clarification and overcomplicate the retention period. One of the goals of these amendments was to streamline and modernize the schedule and provide for more efficient use.

COMMENT. An official from University of Texas Medical Branch commented suggesting changing the RSIN 5.4.016 Hazardous Materials - Exposure/ Survey Records subseries to match citations: 5.4.016a - Employee Medical Record; 5.4.016b - Employee Medical Record -Exposure Records; and 5.4.016c - Employee Medical Record - First Aid Records. The commentator provided additional comments with description, retention, legal citations, and remarks for the series.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the proposed new series do not add clarification and overcomplicate the retention period. One of the goals of these amendments was to streamline and modernize the schedule and provide for more efficient use.

COMMENT. An official from University of Texas Medical Branch commented suggesting the addition of a caution note to RSIN 5.4.016b Hazardous Materials - Exposure/ Survey Records to reference when this series applies and when RSIN 3.1.024 applies as well as adding legal citations: Citations: 29 CFR 1910.1020(d)(1)(ii); 29 CFR 1910.1020(d)(1)(iii); 29 CFR 1910.1001(m)(1)(iii).

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the description explains that this series is meant only for medical monitoring related to exposure to toxic and hazardous materials and the additional legal citations do not add clarification and overcomplicate the retention period. One of the goals of these amendments was to streamline and modernize the schedule and provide for more efficient use.

COMMENT. An official from University of Texas Medical Branch commented suggesting the addition of legal citations to RSIN 5.4.017 Emergency Response and Recovery Records: Citations: 29 CFR 1910.1020(d)(1)(ii); 29 CFR 1910.1020(d)(1)(iii); 29 CFR 1910.1001(m)(1)(iii).

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the citations do not apply to emergency response records.

COMMENT. An official from University of Texas Medical Branch commented suggesting the removal of legal citation references "per Texas Internal Auditing Act and Chapter 2102, Government Code." and "as described in the State Agency Internal Audit Forum (SAIAF) Peer Review Manual and Chapter 2102, Government Code." from the remarks of RSINs 5.4.018 Annual Audit Plan and 5.4.019 Audit Peer Review - Working Papers, respectively, and move to the description.

RESPONSE. The commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods.

COMMENT. An official from University of Texas Medical Branch commented suggesting the use of "Includes but is not limited to: "¦." for lists across the schedule for consistency. If not, match use of commas, semicolons, or manner to list examples.

RESPONSE. The commission disagrees with this grammatical and stylistic comment and declines to make the suggested change, as it does not add clarity to the text as proposed.

COMMENT. An official from University of Texas Medical Branch commented recommending moving record series from newly created categories 4.8/4.9 Banking/Budgeting Records to already existing category numbers.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as new sections were added to the Fiscal Category to create a logical structure that allows for growth in future revisions, if required.

COMMENT. An official from University of Texas Medical Branch questioned why HRIS reports are being combined with a non-financial report series with a lower retention period if these reports are both personnel and payroll records.

RESPONSE. The commission has included HRIS reports in RSIN 1.1.067 (Reports and Studies [Non-Fiscal]), as HRIS reports contain summary payroll information, not individual payroll registers; these reports should only contain duplicate or summary information from more detailed payroll records maintained in other record series. Additionally, the schedule is media-neutral and must not prescribe retention periods based on records storage systems.

COMMENT. An official from University of Texas Medical Branch commented recommending RSIN 4.5.006 be kept as it originally was and not moved to a new category.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as new sections were added to the Fiscal Category to create a logical structure that allows for growth in future revisions, if required.

COMMENT. An official from University of Texas Medical Branch commented recommending removal of the acronym bar from the bottom of all pages in the introduction.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the acronym bar is included on every page to reduce the need to flip back and forth through the schedule.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to change the AC definition in the retention code bar (field 7): Possibly use, "After closed or see remarks field for specific retention instructions." or "See event trigger for specific retention instructions." Records series definition doesn't seem to fit explanation. Further comments encourage consistent changes to the retention code on the RRS and the URRS, and matching the AC definition in introduction to the retention codes section.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the definition of "AC" has not changed. The definitions provided in the RRS and the URRS are identical.

COMMENT. An official from University of Texas Medical Branch commented with suggestions for consistent use of commas, semicolons, and other methods to list information as it pertains to RSINs 1.1.048 Litigation Files, 2.1.009 Hardware and Software Technical Documentation, 2.1.010 Audit Trail Records, 3.1.014 Employment Selection Records, 3.1.021 Personnel Disciplinary Action Documentation, 3.3.004 Benefit Plans, and 5.4.015 Hazardous Materials - Administrative Records.

RESPONSE. The commission declines to make the suggested change, as the commission follows the advice of the Chicago Manual of Style, which allows for the use of semicolons depending on the nature of the list, for example, if list items are complex or contain commas.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add an additional series to cover working copies of all legislative reporting as it pertains to RSIN 1.1.055 Strategic Plans.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as working files are already including in other reports/reporting series, as needed.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add an additional series for leadership meetings with a longer retention than RSIN 1.1.063 Staff Meetings, similar to the URRS. "Executive meetings" or "Leadership Meetings" would merit a higher need to be kept over regular staff meetings and might require archival review.

RESPONSE. The commission declines to make the suggested change as it is unnecessary at a statewide level. State agencies are free to retain executive level internal staff meeting notes for longer periods, if needed.

COMMENT. An official from the Office of the Governor commented that internal policies do not belong in RSIN 1.1.070 Agency Rules, Policies, and Procedures - Final. Internal policies tend to be documents like employee handbooks, information technology/security policies, travel policies--records that are not especially unique to an agency and therefore do not have historical value.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as it is up to the archival appraiser to determine if the internal policies of an agency have historical value. The archival code "R" is sufficient.

COMMENT. An official from University of Texas Medical Branch commented the use of "e.g." is not used throughout the schedule, for RSIN 1.2.001 Destruction Authorizations and 1.2.003 Forms History and Maintenance, in particular. The commenter points out that "for example" or "including" are used instead, and that consistency should be applied.

RESPONSE. The commission declines to make the suggested change, as it does not add clarity to the text as proposed and is unnecessary at this time.

COMMENT. An official from University of Texas Medical Branch commented that RSIN 5.4.017 Emergency Response and Recovery Records should be moved to be with COOP Plan - 5.4.013. Change RSIN to 5.4.013b and the use of examples in a series - commas vs. semicolons vs. "This series may include but is not limited to:". The commenter states the format throughout schedule should be the same.

RESPONSE. The commission will not move this series, as the schedule must remain in RSIN order. A cross-reference has been added for clarification. Additionally, the commission declines to make the suggested stylistic changes; the commission follows the advice of the Chicago Manual of Style, which allows for the use of semicolons when list items are complex.

COMMENT. An official from University of Texas Medical Branch commented that the description of RSIN 1.3.001 State Publication contains mistakes and needs clarifying, "as defined in section xi," but there is not section xi and the description needs to be more inclusive of what constitutes a state publication and state guidance would be helpful and actual examples. Commentator also requests guidance and description of website files as state publications.

RESPONSE. The commission has corrected all page number references in the schedule. Additionally, the commission has amended the definition of State Publication on page 11 to include websites. There is no need to add a new series for websites, as the remark for RSIN 1.3.001 (State Publications) points to this definition. Other website-related records such as website design files or website code are already covered under RSIN 1.3.002 (Publication Development Files) and RSIN 2.1.007 (Computer Software Programs).

COMMENT. An official from University of Texas Medical Branch commented recommending the revision of retention periods of RSINs 3.1.019 Performance Appraisals and 3.1.022 Personnel Information or Action Forms to AC+2; AC = Until superseded or terminated, whichever sooner. They state, "if an evaluation isn't done yearly or on a regular basis, you would not want to dispose of all appraisals on file and then have no documents to reference for prior evaluation history" and "If no changes are made within the 2 year time frame, would you really want to destroy the official document that lists pay grade, position class, etc. without having something to replace it?".

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the retention period of 2 years is sufficient to meet the needs of most state agencies that follow the standard appraisal cycle. Agencies may retain for longer on their own schedules if they find their HR departments have an administrative need for it.

COMMENT. An official from University of Texas Medical Branch commented recommending the combination of RSINs 3.1.024 Physical Examinations/Medical Reports and 5.4.016 or matching the retention period of 5.4.016.

RESPONSE. The commission declines to make the suggested change, as medical monitoring related to hazardous materials exposure is controlled by different regulations and has different retention requirements.

COMMENT. An official from University of Texas Medical Branch commented recommending changing the description of RSIN 3.1.026 Criminal History Checks to include "background checks" to make it easier for a user to search and locate as well as create a new series for authorization to run information, a new series/caution note for TCOLE required background checks (See 37 TAC §217.7(h) SEE PS 4075-03).

RESPONSE. The commission declines to make the suggested changes, as the term "background check" is too broad of a term that may include information other than criminal history, and the commission declines to create the suggested new series, as the majority of state agencies are not "consumer reporting agencies." Authorizations are already included in RSIN 3.1.041 (Employee Acknowledgement and Agreement Forms). Officer background checks are too specific for most state agencies and would be adopted as custom series on by agencies like DPS and TCOLE.

COMMENT. An official from University of Texas Medical Branch commented recommending revising the AC definition of RSIN 3.1.029 Employment Eligibility Documentation to match citation.

RESPONSE. The commission declines to make the suggested change, as "date the individual's employment is terminated" and "termination of employment" are consistent.

COMMENT. An official from University of Texas Medical Branch commented recommending adding a caution notice under RSIN 3.1.031 Employee Benefits - Other than Health Insurance pointing to Insurance benefits under 3.1.011.

RESPONSE. This commission combined RSIN 3.1.011 and 3.1.031, which obviates the need for a caution note.

COMMENT. An official from University of Texas Medical Branch commented recommending a note be added to RSIN 5.1.004 Mail and Telecommunications Listings about not needing to submit disposition logs for every minor changes.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as this is a disposition decision that can be made by state agencies on their individual schedules.

COMMENT. Officials from State Office of Administrative Hearings commented that the proposed new record series of RSIN 5.3.007 Bid Documentation include any "canceled procurement" records with the already-proposed sub-series for "invalid bids" with a retention period of AC+2 for both. Both types of records would likely be retained only for the purpose of documenting the fact that no contract was awarded, and therefore there is no business reason to distinguish them according to different retention periods or categories. If the records of invalid bids or canceled procurements became the subject of an audit or litigation, then they would be subject to a different records series and retention period.

RESPONSE. The commission disagrees with this comment and declines the make the suggested change, as canceled procurement records are already covered under RSIN 5.3.009 (Requests for Information).

COMMENT. An official from University of Texas Medical Branch commented that RSIN 5.3.010 Vendor Records/W-9 define the acronym IRS in the reference and the chapter referenced in the citation is called "retention of certificates" should the description include that terminology as well.

RESPONSE. The commission has defined the acronym as suggested. The commission declines to make the suggested description change, as it does not add clarity to the text as proposed.

COMMENT. An official from University of Texas Medical Branch commented that the following changes should be made to RSIN 5.4.016 Hazardous Materials - Exposure/ Survey Records: 1) Remove 29 CFR 1910.1020(d) it's listed twice; 2) Add parenthesis around (ii) on second reference to citation; 3)Remove Health and Safety Code, section 502.009(g) because it references training and hazard plan records, not exposure; and 4) Remove 29 CFR 1904.33 because it references incident reporting and the OSHA requirements listed for 5.4.001 with a CE+5 retention, not exposure.

RESPONSE. The commission has not removed the first citation from this series, as it is not a duplicate listing; one citation lists the types of records to be maintained, and another specific line in that section is listed in order to show whence the 30 year retention period comes. The commission agrees with the remaining suggestions and has made the changes as advised.

COMMENT. An official from University of Texas Medical Branch commented questioning how RSIN 5.4.015b Hazardous Materials - Exposure/ Survey Records differs from RSIN 3.1.024 Physical Exams and Medical Reports. Both series state "for employees whom periodic monitoring of health and fitness is required." but list different retention periods. AC+2 vs. US+2.

RESPONSE. The commission states that RSIN 5.4.016 (Hazardous Materials - Exposure/Survey Records) is specifically for hazardous materials work. Hazardous material exposure is monitored under different citations and has different retention requirements than standard medical monitoring records. Not all employees who require regular medical monitoring may work with hazardous chemicals.

COMMENT. An official from University of Texas Medical Branch commented questioning how RSIN 5.4.015b Hazardous Materials - Exposure/ Survey Records differs from RSIN 3.1.024 Physical Exams and Medical Reports. Both series state "for employees whom periodic monitoring of health and fitness is required." but list different retention periods. AC+2 vs. US+2.

RESPONSE. The commission states that RSIN 5.4.016 (Hazardous Materials - Exposure/Survey Records) is specifically for hazardous materials work. Hazardous material exposure is monitored under different citations and has different retention requirements than standard medical monitoring records. Not all employees who require regular medical monitoring may work with hazardous chemicals.

COMMENT. Officials from the State Office of Administrative Hearings commented questioning the deletion of the entire record series concerning Suggestion System Records RSIN 1.1.041, but do not provide for another record series under which these types of records should be kept.

RESPONSE. The commission disagrees with this comment, as "Suggestion System Records" is an obsolete record series. Records should be classified under alternate series as applicable (e.g. RSIN 1.1.006 "Complaint and Feedback Records," RSIN 3.1.018 "Grievance Records," RSIN 1.1.008 "Correspondence - General," etc.)

COMMENT. An official from the Office of the Governor commented questioning RSIN 3.2.010 HRIS Reports stating these reports do not have archival value and may contain confidential information (PII); they should not be classified under 1.1.067. This record series should not be deleted for that reason.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as it is up to the archival appraiser to determine if agency reports have historical value. The archival code "R" and remark that only substantive reports are archival are sufficient. The possible presence of PII may be evaluated by archival appraisers to determine if HRIS reports may be restricted.

COMMENT. An official from the Office of the Governor commented questioning the deletion of RSIN 4.6.002 Reconciliations stating by deleting this series and incorporating reconciliations into the Banking Records series, you do not give agencies a way to classify reconciliations that are unrelated to banking. Most of the reconciliations performed by our agency are between different financial systems of record and have nothing to do with banking.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the deleted reconciliations series did not apply to general reconciliations; it was a Fiscal/Category 4 record. Fiscal reconciliations are now classified under RSIN 4.1.009 (Accounts Receivable), and all non-fiscal reconciliations can be classified into other appropriate series, such as RSIN 2.2.013 (Quality Assurance Records).

COMMENT. An official from the Office of the Governor commented requesting a record series covering website records, stating this is the time to resolve that issue and create a new record series.

RESPONSE. The commission has amended the definition of State Publication on page 13 to include websites; websites are included in the definition of State Publication in 13 TAC 3.1(27). There is no need to add a new series for websites, as the remark for RSIN 1.3.001 (State Publications) points to this definition. Other website-related records such as website design files or website code are already covered under RSIN 1.3.002 (Publication Development Files) and RSIN 2.1.007 (Computer Software Programs).

COMMENT. An official from the Office of the Governor commented requesting a record series covering social media communications, stating it is not reasonable to expect a state agency to categorize individual social media posts, comments, or messages under specific, disparate record series, as has been suggested in SLRM trainings. SLRM and ARIS need to decide on a minimum retention period and archival requirement at the account level and create a record series that captures this.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as any records posted on social media platforms are to be classified according to their content and function. The State RRS does not classify records based on format. State agencies may choose to adopt a custom series for transitory social media records if needed.

COMMENT. Officials from the State Office of Administrative Hearings commented "SOAH wholly supports and appreciates the elimination of obsolete or superfluous records series; the addition of necessary record series for organizational and clarity purposes; the consolidating or bucketing of multiple records series that are similar in function and/or type to create a more concise Texas RRS; and the addition or revision of record series descriptions to provide for enhanced clarity, consistency, and a better reflection of each record series."

RESPONSE. The commission agrees with this comment.

COMMENT. Officials from the State Office of Administrative Hearings commented "SOAH would be remiss to not mention the noticeable absence of a column for the designation of "Vital

Records" from the proposed schedule. The current version of the Texas RRS includes a column indicating whether a record series is considered vital, and we recommend that TSLAC consider retaining this designation because it is helpful in identifying agency records that are essential to the continuity of state agency operations."

RESPONSE. The commission declines to make the suggested change, as the Vital Record column is referencing an outdated version of the SLR 105 (standard form used to submit individual state agency retention schedules). The vital record column has been discontinued. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Branch commented requesting the addition of series for Historical documentation about record series categories, some of these larger decisions or opinions need to be continually referenced to provide details about retention period decisions. This type of information could also be applied to the creation of the RRS/URRS/Local Government Schedules. Knowing the history behind the decisions made and retention periods applied is extremely helpful for future explanation and justification. Commentator provided additional information about title, description, and retention period in subsequent comments.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as schedule recertification checklists and revision notes are already maintained by TSLAC for 50 years, and working copies are maintained for a retention period of AV; there is no need to require state agencies to keep copies as well. Agencies may choose to keep their own recertification notes in a custom series if they find them administratively valuable beyond the previous recertification period.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add various information to the title, descriptions, remarks, and legal citations for series, including RSINs 3.1.034 Resumes - Unsolicited, 3.1.036 Apprenticeship Records, 3.1.041 Employee Acknowledgement and Agreement Forms, 1.1.014 Legal Opinions and Advice, 1.1.053 Registration Logs, 1.1.076 Subpoenas, 3.1.014 Employment Selection Records, and 5.2.019 Service Orders.

RESPONSE. The commission declines to make the suggested changes, as it does not add clarity to the text as proposed.

COMMENT. Several commentators commented with suggestions to add cross references to various record series across the schedule to increase ease of use and navigating the retention schedule.

RESPONSE. The commission agrees with these comments and has added the suggested cross references.

COMMENT. Several commentators commented with typographical and grammatical errors throughout the schedule and the recommended corrections as well as suggestions for consistency across the schedule impacting the appearance of legal citations, the use "and", spacing, page numbering etc.

RESPONSE. The commission agrees with these comments and has made the recommended changes.

COMMENT. Officials from the State Office of Administrative Hearings commented that they appreciate of changes to particular series that will foster efficiency, eliminate uncertainty, and provide clarification

RESPONSE. The commission agrees with these comments.

COMMENT. An official from the University of Texas Medical Board commented recommending the addition of a Pesticide and Herbicide Application Records series to document the application of chemicals such as pesticides, herbicides, and fertilizers to institutional property. Records include date used, weather conditions, application area, chemical applied, mix ratio, and coverage rate.

AC+2; AC = Date of application.

Agriculture Code, 76.114(c); 4 TAC 7.33(a); 4 TAC 7.144(a).

RESPONSE. This suggestion is beyond the scope of the proposed amendments. However, the commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending the addition of a Vehicle and Equipment Assignment Records series. This series documents the assignment of agency vehicles and equipment to personnel.

AC+2; AC = Date returned.

RESPONSE. This suggestion is beyond the scope of the proposed amendments. However, the commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending the addition of a consent forms record series to cover picture consents to be added to a website or publication. And consent forms for drug screens, or other consents, etc.. Retention period of AC+2; AC = Consent authorized or consent no longer active, whichever longer. And, add a caution note that if an image is still being used the authorized consent documentation needs to be kept until the image is no longer being used.

RESPONSE. This suggestion is beyond the scope of the proposed amendments. However, the commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the Office of the Governor commented recommending the addition of an unfunded grant applications record series. Unfunded applications do not need to be kept as long as funded ones; UGMS regulations applies to funded applications only. TSLAC should establish a separate record series for unfunded grant applications.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending an explanation in a caution or retention note that even though many wage and hour records are only required to be kept 2 years or federal law for 3 years, Texas requires 4 for unemployment tax law so all associated should be kept 4, even though lower federal requirements? Research should be done to how this applies to each series.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending research be done to see which exact series needs to be kept per the Texas Unemployment Earning and Tax Laws. What is the breakdown in the differences between the CFR citation documents vs. what's needed for the TAC unemployment reporting requirements? I

think some time should be spent ensuring all documents with lower retention periods that are following the CFR guidance aren't conflicting whatever is needed for the 4 years needed to follow the Texas requirements. Double check all series to make sure they are being kept for proper length of time.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending a record series like RSIN 5.6.003 Inspection Repair and Maintenance Records - Vehicles be created for airplane maintenance records-- 14 CFR 135.439. Also see PS4050-01.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending matching the retention periods of RSIN 5.2.008 equipment maintenance to vehicle maintenance and matching the retention periods of RSIN 5.2.008 Equipment History File (LA+3) and 5.6.003 (LA+1)

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending various changes and additional research into RSIN 5.6.001a Aircraft Flight Logs: Shouldn't Government Code, Title 10, Chapter 2205, Subchapter A discussing travel logs be referenced in the description?; Should there be reference to the Texas Airplane Pool in the TAC code?; and are there any FAA citations regarding requirements? Seems like with such a highly regulated field that there would be legal references?

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from Health and Human Services Commission commented recommending a new series be created RE: Cancelled procurements, HHSC recommends AC, where AC=Date of cancellation. These records have no value to us once the procurement is cancelled and actually pose a risk to the integrity of the procurement process if we choose to pursue a similar procurement later and these unused evaluations become available via open records request.

RESPONSE. This suggestion is beyond the scope of the proposed amendments. However, the commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from Health and Human Services Commission commented recommending RSIN 4.7.008 Grant Records be considered contract records for the purposes of compliance with Govt. Code 441.1855 (SB20) (based on CPA feedback) and updating this series as appropriate.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented recommending the creation of a new series or subseries under RSIN 4.7.008 Grant Records for Grants - Not Awarded. Possible retention of AC+2; AC = Notification that grant is not awarded.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented recommending the combination of various procedure series into RSIN 1.1.070 Agency Rules, Policies, and Procedures, including RSINs 4.7.001 Accounting Policies and Procedures, 3.3.024 Personnel Policies and Procedures, and 1.2.014 Records Management Policies and Procedures.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the Office of the Governor commented recommending all internal policies & procedures be consolidated into a single record series, citing no legal mandate, and the need to simplify internal policy & procedure documents from seven separate series, particularly in the age of automation where agencies need to simplify retention requirements as much as possible. Records series that include internal policy and procedures and should be consolidated into a single series include: 1.1.070 - Agency Rules, Policies, and Procedures; 1.2.014 - Records Management Policies and Procedures; 2.2.011 - Data Processing Policies and Procedures; 3.3.024 - Personnel Policies and Procedures; 3.3.025 - Job Procedure Records; 4.7.001 - Accounting Policies and Procedures Manual; 5.1.014 - Office Procedures

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented recommending research into the retention period of RSIN 1.2.014 Records Management Policies and Procedures and why it doesn't match RSIN 1.1.070 Agency Rules, Policies, and Procedures.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented recommending research into why RSIN 1.1.064 Agency Performance Measures Documentation has its own separate series with a lower retention, but on every other legislative report series working documentation is now included as a part of the AC+6 retention requirements. Should this series be changed to a generic Legislative reporting raw data or supporting documentation series - to include: Agency Performance Measures Docs, Working files for Biennial or agency narrative reports, strategic plans, etc.?

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented with recommendations for RSIN 3.3.001 subseries combining RSIN 3.3.001a Affirmative Action Plans -Employees and combining RSIN 3.3.001b Affirmative Action Plans - Apprenticeship Programs recommending the two series, researching the citation 29 CFR 30.12(d), changing to cover subcontractor and contractors in 3.3.001b and moving apprenticeship records to 3.3.001a.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

In addition to the changes from the above comments, the Commission identified and made non-substantive grammatical and typographical changes to the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.185(f), which grants authority to the Texas State Library and Archives Commission to prescribe

by rule a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court. The amended section is also proposed under Government Code, §441.199, which authorizes the Commission to adopt rules it determines necessary for the state's management and preservation of records.

§6.10. Texas State Records Retention Schedule.

(a) A record listed in the Texas State Records Retention Schedule (5th Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described.
Figure: 13 TAC §6.10(a)

(b) A record listed in the University Records Retention Schedule must be retained for the minimum retention period indicated by any university or institution of higher education.
Figure: 13 TAC §6.10(b) (No change.)

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001511
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: May 10, 2020
Proposal publication date: February 14, 2020
For further information, please call: (512) 463-5591

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §§24.3, 24.11, 24.14, 24.25, 24.27, 24.29, 24.33, 24.35, 24.49, 24.127, 24.129, 24.227, and 24.363, relating to classifications for water and sewer utilities with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8172). The rules will be republished. The amendments will implement the changes required by sections 1, 2 (in part), 3, 7, 8, 9, and 11 of Senate Bill 700, passed in the 86th Regular Legislative Session and effective September 1, 2019, relating to changes in the classification of water and sewer utilities, the issuance of emergency orders by the commission and the Texas Commission on Environmental Quality(TCEQ), and the continuation of temporary rates for nonfunctioning utilities that are acquired by another utility. The proposed amendments make changes to 16 TAC §24.3 to conform certain definitions to the definitions found in TWC §13.002, delete terms that are defined using language that is repeated elsewhere in 16 TAC Chapter 24, delete terms that are also defined in 16 TAC Chapter 22, and delete terms that appear only in 16 TAC §24.3 and nowhere else in 16 TAC Chapter 24. Definitions of some commonly used ratemaking terms are also deleted. The amendments are adopted under Project Number 49798.

The commission received comments and reply comments on the proposed amendments from the Office of Public Utility Counsel(OPUC) and the Texas Association of Water Companies(TAWC).

Comments on the preamble.

OPUC recommended modifying the preamble to clarify that the deletion of certain definitions from 16 TAC §24.3 constitutes a repeal of those sections and adding a section-by-section explanation of the proposed deletions to the preamble. TAWC agreed that clarifying the reason why each definition was deleted may be helpful to stakeholders.

Commission response:

The commission declines to amend the preamble as recommended by OPUC because it disagrees with OPUC's application of the term "repealed" to a subsection within a rule. If a rule as a whole is deleted, then the rule is repealed. If only a subsection of a rule is deleted, then the rule is amended. The commission also declines to provide the definition-by-definition analysis recommended by OPUC and TAWC and instead provides the following summary to address the deleted definitions.

The terms "intervenor" and "protestor" are defined in 16 TAC §22.2 and would not be defined differently for the purposes of a water case under 16 TAC Chapter 24. All defined acronyms such as "TCEQ" were deleted and instead defined when they appear throughout Chapter 24. Terms like "amortization," "annualization," "functional cost category," "functionalization," and "net book value" were deleted because they are common ratemaking terms. The terms "acquisition adjustment," "financial assurance," "return on invested capital," and "temporary water rate provision for mandatory water use reduction" are addressed in specific rules within Chapter 24. The terms "general rate revenue," "license," "licensing," "multi-jurisdictional," "purchased sewage treatment," and "rate region" are used only once or not at all in Chapter 24 outside of §24.3. The terms "reconnect fee," "sewage," and "tap fee" are commonly used terms in the industry. The terms "public utility" and "retail public utility" were combined into a single definition with "water and sewer utility" similar to how they are presented in TWC §13.002(23).

Comments on specific terms deleted from 16 TAC §24.3.

OPUC recommended adding a savings clause to make clear that the amendments to 16 TAC §24.3 do not affect any case filed before the effective date of the amendments. OPUC also recommended that the Commission retain the following terms and definitions: "active connections," "base rate," "block rates," "certificate of convenience and necessity(CCN)," "known and measurable," "main," "mandatory water use reduction," "point of use," "ratepayer," and "water use restrictions." TAWC agreed with retaining these definitions and suggested specific modifications to the existing definitions of the following terms: "active connection," "inactive connection," "block rates," and "ratepayer." TAWC and OPUC also recommended maintaining a definition of "landowner" that conforms exactly to the definition in TWC §13.002(1-a) and retaining the definition of point of use or point of ultimate use with a modification to clarify that this term refers to a service connection point. Finally, TAWC recommended broadening the definition of "nonfunctioning system or utility" to allow a

utility that acquires a system with "problems" to apply for a temporary rate even if the problems do not rise to the level of those enumerated in the current definition of nonfunctioning system or utility.

Commission response:

The commission agrees that the amendments to 16 TAC §24.3 do not affect pending applications that were filed before the effective date of these amendments; therefore, the addition of a savings clause to 16 TAC §24.3 is unnecessary. Additionally, the majority of the amendments delete the definition of a term completely, rather than changing how the term is defined, which should not materially affect a case that was filed before the adoption of the term was deleted. The commission amends the definition of "landowner" in 16 TAC §24.3 to match the definition in TWC §13.002(1-a). The commission retains the definition of "point of use or point of ultimate use" modified as follows: "Point of Use--The primary service connection point where water is used or sewage is generated." The commission also retains the existing definition of "water use restrictions" because it clarifies the meaning of 16 TAC §24.205, which prohibits a utility from implementing water use restrictions in lieu of providing facilities that meet TCEQ's minimum capacity requirements or reasonable local demand characteristics during normal use periods.

The commission declines to retain the definition of "base rate" because it was replaced with a definition of "minimum monthly charge." The phrase "base rate" is often used to collectively refer to a utility's fixed rate and volumetric charges as opposed to a utility's pass-through charge that is separate from these base charges; therefore, replacing "base rate" with a more specific term like "minimum monthly charge" will avoid confusion. The commission declines to retain the definition of "block rate" because it is used only once in 16 TAC Chapter 24 and is not used at all in the sections of the TWC applicable to the commission. The commission declines to retain the definition of "certificate of convenience and necessity" because defining this term does not provide any needed guidance for implementing the sections of the TWC or commission rules that address issuance of and requirements related to CCNs. The commission declines to retain the definition of "known and measurable." Because this is a commonly used ratemaking term, it can be difficult to provide a definition that is appropriate for every context in which the term could be used. The commission declines to retain the term "main" because it is a common term in the water industry that has the same meaning when used in the commission's rules.

The commission declines to retain the term "mandatory water use reduction" because the meaning of this term is clear from 16 TAC §24.25(j), which establishes the approval process for a temporary water rate provision. The commission declines to broaden the definition of the term "nonfunctioning utility" because a change that could increase the number of utilities to which this definition applies is beyond the scope of what was contemplated in the proposed rule amendments. The commission declines to retain the term "ratepayer" because the current definition is specific to the contexts addressed in 16 TAC §§24.35(c) and 24.101(d), while the term ratepayer is used more generically in other sections of 16 TAC Chapter 24.

Comments on the amendments to 16 TAC §24.25(b)(2).

TAWC recommended adding a provision to 16 TAC §24.25(b)(2), relating to minor tariff changes, to allow a utility to obtain approval of a new or amended extension policy outside of a base rate proceeding. TAWC also recommended adding three new items to the list of minor tariff changes authorized in 16 TAC §24.25(b)(2)(A), including: changes in policies and fees related to credit card payments; the adoption of rates to recoup costs associated with using a water system for fire suppression; and the adoption of rates for a meter size not included in a utility's current tariff. OPUC encouraged a careful evaluation of TAWC's proposed additions because they would have the effect of increasing the number of tariff changes allowed outside of a base rate case where a utility's costs are reviewed to ensure that the costs are reasonable and necessary for the provision of service.

Commission response:

The commission declines to amend 16 TAC §24.25(b)(2) to allow a utility to obtain approval of a new or amended extension policy outside of a base rate proceeding. The existing rule expressly states that adding or modifying an extension policy is not a minor tariff change and eliminating this language would increase the scope of this rule in a manner not contemplated in the proposed rule amendments. The commission also declines to include changes in policies and fees related to credit card payments. While the commission acknowledges that customers can benefit from having the option to pay by credit card, this recommendation is also outside the scope of the proposed rule amendments, which did not expand the types of minor tariff changes listed in 16 TAC §24.25(b)(2)(A). Due to similar concerns related to the scope of the proposed changes that were published for comment, the commission declines to expand the list of authorized minor tariff changes to include the adoption of rates to recoup costs associated with using a water system for fire suppression or the adoption of rates for meter sizes not included in a utility's tariff.

Comments on the amendments to 16 TAC §24.29.

If the commission declines to adopt the recommendation to expand the types of minor tariff changes authorized in 16 TAC §24.25(b)(2), TAWC recommended amending 16 TAC §24.29, which limits a utility to filing a base rate case only once in a 12-month period. Specifically, TAWC recommended creating an exception to this filing limitation for requests to change extension and construction policies or fees and policies related to payments by credit card; requests to adopt or revise rates charged to recover costs associated with using a water system for fire suppression; and requests to add rates for new meter sizes not currently served by a utility. OPUC opposed this recommendation on the grounds that expanding the list of exceptions could unnecessarily create rate uncertainty for customers.

Commission response:

The commission declines to adopt TAWC's recommendation to expand the existing list of exceptions to the time required between filings made to increase rates under TWC §§13.187, 13.1871, 13.18715, and 13.1872(c)(2) that is included in 16 TAC §24.29(c). Currently, this list includes exceptions for filings classified as a minor tariff change under 16 TAC §24.25(b)(2). The commission declines to expand the list at this time for the same reason the commission has declined to adopt the additions TAWC proposed to 16 TAC §24.25(b)(2). Namely, that such a change is beyond the scope of the proposed rule amendments, which amended 16 TAC §24.29(c) only to the extent necessary to reflect the addition of a fourth classification, Class D, for water and sewer utilities.

Comments on 16 TAC §24.44.

TAWC suggested that amendments to 16 TAC §24.44, relating to recovery of rate-case expenses, may be appropriate because the current rule does not address recovery of rate-case expenses incurred for applications filed by a Class C utility under TWC §13.18715 or a Class D utility under TWC §13.1872(c)(2). OPUC recommended that such a change is unnecessary because 16 TAC §24.44 applies to rate-case expenses incurred as a result of filing a rate change application pursuant to TWC §13.187 or TWC §13.1871 and both TWC §13.18715(applicable to Class C utilities) and TWC §13.1872(c)(2)(applicable to Class D utilities) reference the procedures used in TWC §13.1871.

Commission response:

The commission acknowledges that amendments to 16 TAC §24.44 may be necessary to expressly reflect the increase in the number of water and sewer utility classes from three to four because the existing rule specifically references rate change applications filed under TWC §§13.187 and 13.1871 and not TWC §§13.18715 and 13.1872(c)(2). However, no proposed amendments to 16 TAC §24.44. were published as part of this project, and the commission declines to adopt a change that was not noticed.

Comments on the amendments to 16 TAC §24.127.

TAWC recommended additional amendments to 16 TAC §24.127, relating to financial records, to allow utilities to use the National Association of Regulatory Utility Commissioners' uniform system of accounts based on annual operating revenues, rather than the number of connections, if appropriate.

Commission response:

The commission declines to adopt TAWC's proposed changes to 16 TAC §24.127 because TWC §13.002 classifies utilities based on the number of connections served, and not on annual revenues.

Comments on the amendments to 16 TAC §24.227.

TAWC pointed out that new 16 TAC §24.227(c) includes requirements for applications submitted under TWC §13.258, which provides for a Class A utility to apply for an amendment of CCN held by a municipal utility district to allow the utility to have the same rights and powers under the certificate as the municipal utility district, that exceed the requirements in the statute. TAWC recommended that the commission adopt a separate rule to implement TWC § 13.258 and consider adopting a special form for this type of CCN amendment.

Commission response:

The commission modifies the proposed version of 16 TAC §24.227(c) to conform with TWC §13.258. The commission declines to adopt a special form for this type of CCN amendment because TWC §13.258(c) clearly enumerates the information that must be submitted with an application of this type and bars the commission from requiring any additional information.

All initial and reply comments, including any not specifically referenced herein, were fully considered by the commission.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§24.3, 24.11, 24.14

Statutory Authority

The amendments are adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility's actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.

Cross reference to statutes: Texas Water Code §§13.041, 13.046, 13.131, 13.136(b), 13.181(b), 13.1871, 13.1872, 13.1873, 13.246.

§24.3. Definitions of Terms.

The following words and terms, when used in this chapter, have the following meanings, unless the context indicates otherwise.

(1) Affected county--A county to which Local Government Code, Chapter 232, Subchapter B, applies.

(2) Affected person--Any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(3) Affiliated interest or affiliate--

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(4) Billing period--The period between meter reading dates for which a bill is issued or, if usage is not metered, the period between bill issuance dates.

(5) Class A Utility--A public utility that provides retail water or sewer utility service to 10,000 or more taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(6) Class B Utility--A public utility that provides retail water or sewer utility service to 2,300 or more taps or active connections but fewer than 10,000 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(7) Class C Utility--A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 2,300 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(8) Class D Utility--A public utility that provides retail water or sewer utility service to fewer than 500 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(9) Commission--The Public Utility Commission of Texas.

(10) Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but does not include municipal corporations unless expressly provided in TWC Chapter 13.

(11) Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(12) Customer class--A group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

(13) Customer service line--The pipe connecting the water meter to the customer's point of consumption or the pipe that conveys sewage from the customer's premises to the service provider's service line.

(14) District--District has the meaning assigned to it by TWC §49.001(a).

(15) Facilities--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(16) Inactive connection--A water or wastewater connection that is not currently receiving service from a retail public utility.

(17) Incident of tenancy--Water or sewer service provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(18) Landowner--An owner or owners of a tract of land, including multiple owners of a single deeded tract of land, as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(19) Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(20) Minimum Monthly Charge--The fixed amount billed to a customer each month even if the customer uses no water or wastewater.

(21) Municipality--Cities existing, created, or organized under the general, home rule, or special laws of this state.

(22) Municipally owned utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(23) Nonfunctioning system or utility--A system that is operating as a retail public utility and

(A) is required to have a CCN and is operating without a CCN; or

(B) is under supervision in accordance with §24.353 of this title (relating to Supervision of Certain Utilities); or

(C) is under the supervision of a receiver, temporary manager, or has been referred for the appointment of a temporary manager or receiver, in accordance with §24.355 of this title (relating to Operation of Utility that Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.357 of this title (relating to Operation of a Utility by a Temporary Manager).

(24) Person--Natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.

(25) Point of use--The primary service connection point where water is used or sewage is generated.

(26) Potable water--Water that is used for or intended to be used for human consumption or household use.

(27) Potential connections--Total number of active plus inactive connections.

(28) Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(29) Rate--Every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.

(30) Requested area--The area that a petitioner or applicant seeks to obtain, add to, or remove from a retail public utility's certificated service area.

(31) Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(32) Retail water or sewer utility service--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(33) Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under TWC Chapter 13 to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(34) Service area--Area to which a retail public utility is obligated to provide retail water or sewer utility service.

(35) Stand-by fee--A charge, other than a tax, imposed on undeveloped property:

(A) with no water or wastewater connections; and

(B) for which water, sanitary sewer, or drainage facilities and services are available; water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve the property is available; or major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve the property are available.

(36) Temporary rate for services provided for a nonfunctioning system--A rate charged under TWC §13.046 to the customers of a nonfunctioning system by a retail public utility that takes over the provision of service for a nonfunctioning retail public water or sewer utility service provider.

(37) Test year--The most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

(38) Tract of land--An area of land that has common ownership and is not severed by other land under different ownership, whether owned by government entities or private parties; such other land includes roads and railroads. A tract of land may be acquired through multiple deeds or shown in separate surveys.

(39) Water and sewer utility, utility, or public utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(40) Water supply or sewer service corporation--Any nonprofit corporation organized and operating under TWC chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer utility service to a person who is not a member, except that the corporation may provide retail water or sewer utility service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold.

(41) Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the utility due to emergency conditions or drought.

(42) Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§24.11. Financial Assurance.

(a) Purpose. This section establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.

(b) Application. This section applies to new and existing owners or operators of retail public utilities that are required to provide financial assurance under this chapter.

(c) Financial assurance must be demonstrated by compliance with subsection (d) or (e) of this section, unless the commission requires compliance with both subsections (d) and (e) of this section.

(d) Irrevocable stand-by letter of credit. Irrevocable stand-by letters of credit must be issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation. The retail public utility must use the standard form irrevocable stand-by letter of credit approved by the commission. The irrevocable stand-by letter of credit must be irrevocable for a period not less than five years, be payable to the commission, and permit a draw to be made in part or in full. The irrevocable stand-by letter of credit must permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit if the retail public utility has failed to provide continuous and adequate service or the retail public utility cannot demonstrate its ability to provide continuous and adequate service.

(e) Financial test.

(1) An owner or operator may demonstrate financial assurance by satisfying the leverage and operations tests that conform to the requirements of this section, unless the commission finds good cause exists to require only one of these tests.

(2) Leverage test. To satisfy this test, the owner or operator must meet one or more of the following criteria:

(A) The owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets;

(B) The owner or operator must have a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt payments;

(C) The owner or operator must have sufficient unrestricted cash available as a cushion for two years of debt service. Restricted cash includes monetary resources that are committed as a debt service reserve which will not be used for operations, maintenance or other payables;

(D) The owner or operator must have an investment-grade credit rating from Standard & Poor's Financial Services LLC, Moody's Investors Service, or Fitch Ratings Inc.; or

(E) The owner or operator must demonstrate that an affiliated interest is capable, available, and willing to cover temporary cash shortages. The affiliated interest must be found to satisfy the requirements of subparagraphs (A), (B), (C), or (D) of this paragraph.

(3) Operations test. The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. An affiliated interest may provide a written guarantee of coverage of temporary cash shortages. The affiliated interest of the owner or operator must satisfy the leverage test.

(4) To demonstrate that the requirements of the leverage and operations tests are being met, the owner or operator must submit the following items to the commission:

(A) An affidavit signed by the owner or operator attesting to the accuracy of the information provided. The owner or operator may use the Applicant's Oath adopted by the commission as part of an application filed under §24.233 of this title (relating to Contents of Certificate of Convenience and Necessity Applications) for the purpose of meeting the requirements of this subparagraph; and

(B) A copy of one of the following:

(i) the owner or operator's independently audited year-end financial statements for the most recent fiscal year including the "unqualified opinion" of the auditor; or

(ii) compilation of year-end financial statements for the most recent fiscal year as prepared by a certified public accountant (CPA); or

(iii) internally produced financial statements meeting the following requirements:

(I) for an existing utility, three years of projections and two years of historical data including a balance sheet, income statement and an expense statement or evidence that the utility is moving toward proper accountability and transparency; or

(II) for a proposed or new utility, start up information and five years of pro forma projections including a balance sheet, income statement and expense statement or evidence that the utility will be moving toward proper accountability and transparency during the first five years of operations. All assumptions must be clearly defined and the utility must provide all documents supporting projected lot sales or customer growth.

(C) In lieu of meeting the leverage and operations tests, if the applicant utility is a city or district, the city or district may substantiate financial capability with a letter from the city's or district's financial advisor indicating that the city or district is able to issue debt (bonds) in an amount sufficient to cover capital requirements to provide continuous and adequate service and providing the document in subparagraph (B)(i) of this paragraph.

(5) If the applicant is proposing service to a new CCN area or a substantial addition to its current CCN area requiring capital improvements in excess of $100,000, the applicant must provide the following:

(A) The owner must submit loan approval documents indicating funds are available for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers if the application is a sale, transfer, or merger; or

(B) The owner must submit loan approval documents or firm capital commitments affirming funds are available to install:

(i) the plant and equipment necessary to serve projected customers in the first two years of projections; or

(ii) a new water system or substantial addition to an existing water system if the applicant is proposing service to a new CCN area or a new subdivision.

(6) If the applicant is a nonfunctioning utility, as defined in §24.3(23) of this title (relating to Definitions of Terms), the commission may consider other information to determine if the proposed certificate holder is capable of meeting the leverage and operations tests.

§24.14. Emergency Orders and Emergency Rates.

(a) The commission may issue an emergency order in accordance with Texas Water Code (TWC) Chapter 13, Subchapter K-1 under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities), with or without a hearing:

(1) to appoint a person under §24.355 of this title (relating to Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver), §24.357 of this title (relating to Operation of a Utility by a Temporary Manager), or TWC §13.4132 to temporarily manage and operate a utility that has discontinued or abandoned operations or that is being referred to the Office of the Texas Attorney General for the appointment of a receiver under TWC §13.412;

(2) to compel a retail public utility that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate retail water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the retail public utility's actions or inactions;

(3) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if discontinuance of service or serious impairment in service is imminent or has occurred;

(4) to authorize an emergency rate increase if necessary to ensure the provision of continuous and adequate retail water or sewer service to the utility's customers under TWC §13.4133:

(A) for a utility for which a person has been appointed under TWC §13.4132 to temporarily manage and operate the utility; or

(B) for a utility for which a receiver has been appointed under TWC §13.412;

(5) to establish, on an expedited basis, in response to a request by the Texas Commission on Environmental Quality (TCEQ), reasonable compensation for the temporary service required under TWC §13.041(h)(2) and to allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment;

(6) to compel a retail public utility to make specified improvements and repairs to a water or sewer system owned or operated by the utility under TWC §13.253(b):

(A) if the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area;

(B) after providing a retail public utility notice and an opportunity to be heard at an open meeting of the commission; and

(C) if the retail public utility has provided financial assurance under Texas Health and Safety Code §341.0355 or TWC Chapter 13;

(7) to order an improvement in service or an interconnection under TWC §13.253(a)(1)-(3).

(b) The commission may establish reasonable compensation for temporary service ordered under subsection (a)(3) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(c) For an emergency order issued under subsection (a)(4) of this section:

(1) the commission will coordinate with the TCEQ as needed;

(2) an emergency rate increase may be granted for a period not to exceed 15 months from the date on which the increase takes effect;

(3) the additional revenues collected under an emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service;

(4) the effective date of the emergency rates must be the first day of a billing cycle, unless otherwise authorized by the commission;

(5) any emergency rate increase related to charges for actual consumption will be for consumption after the effective date. An increase or the portion of an increase that is not related to consumption may be billed at the emergency rate on the effective date or the first billing cycle after approval by the commission;

(6) the utility must maintain adequate books and records for a period not less than 12 months to allow for the determination of a cost of service as set forth in §24.41 of this title (relating to Cost of Service); and

(7) during the pendency of the emergency rate increase, the commission may require that the utility deposit all or part of the rate increase into an interest-bearing escrow account as set forth in §24.39 of this title (relating to Escrow of Proceeds Received under Rate Increase).

(d) The costs of any improvements ordered under subsection (a)(6) of this section may be paid by bond or other financial assurance in an amount determined by the commission not to exceed the amount of the bond or financial assurance. After notice and hearing, the commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

(e) An emergency order issued under this subchapter does not vest any rights and expires in accordance with its terms or this subchapter.

(f) An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days.

(g) An emergency order may be renewed once for a period not to exceed 180 days, except an emergency order issued under 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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SUBCHAPTER B. RATES AND TARIFFS

16 TAC §§24.25, 24.27, 24.29, 24.33, 24.35, 24.49

Statutory Authority

The amendments are adopted under Texas Water Code(TWC) §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility's actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority

to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.

Cross Reference to Statutes: Texas Water Code §§13.041, 13.046, 13.131, 13.136(b), 13.181(b), 13.1871, 13.1872, 13.1873, 13.246.

§24.25. Form and Filing of Tariffs.

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as follows:

(1) A utility may charge the rates proposed under Texas Water Code (TWC) §§13.187, 13.1871, 13.18715, or 13.1872(c)(2) on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the regulatory authority sets interim rates.

(2) The regulatory assessment fee required in TWC §5.701(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity.

(3) A person who possesses facilities used to provide retail water utility service or a utility that holds a certificate of public convenience and necessity (CCN) to provide retail water service that enters into an agreement in accordance with TWC §13.250(b)(2), may collect charges for sewer services on behalf of another retail public utility on the same bill with its water charges and must at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(4) A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water or sewer charges and must at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes, and filing of tariffs.

(1) Tariffs filed with applications for CCNs.

(A) When applying to obtain or amend a CCN, or to add a new water or sewer system or subdivision to its certificated service area, each utility must file its proposed tariff with the commission and any regulatory authority with original rate jurisdiction over the utility.

(i) For a utility that is under the original rate jurisdiction of the commission, the tariff must include schedules of all the utility's rates, rules, and regulations pertaining to all its utility services when it applies for a CCN to operate as a utility. The tariff must be on the form prescribed by the commission or another form acceptable to the commission.

(ii) For a utility under the original rate jurisdiction of a municipality, the utility must file with the commission a copy of its tariff as approved by the municipality.

(B) If a person applying for a CCN is not currently a retail public utility and would be under the original rate jurisdiction of the commission if the CCN application were approved, the person must file a proposed tariff with the commission. The person filing the proposed tariff must also:

(i) provide a rate study supporting the proposed rates, which may include the costs of existing invested capital or estimates of future invested capital;

(ii) provide all calculations supporting the proposed rates;

(iii) provide all assumptions for any projections included in the rate study;

(iv) provide an estimated completion date for the construction of the physical plant;

(v) provide an estimate of the date service will begin for all phases of construction; and

(vi) provide notice to the commission once billing for service begins.

(C) A person under the original rate jurisdiction of the commission who has obtained an approved tariff for the first time must file a rate change application within 18 months from the date service begins to revise its rates to be based on a historic test year. Any dollar amount collected under the rates initially approved by the commission that exceeds the revenue requirement established by the commission during the rate change proceeding must be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. A Class D utility must file a rate change application under TWC §13.1872(c)(2) to satisfy the requirements of this subparagraph.

(D) A water supply or sewer service corporation must file with the commission a complete tariff containing schedules of all its rates, rules, and regulations pertaining to all its utility services when it applies to operate as a retail public utility and to obtain or amend a CCN.

(2) Minor tariff changes. Except for an affected county or a utility under the original rate jurisdiction of a municipality, a utility's approved tariff may not be changed or amended without commission approval. Changes to any fees charged by affiliates, the addition of a new extension policy to a tariff, or modification of an existing extension policy are not minor tariff changes. An affected county may change rates for retail water or sewer service without commission approval, but must file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The commission, or regulatory authority, as appropriate, may approve the following minor changes to utility tariffs:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by commission rules;

(iii) addition of the regulatory assessment fee payable to the Texas Commission on Environmental Quality (TCEQ) as a separate item or to be included in the currently authorized rate;

(iv) addition of a provision allowing a utility to collect retail sewer service charges in accordance with TWC §13.250(b)(2) or §13.147(d);

(v) rate adjustments to implement commission-authorized phased or multistep rates or downward rate adjustments to reconcile rates with actual costs;

(vi) implementation of an energy cost adjustment clause under subsection (n) of this section;

(vii) implementation or modification of a pass-through provision calculation in a tariff, as provided in subparagraphs (B)-(F) of this paragraph, which is necessary for the correct recovery of the actual charges from pass-through entities, including line loss;

(viii) some surcharges as provided in subparagraph (G) of this paragraph;

(ix) modifications, updates, or corrections that do not affect a rate may be made to the following information contained in the tariff:

(I) the list of the cities, counties, and subdivisions in which service is provided;

(II) the public water system name and corresponding identification number issued by the TCEQ; and

(III) the sewer system names and corresponding discharge permit number issued by the TCEQ.

(B) The commission, or other regulatory authority, as appropriate, may approve a minor tariff change for a utility to establish reduced rates for a minimal level of retail water service to be provided solely to a class of customers 65 years of age or older to ensure that those customers receive that level of retail water service at more affordable rates. The utility may establish a fund to receive donations to cover the cost of providing the reduced rates. A utility may not recover the cost of the reduced rates through charges to other customer classes.

(i) To request approval of a rate as defined in this subparagraph, the utility must file a proposed plan for consideration by the commission. The plan must include:

(I) A proposed plan for collection of donations to establish a fund to recover the costs of providing the reduced rates.

(II) The account or subaccount name and number, as included in the system of accounts described in §24.127(1) of this title (relating to Financial Records and Reports--Uniform System of Accounts), in which the donations will be accounted for, and a clear definition of how the administrative costs of operation of the program will be accounted for and removed from the cost of service for rate making purposes. Any interest earned on donated funds will be considered a donation to the fund.

(III) The proposed effective date of the program and an example of an annual accounting for donations received and a calculation of all lost revenues and the journal entries that transfer the funds from the account described in this subparagraph of this clause to the utility's revenue account. The annual accounting must be available for audit by the commission upon request.

(IV) An example bill with the contribution line item, if receiving contributions from customers.

(ii) For the purpose of clause (i) of this subparagraph, recovery of lost revenues from donations is limited to the lost revenues due to the difference in the utility's tariffed retail water rates and the reduced rates established by this subparagraph.

(iii) The minimal level of retail water service requested by the utility must not exceed 3,000 gallons per month per connection. Additional gallons used must be billed at the utility's tariffed rates.

(iv) For purposes of the provision in this subparagraph, a reduced rate authorized under this section does not:

(I) Make or grant an unreasonable preference or advantage to any corporation or person;

(II) Subject a corporation or person to an unreasonable prejudice or disadvantage; or

(III) Constitute an unreasonable difference as to retail water rates between classes of service.

(C) If a utility has provided notice as required in subparagraph (F) of this paragraph, the commission may approve a pass-through provision as a minor tariff change, even if the utility has never had an approved pass-through provision in its tariff. A pass-through provision may not be approved for a charge already included in the utility's cost of service used to calculate the rates approved by the commission in the utility's most recently approved rate change under TWC §§13.187, 13.1871, 13.18715, or 13.1872. A pass-through provision may only include passing through of the actual costs charged to the utility. Only the commission staff or the utility may request a hearing on a proposed pass-through provision or a proposed revision or change to a pass-through provision. A pass-through provision may be approved as follows:

(i) A utility that purchases water or sewage treatment and whose rates are under the original jurisdiction of the commission may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated.

(ii) A utility may pass through a temporary water rate provision implemented in response to mandatory reductions in water use imposed by a court, government agency, or other authority. The provision must specify how the temporary water rate provision is calculated.

(iii) A utility may include the addition of a production fee charged by a groundwater conservation district, including a production fee charged in accordance with a groundwater reduction plan entered in to by a utility in response to a groundwater conservation district production order or rule, as a separate line item in the tariff.

(iv) A utility may pass through the costs of changing its source of water if the source change is required by a governmental entity. The pass-through provision may not be effective prior to the date the conversion begins. The pass-through provision must be calculated using an annual true-up provision.

(v) A utility subject to more than one pass-through cost allowable in this section may request approval of an overall combined pass-through provision that includes all allowed pass-through costs to be recovered in one provision under subparagraph (D) of this paragraph. The twelve calendar months (true-up period) for inclusion in the true-up must remain constant, e.g., January through December.

(vi) A utility that has a combined pass-through provision in its approved tariff may request to amend its tariff to replace the combined pass-through provision with individual pass-through provisions if all revenues and expenses have been properly trued up in a true-up report and all overcollections have been credited back to the customers. A utility that has replaced its previously approved combined pass-through provision with individual provisions may not request another combined pass-through until three years after the replacement has been approved unless good cause is shown.

(D) A change in the combined pass-through provision may be implemented only once per year. The utility must file a true-up report within one month after the end of the true-up period. The report must reconcile both expenses and revenues related to the combined pass-through charge for the true-up period. If the true-up report reflects an over-collection from customers, the utility must change

its combined pass-through rate using the confirmed rate changes to charges being passed through and the over-collection from customers reflected in the true-up report. If the true-up report does not reflect an over-collection from the customers, the implementation of a change to the pass-through rate is optional. The change may be effective in a billing cycle within three months after the end of the true-up period as long as the true-up clearly shows the reconciliation between charges by pass-through entities and collections from the customers, and charges from previous years are reconciled. Only expenses charged by the pass-through provider may be included in the provision. The true-up report must include:

(i) a list of all entities charging fees included in the combined pass- through provision, specifying any new entities added to the combined pass-through provision;

(ii) a summary of each charge passed through in the report year, along with documentation verifying the charge assessed and showing the amount the utility paid;

(iii) a comparison between annual amounts billed by all entities charging fees included in the pass-through provision with amounts billed for the usage by the utility to its customers in the pass-through period;

(iv) all calculations and supporting documentation;

(v) a summary report, by year, for the lesser of all years prior or five years prior to the pass-through period showing the same information as in clause (iii) of this subparagraph with a reconciliation to the utility's booked numbers, if there is a difference in any year; and

(vi) any other documentation or information requested by the commission.

(E) For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs must be stated separately from all charges by the utility to recover the revenue requirement. Except for a combined pass-through provision, the calculation for a pass-through gallonage rate for a utility with one source of water may be made using the following equation, which is provided as an example: R=G /(1-L), where R is the utility's new proposed pass-through rate, G equals the new gallonage charge by source supplier or conservation district, and L equals the actual line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085). Line loss will be considered on a case-by-case basis.

(F) A utility that requests to revise or implement an approved pass-through provision must take the following actions prior to the beginning of the billing period in which the revision takes effect:

(i) file a written notice with the commission that must include:

(I) each affected CCN number;

(II) a list of each affected subdivision public water system (including name and corresponding number issued by the TCEQ), and water quality system (including name and corresponding number issued by the TCEQ), if applicable;

(III) a copy of the notice to the customers;

(IV) documentation supporting the stated amounts of any new or modified pass-through costs; (V) historical documentation of line loss for one year;

(VI) all calculations and assumptions for any true-up of pass-through costs;

(VII) the calculations and assumptions used to determine the new rates; and

(VIII) a copy of the pages of the utility's tariff that contain the rates that will change if the utility's application is approved; and

(ii) e-mail (if the customer has agreed to receive communications electronically), mail, or hand-deliver notice to the utility's customers. Notice may be in the form of a billing insert and must contain:

(I) the effective date of the change;

(II) the present calculation of customer billings;

(III) the new calculation of customer billings;

(IV) an explanation of any corrections to the pass-through formula, if applicable;

(V) the change in charges to the utility for purchased water or sewer treatment or ground water reduction fee or subsidence, if applicable; and

(VI) the following language: "This tariff change is being implemented in accordance with the minor tariff changes allowed by 16 Texas Administrative Code §24.25. The cost to you as a result of this change will not exceed the costs charged to your utility."

(G) The following provisions apply to surcharges:

(i) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(ii) If authorized by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(I) sampling fees not already recovered by rates;

(II) inspection fees not already recovered by rates;

(III) production fees or connection fees not already recovered by rates charged by a groundwater conservation district; or

(IV) other governmental requirements beyond the control of the utility.

(iii) A utility must use the revenues collected through a surcharge approved by the commission to cover the costs listed in subparagraph (G)(ii) of this section or for any purpose noted in the order approving the surcharge. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the commission.

(iv) The commission may require a utility to file periodic and/or final accounting information to show the collection and disbursement of funds collected through an approved surcharge.

(3) Tariff revisions and tariffs filed with rate changes.

(A) If the commission is the regulatory authority, the utility must file its revisions with the commission. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(B) Each revision must be accompanied by a copy of the original tariff and a red-lined copy of the proposed tariff revisions clearly showing the proposed changes.

(4) Rate schedule. Each rate schedule must clearly state:

(A) the name of each public water system and corresponding identification number issued by the TCEQ, or the name of each sewer system and corresponding identification number issued by the TCEQ for each discharge permit, to which the schedule is applicable; and

(B) the name of each subdivision, city, and county in which the schedule is applicable.

(5) Tariff pages. Tariff pages must be numbered consecutively. Each page must show section number, page number, name of the utility, and title of the section in a consistent manner.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, must contain sections setting forth:

(1) a table of contents;

(2) a list of the cities, counties, and subdivisions in which service is provided, along with each public water system name and corresponding identification number issued by the TCEQ and each sewer system name and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;

(3) each CCN number under which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms to be completed as required by the TCEQ;

(6) the extension policy;

(7) an approved drought contingency plan as required by the TCEQ; and

(8) the forms of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariff attached is in compliance with the order, giving the docket number, date of the order, a list of tariff pages filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's tariff form or any modifications of a rule in the tariff must be clearly noted. All tariff pages must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariff must comply with the provisions of the order.

(e) Availability of tariffs. Each utility must make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees must lend assistance to persons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility must also provide copies of any portion of the tariffs at a reasonable cost to a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section must be returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Each utility operating within the corporate limits of a municipality exercising original jurisdiction must file with the commission its current tariff that has been authorized by the municipality. If changes are made to the utility's tariff for one or more service areas under the jurisdiction of the municipality, the utility must file its tariff reflecting the changes along with the ordinance, resolution or order issued by the municipality to authorize the change.

(h) Effective date. The effective date of a tariff change is the date of approval by the regulatory authority, unless otherwise specified by the regulatory authority, in a commission order, or by rule. The effective date of a proposed rate increase under TWC §§13.187, 13.1871, 13.18715, or 13.1872 is the proposed date on the notice to customers and the regulatory authority, unless suspended by the regulatory authority.

(i) Tariffs filed by water supply or sewer service corporations. A water supply or sewer service corporation must file with the commission, for informational purposes only, its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rates, rules, and regulations relating to utility service or extension of service, each CCN number under which service is provided, and all affected counties or cities. If changes are made to the water supply or sewer service corporation's tariff, the water supply or sewer service corporation must file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection must be filed in conformance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).

(j) Temporary water rate provision for mandatory water use reduction.

(1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures that affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover revenues that the utility would otherwise have lost due to mandatory water use reductions. If a utility obtains an alternate water source to replace the required mandatory reduction during the time the temporary water rate provision is in effect, the temporary water rate provision must be adjusted to prevent over-recovery of revenues from customers. A temporary water rate provision may not be implemented if an alternative water supply is immediately available without additional cost.

(2) The temporary water rate provision must be approved by the regulatory authority having original jurisdiction in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate provision must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions. The formula for a temporary water rate provision for mandatory water use reduction under this paragraph is TGC = cgc + [(prr)(cgc)(r)/(1.0-r)] where, TGC = Temporary gallonage charge cgc = current gallonage charge r = water use reduction expressed as a decimal fraction (the pumping restriction) prr = percentage of revenues to be recovered expressed as a decimal fraction (i.e., 50% = 0.5)

(A) The utility must file a request for a temporary water rate provision for mandatory water use reduction and provide customer notice as required by the regulatory authority, but is not required to

provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, a list of all customer classes affected, the rates affected, information on how to protest or intervene in the rate change, the address of the regulatory authority, the time frame for protests, and any other information that is required by the regulatory authority. The utility's existing rates are not subject to review in this proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision for mandatory water use reduction under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §24.29 of this title (relating to Time Between Filings).

(B) The utility must establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in paragraph (3) of this subsection or any other method acceptable to the regulatory authority to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues, the utility must submit financial data to support its existing rates as well as the temporary water rate provision for mandatory water use reduction even if no other rates are proposed to be changed. The utility's existing rates are subject to review in addition to the temporary water rate provision for mandatory water use reduction.

(B) The utility must establish that the projected revenues that will be generated by the temporary water rate provision for mandatory water use reduction are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the regulatory authority in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate provision into effect only after:

(A) it has been approved by the regulatory authority and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility may readjust its temporary water rate provision to respond to modifications or changes to the original required water use reductions by reissuing notice as required by paragraph (7) of this subsection. If the commission is the regulatory authority, only the commission or the utility may request a hearing on the proposed implementation.

(7) A utility implementing a temporary water rate for mandatory water use reduction must take the following actions prior to the beginning of the billing period in which the temporary water rate provision takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the regulatory authority; and

(B) e-mail, if the customer has agreed to receive communications electronically, or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate provision is implemented. If the commission is the regulatory authority, the notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Public Utility Commission of Texas to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from ($ per 1,000 gallons to $ per 1,000 gallons)."

(8) A utility must stop charging a temporary water rate provision as soon as is practicable after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility must notify its customers of the date that the temporary water rate provision ends and that its rates will return to the level authorized before the temporary water rate provision was implemented. The notice provided to customers regarding the end of the temporary water rate provision must be filed with the commission.

(9) If the regulatory authority initiates an inquiry into the appropriateness or the continuation of a temporary water rate provision, it may establish the effective date of its decision on or after the date the inquiry is filed.

(k) Multiple system consolidation. Except as otherwise provided in subsection (m) of this section, a utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(l) Regional rates. The regulatory authority, where practicable, will consolidate the rates by region for applications submitted by a Class A, B, or C utility, or a Class D utility filing under TWC §13.1872(c)(2), with a consolidated tariff and rate design for more than one system.

(m) Exemption. Subsection (k) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.

(n) Energy cost adjustment clause.

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of retail water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.

(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff must file a request with the commission. The utility must also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, by e-mail, or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was delivered to affected customers and stating the date of such delivery must be filed with the commission by the utility as part of the request. Notice must be pro-

vided on a form prescribed by the commission and must contain the following information:

(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the classes of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;

(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and

(C) any other information that is required by the commission.

(3) The commission's review of the utility's request is not subject to a contested case hearing. However, the commission will hold a public meeting if requested by a member of the legislature who represents an area served by the utility or if the commission determines that there is substantial public interest in the matter.

(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass-through, whether an increase or decrease, must be implemented on at least an annual basis, unless the commission determines otherwise. Before making a change to the energy cost adjustment clause, notice must be provided as required by paragraph (5) of this subsection. Copies of notices to customers must be filed with the commission.

(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility must take the following actions prior to the beginning of the billing period in which the implementation takes effect:

(A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and

(B) e-mail, if the customer has agreed to receive communications electronically, mail, either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases)(decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase)(decrease) in documented energy costs."

(6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly file the request or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission.

(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.

(8) A proceeding under this subsection is not a rate case under TWC §§13.187, 13.1871, 13.18715, or 13.1872.

§24.27. Notice of Intent and Application to Change Rates.

(a) Purpose. This section describes the requirements for the contents of an application to change rates and the requirements for the provision of notice of an application to change rates filed by a Class A, B, or C utility, or a Class D utility filing under Texas Water Code (TWC) §13.1872(c)(2).

(b) Contents of the application. An application to change rates is initiated by the filing of the applicable rate filing package, a statement of intent to change rates, and the proposed form and method of notice to customers and other affected entities under subsection (c) of this section.

(1) The application must include the commission's rate filing package form and include all required schedules.

(2) The application must be based on a test year as defined in §24.3(36) of this title (relating to Definitions of Terms).

(3) For an application filed by a Class A utility, the rate filing package, including each schedule, must be supported by pre-filed direct testimony. The pre-filed direct testimony must be filed at the same time as the application to change rates.

(4) For an application filed by a Class B utility, Class C utility, or Class D utility filing under TWC §13.1872(c)(2), the applicable rate filing package, including each schedule, must be supported by affidavit. The affidavit must be filed at the same time as the application to change rates. The utility may file pre-filed direct testimony at the same time as the application to change rates. If the application is set for a hearing, the presiding officer may require the filing of pre-filed direct testimony at a later date.

(5) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the dates of such delivery must be filed with the commission by the applicant utility as part of the rate change application.

(c) Notice requirements specific to applications filed by a Class A Utility under TWC §13.187.

(1) Notice of the application. In order to change rates under TWC §13.187, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a statement of intent (notice) with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change, to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice must be provided using the commission-approved form and must include a description of the process by which a ratepayer may intervene in the proceeding.

(C) This notice must state the docket number assigned to the rate application. Prior to the provision of notice, the utility must file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

(2) Notice of the hearing. After the rate application is set for a hearing, the commission will give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county.

(d) Notice requirements specific to applications filed by Class B, C, and D utilities.

(1) Notice of the application. In order to change rates, a Class B or C utility, or a Class D utility filing under TWC §13.1872(c)(2), must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a notice with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change, to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice must be provided using the commission-approved form and must include a description of the process by which a ratepayer may file a protest under TWC §13.1871(i).

(C) The notice must state the docket number assigned to the rate application. Prior to providing notice, a Class B or C utility, or a Class D utility filing under TWC §13.1872(c)(2), must file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

(2) Notice of the hearing. After the rate application is set for a hearing, the following notice requirements apply.

(A) The commission will give reasonable notice of the prehearing conference, including notice to the governing body of each affected municipality and county. The commission may require the utility to provide this notice. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice for the prehearing conference, including notice to the governing body of each affected municipality and county.

(B) A Class B utility must mail notice of the prehearing conference to each affected ratepayer at least 20 days before the prehearing conference.

(C) A Class C utility, or a Class D utility filing under TWC §13.1872(c)(2), must mail, e-mail, or hand deliver notice of the prehearing conference to each affected ratepayer at least 20 days before the prehearing conference.

(D) A notice provided under subparagraph (B) or (C) of this paragraph must include a description of the process by which a ratepayer may intervene in the proceeding.

(e) Line extension and construction policies. A request to approve or amend a utility's line extension and construction policy must be filed in a rate change application under TWC §§13.187, 13.1871, 13.18715, or 13.1872(c)(2). The application must include the proposed tariff and other information requested by the commission. The request may be made with a request to change one or more of the utility's other rates.

(f) Capital improvements surcharge. In a rate proceeding under TWC §§13.187, 13.1871, 13.18715, or 13.1872(c)(2), the commission may approve a surcharge to collect funds for capital improvements necessary to provide facilities capable of providing continuous and adequate utility service, and for the preparation of design and planning documents.

(g) Debt repayments surcharge. In a rate proceeding under TWC §§13.187, 13.1871, 13.18715, or 13.1872(c)(2), the commission may approve a surcharge to collect funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all the requirements of the Texas Water Development Board regarding financial assistance from the Safe Drinking Water Revolving Fund.

§24.29. Time Between Filings.

(a) Application. The following provisions are applicable to utilities, including those with consolidated or regional tariffs, under common control or ownership with any utility that has filed a statement of intent to increase rates under TWC §§13.187, 13.1871, or 13.18715.

(b) A utility, or two or more utilities under common control and ownership, may not file a statement of intent to increase rates more than once in a 12-month period except:

(1) to implement an approved purchase water pass through provision;

(2) to adjust the rates of a newly acquired utility system;

(3) to comply with a commission order;

(4) to adjust rates authorized by §24.25(b)(2) of this title (relating to Form and Filing of Tariffs);

(5) when the regulatory authority requires the utility to deliver a corrected statement of intent; or

(6) when the regulatory authority determines that a financial hardship exists. A utility may be considered to be experiencing a financial hardship if revenues are insufficient to:

(A) cover reasonable and necessary operating expenses;

(B) cover cash flow needs which may include regulatory sampling requirements, unusual repair and maintenance expenses, revenues to finance required capital improvements or, in certain instances, existing debt service requirements specific to utility operations; or

(C) support a determination that the utility is able to provide continuous and adequate service to its existing service area.

(c) A Class D utility under common control or ownership with a utility that has filed an application to change rates under TWC §§13.187, 13.1871, or 13.18715 within the preceding 12 months may not file an application to change rates under TWC §13.1872(c)(2) unless one of the exceptions listed in subsection (b) of this section applies.

§24.33. Suspension of the Effective Date of Rates.

(a) Regardless of, and in addition to, any period of suspension ordered under subsection (b) of this section, after written notice to the utility, the commission may suspend the effective date of a rate change for not more than:

(1) 150 days from the date the proposed rates would otherwise be effective for an application filed under Texas Water Code (TWC) §13.187; or

(2) 265 days from the date the proposed rates would otherwise be effective for an application filed under TWC §§13.1871, 13.18715, or 13.1872(c)(2).

(b) Regardless of, and in addition to, any period of suspension ordered under subsection (a) of this section, the commission may suspend the effective date of a change in rates if the utility:

(1) has failed to properly complete the rate application as required by §24.27 of this title (relating to Notice of Intent and Application to Change Rates), has failed to comply with the notice requirements and proof of notice requirements, or has for any other reason filed a request to change rates that is not deemed administratively complete until a properly completed request to change rates is accepted by the commission;

(2) does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity until a completed application to obtain or transfer a certificate of convenience and necessity is accepted by the commission; or

(3) is delinquent in paying the regulatory assessment fee and any applicable penalties or interest required by TWC §5.701(n) until the delinquency is remedied.

(c) If the commission suspends the effective date of a requested change in rates under subsection (b) of this section, the requirement under §24.35(b)(1) of this title (relating to Processing and Hearing Requirements for an Application to Change Rates), to begin a hearing within 30 days of the effective date does not apply and the utility may not notify its customers of a new proposed effective date until the utility receives written notification from the commission that all deficiencies have been corrected.

(d) A suspension ordered under subsection (a) of this section will be extended two days for each day a hearing on the merits exceeds 15 days.

(e) If the commission does not make a final determination on the proposed rate before the expiration of the suspension period described by subsections (a) and (d) of this section, the proposed rate will be considered approved. This approval is subject to the authority of the commission thereafter to continue a hearing in progress.

(f) The effective date of any rate change may be suspended at any time during the pendency of a proceeding, including after the date on which the proposed rates are otherwise effective.

(g) For good cause shown, the commission may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended to the extent the proposed rate exceeds the existing rate.

§24.35. Processing and Hearing Requirements for an Application to Change Rates.

(a) Purpose. This section describes the requirements for the processing of applications to change rates filed by a Class A, B, or C utility, or a Class D utility filing under Texas Water Code (TWC) §13.1872(c)(2).

(b) Proceedings Under TWC §13.187. The following criteria apply to applications to change rates filed by Class A utilities under TWC §13.187.

(1) Not later than the 30th day after the effective date of the change, the commission will begin a hearing to determine the propriety of the change.

(2) The matter may be referred to the State Office of Administrative Hearings and the referral will be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.

(3) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference will be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.

(c) Proceedings Under TWC §13.1871. The following criteria apply to applications to change rates filed by a Class B, C, or D utility, using the procedures in TWC §13.1871.

(1) The commission may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change.

(2) The commission will set the matter for a hearing if it receives a complaint from any affected municipality or protests from the lesser of 1,000 or 10 percent of the affected ratepayers of the utility over whose rates the commission has original jurisdiction, during the first 90 days after the effective date of the proposed rate change.

(A) Ratepayers may file individual protests or joint protests. Each protest must contain the following information:

(i) a clear and concise statement that the ratepayer is protesting a specific rate action of the water or sewer service utility in question; and

(ii) the name and service address or other identifying information of each signatory ratepayer. The protest must list the address of the location where service is received if it differs from the residential address of the signatory ratepayer.

(B) For the purposes of this subsection, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The protest is properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

(3) Referral to the State Office of Administrative Hearings at any time during the pendency of the proceeding is deemed to be setting the matter for hearing as required by paragraphs (1) and (2) of this subsection.

(4) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference is deemed to be the beginning of the hearing required by paragraph (2) of this subsection.

(d) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of the law, the regulatory authority will determine the rates to be charged by the utility and will fix the rates by order served on the utility.

(e) The utility may begin charging the proposed rates on the proposed effective date, unless the proposed rate change is suspended by the commission under §24.33 of this title (relating to Suspension of the Effective Date of Rates) or interim rates are set by the presiding officer under §24.37 of this title (relating to Interim Rates). Rates charged under a proposed rate during the pendency of a proceeding are subject to refund to the extent the commission ultimately approves rates that are lower than the proposed rates.

§24.49. Application for a Rate Adjustment by a Class D Utility Under Texas Water Code §13.1872.

(a) Purpose. This section establishes procedures for a Class D utility to apply for an adjustment to its water or wastewater rates as allowed by Texas Water Code (TWC) §13.1872(c)(1).

(b) Definitions. In this section, the term application means an application for a rate adjustment filed under this section and TWC §13.1872(c)(1).

(c) Requirements for filing of the application. Subject to the limitations set out in subsection (f) of this section, a Class D utility may file an application with the commission.

(1) The utility may request to increase its tariffed monthly fixed customer or meter charges and monthly gallonage charges by no more than five percent.

(2) The application must be on the commission's form and must include:

(A) a proposal for the provision of notice that is consistent with subsection (e) of this section; and

(B) a copy of the relevant pages of the utility's currently approved tariff showing its current monthly fixed customer or meter charges and monthly gallonage charges.

(d) Processing of the application. The following criteria apply to the processing of an application.

(1) Determining whether the application is administratively complete.

(A) If commission staff requires additional information in order to process the application, commission staff must file a notification to the utility within 10 days of the filing of the application requesting any necessary information.

(B) An application may not be deemed administratively complete as required by §24.8 of this title (relating to Administrative Completeness) until after the utility has responded to commission staff's request under subparagraph (A) of this paragraph.

(2) Within 30 days of the filing of the application, commission staff must file a recommendation stating whether the application should be deemed administratively complete as required by §24.8 of this title. If commission staff recommends that the application be deemed administratively complete, commission staff must also file a recommendation on final disposition, including, if necessary, a proposed tariff sheet reflecting the requested rate change.

(e) Notice of Approved Rates. After the utility receives a written order by the commission approving or modifying the utility's application, including the proposed notice of approved rates, and at least 30 days before the effective date of the proposed change established in the commission's order, the utility must send by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, the approved or modified notice to each ratepayer describing the proposed rate adjustment. The notice must include:

(1) a statement that the utility requested an annual rate adjustment and specifying the percent amount requested;

(2) the existing rate;

(3) the approved rate; and

(4) a statement that the rate adjustment was requested under TWC §13.1872 and that a hearing will not be held for the request.

(f) Time between filings. The following criteria apply to the timing of the filing of an application.

(1) A Class D utility may adjust its rates under this section not more than once each calendar year and not more than four times between rate proceedings filed under TWC §13.1872(c)(2).

(2) The filing of applications as allowed by this section is limited to a specific quarter of the calendar year, and is based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below, unless good cause is shown for filing in a different quarter. For a utility holding multiple CCNs, the utility may file an application in any quarter for which any of its CCN numbers is eligible.

(A) Quarter 1 (January-March): CCNs ending in 00 through 27;

(B) Quarter 2 (April-June): CCNs ending in 28 through 54;

(C) Quarter 3 (July-September): CCNs ending in 55 through 81; and

(D) Quarter 4 (October-December): CCNs ending in 82 through 99.

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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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER E. RECORDS AND REPORTS

16 TAC §24.127, §24.129

Statutory Authority

The amendments are adopted under Texas Water Code(TWC) §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility's actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority

to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.

Cross Reference to Statutes: Texas Water Code §§13.041, 13.046, 13.131, 13.136(b), 13.181(b), 13.1871, 13.1872, 13.1873, 13.246.

§24.127. Financial Records and Reports -- Uniform System of Accounts.

Each public utility, except a utility operated by an affected county, must keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, must be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

(1) System of accounts. For the purpose of accounting and reporting to the commission, each public utility must maintain its books and records in accordance with the commission's approved system of accounts, or if the commission has not approved a system of accounts, the following prescribed uniform system of accounts:

(A) Class A Utility, as defined by §24.3(5) of this title (relating to Definitions of Terms); the uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners (NARUC) for a utility classified as a NARUC Class A utility.

(B) Class B Utility, as defined by §24.3(6) of this title; the uniform system of accounts as adopted and amended by NARUC for a utility classified as a NARUC Class B utility.

(C) Class C Utility, as defined by §24.3(7) of this title; the uniform system of accounts as adopted and amended by for a utility classified as a NARUC Class C utility.

(D) Class D Utility, as defined by §24.3(8) of this title; the uniform system of accounts as adopted and amended by a utility classified as a NARUC Class C utility.

(2) Accounting period. Each utility must keep its books on a monthly basis so that for each month all transactions applicable thereto are entered in the books of the utility.

§24.129. Water and Sewer Utilities Annual Reports.

(a) Each utility, except a utility operated by an affected county, must file a service, financial, and normalized earnings report by June 1 of each year.

(b) Contents of report. The annual report must disclose the information required on the forms approved by the commission and may include any additional information required by the commission.

(c) A Class D utility's normalized earnings must be equal to its actual earnings during the reporting period for the purposes of compliance with Texas Water Code §13.136.

(d) For reporting year 2019 due on June 1, 2020, each utility, except a utility operated by an affected county, must file the report that corresponds to the Class A, B, or C classification that applied to the utility on August 31, 2019.

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

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SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.227

Statutory Authority

The amendments are adopted under Texas Water Code(TWC) §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility's actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the

applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.

Cross Reference to Statutes: Texas Water Code §§13.041, 13.046, 13.131, 13.136(b), 13.181(b), 13.1871, 13.1872, 13.1873, 13.246.

§24.227. Criteria for Granting or Amending a Certificate of Convenience and Necessity.

(a) In determining whether to grant or amend a certificate of convenience and necessity (CCN), the commission will ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For retail water utility service, the commission will ensure that the applicant has:

(A) a public water system approved by the Texas Commission on Environmental Quality (TCEQ) that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC; and

(B) access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirement of paragraph (1)(A) of this subsection.

(2) For retail sewer utility service, the commission will ensure that the applicant has:

(A) a TCEQ-approved system that is capable of meeting TCEQ design criteria for sewer treatment plants, TCEQ rules, and the TWC; and

(B) access to sewer treatment and/or capacity or a long-term contract for purchased sewer treatment and/or capacity with an entity whose system meets the requirements of paragraph (2)(A) of this subsection.

(b) When applying for a new CCN or a CCN amendment for an area that would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) for applications to obtain or amend a water CCN, a list of all retail public water and/or sewer utilities within one half mile from the outer boundary of the requested area;

(2) for applications to obtain or amend a sewer CCN, a list of all retail public sewer utilities within one half mile from the outer boundary of the requested area;

(3) copies of written requests seeking to obtain service from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection or evidence that it is not economically feasible to obtain service from the retail public utilities referenced in paragraph (1) or (2) of this subsection;

(4) copies of written responses from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection from which written requests for service were made or evidence that they failed to respond within 30 days of the date of the request;

(5) if a neighboring retail public utility has agreed to provide service to a requested area, then the following information must also be provided by the applicant:

(A) a description of the type of service that the neighboring retail public utility is willing to provide and comparison with service the applicant is proposing;

(B) an analysis of all necessary costs for constructing, operating, and maintaining the new facilities for at least the first five years of operations, including such items as taxes and insurance; and

(C) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility for at least the first five years of operations.

(c) Notwithstanding any other provision of this chapter, a Class A utility may apply to the commission for an amendment of a water or sewer CCN held by a municipal utility district, other than a municipal utility district located wholly or partly inside of the corporate limits or extraterritorial jurisdiction of a municipality with a population of two million or more, to allow the Class A utility to have the same rights and powers under the CCN as the municipal utility district.

(1) An application filed under this subsection must include:

(A) information identifying the applicant;

(B) the identifying number of the CCN to be amended;

(C) the written consent of the municipal utility district that holds the certificate of convenience and necessity;

(D) a written statement by the municipal utility district that the application is supported by a contract between the municipal utility district and the utility for the utility to provide services inside the certificated area and inside the boundaries of the municipal utility district; and

(E) a description of the proposed service area by:

(i) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(ii) the Texas State Plane Coordinate System;

(iii) verifiable landmarks, including roads, creeks, or railroad lines; or

(iv) if a recorded plat of the area exists, lot and block number.

(2) No later than the 60th day after the Class A utility files the application, the commission will review an application filed under this subsection and determine whether the application is sufficient.

(3) Once the application is found sufficient, the commission will:

(A) find that the amendment of the certificate is necessary for the service, accommodation, convenience, or safety of the public; and (B) grant the application and amend the certificate.

(4) Chapter 2001 of the Texas Government Code does not apply to a petition filed under this subsection. The applicant, municipal utility district, or commission staff may file a motion for rehearing of the commission's decision on the same timeline that applies to other final orders of the commission. The commission's order ruling on the application may not be appealed.

(5) The commission may approve an application filed under this subsection that requests to amend a CCN with area that is in the extraterritorial jurisdiction of a municipality without the consent of the municipality.

(6) TWC §13.241(d) and §13.245 and subsections (e),(f), and (g) of this section do not apply to an application filed under this subsection.

(d) The commission may approve applications and grant or amend a CCN only after finding that granting or amending the CCN

is necessary for the service, accommodation, convenience, or safety of the public. The commission may grant or amend the CCN as applied for, or refuse to grant it, or grant it for the construction of only a portion of the contemplated facilities or extension thereof, or for only the partial exercise of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(e) In considering whether to grant or amend a CCN, the commission will also consider:

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

(2) the need for additional service in the requested area, including, but not limited to:

(A) whether any landowners, prospective landowners, tenants, or residents have requested service;

(B) economic needs;

(C) environmental needs;

(D) written application or requests for service; or

(E) reports or market studies demonstrating existing or anticipated growth in the area;

(3) the effect of granting or amending a CCN on the CCN recipient, on any landowner in the requested area, and on any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested area. These effects include but are not limited to regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the TCEQ and the commission, taking into consideration the current and projected density and land use of the requested area;

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

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the new CCN or a CCN amendment; and

(9) the effect on the land to be included in the requested area.

(f) The commission may require an applicant seeking to obtain a new CCN or a CCN amendment to provide a bond or other form of financial assurance to ensure that continuous and adequate retail water or sewer utility service is provided. The commission will set the amount of financial assurance. The form of the financial assurance will be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(g) Where applicable, in addition to the other factors in this chapter the commission will consider the efforts of the applicant to extend retail utility service to any economically distressed areas located within the applicant's certificated service area. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC §15.001(h) for two or more retail public utilities that apply for a CCN to provide retail water utility service to an unserved area located in an economically distressed area as defined in TWC §15.001, the commission will conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment will be conducted after the preliminary hearing and only if the parties cannot agree among themselves regarding who will provide service. The assessment will be conducted considering the following information:

(1) all criteria from subsections (a)-(g) of this section;

(2) source-water adequacy;

(3) infrastructure adequacy;

(4) technical knowledge of the applicant;

(5) ownership accountability;

(6) staffing and organization;

(7) revenue sufficiency;

(8) creditworthiness;

(9) fiscal management and controls;

(10) compliance history; and

(11) planning reports or studies by the applicant to serve the proposed area.

(i) Except as provided by subsection (j) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the requested area may elect to exclude some or all of the landowner's property from the requested area by providing written notice to the commission before the 30th day after the date the landowner receives notice of an application for a CCN or for a CCN amendment. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the requested area must be modified to remove the electing landowner's property. An applicant that has land removed from its requested area because of a landowner's election under this subsection may not be required to provide retail water or sewer utility service to the removed land for any reason, including a violation of law or commission rules.

(1) The landowner's request to opt out of the requested area must be filed with the commission and must include the following information:

(A) the commission docket number and CCN number if applicable;

(B) the total acreage of the tract of land subject to the landowner's opt-out request; and

(C) a metes and bounds survey for the tract of land subject to the landowner's opt-out request, that is sealed or embossed by either a licensed state land surveyor or registered professional land surveyor

(2) The applicant must file the following mapping information to address each landowner's opt-out request:

(A) a detailed map identifying the revised requested area after removing the tract of land subject to each landowner's opt-out request. The map must also identify the outer boundary of each tract of land subject to each landowner's opt-out request, in relation to the revised requested area. The map must identify the tract of land and the requested area in reference to verifiable man-made and natural landmarks such as roads, rivers, and railroads;

(B) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters) for the revised requested area after removing each tract of land subject to any landowner's opt-out request. The digital mapping data must include a single, continuous polygon record; and

(C) the total acreage for the revised requested area after removing each tract of land subject to the landowner's opt-out requests. The total acreage for the revised requested area must correspond to the total acreage included with the digital mapping data.

(j) If the requested area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a retail public utility owned by the municipality is the applicant, a landowner is not entitled to make an election under subsection (i) of this section but is entitled to file a request to intervene in order to contest the inclusion of the landowner's property in the requested area at a hearing regarding the 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.

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SUBCHAPTER K. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §24.363

Statutory Authority

The amendments are adopted under Texas Water Code(TWC) §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility's actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.

Cross Reference to Statutes: Texas Water Code §§13.041, 13.046, 13.131, 13.136(b), 13.181(b), 13.1871, 13.1872, 13.1873, 13.246.

§24.363. Temporary Rates for Services Provided for a Nonfunctioning System.

(a) Notwithstanding other provisions of this chapter, upon sending written notice to the commission, a retail public utility other than a municipally owned utility or a water and sewer utility subject to the original rate jurisdiction of a municipality that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider may immediately begin charging the customers of the nonfunctioning system a temporary rate to recover the reasonable costs incurred for interconnection or other costs incurred in making services available and any other reasonable costs incurred to bring the nonfunctioning system into compliance with commission rules.

(b) Notice of the temporary rate must be provided to the customers of the nonfunctioning system no later than the first bill which includes the temporary rates.

(c) Within 90 days of receiving notice of the temporary rate increase, the commission will issue an order regarding the reasonableness of the temporary rates. In making the determination, the commission will consider information submitted by the retail public utility taking over the provision of service, the customers of the nonfunctioning system, or any other affected person.

(d) At the time the commission approves an acquisition of a nonfunctioning retail water or sewer utility service provider under Texas Water Code (TWC) §13.301, the commission must:

(1) determine the duration of the temporary rates to the retail public utility, which must be for a reasonable period; and

(2) rule on the reasonableness of the temporary rates under subsection (a) of this section if the commission did not make a ruling before the application was filed under TWC §13.301.

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 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.5, relating to definitions; §25.130, relating to advanced metering; and §25.133, relating to non-standard metering service, with changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7262). The amendments to §25.130 and §25.133 conform the rules to Senate Bill 1145, 85th Legislature, Regular Session, which amended Public Utility Regulatory Act (PURA) §39.452, and to the following bills from the 86th Legislature, Regular Session: House Bill 853, which amended PURA §39.5521; House Bill 986, which amended PURA §39.402; and House Bill 1595, which amended PURA §39.5021. These bills encourage deployment of advanced metering and meter information networks by extending the applicability of PURA §39.107(h) and (k) to electric utilities providing service in areas outside the Electric Reliability Council of Texas (ERCOT) region.

The amendments also remove the requirement for an electric utility to offer the home area network (HAN) feature and set minimum capabilities for on-demand reads of customers' advanced meter data. In addition, the amendments clarify and define rule language; and remove obsolete and other unnecessary rule language. These amendments are adopted under Project No. 48525.

The commission received comments on the proposed amendments from Southwestern Electric Power Company, El Paso Electric Company, Entergy Texas, Inc., and Southwestern Public Service Company (collectively Joint Non-ERCOT Utilities); Alliance for Retail Markets (ARM); Texas Energy Association for Marketers (TEAM); Office of Public Utility Counsel (OPUC); Mission:Data Coalition (Mission:Data); Texas Advanced Energy Business Alliance (TAEBA); Enel X North America, Inc. (Enel X); Lone Star Chapter of Sierra Club (Sierra Club); Texas Solar Power Association (TSPA); and Solar Energy Industries Association (SEIA). In addition, the commission received joint initial comments from AEP Texas Inc. (AEP), CenterPoint Energy Houston Electric, LLC, (CenterPoint) and Texas-New Mexico Power Company (TNMP) and joint reply comments from these utilities and Oncor Electric Delivery LLC (Oncor; collectively Joint ERCOT TDUs). There was no request for a public hearing.

Comments on §25.5 (definitions)

ARM supported the commission's proposed inclusion of a definition for "retail electric provider (REP) of record" to distinguish it from the general definition for retail electric provider.

Commission Response

The commission agrees with ARM and adopts the definition as proposed.

Comments on §25.130(c) (definitions)

TSPA recommended two changes to the definition of "web portal." The first recommended change was to add the word "secure" before "read-only access" to add clarity that the web portal needs to be secure because of the growing threat of cyber-attacks. TSPA also recommended that data be accessible in a standardized format to facilitate software development so customers, REPs, and other entities authorized to have access will not be required to use the web portal graphical user interface.

The Joint Non-ERCOT Utilities opposed TSPA's proposed changes to the definition of web portal. The Joint Non-ERCOT Utilities pointed out that §25.130(j) already requires access to the web portal to be secure. Concerning TSPA's proposal to require data accessibility in a standardized format, the Joint Non-ERCOT Utilities argued that TSPA did not consider or quantify the cost that would be imposed on utilities and their customers. The Joint Non-ERCOT Utilities stated that the costs of this proposal outweigh the benefits to customers.

ARM acknowledged that data provided in a standardized format facilitates software development to make data more readily available to customers and REPs. However, ARM stated that Smart Meter Texas (SMT) already provides data in a standardized format, so it is unclear what additional format standardization TSPA is requesting.

TEAM recommended a change to the definition of "web portal" to delete "by an electric utility or a group of electric utilities." TEAM advocated for this change to leave open the possibility in the future for ERCOT to perform some or all the features of access to advanced meter data. However, TEAM did not advocate for this change presently. ARM expressed support for TEAM's proposed amendment to the definition of web portal based on the same reason as TEAM. ARM also added it does not advocate for this change presently.

The Joint ERCOT TDUs responded by disagreeing with TEAM's proposed revision. The Joint ERCOT TDUs stated that there is no need to revise §25.130 now to address something that might come up in the future and noted that the commission routinely reviews and revises rules when appropriate.

Mission:Data proposed to add the following language to the definition of "web portal": "For non-ERCOT utilities, a portal shall also provide customer account information, billing information, and other information necessary to determine eligibility in, and for customers to participate in, any demand-side management program(s)." In addition, Mission:Data argued that Texas customers in non-ERCOT regions should be able to delegate access to their energy information to service providers so energy usage can be economically optimized to better serve customers.

The Joint Non-ERCOT Utilities opposed Mission:Data's proposal. The Joint Non-ERCOT Utilities stated that Mission:Data did not address the data privacy requirements of PURA §39.107(k) and §25.44, which require that "An electric utility shall not sell, share, or disclose information generated, provided, or otherwise collected from an advanced metering system or meter information network, including information used to calculate charges for service, historical load data, and any other customer information," or PURA §39.101(a)(2), which requires that the commission ensure retail customer protections that provide a customer with "privacy of customer consumption and credit information." Although the Joint Non-ERCOT Utilities acknowledged that customers are free to share their meter data and any other information with a competitive service provider, they stated that Mission:Data's proposal seems to make the sharing of virtually all customer information by the utility automatic via the web portal with customer approval of access to meter usage data. The Joint Non-ERCOT Utilities stated that this is inconsistent with PURA §39.107(k), which governs usage data. Further, the Joint Non-ERCOT Utilities stated that AMS does not produce the additional customer data requested by Mission:Data, and that it is improper to use this proceeding to attempt to alter the means by which third parties may access customer records.

Commission Response

The commission adopts TSPA's recommendation to add the word "secure" before "read-only access" in the definition of "web portal." This addition makes explicit the important requirement that access to customer data be secure.

The commission does not adopt TSPA's proposal to require data accessibility in a standardized format. TSPA did not provide enough information to justify its proposal.

The commission declines to adopt TEAM's proposal to delete "by an electric utility or a group of electric utilities" from the definition of web portal. If, in the future, the commission requires ERCOT to provide access to advanced meter data, the rule can be amended at that time.

The commission does not adopt the definition of web portal proposed by Mission:Data. Mission:Data did not provide enough information to justify its proposal.

Comments on §25.130(d)(4)(D) (web portal)

TEAM proposed a modification to subsection (d)(4)(D) relating to the requirement to provide a web portal in order to ensure that the amended rule language leaves open the possibility that, with proper approval from ERCOT and stakeholders, some or all of the features of access to advanced meter data currently performed by SMT could be performed by ERCOT. TEAM did not advocate for implementing such changes now but does not want to foreclose any efficiencies that might be brought about by participation of ERCOT in the future.

The Joint ERCOT TDUs responded by disagreeing with TEAM's proposed revision to §25.130 (d)(4)(D). The Joint ERCOT TDUs stated that there is no need to revise §25.130 now to address something that might come up in the future and noted that the Commission routinely reviews and revises rules when appropriate.

Commission Response

The commission declines to adopt TEAM's proposed addition to §25.130(d)(4)(D) relating to the requirement to provide a web portal. If, in the future, the commission requires ERCOT to provide access to advanced meter data, the rule can be amended at that time.

Comments on §25.130(d)(6) and (d)(9), and §25.130(g)(4) (progress reports)

The Joint Non-ERCOT Utilities urged the commission to reduce the frequency of the progress reports relating to the deployment status of an electric utility's AMS required under §25.130(d)(6) and (d)(9) from monthly to quarterly. In addition, they requested that the requirement to file such reports not begin until after deployment has commenced.

The Joint Non-ERCOT Utilities also urged the commission to reduce the frequency of progress reports relating to activities undertaken to enhance the electric utility's AMS, required under §25.130(g)(4), from monthly to quarterly.

Commission Response

The commission declines to reduce the frequency of reports required under §25.130(d)(6) and (d)(9) regarding the utility's deployment status, and retains the requirement that these reports commence after the electric utility files its deployment plan. Monthly reports are better suited than quarterly reports to timely identify and follow up on issues arising prior to and during deployment. The commission declines to reduce the frequency of reports required under §25.130(g)(4) relating to the status of activities undertaken to enhance AMS features for the same reason.

Comments on §25.130(d)(11) (outage notification)

Subsection (d)(11) requires that "notification of any planned or unplanned outage that affects access to customer usage data must be posted on the electric utility's web portal home page." In order to conform this requirement with Mission:Data's proposed modification to the definition of "web portal" in §25.130(c)(5), Mission:Data proposed to remove the word "usage" before "data." This change would broaden the existing requirement to require non-ERCOT utilities to provide account information, billing information, and other information through a web portal.

The Joint Non-ERCOT Utilities opposed Mission:Data's proposed modification to §25.130(d)(11) for the same data privacy reasons it opposed Mission:Data's proposed modification to the definition of "web portal" in §25.130(c)(5). Furthermore, the Joint Non-ERCOT Utilities argued that AMS does not produce the additional customer data discussed by Mission:Data, and that it is improper to use this proceeding to attempt to alter the means by which third parties may access customer records.

Commission Response

The commission declines to adopt Mission:Data's proposal to make changes to §25.130(d)(11) to broaden the existing provision to require non-ERCOT utilities to provide account information, billing information, and other information through a web portal. As stated in its response to the comments of Mission:Data regarding §25.130(c), the commission declines to modify the advanced metering rule to require that non-ERCOT electric utilities provide information through a web portal other than the information provided by the utility's AMS.

Comments on §25.130(d)(12) (prohibition on provision of competitive energy services)

ARM requested that §25.130(d)(12) be revised to clarify that the prohibition on transmission and distribution utilities (TDUs) providing any advanced metering equipment or service under §25.343, relating to competitive energy services, applies to any service provided through SMT, which is the web portal jointly owned and operated by the TDUs.

The Joint ERCOT TDUs opposed ARM's proposed revision and stated that the subsection already makes clear that a utility must not provide any advanced metering equipment or service that is deemed a competitive energy service under §25.343 of this title. The Joint ERCOT TDUs expressed belief that ARM's proposal to insert "including any service provided through a web portal" is too broad because it seems to capture any possible action taken by a utility on a web portal. The Joint ERCOT TDUs stated that not every action taken on a web portal should or would constitute a competitive energy service under §25.343. In addition, the Joint ERCOT TDUs stated that a modification to this subsection should not be used as a device to expand the definition of competitive energy services provided in §25.341(3) of this title. The Joint ERCOT TDUs expressed concern that if ARM's proposal is adopted, ARM or another party could assert that SMT is precluded from using dashboards, graphs, or charts to communicate meter data to customers. The Joint ERCOT TDUs were concerned that without these tools, it would be very difficult for customers to understand and use the meter data provided by SMT. Furthermore, the Joint ERCOT TDUs noted that the SMT

business requirements approved in Docket No. 47472 address the manner in which meter data must be provided and displayed on SMT.

Commission Response

The commission declines to adopt ARM's request to modify §25.130(d)(12) to specify that the prohibition on TDUs relating to provision of competitive energy services under §25.343 of this title applies to any service provided through SMT. The provision already properly addresses the issue raised by ARM. Furthermore, the commission agrees with the Joint ERCOT TDUs that the SMT business requirements approved in Docket No. 47472 clearly specify the way meter data must be provided and displayed on SMT.

Comments on §25.130(d)(13) (limitation of liability)

AEP, CenterPoint, and TNMP opposed elimination of the limitation of liability provision in §25.130(d)(13), and suggested language to revise the existing provision. They stated that the existing language resolves any uncertainty as to whether a utility's provision of AMS with the minimum features required by subsection (g) of this section constitutes provision of a delivery service. They were concerned that removal of the current provision would cause uncertainty and could lead to a court determination that provision of the minimum AMS features required under subsection (g) does not constitute provision of a delivery service under the utilities' retail delivery service tariff. In addition, these commenters stated that the proposed rule would require the utilities to provide access to a new class of entities: those authorized by the customer to receive such access. These commenters stated that their retail delivery service tariffs only cover competitive retailers and retail customers. Because of this, they urged the commission to extend the reach of the limits of liability in the retail delivery service tariff to all entities that the utilities would be required to provide access to. To accomplish this, they proposed retention of existing §25.130(d)(13) as modified by their revisions. The proposed revisions clarify that provision of AMS services and features constitute delivery services under the electric utility's tariff; and allow any commercial entity other than a REP that is authorized to access a customer's meter data under subsection (g) of this section, to be deemed a retail customer for purposes of the limitation of liability provisions in the electric utility's tariff.

ARM did not oppose the extension of limitation of liability, but rejected the proposed wording that any commercial entity other than a REP "shall be deemed a retail customer for purposes of limitation of liability provisions." ARM stated that deeming a person or entity to be a retail customer, who is not a retail customer, could raise a host of unintended consequences in the interpretation of other commission rules. ARM proposed alternate language for the commission to consider that would allow a commercial entity to be included within the limitation of liability in the electric utility's tariff if §25.130(d)(13) is retained.

Mission:Data and Enel X supported removal of the limitation of liability language in this subsection. Mission:Data stated that the language properly belongs in the Joint ERCOT TDUs' retail delivery tariffs. Mission:Data urged the commission to consider revisions to the Joint ERCOT TDUs' retail delivery tariffs in a separate proceeding. Mission:Data and Enel X reminded the commission that the Joint ERCOT TDUs agreed in Docket No. 47472 not to address issues relating to limitation of liability, because SMT's terms and conditions provide sufficient limitations on their liability. Enel X stated that the proposed language seems to be inconsistent with the agreement of the settling parties in Docket No. 47472, is not necessary, and should be rejected. Mission:Data stated that if the commission decides to address these issues in this proceeding, there are significant issues to be addressed concerning the TDU's liability for poor or negligent operation of SMT. Mission:Data argued that it is not necessarily reasonable for tort immunity provisions relating to retail delivery service to apply equally to an information technology service such as SMT. Mission:Data stated that these issues have not been adequately addressed in the present proceeding and should be addressed in a separate proceeding where a sufficient record can be developed.

Commission Response

In response to the comments of AEP, CenterPoint, and TNMP, the commission retains the existing limitation of liability provision in the rule in order to avoid unintended consequences that could result from deleting the provision. In proposing to delete the provision, the commission did not intend to make a substantive change. The commission declines to modify the provision as proposed by AEP, CenterPoint, and TNMP, because the commission intends to maintain the applicability of the limitation of liability provisions found in an electric utility's tariff to the electric utility's deployment and provision of AMS services and features.

The commission disagrees with the comments of AEP, CenterPoint, and TNMP that the proposed rule would require the utilities to provide access to a new class of entities: those authorized by the customer to receive such access. Existing §25.130(j)(5) provides: "A customer may authorize data to be available to an entity other than its REP." In the order adopting this provision, *Rulemaking Related to Advanced Metering,* Project No. 31418, order at 69 (May 10, 2007), the commission anticipated that access to customer data could be shared with any entity authorized by the customer when it stated: "The commission concurs with the Joint DSPs that [it is] sufficient for the REP, the customer, and any authorized third party to have access to the advanced meter data..."

Comments on §25.130(f) (pilot programs)

Subsection (f) provides that an electric utility may deploy AMS with a limited number of meters that do not meet the requirements of subsection (g) of this section in a pilot program in order to gather information.

TSPA stated that notice and opportunity to participate in pilots should extend beyond REPs to include entities authorized by the customer to have access to customer data.

Commission Response

The commission makes the change proposed by TSPA. The commission agrees that notice and opportunity to participate in pilots should extend beyond REPs to include entities authorized by the customer to have access to customer data. Use of AMS has become widespread since this section was adopted in 2007. If an electric utility engages in a pilot program to gather additional information beyond the body of information currently available, the commission agrees with TSPA that notice and opportunity to participate in the pilot should be sent by the utility not only to REPs but also the entities authorized by a customer to have read-only access to the customer's advanced meter data. These entities may have systems that use the advanced meter data and these systems may be affected by broad deployment of the technology used in the pilot.

Comments on 25.130(g)(1)(D) (provision of time-stamped meter data)

The Joint Non-ERCOT Utilities noted that §25.130(g)(1)(D) requires that a utility's AMS provide or support sharing of time-stamped meter data to the independent organization or regional transmission organization for purposes of wholesale settlement. They stated that the intent of the provision seems to be that an organization that administers a retail marketplace have access to retail sales data in order to settle market transactions. The Joint Non-ERCOT Utilities explained that there is no reason for a vertically integrated utility to submit retail meter data to a regional transmission operator because the Southwest Power Pool (SPP) and the Midcontinent Independent System Operator (MISO) do not administer a retail market place, and utilities participating in SPP or MISO already have appropriate metering and processes in place to settle wholesale market transactions. The Joint Non-ERCOT Utilities proposed revisions to §25.130(g)(1)(D) to clarify that the provision applies only to utilities that participate in a retail marketplace administered by an independent organization or a regional transmission organization.

ARM did not oppose the comments of the Joint Non-ERCOT Utilities, but stated that because the ERCOT TDUs do not "participate" in the retail market the proposed revision could be confusing or have unintended consequences. ARM recommended language to address this distinction.

Commission Response

The commission agrees with the Joint Non-ERCOT TDUs that not all electric utilities are required to provide time-stamped meter data to an independent organization or regional transmission organization. However, time-stamped meter data is necessary to identify when a meter read is made and is needed for on-demand meter reads and time of use rates. The commission has therefore changed §25.130(g)(1)(D) to require an AMS to provide time-stamped meter data, without reference to providing it to an independent organization or a regional transmission organization. A utility subject to requirements concerning time-stamped meter data by an independent organization or regional transmission organization will be subject to those requirements regardless of whether such requirements are addressed in the rule.

Comments on §25.130(g)(1)(E) (provision of direct, real-time access to customer usage data)

Enel X, Sierra Club, Mission:Data, and TSPA urged the commission to retain the existing provision in §25.130(g)(1)(E) that requires an AMS to provide or support the "capability to provide direct, real time" access to customer usage data. Enel X stated that new technologies are developing that would enable customers to make use of real-time data. TSPA acknowledged that HAN devices have not been widely adopted but stressed that continued access to real-time data is essential because alternative methods to access real-time data could be more successful. Enel X stated that removing this requirement would require customers that want real-time data to pay for duplicative meter equipment that can only provide similar data to the utility meter.

Enel X proposed a modification to the current provision in the rule that would expand the requirement to provide direct, real-time access to customer usage data to entities authorized by the customer. Enel X argued that its proposed revision is faithful to the settlement in Docket No. 47472 that only removes the HAN requirement and preserves the opportunity for new technologies to enable real-time access to customer usage data. Sierra Club supported Enel X's proposed revision to §25.130(g)(1)(E), because it preserves the opportunity for new technologies to access direct, real-time usage data.

Mission:Data stated that retail tariffs in non-ERCOT regions that include time-of-use, peak demand, or other time or demand charges are fundamentally unfair if customers, and the devices customers install, are deprived of real-time access to information needed to make economic decisions. Mission:Data argued that no cost-effective alternative to the HAN for acquiring real-time energy usage currently exists. Mission:Data stated that because there is no evidence on record concerning the costs, benefits, or customer uptake of HAN, any attempt to eliminate the HAN requirements is premature and unwarranted.

ARM agreed with ENEL X, Sierra Club, TSPA, and Mission:Data that access to direct, real-time customer usage data would be beneficial, but explained that they do not seek to upset the agreement reached in Docket No. 47472.

The Joint ERCOT TDUs and the Joint Non-ERCOT Utilities were opposed to the proposal to leave language in §25.130(g)(1)(E) that requires a utility's AMS to have the capability to provide direct, real-time access to customer usage data. The Joint Non-ERCOT Utilities argued that this would essentially continue to require HAN functionality without naming it. The Joint Non-ERCOT Utilities asserted that on-demand-reads, which provide near real-time access, is the reasonable minimum capability that should be required, because it seems that few people need or want HAN.

The Joint Non-ERCOT Utilities stated that HAN functionality should be permissive, and utilities that deploy HAN should be permitted to recover costs if it is shown that there is a sufficient level of customer interest or there is some reason to socialize costs.

Commission Response

The commission declines to retain the existing language in §25.130(g)(1)(E) that requires an electric utility's AMS to support the capability to provide direct, real-time access to customer usage data as proposed by Enel X, Sierra Club, Mission:Data, and TSPA. Furthermore, the commission declines to accept the changes proposed by Enel X that would expand the current requirement in the rule to provide direct, real-time access to customer usage data to entities authorized by the customer. Only a very small percentage of customers has taken advantage of the capability of AMS to provide direct, real-time access to customer usage data. The commission does not agree with the comments of Enel X that customer appetite for direct, real-time access to customer usage data will increase as a result of any new technologies that are being developed to make use of real-time data, or of methods to access real-time data other than through a HAN device as suggested by TSPA. In addition, the commission does not agree with the comments of Mission:Data that customer use of HAN would be significantly different in the non-ERCOT regions of Texas than in the ERCOT region of Texas. The commission found in "˜Commission Staff's Petition to Determine Requirements for Smart Meter Texas', Docket No. 47472, Finding of Fact No. 62I (Jul. 12, 2018) that on-demand meter reading functionality is an adequate substitute for HAN functionality. On-demand meter reading gives a customer prompt access to usage information without the costs incurred by the customer for a HAN. In addition, use of on-demand reads

is increasing by customers in ERCOT, whereas use of HAN by customers in ERCOT is decreasing.

Comments on §25.130(g)(1)(E) (interval data recorder (IDR) meters)

ARM requested that the commission retain existing §25.130(g)(1)(E)(ii), which requires a stakeholder process and commission approval to determine when and how 15-minute IDR data will be made available on the electric utility's web portal. ARM stated this would balance the interests of all stakeholders. If the commission declines to retain §25.130(g)(1)(E)(ii), ARM requested the commission clarify that removal of the provision is not intended to foreclose a future proceeding to include IDR metered data on the SMT portal or via some other means. ARM stated that ERCOT Nodal Protocol Revision Request 877 provides a process for a TDU to replace a customer's IDR meter with an AMS meter but explained that not all premises can utilize an AMS meter in place of an IDR meter. ARM acknowledged that technical limitations keep IDR metered data from being available as frequently as AMS data and recommended that the TDUs undertake system modifications to allow for daily interval data to be available on SMT or some other means.

The Joint ERCOT TDUs opposed ARM's proposal. The Joint ERCOT TDUs stated that §25.130 is applicable only to AMS, not metering for those customers with IDR meters. In addition, the Joint ERCOT TDUs stated that, from a technical perspective, it would only be possible to make 15-minute IDR data available on SMT if all IDR meters were converted to AMS meters which, they observed, is not required by rule or statute.

Commission Response

The commission declines to retain the language in §25.130(g)(1)(E)(ii) that requires a stakeholder process and commission approval to determine when and how 15-minute IDR data will be made available on the electric utility's web portal. As ARM acknowledged, there are technical problems with implementing this requirement. Methods to gain better access to energy usage data recorded by IDR meters may be considered in future proceedings.

Comments on §25.130(g)(1)(E) (time intervals for data collection)

TEAM proposed modifications to §25.130(g)(1)(E) to address the potential future approval of involvement of an independent organization to provide a database of meter data and a web portal to allow access to that data.

TSPA proposed that data on meters and AMS be stored in five-minute intervals. TSPA stated this move is necessary to predicate further wholesale market innovation that would include five-minute wholesale market settlement.

The Joint ERCOT TDUs opposed TEAM's and TSPA's proposed revisions. Regarding TEAM's proposal, the Joint ERCOT TDUs asserted there is no reason to make changes to address a circumstance that is not under consideration or lacks sufficient support at this time. The Joint ERCOT TDUs stated that TSPA's comments did not address the technical aspects of five-minute interval data collection and the AMS upgrades that would be required to move data collection to shorter than 15-minute intervals. In addition, the Joint ERCOT TDUs noted that extensive technical inquiry and cost evaluation would be required before such a significant change could be considered. The Joint Non-ERCOT Utilities also opposed TSPA's proposal and stated that they saw no value in requiring data storage and communication capability for 5-minute intervals when it is not necessary for settlement. The Joint Non-ERCOT Utilities supported the 15-minute interval requirement in the rule.

Commission Response

The commission declines to adopt TEAM's proposal to accommodate the possible future involvement by an independent organization. If, in the future, the commission requires ERCOT to provide access to advanced meter data, the rule can be amended at that time.

Further, the commission declines to adopt the changes proposed by TSPA to require that meter data be stored in five-minute intervals. The commission agrees with the Joint ERCOT TDUs that extensive technical inquiry and cost evaluation would be required before such a significant change could be considered, and there are insufficient reasons for doing so at this time.

Comments on §25.130(g)(1)(G) (on-demand reads)

The Joint Non-ERCOT Utilities requested that the commission clarify §25.130(g)(1)(G) to specify that access to "customer advanced meter data" is provided.

TSPA, Sierra Club, OPUC, and Enel X expressed concern regarding the proposed minimum requirements for on-demand reads provided through an application programming interface. TSPA remarked that merely allowing on-demand reads to be done via the graphical user interface (web page) will substantially diminish its usefulness because this method, typically accomplished by a user clicking a button on a website, is not scalable. TSPA stated that on-demand reads must be encouraged programmatically through software. TSPA asserted that two on-demand reads per hour per meter via an application programming interface is insufficient in times of significant strains on the grid when customer load can lead to dramatic differences in energy costs. In addition, TSPA asserted that far more than 6,000 on-demand reads per day per utility are necessary, and a level of service should be reliably expected without an exception for network traffic.

Sierra Club and OPUC also asserted that the proposed minimum requirement for provision of on-demand reads through an application programming interface is too low. Sierra Club stated that for the large utilities, the requirement represents only a tiny percentage of total advanced meters deployed. In order to make the minimum requirement more equitable, Sierra Club requested that the requirement be based on a percentage of meters or some other number based on the size of the utility. Alternatively, Sierra Club suggested that the commission determine appropriate requirements for provision of on-demand reads for each utility outside of the rule. OPUC preferred no minimum requirement be set and stated that many utilities currently provide more on-demand reads than the proposed minimum requirement. OPUC recommended that, if the commission keeps a minimum requirement in the rule, it be increased substantially, or the commission establish appropriate minimum requirements on an individual utility basis. OPUC did not oppose Sierra Club's suggestion to make the minimum requirement a percentage rather than a number but preferred no minimum requirement be set.

Enel X stated that deleting the proposed revision to §25.130(g)(1)(G) would allow the issue to be addressed by the terms of the settlement agreement in Docket No. 47472 for now and, at a future date, enable the commission to more

easily consider alternate minimum requirements that more appropriately reflect the size and capability of each utility's system.

ARM agreed that it is unnecessary to include a minimum number of on-demand reads in the rule because the settlement in Docket No. 47472 already addresses the issue. ARM stated that if a minimum is included, it could create confusion as to whether the settlement in Docket No. 47472 or the rule controls. ARM recommended that the proposed changes to §25.130(g)(1)(G) that could be inconsistent with the settlement be dropped.

The Joint ERCOT TDUs opposed proposals to change the minimum number of on-demand reads required through an application programming interface. The Joint ERCOT TDUs stated that there is no need to require unlimited on-demand reads, because customer demand for on-demand reads are being met. In response to TSPA's comment that on-demand reads should be available programmatically through software, the Joint ERCOT TDUs responded that SMT already provides on-demand reads programmatically through software by offering on-demand reads through an application programming interface.

The Joint Non-ERCOT Utilities opposed TSPA's comment that on-demand reads be available programmatically through software. The Joint Non-ERCOT Utilities asserted that keeping the rule permissive for the Joint Non-ERCOT Utilities is a better approach, because on-demand reads through a graphical user interface are mandatory. The Joint Non-ERCOT Utilities believed the proposed language provides a reasonable balance of facilitating near real-time access to meter data and the costs and requirements of each utility's communications and information technology infrastructure. The Joint Non-ERCOT Utilities remarked that the benefit a non-ERCOT customer would receive as a result of mandating on-demand reads through an application programming interface has not been demonstrated.

The Joint Non-ERCOT Utilities also opposed TSPA's proposal to remove the rule's exception for network traffic. The Joint Non-ERCOT Utilities explained that the utility must retain the ability to protect core network data flow, particularly with respect to sensors and any distribution automation devices on the grid during an outage. The Joint Non-ERCOT Utilities believed that the exception provides reasonable protection against sudden increased demand on the communications system to protect core processes and mitigates risk of incurring unreasonable or unnecessary investment to expand the communication network solely to facilitate more on-demand reads, which to date are relatively few.

Commission Response

The commission makes the change proposed by the Joint Non-ERCOT Utilities to specify that access to "customer meter data" is provided by an on-demand read.

The commission agrees with the concerns of TSPA, Sierra Club, OPUC, Enel, and ARM about including specific numerical requirements in the rule relating to-demand reads through an application programming interface (API). The commission therefore does not adopt those requirements in the proposed rule, so that any specific numerical requirements will be addressed on a case-by-case basis. Therefore, the specific numerical requirements approved by the commission in Docket No. 47472 for the four ERCOT utilities will remain in place unless and until the commission changes them in a future proceeding. Version 2.0 of SMT, the web portal used by the four ERCOT utilities, was implemented in December 2019 and for the first time allows on-demand reads to be made through an API rather than manually through SMT's graphical user interface (web page). Because on-demand reads through an API are automated, this upgrade of SMT creates the potential for a quick and significant increase in the numbers of on-demand reads, which could overwhelm a utility's ability to provide timely on-demand reads. The specific numerical requirements approved by the commission in Docket No. 47472 addressed this concern.

The commission declines to adopt TSPA's proposed revision that would require the Joint Non-ERCOT Utilities to provide on-demand reads through an API. These utilities currently do not have retail competition or tariff offerings that create a potential need for API access. The rule permits but does not require a utility to support API access. Therefore, if there is a cost-justified reason for adding this functionality, a utility has the ability to do so under the rule.

The commission declines to adopt TSPA's proposal to remove the rule's provision making the availability of on-demand reads subject to network traffic. The commission agrees with the comments of the Joint Non-ERCOT Utilities that an electric utility must retain the ability to protect core network data flow.

Comments on §25.130(g)(1)(H) (on-board storage of AMS meter data)

Subsection §25.130 (g)(1)(H) requires that an AMS must support on-board storage of meter data that complies with nationally recognized non-proprietary standards.

The Joint Non-ERCOT Utilities suggested that the range of relevant standards for on-board storage of meter data be expanded to include the International Electromechanical Commission (IEC) DLMS-COSEM standards, which are used by OpenWay Riva meters. They also proposed ending this subparagraph with the term "etc."

Commission Response

The commission agrees to expand the example of relevant non-proprietary standards for on-board storage of meter data as suggested by the Joint Non-ERCOT Utilities. However, the commission declines to add "etc." to §25.130(g)(1)(H) because the language is vague and unnecessary.

Comments on §25.130(g)(1)(J) (HAN devices)

Enel X and Sierra Club opposed the proposed revisions to §25.130(g)(1)(J) that would remove the requirement that an AMS have the capability to communicate with devices inside the home.

Sierra Club stated that it is open to some change in the language to reflect the limited use of HANs. However, Sierra Club preferred that the commission keep the requirement that an AMS have the capability to communicate with devices inside the premises so that customers can obtain their data in real-time. Furthermore, Sierra Club stated that not requiring non-ERCOT utilities' AMS to have the capability to communicate with devices inside the home is a disservice to ratepayers who will be funding deployment of advanced meters.

Enel X stated that the structure of §25.130(g)(1)(J) does not mandate that HAN be the only solution that may be used to provide real-time access to data from a customer's advanced meter. In addition, it stated that the result of the proposed revisions to §25.130(g)(1)(J) would be not only to limit access to real-time data through a HAN that communicates through the utility's AMS, but also to limit the customers who can have access to those

grandfathered in the settlement agreement adopted in Docket No. 47472. Enel X proposed a more narrowly focused revision to the subsection that eliminates the ERCOT TDUs' obligation to maintain HAN functionality consistent with the agreement in Docket No. 47472 but retains clear authority for customers to use other potential means to receive data from their meters in real-time. Enel X believed that limiting customer access to their meter data on a delayed, after-the-fact, basis is not adequate in many circumstances. In addition, Enel X stated that as ERCOT looks for solutions to provide it with a better understanding of the status and activity of resources on the distribution grid, allowing pathways to provide awareness that is less cost-prohibitive than solutions used for larger resources on the transmission grid, such as access to real-time data from a customer's meter, could facilitate this awareness and allow smaller customers easier access to wholesale markets.

Mission:Data urged the commission to maintain the HAN requirement for the non-ERCOT utilities. Mission:Data asserted that retaining the HAN is necessary because there is no adequate or practical substitute for the HAN's ability to relay real-time electricity consumption information to devices inside the home. Mission:Data provided information to support its assertion that alternatives to HAN are expensive, difficult, and potentially dangerous to install, and may not be possible for certain electrical panels throughout Texas. Mission:Data argued that eliminating HAN will have significant impacts on distributed energy resources in the non-ERCOT regions of Texas. Mission:Data asserted that advanced systems involving rooftop solar, batteries, aggregated energy efficiency, or demand response resources in homes and businesses will be negatively impacted without access to cost-effective real-time energy usage data. Mission:Data stated that it does not necessarily follow that eliminating the requirement for ERCOT TDUs to provide HAN means that it is reasonable to eliminate HAN for the non-ERCOT investor-owned utilities. To the extent that customer longevity is required to finance market energy management systems that use HAN, Mission:Data believed that vertically integrated utilities may be in a better position than REPs in the ERCOT region. Furthermore, Mission:Data asserted that there has been no discussion in this proceeding about the rate design implications for non-ERCOT utilities of eliminating the only cost-effective method of providing customers with real-time feedback on their electricity usage.

The Joint Non-ERCOT Utilities asserted that Mission:Data's comments failed to provide the full scope of issues surrounding the HAN that weigh against proposals of HAN as a required minimum feature. The Joint Non-ERCOT Utilities asserted that Mission:Data's comments failed to recognize that HAN functionality has been available through the ERCOT TDUs' deployments for over ten years but never widely adopted by customers. The Joint Non-ERCOT Utilities pointed to testimony in support of the stipulation and settlement agreement filed in Docket No. 47472 that indicated less than 7,700 HAN devices were provisioned on SMT as of April 2018. The Joint Non-ERCOT Utilities stated that the commission found on-demand reads to be an acceptable substitute for HAN functionality.

ARM stated that AMS meters were designed to be pairable with HAN devices. ARM asserted that to the extent possible through manual support on an as-requested basis, customers should retain the ability to have self-provided or REP-provided on-premise devices supported for pairing to AMS meters provided the customer or REP is willing to pay for the reasonable cost of necessary modifications. ARM believed that this could be effectuated under §25.130(h), which provides a process for a REP to request TDUs to provide enhanced advanced meters, additional metering technology, or advanced meter features. ARM provided a proposed revision to §25.130(g)(1)(J) to acknowledge that REPs or customers may request that ERCOT TDUs support the pairing of a customer or REP-provided device to an AMS meter. The REPs asserted that their proposed amendment to the subsection would not alter the business requirements approved in Docket No. 47472 because those are in relation to SMT support for HAN, as distinct from AMS meters' support.

The Joint ERCOT TDUs opposed ARM's proposal unless the commission authorizes utilities to implement a discretionary service charge for that service. The Joint ERCOT TDUs also stated that ARM's proposal is inconsistent with the Order and Stipulation in Docket No. 47472. In addition, the Joint ERCOT TDUs stated that ARM's proposal would require the TDUs to enable the pairing of an AMS meter with a customer-provided HAN device or a HAN device provided by a REP or a competitive service provider. Furthermore, the Joint ERCOT TDUs stated that SMT 2.0 is not capable of pairing a HAN device to a meter because that functionality was removed under the stipulation and commission's order in Docket No. 47472.

Commission Response

The commission makes no change to the proposed language in §25.130(g)(1)(J). The language in the proposed rule narrows the requirement for an AMS to have the capability to communicate with devices inside a customer's premises to an electric utility in the ERCOT region with a HAN device paired to a meter and in use at the time the version of the web portal approved in Docket No. 47472 was implemented. As found in Docket No. 47472, only a very small percentage of customers have taken advantage of the capability of AMS to provide access to direct, real-time data through a HAN device. Furthermore, as stated in response to comments made on §25.130(g)(1)(E), on-demand meter reading gives a customer prompt access to usage information without the costs incurred by the customer for a HAN. In addition, use of on-demand reads is increasing by customers in the ERCOT region, whereas use of HAN by customers in the ERCOT region is decreasing. For the same reason, the commission declines to adopt the changes proposed by Enel X and Sierra Club to retain the requirement that an AMS have the capability to communicate with devices inside the home, and the changes proposed by Mission:Data to retain the HAN requirement for non-ERCOT investor-owned utilities. The commission also declines to adopt ARM's proposal to revise §25.130(g)(1)(J) to permit REPs or customers to request that ERCOT TDUs support the pairing of a customer or REP-provided device to an AMS meter, because the commission is eliminating the requirement that an AMS meter be capable of pairing with a customer or REP-provided device. The commission's finding in Docket No. 47472 remains correct that "On-demand meter reading functionality through SMT is an adequate substitute for HAN functionality."

Comments on §25.130(h)(2) (discretionary service charges)

ARM recommended removal of proposed language in §25.130(h)(2) that require a REP to be responsible for the cost of system changes necessary to provide enhanced advanced meters requested by the REP. The REPs asserted that the term "system changes" is broad, undefined, and could result in REPs being charged for a variety of TDU overhead and administrative costs that could be inappropriately attributed to a single request for an enhanced advanced meter. Should the commission retain system changes as a potential cost, the REPs requested that

they only be charged the pro-rata share of the differential costs directly attributable to any individual request for the enhanced meter or feature.

The Joint ERCOT TDUs opposed ARM's request. The Joint ERCOT TDUs stated that REPs should pay for enhanced meters or features; otherwise, REPs will be empowered to request features regardless of the changes required to the utility's system or the costs associated with system changes.

Commission Response

The commission declines to make ARM's proposed change that would eliminate the requirement that a REP be responsible for the cost of system changes necessary to provide enhanced advanced meters requested by the REP. Further, the commission disagrees with ARM's alternate proposal that would charge a REP only the pro-rata share of the differential costs directly attributable to any individual request for the enhanced meter or feature. The commission declines to adopt either of ARM's proposals, in order to prevent costs related to an enhanced advanced meter or feature from being charged to customers that did not cause the costs to be incurred.

Comments on §25.130(j)(3) (access to meter data)

TSPA and ARM requested that the commission replace "appropriate and reasonable" standards for data access with "robust and reliable" standards in §25.130(j)(3). ARM stated that the competitive retail market relies on consistent and timely access to meter data and the commission's support for robustness of that access would support innovation.

In addition, TSPA stated that allowing access to meter data as soon as it is available, rather than the following day, could reduce the need for on-demand reads. TSPA suggested that utilities be required to provide access to data before validation, estimation, and editing of the data to ensure same day access to the data.

The Joint ERCOT TDUs and the Joint Non-ERCOT Utilities opposed TSPA's proposal for access to unvalidated data, because providing access to that data creates the possibility that customers, REPs, and other entities will make decisions based on incorrect or incomplete data. The Joint ERCOT TDUs asserted that it is crucial that data provided to customers be as correct as possible, because customers may not have the technical expertise to understand the differences that can occur between initial as-read data and data that has been validated or re-versioned.

Commission Response

The commission declines to adopt TSPA's and ARM's proposal to replace "appropriate and reasonable" standards with "robust and reliable" standards for access to meter data. TSPA and ARM did not provide enough information to justify this proposal.

The commission declines to adopt TSPA's proposal to require electric utilities to provide access to data before validation, estimation, and editing of the data in order to ensure same day access to the data. The commission agrees with the Joint ERCOT TDUs and the Joint Non-ERCOT Utilities that providing data that has not been through the electric utilities' validation process creates a significant risk that customers, REPs and other entities would make decisions based on incorrect or incomplete usage data. In addition, extensive technical inquiry and cost evaluation may be required before such a change could be considered, and there are insufficient reasons for doing so at this time.

Comments on §25.130(j)(5) (customer authorization of access to meter data)

TAEBA, Mission:Data, ENEL X, and Sierra Club requested that the commission retain §25.130(j)(5), which provides that "a customer may authorize its data to be available to an entity other than its REP." They stated that the provision is consistent with PURA §39.107(b), which provides that the end-use customer owns and controls all its meter data. TAEBA suspected that the proposal to delete the provision may be based on the perception that the language is unnecessary and potentially redundant to §25.130(j)(1), which states that a utility must provide the customer, the customer's REP, and other entities authorized by the customer read-only access to the customer's meter data. However, TAEBA stated that deleting the explicit provision in §25.130(j)(5) may create unnecessary confusion.

Furthermore, Mission:Data, Enel X, and Sierra Club disagreed with the Joint ERCOT TDUs' interpretation offered in their comments on §25.130(d)(13) that the proposed changes to the AMS rule open up a utility's provision of AMS access to a new class of entities: those that have been authorized by a retail customer to receive such access. Mission:Data, Enel X, and Sierra Club asserted that the existing rule already provides this access. Enel X stated that when the commission adopted §25.130, it recognized that customers could authorize third-parties to receive access to their meter data through the utility's web portal: "The Commission concurs with the joint DSPs that it is sufficient for the REP, the customer, and any authorized third party to have access to the advanced meter data via the web portal, as well as through the customer's home area network (HAN)..." Mission:Data, Enel X, and the Sierra Club stated that the Joint ERCOT TDUs' narrow interpretation of the rule also conflicts with PURA §39.107(b). Enel X asserted that customers need to be able to continue to share their data with entities other than REPs, because most customers do not have the means to analyze their data or to understand the breadth of services available to them for energy management purposes. In addition, Enel X stated that energy management services provide benefits that extend beyond the customer premises to the electric grid. To avoid confusion regarding the ability of a customer to authorize access to its data to an entity other than its REP, Mission:Data and Enel X suggested replacing "an" with "any" to strengthen the provision in §25.130(j)(5) by revising it to read: "A customer may authorize data to be available to any entity other than its REP." Sierra Club agreed with this proposal.

Commission Response

The commission agrees with TAEBA, Mission:Data, ENEL X, and Sierra Club that the rule should clearly state a customer's right to authorize its meter data to be available to an entity other than its REP. Therefore, the commission keeps the language in existing §25.130(j)(5), with clarifications, and moves it to §25.130(j)(1) in order to streamline §25.130(j).

Comments on §25.130(k) (fees for distributed generation)

TSPA stated that because advanced meters are capable of multiple channels, an electric utility with an approved advanced meter deployment plan should not be allowed to charge an additional metering fee for distributed generation. Furthermore, TSPA asserted that any cost that would be recovered by such a fee should be included in the AMS surcharge or rates. Sierra Club and SEIA agreed with TSPA that a utility should be prohibited from charging an additional metering fee associated with distributed generation.

ARM stated that this rulemaking was undertaken to harmonize the rules with legislative amendments extending AMS deploy-

ment to non-ERCOT electric utilities. Considering this, ARM recommended that TSPA, SEIA, and Sierra Club's issue would be better addressed in a separate proceeding.

The Joint Non-ERCOT Utilities stated that, although it is true that advanced meters typically have multiple channels that could be used for distributed generation, a fee charged for premises with distributed generation might include costs other than the meter, such as a manual monthly billing calculation if this is not an automated feature, or provision of bi-directional meter data. The Joint Non-ERCOT Utilities also stated that failure to charge these costs to the distributed generation customer directly would put the burden for cost recovery on all customers.

Commission Response

The commission agrees with the Joint Non-ERCOT Utilities that there may be costs associated with premises with distributed generation that warrant a fee charged to such premises. Therefore, TSPA's proposal to prohibit such fees is inappropriate.

Comments on §25.133(d)(1) (termination of non-standard metering service)

This provision requires a utility to offer the following four different specific means of non-standard metering: disabling communications technology in an advanced meter if feasible; if applicable, allowing the customer to continue to receive metering service using the existing meter if the electric utility determines that it meets applicable accuracy standards; if commercially available, an analog meter that meets applicable meter accuracy standards; and a digital, non-communicating meter.

The Joint Non-ERCOT Utilities proposed to replace "and" with "or" in subsection(d)(1)(E)(iii) so a utility is not required to make all four alternative non-standard metering solutions available when any one of the options would be sufficient for offering non-standard metering service.

OPUC agreed with the Joint Non-ERCOT Utilities' proposal and argued that requiring a utility to provide all four non-standard metering options will increase costs passed onto ratepayers.

ARM opposed the Joint Non-ERCOT Utilities' proposed edit to this subsection, because all four means may be required in some instances. ARM further argued that the Joint Non-ERCOT Utilities' concern is addressed in the rule by the qualifying statements of "if feasible" in clause (i), "if applicable" in clause (ii), and "if commercially available" in clause (iii).

Commission Response

The commission does not adopt the Joint Non-ERCOT Utilities' proposal to change the language in §25.133(d)(1) that requires a utility to offer non-standard metering using one of four alternative non-standard metering solutions. Electric utilities in ERCOT have been offering non-standard metering service for a number of years under the rule that Joint Non-ERCOT Utilities seek to change and significant issues with this requirement have not been raised with the commission. The provision that non-ERCOT utilities propose to change already properly addresses the issue raised by the Joint Non-ERCOT Utilities. The Joint Non-ERCOT Utilities' concern about being required to make all four alternative non-standard metering solutions available is addressed by qualifying statements in the provision. Specifically, "if feasible" applies to disabling communications technology in an advanced meter; "if applicable" applies to allowing the customer to continue to receive metering service using the existing meter if the electric utility determines that it meets applicable accuracy standards; and "if commercially available" applies to an analog meter that meets applicable meter accuracy standards.

Comments on §25.133(d)(2) (termination of non-standard metering service)

This subsection allows a customer to terminate non-standard metering service by contacting the customer's electric utility. The customer is responsible for any remaining non-standard metering costs.

ARM proposed a change to this subsection to clarify the customer's cost responsibility ends when terminating non-standard metering service. This edit adds "until the electric utility has terminated the service" to ensure a customer's cost responsibility ends once the utility terminates service and does not continue indefinitely. OPUC agreed with ARM's proposal.

The Joint Non-ERCOT Utilities opposed ARM's proposal, because it could have unintended consequences. They stated that it is possible that some capital costs incurred to provide non-standard metering service may not be fully recovered by the utility when a customer terminates non-standard metering service. The Joint Non-ERCOT Utilities provided the example of when a utility incurs costs for making back office programming changes to provide non-standard metering service for a customer request. The utility will incur costs to obtain and install the non-standard meter and update the billing system. If the non-standard metering service is terminated before these costs have been fully recovered, then the utility or other customers would be responsible for the remainder of these costs. The Joint Non-ERCOT Utilities recommended the rule as proposed to give the utilities and the commission flexibility to determine recovery of non-standard metering service costs from the customers who caused the costs to be incurred.

Commission Response

The commission agrees with the Joint Non-ERCOT Utilities that it is appropriate for the commission to retain the flexibility to determine recovery for any non-standard metering service costs that may not have been recovered upon the termination of non-standard metering service. Therefore, the commission declines to adopt ARM's proposed change that would specify that the customer's cost responsibility ends when terminating non-standard metering service.

All comments, including any not specifically referenced herein, were fully considered by the commission.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.5

These amendments are adopted under §14.001 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §36.003, which grants the commission the authority to ensure that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; PURA §39.107, which grants the commission the authority to approve electric utility surcharges for the deployment of advanced meters, adopt rules relating to the transfer of customer data, and approve non-discriminatory rates

for metering service; and PURA §§39.402, 39.452, 39.5021 and 39.5521, which permit the electric utilities outside of the ERCOT region that elect to deploy advanced meters and meter information networks to recover reasonable and necessary deployment costs and subjects the deployment to commission rules adopted under PURA §39.107(h) and (k).

Cross reference to statutes: PURA §§14.001, 14.002, 36.003, 39.107, 39.402, 39.452, 39.5021 and 39.5521.

§25.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Above-market purchased power costs -- Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) Affected person -- means:

(A) a public utility or electric cooperative affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a public utility.

(3) Affiliate -- means:

(A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;

(B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;

(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or

(ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or

(F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.

(4) Affiliated electric utility -- The electric utility from which an affiliated retail electric provider was unbundled in accordance with Public Utility Regulatory Act §39.051.

(5) Affiliated power generation company (APGC) -- A power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(6) Affiliated retail electric provider (AREP) -- A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(7) Aggregation -- Includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load.

(8) Aggregator -- A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

(9) Ancillary service -- A service necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services the commission may determine by rule.

(10) Base rate -- Generally, a rate designed to recover the cost of service other than certain costs separately identified and recovered through a rider, rate schedule, or other schedule. For bundled utilities, these separately identified costs may include items such as a fuel factor, power cost recovery factor, and surcharge. Distribution service providers may have separately identified costs such as transition costs, the excess mitigation charge, transmission cost recovery factors, and the competition transition charge.

(11) Bundled Municipally Owned Utilities/Electric Cooperatives (MOU/COOP) -- A municipally owned utility/electric cooperative that is conducting both transmission and distribution activities and competitive energy-related activities on a bundled basis without structural or functional separation of transmission and distribution functions from competitive energy-related activities and that makes a written declaration of its status as a bundled municipally owned utility/electric cooperative pursuant to §25.275(o)(3)(A) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).

(12) Calendar year -- January 1 through December 31.

(13) Commission -- The Public Utility Commission of Texas.

(14) Competition transition charge (CTC) -- Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.

(15) Competitive affiliate -- An affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.

(16) Competitive energy efficiency services -- Energy efficiency services that are defined as competitive energy services pursuant to §25.341 of this title (relating to Definitions).

(17) Competitive retailer -- A retail electric provider; or a municipally owned utility or electric cooperative, that has the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice, without regard to geographic location.

(18) Congestion zone -- An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.

(19) Control area -- An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;

(C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and

(D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.

(20) Corporation -- A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by the Public Utility Regulatory Act.

(21) Critical loads -- Loads for which electric service is considered crucial for the protection or maintenance of public health and safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.

(22) Customer choice -- The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(23) Customer class -- A group of customers with similar electric service characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas Government Code, Title 10, Chapter 2303 may be considered to be a separate customer class of electric utilities.

(24) Day-ahead -- The day preceding the operating day.

(25) Deemed savings -- A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(26) Demand -- The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(27) Demand savings -- A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(28) Demand-side management (DSM) -- Activities that affect the magnitude or timing of customer electrical usage, or both.

(29) Demand-side resource or demand-side management -- Equipment, materials, and activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

(30) Disconnection of service -- Interruption of a customer's supply of electric service at the customer's point of delivery by an electric utility, a transmission and distribution utility, a municipally owned utility or an electric cooperative.

(31) Distribution line -- A power line operated below 60,000 volts, when measured phase-to-phase, that is owned by an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.

(32) Distributed resource -- A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (below 60,000 volts), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.

(33) Distribution service provider (DSP) -- An electric utility, municipally-owned utility, or electric cooperative that owns or operates for compensation in this state equipment or facilities that are used for the distribution of electricity to retail customers, as defined in this section, including retail customers served at transmission voltage levels.

(34) Economically distressed geographic area -- Zip code area in which the average household income is less than or equal to 60% of the statewide median income, as reported in the most recently available United States Census data.

(35) Electric cooperative --

(A) a corporation organized under the Texas Utilities Code, Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;

(B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or

(C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.

(36) Electric generating facility -- A facility that generates electric energy for compensation and that is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

(37) Electricity Facts Label -- Information in a standardized format, as described in §25.475(f) of this title (relating to Information Disclosures to Residential and Small Commercial Customers),

that summarizes the price, contract terms, fuel sources, and environmental impact associated with an electricity product.

(38) Electricity product -- A specific type of retail electricity service developed and identified by a REP, the specific terms and conditions of which are summarized in an Electricity Facts Label that is specific to that electricity product.

(39) Electric Reliability Council of Texas (ERCOT) -- Refers to the independent organization and, in a geographic sense, refers to the area served by electric utilities, municipally owned utilities, and electric cooperatives that are not synchronously interconnected with electric utilities outside of the State of Texas.

(40) Electric service identifier (ESI ID) -- The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by the Electric Reliability Council of Texas (ERCOT) or another independent organization.

(41) Electric utility -- Except as otherwise provided in this Chapter, an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) the state of Texas or an agency of the state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Subchapter C, Chapter 184.

(42) Energy efficiency -- Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.

(43) Energy efficiency measures -- Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kW, or both.

(44) Energy efficiency project -- An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.

(45) Energy efficiency service provider (EESP) -- A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or large commercial customer, if the person has executed a standard offer contract.

(46) Energy savings -- A quantifiable reduction in a customer's consumption of energy.

(47) ERCOT protocols -- Body of procedures developed by ERCOT to maintain the reliability of the regional electric network and account for the production and delivery of electricity among resources and market participants. The procedures, initially approved by the commission, include a revisions process that may be appealed to the commission, and are subject to the oversight and review of the commission.

(48) ERCOT region -- The geographic area under the jurisdiction of the commission that is served by transmission service providers that are not synchronously interconnected with transmission service providers outside of the state of Texas.

(49) Exempt wholesale generator -- A person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale, and who is in compliance with the registration requirements of §25.109 of this title (Registration of Power Generation Companies and Self-Generators).

(50) Existing purchased power contract -- A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(51) Facilities -- All the plant and equipment of an electric utility, including all tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of an electric utility.

(52) Financing order -- An order of the commission adopted under the Public Utility Regulatory Act §39.201 or §39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.

(53) Freeze period -- The period beginning on January 1, 1999, and ending on December 31, 2001.

(54) Generation assets -- All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or

subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(55) Generation service -- The production and purchase of electricity for retail customers and the production, purchase and sale of electricity in the wholesale power market.

(56) Good utility practice -- Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

(57) Hearing -- Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(58) Independent organization -- An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller.

(59) Independent system operator -- An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

(60) Installed generation capacity -- All potentially marketable electric generation capacity, including the capacity of:

(A) generating facilities that are connected with a transmission or distribution system;

(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(61) Interconnection agreement -- The standard form of agreement, which has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.

(62) License -- The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(63) Licensing -- The commission process for granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(64) Load factor -- The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.

(65) Low-income customer -- An electric customer who receives Supplemental Nutrition Assistance Program (SNAP) from Texas Health and Human Services Commission (HHSC) or medical assistance from a state agency administering a part of the medical assistance program.

(66) Low-Income List Administrator (LILA) -- A third-party administrator contracted by the commission to administer aspects of the low-income customer identification process established under PURA §17.007.

(67) Market power mitigation plan -- A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act §39.154.

(68) Market value -- For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under the Public Utility Regulatory Act (PURA) §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

(69) Master meter -- A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.

(70) Municipality -- A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(71) Municipally-owned utility (MOU) -- Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(72) Nameplate rating -- The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

(73) Native load customer -- A wholesale or retail customer on whose behalf an electric utility, electric cooperative, or municipally-owned utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.

(74) Natural gas energy credit (NGEC) -- A tradable instrument representing each megawatt of new generating capacity fueled by natural gas, as authorized by the Public Utility Regulatory Act §39.9044 and implemented under §25.172 of this title (relating to Goal for Natural Gas).

(75) Net book value -- The original cost of an asset less accumulated depreciation.

(76) Net dependable capability -- The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.

(77) New on-site generation -- Electric generation capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:

(A) A fully operational facility, or

(B) A project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.

(78) Off-grid renewable generation -- The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(79) Other generation sources -- A competitive retailer's or affiliated retail electric provider's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.

(80) Person -- Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

(81) Power cost recovery factor (PCRF) -- A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

(82) Power generation company (PGC) -- A person that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies;

(B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(83) Power marketer -- A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state; does not have a certificated service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers).

(84) Power region -- A contiguous geographical area which is a distinct region of the North American Electric Reliability Council.

(85) Pre-interconnection study -- A study or studies that may be undertaken by a utility in response to its receipt of a completed application for interconnection and parallel operation with the utility system at distribution voltage. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies and utility system impact studies.

(86) Premises -- A tract of land or real estate or related commonly used tracts including buildings and other appurtenances thereon.

(87) Price to beat (PTB) -- A price for electricity, as determined pursuant to the Public Utility Regulatory Act §39.202, charged by an affiliated retail electric provider to eligible residential and small commercial customers in its service area.

(88) Proceeding -- A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

(89) Proprietary customer information -- Any information compiled by a retail electric provider, an electric utility, a transmission and distribution business unit as defined in §25.275(c)(16) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities) on a customer in the course of providing electric service or by an aggregator on a customer in the course of aggregating electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

(90) Provider of last resort (POLR) -- A retail electric provider (REP) certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)).

(91) Public retail customer -- A retail customer that is an agency of this state, a state institution of higher education, a public school district, or a political subdivision of this state.

(92) Public utility or utility -- An electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in the Public Utility Regulatory Act §51.002.

(93) Public Utility Regulatory Act (PURA) -- The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 *et. seq.*

(94) Purchased power market value -- The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(95) Qualified scheduling entity -- A market participant that is qualified by the Electric Reliability Council of Texas (ERCOT) in accordance with Section 16, Registration and Qualification of Market Participants of ERCOT's Protocols, to submit balanced schedules and ancillary services bids and settle payments with ERCOT.

(96) Qualifying cogenerator -- The meaning as assigned this term by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

(97) Qualifying facility -- A qualifying cogenerator or qualifying small power producer.

(98) Qualifying small power producer -- The meaning as assigned this term by 16 U.S.C. §796(17)(D).

(99) Rate -- A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

(100) Rate class -- A group of customers taking electric service under the same rate schedule.

(101) Rate year -- The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

(102) Ratemaking proceeding -- A proceeding in which a rate may be changed.

(103) Registration agent -- Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.

(104) Regulatory authority -- In accordance with the context where it is found, either the commission or the governing body of a municipality.

(105) Renewable demand side management (DSM) technologies -- Equipment that uses a renewable energy resource (renewable resource) as defined in this section, that, when installed at a customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.

(106) Renewable energy -- Energy derived from renewable energy technologies.

(107) Renewable energy credit (REC) -- A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by the Public Utility Regulatory Act §39.904 and implemented under §25.173(e) of this title (relating to Goal for Renewable Energy).

(108) Renewable energy credit account (REC account) -- An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.

(109) Renewable energy resource (renewable resource) -- A resource that produces energy derived from renewable energy technologies.

(110) Renewable energy technology -- Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(111) Repowering -- Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(112) Residential customer -- Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity at the customer's place of residence for personal, family or household purposes and who are not resellers of electricity.

(113) Retail customer -- The separately metered end-use customer who purchases and ultimately consumes electricity.

(114) Retail electric provider (REP) -- A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(115) Retail electric provider (REP) of record -- The REP assigned to the electric service identifier (ESI ID) in ERCOT's database. There can be no more than one REP of record assigned to an ESI ID at any specific point in time.

(116) Retail stranded costs -- That part of net stranded cost associated with the provision of retail service.

(117) Retrofit -- The installation of control technology on an electric generating facility to reduce the emissions of nitrogen oxide, sulfur dioxide, or both.

(118) River authority -- A conservation and reclamation district created pursuant to the Texas Constitution, Article 16, Section 59, including any nonprofit corporation created by such a district pursuant to the Texas Water Code, Chapter 152, that is an electric utility.

(119) Rule -- A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(120) Separately metered -- Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(121) Service -- Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.

(122) Spanish-speaking person -- A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(123) Standard meter -- The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.

(124) Stranded cost -- The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.

(125) Submetering -- Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.

(126) Summer net dependable capability -- The net capability of a generating unit in megawatts (MW) for daily planning and operational purposes during the summer peak season, as determined in accordance with requirements of the reliability council or independent organization in which the unit operates.

(127) Supply-side resource -- A resource, including a storage device, that provides electricity from fuels or renewable resources.

(128) System emergency -- A condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

(129) Tariff -- The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.

(130) Termination of service -- The cancellation or expiration of a sales agreement or contract by a retail electric provider by notification to the customer and the registration agent.

(131) Tenant -- A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(132) Test year -- The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(133) Texas jurisdictional installed generation capacity -- The amount of an affiliated power generation company's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

(134) Transition bonds -- Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.

(135) Transition charges -- Non-bypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.

(136) Transmission and distribution business unit (TDBU) -- The business unit of a municipally owned utility/electric cooperative, whether structurally unbundled as a separate legal entity or functionally unbundled as a division, that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity at retail, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of electric utility in a qualifying power region certified under the Public Utility Regulatory Act §39.152. Transmission and distribution business unit does not include a municipally owned utility/electric cooperative that owns, controls, or is an affiliate of the transmission and distribution business unit if the transmission and distribution business unit is organized as a separate corporation or other legally distinct entity. Except as specifically authorized by statute, a transmission and distribution business unit shall not provide competitive energy-related activities.

(137) Transmission and distribution utility (TDU) -- A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility", in a qualifying power region certified under the Public Utility Regulatory Act (PURA) §39.152, but does not include a municipally owned utility or an electric cooperative. The TDU may be a single utility or may be separate transmission and distribution utilities.

(138) Transmission line -- A power line that is operated at 60 kilovolts (kV) or above, when measured phase-to-phase.

(139) Transmission service -- Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice in any portion of the Electric Reliability Council of Texas (ERCOT) region, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not "transmission service".

(140) Transmission service customer -- A transmission service provider, distribution service provider, river authority, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be eligible to be a transmission service customer. A retail customer, as defined in this section, may not be a transmission service customer.

(141) Transmission service provider (TSP) -- An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.

(142) Transmission system -- The transmission facilities at or above 60 kilovolts (kV) owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission service.

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

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SUBCHAPTER F. METERING

16 TAC §25.130, §25.133

Statutory Authority

These amendments are adopted under §14.001 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §36.003, which grants the commission the authority to ensure that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; PURA §39.107, which grants the commission the authority to approve electric utility surcharges for the deployment of advanced meters, adopt rules relating to the transfer of customer data, and approve non-discriminatory rates for metering service; and PURA §§39.402, 39.452, 39.5021 and 39.5521, which permit the electric utilities outside of the ERCOT region that elect to deploy advanced meters and meter information networks to recover reasonable and necessary deployment

costs and subjects the deployment to commission rules adopted under PURA §39.107(h) and (k).

Cross reference to statutes: PURA §§14.001, 14.002, 36.003, 39.107, 39.402, 39.452, 39.5021 and 39.5521.

§25.130. Advanced Metering.

(a) Purpose. This section addresses the deployment, operation, and cost recovery for advanced metering systems.

(b) Applicability. This section is applicable to all electric utilities, including transmission and distribution utilities. Any requirement applicable to an electric utility in this section that relates to retail electric providers (REPs) or REPs of record is applicable only to electric utilities operating in areas open to customer choice.

(c) Definitions. As used in this section, the following terms have the following meanings, unless the context indicates otherwise:

(1) Advanced meter -- Any new or appropriately retrofitted meter that functions as part of an advanced metering system and that has the minimum system features specified in this section, except to the extent the electric utility has obtained a waiver of a minimum feature from the commission.

(2) Advanced Metering System (AMS) -- A system, including advanced meters and the associated hardware, software, and communications systems, including meter information networks, that collects time-differentiated energy usage and performs the functions and has the features specified in this section.

(3) Deployment Plan -- An electric utility's plan for deploying advanced meters in accordance with this section and either filed with the commission as part of the Notice of Deployment or approved by the commission following a Request for Approval of Deployment.

(4) Enhanced advanced meter -- A meter that contains features and functions in addition to the AMS features in the deployment plan approved by the commission.

(5) Web portal -- The website made available on the internet in compliance with this section by an electric utility or a group of electric utilities through which secure, read-only access to AMS usage data is made available to the customer, the customer's REP of record, and entities authorized by the customer.

(d) Deployment and use of advanced meters.

(1) Deployment and use of an AMS by an electric utility is voluntary unless otherwise ordered by the commission. However, deployment and use of an AMS for which an electric utility seeks a surcharge for cost recovery must be consistent with this section, except to the extent that the electric utility has obtained a waiver from the commission.

(2) Six months prior to initiating deployment of an AMS or as soon as practicable after the effective date of this section, whichever is later, an electric utility that intends to deploy an AMS must file a statement of AMS functionality, and either a notice of deployment or a request for approval of deployment. An electric utility may request a surcharge under subsection (k) of this section in combination with a notice of deployment or a request for approval of deployment, or separately. A proceeding that includes a request to establish or amend a surcharge will be a ratemaking proceeding and a proceeding involving only a request for approval of deployment will not be a ratemaking proceeding.

(3) The statement of AMS functionality must:

(A) state whether the AMS meets the requirements specified in subsection (g) of this section and what additional features, if any, it will have;

(B) describe any variances between technologies and meter functions within the electric utility's service territory; and

(C) state whether the electric utility intends to seek a waiver of any provision of this section in its request for surcharge.

(4) A deployment plan must contain the following information:

(A) Type of meter technology;

(B) Type and description of communications equipment in the AMS;

(C) Systems that will be developed during the deployment period;

(D) A timeline for the web portal development or integration into an existing web portal;

(E) A deployment schedule by specific area (geographic information); and

(F) A schedule for deployment of web portal functionalities.

(5) An electric utility must file with the deployment plan, testimony and other supporting information, including estimated costs for all AMS components, estimated net operating cost savings expected in connection with implementing the deployment plan, and the contracts for equipment and services associated with the deployment plan, that prove the reasonableness of the plan.

(6) Competitively sensitive information contained in the deployment plan and the monthly progress reports required under paragraph (9) of this subsection may be filed confidentially. An electric utility's deployment plan must be maintained and made available for review on the electric utility's website. Competitively sensitive information contained in the deployment plan must be maintained and made available at the electric utility's offices in Austin. Any REP that wishes to review competitively sensitive information contained in the electric utility's deployment plan available at its Austin office may do so during normal business hours upon reasonable advanced notice to the electric utility and after executing a non-disclosure agreement with the electric utility.

(7) If the request for approval of a deployment plan contains the information described in paragraph (4) of this subsection and the AMS features described in subsection (g)(1) of this section, then the commission will approve or disapprove the deployment plan within 150 days, but this deadline may be extended by the commission for good cause.

(8) An electric utility's treatment of AMS, including technology, functionalities, services, deployment, operations, maintenance, and cost recovery must not be unreasonably discriminatory, prejudicial, preferential, or anticompetitive.

(9) Each electric utility must provide progress reports on a monthly basis following the filing of its deployment plan with the commission until deployment is complete. Upon filing of such reports, an electric utility operating in an area open to customer choice must notify all REPs of the filing through standard market notice procedures. A monthly progress report must be filed within 15 days of the end of the month to which it applies, and must include the following information:

(A) the number of advanced meters installed, listed by electric service identifier for meters in the Electric Reliability Council

of Texas (ERCOT) region. Additional deployment information if available must also be provided, such as county, city, zip code, feeder numbers, and any other easily discernable geographic identification available to the electric utility about the meters that have been deployed;

(B) significant delays or deviation from the deployment plan and the reasons for the delay or deviation;

(C) a description of significant problems the electric utility has experienced with an AMS, with an explanation of how the problems are being addressed;

(D) the number of advanced meters that have been replaced as a result of problems with the AMS; and

(E) the status of deployment of features identified in the deployment plan and any changes in deployment of these features.

(10) If an electric utility has received approval of its deployment plan from the commission, the electric utility must obtain commission approval before making any changes to its AMS that would affect the ability of a customer, the customer's REP of record, or entities authorized by the customer to utilize any of the AMS features identified in the electric utility's deployment plan by filing a request for amendment to its deployment plan. In addition, an electric utility may request commission approval for other changes in its approved deployment plan. The commission will act upon the request for an amendment to the deployment plan within 45 days of submission of the request, unless good cause exists for additional time. If an electric utility filed a notice of deployment, the electric utility must file an amendment to its notice of deployment at least 45 days before making any changes to its AMS that would affect the ability of a customer, the customer's REP of record, or entities authorized by the customer to utilize any of the AMS features identified in the electric utility's notice of deployment. This paragraph does not in any way preclude the electric utility from conducting its normal operations and maintenance with respect to the electric utility's transmission and distribution system and metering systems.

(11) During and following deployment, any outage related to normal operations and maintenance that affects a REP's ability to obtain information from the system must be communicated to the REP through the outage and restoration notice process according to Applicable Legal Authorities, as defined in §25.214(d)(1) of this title (relating to Tariff for Retail Delivery Service). Notification of any planned or unplanned outage that affects access to customer usage data must be posted on the electric utility's web portal home page.

(12) An electric utility subject to §25.343 of this title (relating to Competitive Energy Services) must not provide any advanced metering equipment or service that is deemed a competitive energy service under that section. Any functionality of the AMS that is a required feature under this section or that is included in an approved deployment plan or otherwise approved by the commission does not constitute a competitive energy service under §25.343 of this title.

(13) An electric utility's deployment and provision of AMS services and features, including but not limited to the features required in subsection (g) of this section, are subject to the limitation of liability provisions found in the electric utility's tariff.

(e) Technology requirements. Except for pilot programs, an electric utility must not deploy AMS technology that has not been successfully installed previously with at least 500 advanced meters in North America, Australia, Japan, or Western Europe.

(f) Pilot programs. An electric utility may deploy AMS with up to 10,000 meters that do not meet the requirements of subsection (g) of this section in a pilot program, to gather additional information on metering technologies, pricing, and management techniques, for studies, evaluations, and other reasons. A pilot program may be used to satisfy the requirement in subsection (e) of this section. An electric utility is not required to obtain commission approval for a pilot program. Notice of the pilot program and opportunity to participate must be sent by the electric utility to all REPs and all entities authorized by a customer to have read-only access to the customer's advanced meter data.

(g) AMS features.

(1) An AMS must provide or support the following minimum system features:

(A) automated or remote meter reading;

(B) two-way communications between the meter and the electric utility;

(C) remote disconnection and reconnection capability for meters rated at or below 200 amps.

(D) time-stamped meter data;

(E) access to customer usage data by the customer, the customer's REP of record, and entities authorized by the customer provided that 15-minute interval or shorter data from the electric utility's AMS must be transmitted to the electric utility's or a group of electric utilities' web portal on a day-after basis;

(F) capability to provide on-demand reads of a customer's advanced meter through the graphical user interface of an electric utility's or a group of electric utilities' web portal when requested by a customer, the customer's REP of record, or entities authorized by the customer subject to network traffic such as interval data collection, market orders if applicable, and planned and unplanned outages;

(G) for an electric utility that provides access through an application programming interface, the capability to provide on-demand reads of a customer's advanced meter data, subject to network traffic such as interval data collection, market orders if applicable, and planned and unplanned outages;

(H) on-board meter storage of meter data that complies with nationally recognized non-proprietary standards such as in American National Standards Institute (ANSI) C12.19 tables or International Electrotechnical Commission (IEC) DLMS-COSEM standards;

(I) open standards and protocols that comply with nationally recognized non-proprietary standards such as ANSI C12.22, including future revisions;

(J) for an electric utility in the ERCOT region, the capability to communicate with devices inside the premises, including, but not limited to, usage monitoring devices, load control devices, and prepayment systems through a home area network (HAN), based on open standards and protocols that comply with nationally recognized non-proprietary standards such as ZigBee, Home-Plug, or the equivalent through the electric utility's AMS. This requirement applies only to a HAN device paired to a meter and in use at the time that the version of the web portal approved in Docket Number 47472 was implemented and terminates when the HAN device is disconnected at the request of the customer or a move-out transaction occurs for the customer's premises; and

(K) the ability to upgrade these features as the need arises.

(2) A waiver from any of the requirements of paragraph (1) of this subsection may be granted by the commission if it would

be uneconomic or technically infeasible to implement or there is an adequate substitute for that particular requirement. The electric utility must meet its burden of proof in its waiver request.

(3) In areas where there is not a commission-approved independent regional transmission organization, standards referred to in this section for time tolerance and data transfer and security may be approved by a regional transmission organization approved by the Federal Energy Regulatory Commission or, if there is no approved regional transmission organization, by the commission.

(4) Once an electric utility has deployed its advanced meters, it may add or enhance features provided by AMS, as technology evolves. The electric utility must notify the commission and REPs of any such additions or enhancements at least three months in advance of deployment, with a description of the features, the deployment and notification plan, and the cost of such additions or enhancements, and must follow the monthly progress report process described in subsection (d)(9) of this section until the enhancement process is complete.

(h) Discretionary Meter Services. An electric utility that operates in an area that offers customer choice must offer, as discretionary services in its tariff, installation of enhanced advanced meters and advanced meter features.

(1) A REP may request the electric utility to provide enhanced advanced meters, additional metering technology, or advanced meter features not specifically offered in the electric utility's tariff, that are technically feasible, generally available in the market, and compatible with the electric utility's AMS.

(2) The REP must pay the reasonable differential cost for the enhanced advanced meters or features and system changes required by the electric utility to offer those meters or features.

(3) Upon request by a REP, an electric utility must expeditiously provide a report to the REP that includes an evaluation of the cost and a schedule for providing the enhanced advanced meters or advanced meter features of interest to the REP. The REP must pay a reasonable discretionary services fee for this report. This discretionary services fee must be included in the electric utility's tariff.

(4) If an electric utility deploys enhanced advanced meters or advanced meter features not addressed in its tariff at the request of the REP, the electric utility must expeditiously apply to amend its tariff to specifically include the enhanced advanced meters or meter features that it agreed to deploy. Additional REPs may request the tariffed enhanced advanced meters or advanced meter features under the process described in this paragraph of this subsection.

(i) Tariff. All discretionary AMS features offered by the electric utility must be described in the electric utility's tariff.

(j) Access to meter data.

(1) A customer may authorize its meter data to be available to an entity other than its REP. An electric utility must provide a customer, the customer's REP of record, and other entities authorized by the customer read-only access to the customer's advanced meter data, including meter data used to calculate charges for service, historical load data, and any other proprietary customer information. The access must be convenient and secure, and the data must be made available no later than the day after it was created.

(2) The requirement to provide access to the data begins when the electric utility has installed 2,000 advanced meters for residential and non-residential customers. If an electric utility has already installed 2,000 advanced meters by the effective date of this section, the electric utility must provide access to the data in the timeframe approved by the commission in either the deployment plan or request for surcharge proceeding. If only a notice of deployment has been filed, access to the data must begin no later than six months from the filing of the notice of deployment with the commission.

(3) An electric utility's or group of electric utilities' web portal must use appropriate and reasonable standards and methods to provide secure access for the customer, the customer's REP of record, and entities authorized by the customer to the meter data. The electric utility must have an independent security audit conducted within one year of providing that access to meter data. The electric utility must promptly report the audit results to the commission.

(4) The independent organization, regional transmission organization, or regional reliability entity must have access to information that is required for wholesale settlement, load profiling, load research, and reliability purposes.

(k) Cost recovery for deployment of AMS.

(1) Recovery Method. The commission will establish a nonbypassable surcharge for an electric utility to recover reasonable and necessary costs incurred in deploying AMS to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter. The surcharge must not be established until after a detailed deployment plan is filed under subsection (d) of this section. In addition, the surcharge must not ultimately recover more than the AMS costs that are spent, reasonable and necessary, and fully allocated, but may include estimated costs that will be reconciled pursuant to paragraph (6) of this subsection. As indicated by the definition of AMS in subsection (c)(2) of this section, the costs for facilities that do not perform the functions and have the features specified in this section must not be included in the surcharge provided for by this subsection unless an electric utility has received a waiver under subsection (g)(2) of this section. The costs of providing AMS services include those costs of AMS installed as part of a pilot program under this section. Costs of providing AMS for a particular customer class must be surcharged only to customers in that customer class.

(2) Carrying Costs. The annualized carrying-cost rate to be applied to the unamortized balance of the AMS capital costs must be the electric utility's authorized weighted-average cost of capital (WACC). If the commission has not approved a WACC for the electric utility within the last four years, the commission may set a new WACC to apply to the unamortized balance of the AMS capital costs. In each subsequent rate proceeding in which the commission resets the electric utility's WACC, the carrying-charge rate that is applied to the unamortized balance of the utility's AMS costs must be correspondingly adjusted to reflect the new authorized WACC.

(3) Surcharge Proceeding. In the request for surcharge proceeding, the commission will set the surcharge based on a levelized amount, and an amortization period based on the useful life of the AMS. The commission may set the surcharge to reflect a deployment of advanced meters that is up to one-third of the electric utility's total meters over each calendar year, regardless of the rate of actual AMS deployment. The actual or expected net operating cost savings from AMS deployment, to the extent that the operating costs are not reflected in base rates, may be considered in setting the surcharge. If an electric utility that requests a surcharge does not have an approved deployment plan, the commission in the surcharge proceeding may reconcile the costs that the electric utility already spent on AMS in accordance with paragraph (6) of this subsection and may approve a deployment plan.

(4) General Base Rate Proceeding while Surcharge is in Effect. If the commission conducts a general base rate proceeding while a surcharge under this section is in effect, then the commission will include the reasonable and necessary costs of installed AMS equipment

in the base rates and decrease the surcharge accordingly, and permit reasonable recovery of any non-AMS metering equipment that has not yet been fully depreciated but has been replaced by the equipment installed under an approved deployment plan.

(5) Annual Reports. An electric utility must file annual reports with the commission updating the cost information used in setting the surcharge. The annual reports must include the actual costs spent to date in the deployment of AMS and the actual net operating cost savings from AMS deployment and how those numbers compare to the projections used to set the surcharge. During the annual report process, an electric utility may apply to update its surcharge, and the commission may set a schedule for such applications. For a levelized surcharge, the commission may alter the length of the surcharge collection period based on review of information concerning changes in deployment costs or operating costs savings in the annual report or changes in WACC. An annual report filed with the commission will not be a ratemaking proceeding, but an application by the electric utility to update the surcharge must be a ratemaking proceeding.

(6) Reconciliation Proceeding. All costs recovered through the surcharge must be reviewed in a reconciliation proceeding on a schedule to be determined by the commission. Notwithstanding the preceding sentence, the electric utility may request multiple reconciliation proceedings, but no more frequently than once every three years. There is a presumption that costs spent in accordance with a deployment plan or amended deployment plan approved by the commission are reasonable and necessary. Any costs recovered through the surcharge that are found in a reconciliation proceeding not to have been spent or properly allocated, or not to be reasonable and necessary, must be refunded to electric utility's customers. In addition, the commission will make a final determination of the net operating cost savings from AMS deployment used to reduce the amount of costs that ultimately can be recovered through the surcharge. Accrual of interest on any refunded or surcharged amounts resulting from the reconciliation must be at the electric utility's WACC and must begin at the time the under or over recovery occurred.

(7) Cross-subsidization and fees. The electric utility must account for its costs in a manner that ensures there is no inappropriate cost allocation, cost recovery, or cost assignment that would cause cross-subsidization between utility activities and non-utility activities. The electric utility shall not charge a disconnection or reconnection fee that was approved by the commission prior to the effective date of this rule, for a disconnection or reconnection that is effectuated using the remote disconnection or connection capability of an advanced meter.

§25.133. Non-Standard Metering Service.

(a) Purpose. This section allows a customer to choose to receive electric service through a non-standard meter from an electric utility that has deployed or is requesting to deploy advanced meters under a commission-approved deployment plan or notice of deployment and authorizes the electric utility to assess fees to recover the costs associated with this section from a customer who elects to receive electric service through a non-standard meter.

(b) Applicability. This section is applicable to an electric utility, including a transmission and distribution utility, that has deployed or is requesting to deploy advanced meters under a commission-approved deployment plan or notice of deployment. Any requirement in this section that relates to retail electric providers (REPs) is applicable only to REPs and electric utilities that operate in areas open to customer choice.

(c) Definitions. As used in this section, the following terms have the following meanings, unless the context indicates otherwise:

(1) Advanced meter -- As defined in §25.130 of this title (relating to Advanced Metering).

(2) Non-standard meter -- A meter that does not function as an advanced meter.

(3) Non-standard metering service -- Provision of electric service through a non-standard meter from an electric utility that has deployed or is requesting to deploy advanced meters under a commission-approved deployment plan or notice of deployment.

(d) Initiation and termination of non-standard metering service.

(1) Initiation of non-standard metering service. An electric utility that has deployed or is requesting to deploy advanced meters under a commission-approved deployment plan or notice of deployment must offer non-standard metering service to customers.

(A) An electric utility filing a deployment plan or notice of deployment under §25.130 of this title after the effective date of this section must include non-standard metering service as a part of the plan or notice.

(i) Within 30 days of the date of commission approval of an electric utility's deployment plan or the filing of a notice of deployment, the electric utility must provide information on its website that describes its non-standard metering service, the process under this section to request non-standard metering service, and all the costs associated with the service.

(ii) An electric utility must provide a statement that non-standard metering service is available and provide a hyperlink to the information required under clause (i) of this subparagraph in all notices and messages delivered to a customer relating to the deployment date of advanced meters in the customer's geographic area.

(B) An electric utility must provide notice to a customer consistent with subparagraph (C) of this paragraph within seven days of the customer's request for non-standard metering service, using an appropriate means of service.

(C) An electric utility must notify a customer that requests non-standard metering service of the following through a written acknowledgement.

(i) The customer will be required to pay the costs associated with the initiation(n of non-standard metering service and the ongoing costs associated with the manual reading of the meter, and other fees and charges that may be assessed by the electric utility that are associated with the non-standard metering service;

(ii) The current one-time fees and monthly fee for non-standard metering service;

(iii) The customer may be required to wait up to 45 days to switch the customer's REP of record;

(iv) The customer may experience longer restoration times in case of a service interruption or outage;

(v) The customer may be required by the customer's REP of record to choose a different product or service before initiation of the non-standard metering service, subject to any applicable charges or fees required under the customer's existing contract, if the customer is currently enrolled in a product or service that relies on an advanced meter; and

(vi) For a customer that does not currently have an advanced meter, the date (60 days after service of the notice) by which the customer must provide a signed, written acknowledgement and payment of the one-time fee to the electric utility prescribed by sub-

section (f)(3) of this section. If the signed, written acknowledgement and payment are not received within 60 days, the electric utility will install an advanced meter on the customer's premises.

(D) The electric utility must retain the signed, written acknowledgement for at least two years after the non-standard meter is removed from the premises. The commission may adopt a form for the written acknowledgement.

(E) An electric utility must offer non-standard metering through the following means:

(i) disabling communications technology in an advanced meter if feasible;

(ii) if applicable, allowing the customer to continue to receive metering service using the existing meter if the electric utility determines that it meets applicable accuracy standards;

(iii) if commercially available, an analog meter that meets applicable meter accuracy standards; and

(iv) a digital, non-communicating meter.

(F) The electric utility must not initiate the process to provide non-standard metering service before it has received the customer's payment and signed, written acknowledgement. The electric utility must initiate the approved standard market process to notify the customer's REP of record within three days of the electric utility's receipt of the customer's payment and signed, written acknowledgement. Within 30 days of receipt of the payment of the one-time fee and the signed written acknowledgement from the customer, the electric utility, using the approved standard market process, must notify the customer's REP of record of the date the non-standard metering service was initiated.

(2) Termination of non-standard metering service. A customer receiving non-standard metering service may terminate that service by notifying the customer's electric utility. The customer will remain responsible for all costs related to non-standard metering service.

(e) Other electric utility obligations.

(1) When an electric utility completes a move-out transaction for a customer who was receiving non-standard metering service, the electric utility must install or activate an advanced meter at the premises.

(2) An electric utility must read a non-standard meter monthly. In order for the electric utility to maintain a non-standard meter at the customer's premises, the customer must provide the electric utility with sufficient access to properly operate and maintain the meter, including reading and testing the meter.

(f) Cost recovery and compliance tariffs. All costs incurred by an electric utility to implement this section must be borne only by customers who choose non-standard metering service. A customer receiving non-standard metering service must be charged a one-time fee and a recurring monthly fee.

(1) An electric utility's application for approval of its non-standard metering service tariff or amended tariff must be fully supported with testimony and documentation. The application must include one-time fees and a monthly fee for non-standard metering service and must also include the fees for other discretionary services performed by the electric utility that are affected by the customer's selection of non-standard metering service. The commission will allow the electric utility to recover the reasonable rate case expenses that it incurs under this paragraph as part of the one-time fee, the monthly fee, or both. The application must describe the extent to which the back-office costs that are new and fixed vary depending on the number of customers receiving non-standard metering service. Unless otherwise ordered, the electric utility must serve notice of the approved rates and the effective date of the approved rates within five working days of the filing of the commission's final order to REPs that are authorized by the registration agent to provide service in the electric utility's service area. Notice to REPs under this paragraph may be served by email and must be served at least 45 days before the effective date of the rates.

(2) An electric utility must have a single recurring monthly fee for non-standard metering service and several one-time fees, one of which must apply to the customer depending on the customer's circumstances. A one-time fee must be charged to a customer that does not have an advanced meter at the customer's premises and will continue receiving metering service through the meter currently at the premises. For a customer that currently has an advanced meter at the premises, the fee will vary depending on the type of meter that is installed to provide non-standard metering service, and the fee must include the cost to remove the advanced meter and subsequently re-install an advanced meter once non-standard metering service is terminated. The one-time fee must recover costs to initiate non-standard metering service. The monthly fee must recover ongoing costs to provide non-standard metering service, including costs for meter reading and billing. Fixed costs not related to the initiation of non-standard metering service may be allocated between the one-time and monthly fees and recovered through the monthly fee over a shortened period of time.

(g) Retail electric product compatibility. After receipt of the notice prescribed by subsection (d)(1)(C) of this section, if the customer's current product is not compatible with non-standard metering service, the customer's REP of record must work with the customer to either promptly transition the customer to a product that is compatible with non-standard metering service or transfer the customer to another REP, subject to any applicable charges or fees required under the customer's existing contract. If the customer is unresponsive, the customer's REP of record may transition the customer without the customer's affirmative consent to a market-based, month-to-month product that is compatible with non-standard metering service. Alternatively, if the customer is unresponsive, the customer's REP of record may transfer the customer to another REP under §25.493 (relating to Acquisition and Transfer of Customers from One Retail Electric Provider or Another) so long as the new REP serves the customer using a market-based, month-to-month product with a rate (excluding charges for non-standard metering service or other discretionary services) no higher than one of the tests prescribed by §25.498(c)(15)(A) - (C) of this title (relating to Prepaid Service). The customer's REP of record must promptly provide the customer notice that the customer has been transferred to a new product and, if applicable, to a new REP, and must also promptly provide the new Terms of Service and Electricity Facts Label.

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 April 20, 2020.

TRD-202001510
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 10, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 936-7244

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER BB. BATTERY SALES FEE

34 TAC §3.711

The Comptroller of Public Accounts adopts amendments to §3.711, concerning collection and reporting requirements, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1839). The rule will not be republished. The comptroller adopts amendments to add the fee amounts for sales of lead-acid batteries; to explain the penalty and interest provisions relating to delinquent fees and reports; and to add an exemption for maquiladora enterprises.

The comptroller amends the title of §3.711 to "Battery Sales Fee Collection and Reporting Requirements" to clearly identify the fee addressed by the section.

The comptroller amends subsection (b)(1) to include the battery sales fee amounts due under Health and Safety Code, §361.138(b) (Fee on the Sale of Batteries).

The comptroller renames subsection (c) "Due date and reporting requirements" to better reflect the content of this subsection. The comptroller moves information currently in subsection (c) to subsection (d) and information in subsection (d) to subsection (c) to reorganize the rule structure for better flow. The discussion of the due date and reporting requirements should logically come before a discussion on the report forms on which the report is filed.

The comptroller moves the content of existing subsection (e)(2) with minor wording changes, and re-letters this as subsection (f). The comptroller titles subsection (f) "Discount." and re-letters subsequent subsections. The comptroller amends re-lettered subsection (e)(2) to remove unnecessary language.

The comptroller adds subparagraph (E) to re-lettered subsection (h)(3) that provides an exemption for exports to a maquiladora enterprise. This exemption memorializes the comptroller's longstanding practice of allowing a maquiladora enterprise to purchase batteries tax-free for export to Mexico and references §3.358 of this title (relating to Maquiladoras).

Additionally, the comptroller rewords subsection (h)(7) to state that the sale of a battery may be exempt from the fee if the battery meets certain criteria.

The comptroller adds new subsection (j) regarding penalty on unremitted fees or failure to file a report as provided under Health and Safety Code, §361.138(g).

The comptroller adds new subsection (k) regarding interest due on delinquent fees as provided under Tax Code, §111.060 (Interest on Delinquent Tax).

No comments were received regarding adoption of the amendment.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The section implements Health & Safety Code, §361.138 (Fee on the Sale of Batteries).

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 April 14, 2020.

TRD-202001455
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: May 4, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts amendments to Title 40, Part 1, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, §9.177, concerning Certification Principles: Staff Member and Service Provider Requirements; and §9.579, concerning Certification Principles: Staff Member and Service Provider Requirements. The amendments are adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 877). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants' from $8.00 to $8.11 per hour. Prior to the adoption of these amendments,

the minimum hourly base wage for a personal attendant was referenced in multiple rules. The Executive Commissioner is adopting new §355.7051 in Texas Administrative Code, Title 1, Chapter 355, Base Wage for a Personal Attendant, in this issue of the *Texas Register,* so that the base wage requirements for all of HHSC's programs and services will be contained in that one section of Title 1. As a result of the consolidation of base wage requirements in Chapter 355 of Title 1, amendments are being adopted in §49.312 to delete the base wage requirements in that section and instead reference new §355.7051. Because §49.312 is being amended, amendments to §9.177 and §9.579 are also being adopted to correct the references to §49.312.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed amendments from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rules and HHSC's responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH's support of the amendments.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TACHCH's support of the amendments.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the amendments in response to this comment.

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.177

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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 April 20, 2020.

TRD-202001516
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: May 10, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

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SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.579

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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 April 20, 2020.

TRD-202001517
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: May 10, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

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CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

SUBCHAPTER E. BUDGETS

40 TAC §41.505

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1 and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts an amendment to Title 40, Part 1, Chapter 41, Consumer Directed Services Option, §41.505, concerning Payroll Budgeting. The amendment is adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 879). The rule will be not republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of this amendment, the minimum hourly base wage for a personal attendant was referenced in multiple rules. In the consumer-directed services (CDS) option, the requirements for payment of a base wage to personal attendants were in §41.505. The Executive Commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, in Texas Administrative Code (TAC) Title 1, Part 15, Chapter 355, in this issue of the *Texas Register,* so that the base wage requirements for all of HHSC's programs and services will be contained in that one section of Title 1. As a result of the consolidation of base wage requirements in Chapter 355 of Title 1, §41.505 is being amended in this issue of the *Texas Register* to replace its specific base wage requirements with a cross reference to new §355.7051.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed amendment from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rule and HHSC's responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH's support of the rule.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TAHCH's support of the rule.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the rule in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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 April 20, 2020.

TRD-202001521
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: May 10, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

CHAPTER 44. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES (CMPAS) PROGRAM

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts amendments to Title 40, Part 1, Chapter 44, Consumer Managed Personal Attendant Services (CMPAS) Program, §44.302, concerning Provider Qualifications and Respon-

sibilities in All CMPAS Service Delivery Options; and §44.422, concerning Individual Responsibilities in the Block Grant Option. The amendments are adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 881). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of these amendments, the minimum hourly base wage for a personal attendant was referenced in multiple rules. In the Consumer Managed Personal Attendant Services (CMPAS) Program, CMPAS providers in all service delivery options have been required in §44.302 to comply with Chapter 49, including the requirements in §49.312 for payment of a base wage to personal attendants. However, the Executive Commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, in Texas Administrative Code, Title 1, Part 15, Chapter 355, in this issue of the *Texas Register,* so that the base wage requirements for all of HHSC's programs and services will be contained in that one section of Title 1. As a result of this consolidation of base wage requirements in Chapter 355 of Title 1, §49.312 in Title 40, as amended in this issue of the *Texas Register,* no longer refers to the base wage requirements, and instead references new §355.7051. Amendments to §44.302 are therefore being adopted in this issue of the *Texas Register* to specifically cross-reference the base wage requirements in new §355.7051 of Title 1, rather than including through general cross reference to Chapter 49 in Title 40. Clarifying amendments to §44.442 are also adopted to more clearly and directly reference the base wage requirements of new §355.7051.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed amendments from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rules and HHSC's responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH's support of the amendments.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TAHCH's support of the amendments.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the amendments in response to this comment.

SUBCHAPTER C. SERVICE DELIVERY IN ALL CMPAS OPTIONS

40 TAC §44.302

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001518
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 9, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

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SUBCHAPTER D. SERVICE DELIVERY OPTIONS
DIVISION 2. BLOCK GRANT OPTION

40 TAC §44.422

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001519
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 9, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

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CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1 and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts amendments to Title 40, Part 1, Chapter 49, Contracting for Community Services, §49.102, concerning Definitions; and §49.312, concerning Personal Attendants. The amendments are adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 883). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of these amendments, the minimum hourly base wage for a personal attendant in programs and services administered by HHSC was referenced in multiple rules. HHSC is adopting new §355.7051 in Texas Administrative Code, Title 1 Chapter 355, Base Wage for a Personal Attendant, in this issue of the *Texas Register,* so that the base wage requirements for all of HHSC's programs and services will be contained in that one section of Title 1. For contractors subject to Chapter 49, the requirements for payment of a base wage to personal attendants were in §49.312, Personal Attendants. As a result of the consolidation of base wage requirements in Chapter 355 of Title 1, an amendment to §49.312 is being adopted to delete the base wage requirements in that section and instead reference new §355.7051. An amendment is also being adopted to §49.102 to delete the definition of "personal attendant" because the definition of that term is in new §355.7051.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed amendments from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rules and HHSC's responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH's support of the amendments.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TAHCH's support of the amendments.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the amendments in response to this comment.

SUBCHAPTER A. APPLICATION AND DEFINITIONS

40 TAC §49.102

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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 April 20, 2020.

TRD-202001523
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: May 10, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

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SUBCHAPTER C. REQUIREMENTS OF A CONTRACTOR

40 TAC §49.312

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive

Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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 April 20, 2020.

TRD-202001525
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: May 10, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

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TITLE 43. TRANSPORTATION

PART 16. WILLIAMSON COUNTY TAX ASSESSOR-COLLECTOR

CHAPTER 435. MOTOR VEHICLE TITLE SERVICES

43 TAC §§435.1 - 435.16

The Williamson County Tax Assessor-Collector adopts new 43 TAC §§435.1 - 435.13, 435.15, and 435.16, concerning the regulation of motor vehicle title services, with changes to the proposed text as published in the January 24, 2020, issue of the *Texas Register* (45 TexReg 514). The rules will be republished.

Simultaneously, the Williamson County Tax Assessor-Collector adopts new 43 TAC §435.14, concerning the regulation of motor vehicle title services, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1847). The rule will not be republished.

There were no comments on the proposed new sections submitted to Matt Johnson, Chief Deputy of the Williamson County Tax Assessor-Collector, or to the office in general.

Statutory Authority. The Williamson County Tax Assessor-Collector adopts the new sections pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

This adoption does not affect any other statutes, articles or codes.

§435.1. Definitions.

(a) "Application." Except where otherwise expressly stated, the term "Application" includes all documentation submitted with a Motor Vehicle Title Service Application Form or Motor Vehicle Title Service Runner Application Form.

(b) "Motor vehicle" has the meaning assigned by Texas Transportation Code §501.002.

(c) "Motor vehicle title service" or "MVTS" means any person or entity that for compensation directly or indirectly assists other persons in obtaining title documents, in either written or electronic form, by submitting, transmitting, or sending applications for title documents to the appropriate government agencies.

(d) "Title documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, motor vehicle inquiries, license plate and/or sticker replacement or any other motor vehicle related transaction.

(e) "Title service runner," "Runner" or "MVTSR" means any person employed by a licensed motor vehicle title service to submit or present title documents to the Williamson County Tax Assessor-Collector on behalf of that licensed motor vehicle title service.

§435.2. License Required.

(a) License No./Effective Date. Each license granted will be assigned a number. The effective date of issuance is the date upon which notice is sent under §435.8(c) of this chapter (relating to Application Review/Applicant Background Check/Applicant Interview).

(b) Original. Each licensee shall be issued one original license.

(c) A title service shall process all work at the Williamson County Main St. office for the first ninety days of the license period, after which the title service may process work at any Williamson County Tax Assessor-Collector location. A title service whose license is renewed under §435.12(a) - (d) of this chapter (relating to License Renewal) may, upon the commencement of the renewal period, process work at any Williamson County Tax Assessor-Collector location.

§435.3. Eligible Applicants.

A person may not apply for a Motor Vehicle Title Service License or Motor Vehicle Title Service Runner License unless the person is:

(1) at least 18 years of age on the date the application is submitted; and

(2) authorized to handle financial transactions whether representing himself/herself or another.

§435.4. Criminal Background Check.

Each Applicant for a license must submit to a criminal background check.

§435.5. Submission of Application.

Each Applicant must submit his/her completed application form, including all required documentation, in person to the Tax Assessor-Collector or the Tax Assessor-Collector's designated representative. The Tax Assessor-Collector or the Tax Assessor-Collector's designated representative will accept the completed Application provided Applicant:

(1) presents a valid Texas driver's license and a valid Social Security Card or, if applicable, a U.S.-issued alien identification card issued by the Department of Homeland Security, and permits the Tax Assessor-Collector or Tax Assessor-Collector's designated representative to make a copy of both; and

(2) pays the Application fee.

§435.6. Completion of Motor Vehicle Title Service Application.

(a) A Motor Vehicle Title Service ("MVTS") License Application will not be considered complete under §435.5 of this chapter (relating to Submission of Application) unless all applicable information identified on the Title Service License Application form ("TSLA Form") has been provided, all required documentation has been attached, and the Applicant identified on the TSLA Form has executed the Applicant Affidavit section of the Form as described in subsection (c) of this section. If Applicant Business is a partnership, each partner must submit a separate application. If Applicant Business is a corporation, each officer and director must submit a separate application and identify the state of incorporation on that application.

(b) The following documents must be submitted with and attached to the signed and completed TSLA Form:

(1) a copy of Applicant's valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) an original or certified copy of:

(A) if Applicant Business is a DBA, each applicable Assumed Name Certificate;

(B) if Applicant Business is a corporation, the applicable Articles of Incorporation; or

(C) if Applicant Business is a partnership, the applicable Partnership Agreement; and

(3) all forms required by the Williamson County Tax Assessor-Collector, signed and completed as required by the Williamson County Tax Assessor-Collector.

(c) Each Applicant shall provide all information indicated on the TSLA Form, which information shall include but is not limited to:

(1) Applicant name, address, telephone number, social security number, date of birth, Texas Driver's license number, citizenship status, and what position the Applicant holds in the Applicant Business (i.e., owner, principal, director, officer, partner);

(2) Applicant Business name, physical address, mailing address, and telephone number(s);

(3) identification of Applicant Business type (i.e., DBA, Corporation or Partnership);

(4) name under which Service will conduct business (if different than Applicant Business name);

(5) the physical address(es) (including any applicable suite number(s)) of each location/office from which the Service will conduct business (a P.O. Box will not be accepted) and a corresponding photo, with address numbers clearly visible, of each location/building where business is to be conducted;

(6) the name(s), as applicable, of:

(A) each individual with any ownership interest in the Applicant Business; and

(B) each principal, officer or director of Applicant Business;

(7) whether the Applicant or Applicant Business has previously applied for an MVTS license (or permit), the result of the previous application, and whether the Applicant or Applicant Business has ever held an MVTS license (or permit) that was revoked or suspended;

(8) Applicant Business federal tax identification number; and

(9) Applicant Business state sales tax number.

(d) Each Applicant shall execute the Applicant Affidavit Section of the Form, attesting to the following:

(1) that information provided in and with the application is true and accurate; and

(2) that Applicant freely grants the Williamson County Tax Assessor-Collector and local law enforcement agencies permission to conduct a criminal background investigation on Applicant and/or Applicant's business.

§435.7. Completion of Title Service License Runner Application.

(a) A Motor Vehicle Title Service Runner License Application will not be considered complete under §435.5 of this chapter (relating to Submission of Application) unless all applicable information identified on the Title Service Runner License Application form ("TSRA Form") has been provided, all required documentation has been attached, and the Applicant identified on the TSRA Form has executed the Applicant Affidavit section of the Form as described in subsection (c) of this section. The following documents must be submitted with and attached to the signed and completed TSRA Form:

(1) a copy of Applicant's valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) all forms required by the Williamson County Tax Assessor-Collector, signed and completed as required by the Williamson County Tax Assessor-Collector; and

(3) sworn affidavits of each owner, partner, officer or director of the Licensed Title Service identified on the TSRA form, stating that the Licensed Title Service (which must be identified specifically in the statement by name and License No.) employs Applicant and authorizes him/her to submit or present title documents to the Williamson County Tax Assessor-Collector on its behalf.

(b) Applicants shall provide all information indicated on the TSRA Form, which information shall include but is not limited to:

(1) the name of the licensed motor vehicle title service for which the Applicant seeks a license to submit or present title documents, the MVTS License Number, and date of issue;

(2) the name, office address and office phone of the title service owner, officer or employee who will supervise Applicant;

(3) Applicant name, address, telephone number, social security number, date of birth, Texas Driver's license number, and citizenship status;

(4) whether the Applicant has previously applied for an MVTS or MVTSR license (or permit), the result of the previous application(s), and whether the Applicant or Applicant Business has ever held an MVTS or MVTS Runner license (or permit) that was revoked or suspended; and

(5) a sworn affidavit stating that the Applicant is employed by the motor vehicle title service identified on the Application and authorized by that motor vehicle title service to submit or present title documents to the Williamson County Tax Assessor-Collector.

(c) Each Applicant shall execute the Applicant Affidavit Section of the Form, attesting to the following:

(1) that information provided in and with the application is true and accurate;;

(2) that Applicant is employed by the Title Service identified in Section 1 of the Application to submit or present title documents to the Williamson County Tax Assessor-Collector under Chapter 520 of the Texas Transportation Code; and

(3) that Applicant freely grants the Williamson County Tax Assessor-Collector and local law enforcement agencies permission to conduct a criminal background investigation on Applicant and/or Applicant's business.

§435.8. Application Review/Applicant Background Check/Applicant Interview.

(a) After acceptance of a completed application, the Williamson County Tax Assessor-Collector will conduct an initial review of the Application. If information known to or obtained by the Williamson County Tax Assessor-Collector conflicts or appears to conflict with information supplied in the Application, the Williamson County Tax Assessor-Collector may ask the Applicant to provide additional clarifying or verifying information.

(b) Following initial application review under subsection (a) of this section, the Williamson County Tax Assessor-Collector will conduct the Applicant Background check. Upon completion of this process, interviews for eligible Applicants may be scheduled according to Williamson County Tax Assessor-Collector office needs/staff availability. Applicants are responsible for reserving open interview slots, which will be assigned by the Williamson County Tax Assessor-Collector on a first-come, first-served basis. No license may issue unless each person required to apply for the requested license has completed the interview process if requested by the Williamson County Tax Assessor-Collector. During the interview process, the Williamson County Tax Assessor-Collector may question Applicant and request additional documentation for the purpose of establishing Applicant's business reputation and character.

(c) Applicants will be notified of the outcome of an application within 30 days of receiving the application or the date the interview process is completed should one be required. Such notice will be sent by certified mail:

(1) to Runner License Applicants at the home address listed on the Application; and

(2) to Title Service License Applicants at the business mailing address listed on the Application.

§435.9. License.

(a) License No./Effective Date. Each license granted will be assigned a number. The effective date of issuance is the date upon which notice is sent under §435.8(c) of this chapter (relating to Application Review/Applicant Background Check/Applicant Interview).

(b) Original. Each licensee shall be issued one original license.

(c) A title service and/or runner shall process all work at the Georgetown Main office for the first ninety days of the license period, after which the title service may process work at any Williamson County Tax Assessor-Collector location. A title service whose license is renewed under §435.12(a) - (d) of this chapter (relating to License Renewal) may, upon the commencement of the renewal period, process work at any Williamson County Tax Assessor-Collector location.

§435.10. Records and Reporting.

(a) MVTS.

(1) Each licensed MVTS must inform the Williamson County Tax Assessor-Collector of a change to its primary physical and/or mailing address by submitting a written address change request form to the Williamson County Tax Assessor-Collector. The Williamson County Tax Assessor-Collector shall update the address information upon receipt of such request.

(2) A licensed MVTS shall report a change to its principals, partners, owners, officers, or directors as provided in §435.14(b)(l) of this chapter (relating to Suspension).

(3) Each licensed MVTS must keep on file at its principal place of business:

(A) the original MVTS license and Application (including all submitted documentation); and

(B) a copy of each license issued to a Runner for that MVTS, and of the Application (including all submitted documentation) submitted by each such licensed runner.

(b) Runner.

(1) In order to submit or present documents on behalf of an MVTS, a valid runner license must be presented. A licensed runner may submit or present title documents to the Williamson County Tax Assessor-Collector only on behalf of the licensed motor vehicle title service for which he/she is a licensed runner.

(2) Each licensed Runner must inform the Williamson County Tax Assessor-Collector if his/her home address has changed by submitting a written home address change request to the Williamson County Tax Assessor-Collector. Upon receipt of such request, the Williamson County Tax Assessor-Collector will update the Runner's home address information.

§435.11. License Fees.

(a) All License fees must be paid by business check on account in the applying (Title Service License) or employing (Title Service Runner License) Title Service's name, unless the Williamson County Tax Assessor-Collector in its sole discretion agrees to accept other forms of payment. Other forms of payment will not be accepted except as authorized in writing by the Williamson County Tax Assessor-Collector.

(b) The fee for a motor vehicle title service license shall be $300 for the initial application and $300 for each annual renewal.

(c) The fee for a title service runner license shall be $100 for the initial application and $100 for each annual renewal.

(d) The fee for replacement of a license issued under §435.9(b) of this chapter (relating to License), lost title service license, or title runner license shall be $20.

§435.12. License Renewal.

(a) A license issued under these rules expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the Williamson County Tax Assessor-Collector before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) If a license has been expired for 90 days or less, the person/entity (as applicable), may renew the license by paying to the Williamson County Tax Assessor-Collector 1-1/2 times the required renewal fee.

(d) If a license has been expired for longer than 90 days but less than one year, the person/entity (as applicable), may renew the license by paying to the Williamson County Tax Assessor-Collector two times the required renewal fee.

(e) If a license has been expired for one year or longer, the person/entity (as applicable) may not renew the license. The person/entity may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) Notwithstanding subsection (e) of this section, if a person/entity (as applicable) was licensed in this state, moved to another

state, and has been doing business in the other state for the two years preceding application, the person/entity may renew an expired license. The person must pay to the Williamson County Tax Assessor-Collector a fee that is equal to two times the required renewal fee for the license.

(g) Before the 30th day preceding the date on which a license expires, the Williamson County Tax Assessor-Collector shall notify the license holder of the impending expiration. The notice must be in writing and sent to the license holder's last known address according to the records of the Williamson County Tax Assessor-Collector.

§435.13. Denial or Revocation of License.

(a) Grounds for the denial (after completed Application submission) or revocation of a license include, but are not limited to:

(1) past or present submission by licensee or any applicant for the license, of a license application or related document to the Williamson County Tax Assessor-Collector that contains false information or that by its submission constitutes a misrepresentation of fact;

(2) the licensee or any applicant for the license has been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the sentence completion date is fewer than five years from the application date;

(3) the licensee or any applicant for the license has been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(4) one or more than one of the affiants described in §435.7(a)(3) of this chapter (relating to Completion of Title Service Runner License Application) has withdrawn his/her affidavit or otherwise informed the Williamson County Tax Assessor-Collector that Applicant is not employed and authorized to submit title documents on behalf of the title service identified in the application;

(5) disruptive or aggressive behavior by a licensee or any applicant for the license at any Williamson County Tax Assessor-Collector location that in the opinion of the Williamson County Tax Assessor-Collector creates a security concern;

(6) any dishonest, fraudulent, or criminal activity by a licensee or any applicant for the license; and/or

(7) failure to pay fines and/or fees identified in a suspension notice under §435.14(a) of this chapter (relating to Suspension) within 30 days of the suspension's effective date.

(b) Upon its determination that a license should be denied or revoked, the Williamson County Tax Assessor-Collector shall send notice of denial/revocation to the applicant(s)/licensee by certified mail. Notice of any license denial shall be sent to each applicant at the home address listed on his/her application form. Notice of a Runner license revocation shall be sent to the most recent home address on file. Notice of a Title Service License revocation shall be sent to the attention of "all" MVTS partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file for licensee. The notice shall identify the grounds that warrant the determination.

(c) Revocation - effective date. Revocation shall be effective upon the date notice described in subsection (b) of this section is sent.

(d) A licensee whose license is denied or revoked may not apply for any license before the first anniversary of the date of the revocation. No applicant for a license that has been denied or revoked may apply for any license before the first anniversary of the date of revocation.

§435.15. Appeals.

(a) An applicant/licensee may appeal the denial/revocation of a license by filing a written appeal request with the Williamson County Tax Assessor-Collector within 30 days of the date notice is sent under §435.13(b) of this chapter (relating to Denial or Revocation of License). Any information/documentation in support of such appeal must be submitted with the appeal request.

(b) The Williamson County Tax Assessor-Collector shall appoint a Review Board consisting of five members. At least one member of the Review Board shall be a law enforcement officer. The Williamson County Tax Assessor-Collector may appoint one or more Williamson County Tax Assessor-Collector employees to serve on the Board. Provided at least one law enforcement officer is in attendance, appeals shall be reviewed at a meeting of at least three members of the Board. Such meetings shall be held periodically as determined by the Williamson County Tax Assessor-Collector.

(c) Timely filed appeals will be scheduled for review at the next Review Board meeting, which shall take place no less than sixty (60) days following the filing of the appeal. An applicant/licensee whose appeal is under review may attend the meeting and, at the Board's discretion, provide testimony in support of the appeal. The Board also has discretion to consider documentation not timely provided under subsection (a) of this section.

(d) Recommendation. The law enforcement officer in attendance shall preside over the meeting and determine when each appeal has been sufficiently considered, discussed and reviewed by the members in attendance. Following such determination, each member in attendance shall state and briefly describe the reasons for his/her opinion as to whether the action appealed should be sustained. Thereafter, the presiding law enforcement officer shall independently make a written recommendation to the Williamson County Tax Assessor-Collector. The written recommendation shall be signed by the presiding officer and shall identify which, if any, of the other members in attendance did not agree with it.

(e) Within fifteen (15) days of receiving the presiding officer's written recommendation, the Williamson County Tax Assessor-Collector shall make a final determination on the appeal. The Williamson County Tax Assessor-Collector shall consider the presiding officer's recommendation before making the final determination.

(f) The Williamson County Tax Assessor-Collector shall send notice of its final determination to the applicant/licensee by certified mail as follows:

(1) License denial - to each applicant at the home address listed on his/her application form;

(2) Runner License revocation - to the most recent home address on file;

(3) Title Service License revocation - to the attention of all partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file.

§435.16. Amendment of Rules.

The Williamson County Tax Assessor-Collector may amend these rules in his/her sole discretion and as deemed necessary at any time.

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 April 15, 2020.

TRD-202001477

Larry Gaddes
Williamson County Tax Assessor-Collector
Williamson County Tax Assessor-Collector
Effective date: May 5, 2020
Proposal publication dates: January 24, 2020; March 20, 2020
For further information, please call: (512) 943-1641

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Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 59, Collections. The review is conducted in accordance with Government Code §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Comments should be directed to Rachel Obaldo, Division Chief, Bankruptcy and Collections Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Rachel.Obaldo@oag.texas.gov.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption.

TRD-202001475
Lesley French
General Counsel
Office of the Attorney General
Filed: April 15, 2020

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Joint Financial Regulatory Agencies

Title 7, Part 8

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") file this notice of intention to review and consider for readoption, amendment, or repeal, the following chapters in Texas Administrative Code, Title 7, Part 8: Chapter 151, concerning Home Equity Lending Procedures; Chapter 152, concerning Repair, Renovation, and New Construction on Homestead Property; and Chapter 153, concerning Home Equity Lending.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commissions will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Joint Financial Regulatory Agencies (Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department), which administer these rules, believe that the reasons for adopting the rules contained in these chapters continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commissions.

TRD-202001538
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Filed: April 20, 2020

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Adopted Rule Reviews

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 1, Chapter 1, Consumer Credit Regulation, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 1 was published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 775). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 1 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202001494
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Filed: April 17, 2020

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Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 35 (Check Verification Entities), in its entirety.

Notice of the review of Chapter 35 was published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 921). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 35 in accordance with the requirements of the Government Code, §2001.039.

TRD-202001483
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: April 17, 2020

♦ ♦ ♦

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 90 was published in the *Texas Register* January 31, 2020 (45 TexReg 775). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register.*

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 90 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202001492
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: April 17, 2020

♦ ♦ ♦

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (commission) adopts the review of Chapter 4, School Library Programs. The notice of intention to review the chapter was published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1869). The commission assessed whether the reasons for adopting the chapter continues to exist. The commission received no comments on the proposed review.

The commission finds that the reasons for adopting these sections continue to exist and readopts the rules without changes in accordance with the requirements of Government Code, §2001.039.

This concludes the commission's review of Chapter 4 as required by Government Code, §2001.039.

TRD-202001535
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Filed: April 20, 2020

♦ ♦ ♦

The Texas State Library and Archives Commission (commission) adopts the review of Chapter 8, Texshare Library Consortium. The notice of intention to review the chapter was published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1869). The commission assessed whether the reasons for adopting the chapter continues to exist. The commission received no comments on the proposed review.

The commission finds that the reasons for adopting these sections continue to exist and readopts the rules without changes in accordance with the requirements of Government Code, §2001.039.

This concludes the commission's review of Chapter 8 as required by Government Code, §2001.039.

TRD-202001536
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Filed: April 20, 2020

♦ ♦ ♦

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §90.203(b)(7)(A)(i)

"Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- $18.00 per $100.00 per year on that portion of the cash advance that is $2,190.00 [~~$2,070~~] or less; and

- $8.00 per $100.00 per year on that portion of the cash advance that is greater than $2,190.00 [~~$2,070~~] through $18,250.00 [~~$17,250~~].

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than $1.00."

Figure: 7 TAC §90.203(b)(7)(A)(ii)

"The cash advance is $____. Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- $18.00 per $100.00 per year on that portion of the cash advance that is $2,190.00 [~~$2,070~~] or less; and

- $8.00 per $100.00 per year on that portion of the cash advance that is greater than $2,190.00 [~~$2,070~~] through $18,250.00 [~~$17,250~~].

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than $1.00."

Figure: 7 TAC §90.203(b)(7)(C)(i)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,650.00 [~~$3,450.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,650.00 [~~$3,450.00~~] through $7,665.00 [~~$7,245.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,665.00 [~~$7,245.00~~] through $18,250.00 [~~$17,250~~]. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

Figure: 7 TAC §90.203(b)(7)(C)(ii)

"The cash advance is $____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,650.00 [~~$3,450.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,650.00 [~~$3,450.00~~] through $7,665.00 [~~$7,245.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,665.00 [~~$7,245.00~~] through $18,250.00 [~~$17,250.00~~]. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

Figure: 7 TAC §90.203(b)(7)(E)(i)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,650.00 [~~$3,450.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,650.00 [~~$3,450.00~~] through $7,665.00 [~~$7,245.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,665.00 [~~$7,245.00~~] through $18,250.00 [~~$17,250~~]. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

Figure: 7 TAC §90.203(b)(7)(E)(ii)

"The cash advance is $____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is $3,650.00 [~~$3,450.00~~] or less; (2) 24% on the unpaid cash advance that is greater than $3,650.00 [~~$3,450.00~~] through $7,665.00 [~~$7,245.00~~]; and (3) 18% on the unpaid cash advance that is greater than $7,665.00 [~~$7,245.00~~] through $18,250.00 [~~$17,250.00~~]. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

Figure: 7 TAC §90.204(a)(7)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ DATE OF NOTE _____

CREDITOR / LENDER _____ BORROWER _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	Amount Financed The amount of credit provided to me or on my behalf.	Total of Payments The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.
If checked, Borrower is giving a security interest in:
☐Motor Vehicle ☐Property Purchased with the Money from this Loan ☐Personal Property ☐Other
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. Amount Financed: (2+3+4) $_____

2. Amount given to me directly $_____

3. Amount paid on my account (Net Balance - Prior Account) $_____

4. Amount paid to others on my behalf (A + B + C +D + E + F) $_____
(You may be retaining a portion of this amount.)

A. Cost of personal property insurance paid to insurance company $_____

B. Cost of single-interest insurance paid to insurance company $_____

C. Cost of optional credit insurance paid to insurance company or companies

Life $_____

Disability $_____

Involuntary Unemployment Insurance $_____

Total C: $_____

D. Non-Filing Insurance paid to insurance company $_____

E. Official fees paid to government agencies $_____

F. Payable to:_____ $_____

Payable to:_____ $_____

Payable to:_____ $_____

Total F: $_____

5. Prepaid Finance Charge (Administrative Fee) $_____

I will be in default if:
I do not timely make a payment;
I break any promise I made in this agreement;
I allow a judgment to be entered against me or the collateral;
I sell, lease, or dispose of the collateral;
I use the collateral for an illegal purpose; or
you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Personal Property Insurance $_____ Term _____

☐ Single Interest Insurance (Vehicle) $_____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

☐ Credit Life, one borrower $_____ ☐ Credit Life, both borrowers $_____ Term ____

☐ Credit Disability, one borrower $_____ ☐ Credit Disability, both borrowers $_____ Term ____

☐ Credit Involuntary Unemployment Insurance, one borrower $_____ Term ____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs. (Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

I agree to the terms of this contract. I received a completed copy on _____.

X_____
Borrower
X_____
Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

Figure: 7 TAC §90.204(a)(8)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ DATE OF NOTE _____

CREDITOR / LENDER _____ BORROWER _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	Amount Financed The amount of credit provided to me or on my behalf.	Total of Payments The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.
If checked, Borrower is giving a security interest in:
☐Motor Vehicle ☐ Property Purchased with the Money from this Loan ☐Personal Property ☐Other
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the cash advance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. [~~If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.~~]

I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. **Amount Financed: (2+3+4)** $_____
2. **Amount given to me directly** $_____
3. **Amount paid on my account (Net Balance - Prior Account)** $_____
4. **Amount paid to others on my behalf (A + B + C +D + E + F)** $_____
   (You may be retaining a portion of this amount.)
   - **A. Cost of personal property insurance paid to insurance company** $_____
   - **B. Cost of single-interest insurance paid to insurance company** $_____
   - **C. Cost of optional credit insurance paid to insurance company or companies**
     - **Life** $_____
     - **Disability** $_____
     - **Involuntary Unemployment Insurance** $_____
     - **Total C:** $_____
   - **D. Non-Filing Insurance paid to insurance company** $_____
   - **E. Official fees paid to government agencies** $_____
   - **F. Payable to:**_____ $_____
     Payable to:_____ $_____
     Payable to:_____ $_____
     Total F: $_____
5. **Prepaid Finance Charge (Administrative Fee)** $_____

I will be in default if:
I do not timely make a payment;
I break any promise I made in this agreement;
I allow a judgment to be entered against me or the collateral;
I sell, lease, or dispose of the collateral;
I use the collateral for an illegal purpose; or
you believe in good faith that I am not going to keep any of my promises.
If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Personal Property Insurance $_____ Term _____

☐ Single Interest Insurance (Vehicle) $_____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

☐ Credit Life, one borrower $_____ ☐ Credit Life, both borrowers $_____ Term ____

☐ Credit Disability, one borrower $_____ ☐ Credit Disability, both borrowers $_____ Term ____

☐ Credit Involuntary Unemployment Insurance, one borrower $_____ Term ____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's signature: _____Date: _____

Co-Borrower's signature: _____Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs. (Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

I agree to the terms of this contract. I received a completed copy on _____.

X_____
Borrower
X_____
Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

Figure: 7 TAC §90.304(a)(7)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ DATE OF NOTE _____

CREDITOR / LENDER _____ BORROWER _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	**FINANCE CHARGE** The dollar amount the credit will cost me. $	Amount Financed The amount of credit provided to me or on my behalf. $	Total of Payments The amount I will have paid after I have made all payments as scheduled. $

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment.

Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE FINANCE CHARGE

Acquisition Charge.....$ _____

Installment Account Handling Charge.....$ _____

ITEMIZATION OF THE AMOUNT FINANCED

Previous Account.....# _____
Late Charge on Previous Account.....$ _____
Previous Balance.....$ _____
Less Refund.....$ _____
Net Balance Renewed.....$ _____
Cash to me.....$ _____
Amount Financed.....$ _____

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due.

I can make a whole payment early. The acquisition charge on this loan will not be refunded if I pay off early. If I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than $1.00.

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

(Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X_____
Borrower

X_____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

Figure: 7 TAC §90.304(a)(8)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ DATE OF NOTE _____

CREDITOR / LENDER _____ BORROWER _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	**FINANCE CHARGE** The dollar amount the credit will cost me. $	Amount Financed The amount of credit provided to me or on my behalf. $	Total of Payments The amount I will have paid after I have made all payments as scheduled. $

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment.

Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge and I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE FINANCE CHARGE

Acquisition Charge.....$ _____

Interest Charge (Installment Account Handling Charge)...$ _____

ITEMIZATION OF THE AMOUNT FINANCED

Previous Account.....# _____
Late Charge on Previous Account.....$ _____
Previous Balance.....$ _____
Less Refund.....$ _____
Net Balance Renewed.....$ _____
Cash to me.....$ _____
Amount Financed.....$ _____

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. I can make a whole payment early.

The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, I may save part of the interest charge. However, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded. You don't have to refund or credit any amount less than $1.00.

If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment. If I don't pay all I owe by the date the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due. If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

(Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X_____
Borrower

X_____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

Figure: 7 TAC §90.304(a)(9)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ DATE OF NOTE _____

CREDITOR / LENDER _____ BORROWER _____

ADDRESS _____ ADDRESS _____

_____ _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	**FINANCE CHARGE** The dollar amount the credit will cost me. $	Amount Financed The amount of credit provided to me or on my behalf. $	Total of Payments The amount I will have paid after I have made all payments as scheduled. $

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.
Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment.
Prepayment: If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, and any required repayment in full before the scheduled date.

ITEMIZATION OF THE FINANCE CHARGE

Acquisition Charge.....$ _____
Interest Charge (Installment Account Handling Charge)...$ _____

ITEMIZATION OF THE AMOUNT FINANCED

Previous Account.....# _____
Late Charge on Previous Account.....$ _____
Previous Balance.....$ _____
Less Refund.....$ _____
Net Balance Renewed.....$ _____
Cash to me.....$ _____
Amount Financed.....$ _____

I promise to pay the unpaid principal balance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. I can make any payment early.

The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded.

If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than $100, the late charge will be 5% of the amount of the installment. If the amount financed is $100 or more, the late charge will be the greater of $10 or 5% of the amount of the installment. I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

(Optional: You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report.)

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X_____
Borrower

X_____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

FY 2020 Exemptions Granted

Government Code §552.262(a) authorizes the attorney general to adopt cost rules for governmental bodies to use in determining charges for providing public information under the Public Information Act, chapter 552 of the Government Code. The attorney general's cost rules are found at 1 TAC §§70.1 - 70.12. Government Code §552.262(c) permits a governmental body to request that it be exempt from all or part of the attorney general's cost rules. Government Code §552.262(d) requires the attorney general to publish annually a list of the governmental bodies that are granted exemptions from the attorney general's cost rules and authorized to adopt modified rules for determining charges for providing public information. Therefore, the attorney general publishes the following table of exemptions granted to date for Fiscal Year 2020 (September 1, 2019, through August 31, 2020):

Fiscal Year 2020 Exemptions Granted

Governmental Body	Exempted from Rule Section	Authorized Charges
Guadalupe Appraisal District	1 T.A.C. § 70.3(h)(3)	$4.07 per clock hour for client/server time
Lake Amanda Water Control and Improvement District No. 1	1 T.A.C. § 70.3(b)(1)	$0.45 per color copy

TRD-202001561
Lesley French
General Counsel
Office of the Attorney General
Filed: April 22, 2020

♦ ♦ ♦

Notice Regarding Private Real Property Rights Preservation Act Guidelines

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the proposed updates to the Texas Private Real Property Rights Preservation Act Guidelines are not included in the print version of the Texas Register. The figure is available in the on-line version of the May 1, 2020, issue of the Texas Register.)

In 1995, the Texas Legislature enacted the "Private Real Property Rights Preservation Act" (the Property Rights Act). Tex. Gov't Code Ch. 2007. As required by section 2007.041 of the Property Rights Act, the Texas Attorney General's Office prepared guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. These guidelines were first published in 1996 in the *Texas Register* and have been updated since that time (21 TexReg 387). The Property Rights Act requires that the Texas Attorney General's Office review the guidelines at least annually and revise them as necessary. The current guidelines can be found at https://www2.texasattorneygeneral.gov/agency/private-real-property-rights-preservation-act-guidelines.

The Texas Attorney General's Office has begun its annual review and invites comments, suggestions, or information from the public on whether the public views the guidelines as consistent with the actions of the Texas Legislature and decisions of the United States and Texas Supreme Courts through April 1, 2020. In addition, based on the review of cases issued prior to April 1, 2020, proposed updates to the guidelines are set out below.

Any comments must be submitted no later than 30 days from publication of this notice. Please address comments to Heather D. Hunziker, Assistant Attorney General, Environmental Protection Division, Office of the Attorney General, P.O. Box 12548, MC-066 Austin, Texas 78711-2548, or at Heather.Hunziker@oag.texas.gov. The Texas Attorney General's Office will review any comments submitted and will later publish notice of any revisions to the guidelines.

TRD-202001476
Lesley French
General Counsel
Office of the Attorney General
Filed: April 15, 2020

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Brazos G Regional Water Planning Group

Notice to Public Regional Water Planning 2021 Brazos G Regional Water Plan (IPP)

In accordance with §357.21 of the Texas Administrative Code, notice is hereby given that the Region G Regional Water Planning Group (Brazos G) will conduct a public hearing at 10:00 a.m., Wednesday, June 03, 2020. See below for the location of the meeting and how to participate.

Public Comment: The hearing's purpose is to receive public comment on the Initially Prepared 2021 Brazos G Regional Water Plan (IPP). No action on the IPP will be taken. The agenda for the public hearing will consist of (1) brief introductions (2) a summary of the planning effort

and the IPP given by the consulting team, and (3) individual comments from the public. Written comments will also be accepted from May 4, 2020 until 5:00 p.m. on August 2, 2020 via email at Stephen.hamlin@brazos.org or can be mailed to: Brazos River Authority, Attn: Steve Hamlin, P.O. Box 7555, Waco, Texas 76714-7555.

HOW TO PARTICIPATE IN THE PUBLIC HEARING

In response to the COVID-19 situation, Governor Abbott issued a disaster declaration on March 13, 2020, which was followed up on March 16, 2020 with a limited approval to temporarily suspend specific open meetings laws in order to allow governmental bodies to conduct public meetings by telephone or video conference. As authorized by such declaration/approval the location and method of the public hearing will be contingent upon the status of these or any other declarations/approvals that may be in effect on June 3rd. Accordingly, Brazos G intends to hold the June 3, 2020 public hearing as follows:

1) If approval to hold public meetings by teleconference is still in effect, the Brazos G IPP Public Hearing will be held by teleconference through the Skype conferencing system at 10:00 a.m. on June 3, 2020. The teleconference can be accessed from any telephone at:

Toll-free number: 469-206-8623

Conference ID: 519584607

2) If approval to hold public meetings by teleconference is no longer in effect, the Brazos G IPP Public Hearing will be held at 10:00 a.m. on June 3, 2020 at the Brazos River Authority Central Office, 4600 Cobbs Drive, Waco, Texas 76710.

3) If approval is provided to hold public meetings both in-person and by teleconference, the Brazos G IPP Public Hearing will take place at the Brazos River Authority Central Office, 4600 Cobbs Drive, Waco, Texas 76710 at 10:00 a.m. on June 3, 2020 and will also be accessible through the Skype conferencing system, which can be accessed from any telephone at:

Toll-free number: 469-206-8623

Conference ID: 519584607

A hard copy of the IPP is available for viewing at the Brazos River Authority Central Office and each of the following County Clerk's Offices in the Brazos G Area: Bell, Bosque, Brazos, Burleson, Callahan, Comanche, Coryell, Eastland, Erath, Falls, Fisher, Grimes, Hamilton, Haskell, Hill, Hood, Johnson, Jones, Kent, Knox, Lampasas, Lee, Limestone, McLennan, Milam, Nolan, Palo Pinto, Robertson, Shackleford, Somervell, Stephens, Stonewall, Taylor, Throckmorton, Washington, Williamson and Young counties. A notice is posted at one public library in each of the Brazos G counties listed above with a web link to the IPP and accessible from the library's public computers. A list of designated county libraries and an electronic copy of the IPP is available for viewing on the Brazos G Water Planning Group website at www.brazosgwater.org.

Questions or requests for additional information should be directed to Steve Hamlin, Brazos G Administrator, Brazos River Authority, 4600 Cobbs Drive, Waco, Texas 76710. He can be reached by telephone at (254) 761-3172 or by e-mail at stephen.hamlin@brazos.org

Due to the dynamic COVID-19 situation, please visit the Brazos G website at www.brazosgwater.org for up-to-date information on the IPP Public Hearing.

TRD-202001537

Stephen Hamlin
Brazos G Administrator
Brazos G Regional Water Planning Group
Filed: April 20, 2020

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/27/20 - 05/03/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/27/20 - 05/03/20 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/20 - 05/31/20 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 05/01/20 - 05/31/20 is 5.00% for commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202001544
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 21, 2020

♦ ♦ ♦

Texas Council for Developmental Disabilities

Request for Applications: Family Support and Financial Planning

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one organization to develop a project to increase the number of adults with intellectual and developmental disabilities (IDD) who have effective financial and family support plans. While individuals and/or their caregivers age, plans will ensure funds, services, and supports are available and flexible enough to allow adults with IDD to remain in their homes and in the community, and to exercise control over their own lives. Trainings and tools may be developed so family members and caregivers can implement individualized financial planning strategies for individuals with IDD. Also, trainings may be developed so service providers and other professionals can support individuals and families to plan for future financial and support needs.

TCDD has approved funding for up to one project for up to $100,000, per year, for up to two years. Funds available for this project is provided to TCDD by the U.S. Department of Health and Human Services, Administration on Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for a project in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for a project in other areas.

Additional information concerning this Request for Applications (RFA) and TCDD is available at https://tcdd.texas.gov/grants-

rfas/funding-available-for-grants/. All questions pertaining to this RFA should be directed in writing to TCDD via email at apply@tcdd.texas.gov or via telephone at (512) 437-5432.

Deadline: Applications must be submitted through https://tcdd.smapply.org/prog/lst/ and will be reviewed by TCDD according to the following schedule: applications received by 11:59 p.m. on June 29, 2020, may be reviewed at the August 2020 Council meeting; applications received by 11:59 p.m. on September 28, 2020, may be reviewed at the November 2020 Council meeting.

TRD-202001557
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: April 22, 2020

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Request for Applications: Money Basics

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one organization to develop a universally available or replicable model that will increase the money management skills of adults with intellectual and developmental disabilities (IDD). If people with IDD manage their money effectively, they will be more likely to be able to save for the future, stay out of debt, and ultimately have more control over their own lives. The project will develop and provide money management skills training, and also develop resources and tools adults with IDD can use in real-life situations beyond the duration of the project.

TCDD has approved funding for up to one project for up to $150,000, per year, for up to five years. Funds available for this project is provided to TCDD by the U.S. Department of Health and Human Services, Administration on Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for a project in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for a project in other areas.

Additional information concerning this Request for Applications (RFA) and TCDD is available at https://tcdd.texas.gov/grants-rfas/funding-available-for-grants/. All questions pertaining to this RFA should be directed in writing to TCDD via email at apply@tcdd.texas.gov or via telephone at (512) 437-5432.

Deadline: Applications must be submitted through https://tcdd.smapply.org/prog/lst/ and will be reviewed by TCDD according to the following schedule: applications received by 11:59 p.m. on June 29, 2020, may be reviewed at the August 2020 Council meeting; applications received by 11:59 p.m. on September 28, 2020, may be reviewed at the November 2020 Council meeting.

TRD-202001556
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: April 22, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 2, 2020.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 2, 2020.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Blanchard Refining Company LLC; DOCKET NUMBER: 2019-0487-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 47256 and PSDTX402M3, Special Conditions Number 1, Federal Operating Permit Number O1541, General Terms and Conditions and Special Terms and Conditions Number 28, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $39,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $15,750; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Brown County Water Improvement District Number 1; DOCKET NUMBER: 2019-1666-SLG-E; IDENTIFIER: RN102688314; LOCATION: Brownwood, Brown County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §312.122(b) and TWC, §26.121(a), by failing to obtain authorization to land apply water treatment plant sewage sludge; PENALTY: $2,550; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: City of Crandall; DOCKET NUMBER: 2019-1077-MWD-E; IDENTIFIER: RN101917136; LOCATION: Crandall, Kaufman County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010834001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $47,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $47,250; ENFORCEMENT COOR-

DINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Laredo; DOCKET NUMBER: 2019-0881-MWD-E; IDENTIFIER: RN103026043; LOCATION: Laredo, Webb County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010681002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $42,600; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $34,080; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(5) COMPANY: Cuvee Coffee, LLC; DOCKET NUMBER: 2018-1625-WQ-E; IDENTIFIER: RN109184416; LOCATION: Spicewood, Travis County; TYPE OF FACILITY: coffee producing and canning facility; RULES VIOLATED: 30 TAC §210.57(b)(1)(A) and TCEQ Authorization for Industrial Reclaimed Water Use Number 2E-0000236, Additional Requirements Number 10, by failing to get approval prior to utilizing floor wash water for on-site irrigation; PENALTY: $563; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(6) COMPANY: DETMAR LOGISTICS, LLC dba Express Energy Services and IMPERIAL FLEET SERVICE INC dba Express Energy Services; DOCKET NUMBER: 2019-0806-MLM-E; IDENTIFIER: RN107009854; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: fleet maintenance facility; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; and 30 TAC §§335.62, 335.503(a), and 335.504 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications; PENALTY: $5,266; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(7) COMPANY: DIAMOND SHAMROCK REFINING COMPANY, L.P. dba Valero McKee Refinery; DOCKET NUMBER: 2019-1100-WDW-E; IDENTIFIER: RN100210517; LOCATION: Sunray, Moore County; TYPE OF FACILITY: Class I hazardous and nonhazardous waste underground injection well; RULES VIOLATED: 30 TAC §331.63(h) and Underground Injection Control Permit Numbers WDW-102 and WDW-192, Provision Number V.C, and WDW-332, Provision Number VI.C, Character of the Waste Streams, by failing to maintain chemical or physical characteristics of the injected fluids within specified permit limits for the protection of the injection well, associated facilities, and injection zone, and to ensure proper operation of the facility; PENALTY: $17,100; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,840; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: EP SHARP INVESTMENTS, LLC; DOCKET NUMBER: 2019-1619-MLM-E; IDENTIFIER: RN106833296; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: transportation trucking services; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; PENALTY: $2,825; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: Gonzales County Water Supply Corporation; DOCKET NUMBER: 2019-1320-PWS-E; IDENTIFIER: RN101235778; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c)(4), by failing to provide the water storage tanks with a liquid level indicator; 30 TAC §290.45(b)(1)(C)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide an elevated storage tank capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exists; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free from excessive solids; and 30 TAC §290.110(d)(3) and (4), by failing to use an acceptable analytical method for disinfectant analyses; PENALTY: $3,611; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: GrubTubs, Inc; DOCKET NUMBER: 2019-1277-MLM-E; IDENTIFIER: RN110279692; LOCATION: Buda, Hays County; TYPE OF FACILITY: recycling and composting center; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance odor conditions; 30 TAC §328.4(b)(2) and (3), by failing to recycle during each subsequent six-month period at least 50% by weight or volume of material accumulated at the facility for recycling or transfer to a different site for recycling; and 30 TAC §332.8(c)(3), by failing to ensure that there is an adequate volume of bulking material to blend or cover the material with high odor potential, and to process the material in a manner that prevents nuisances; PENALTY: $18,375; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(11) COMPANY: Johnson Bros. Corporation, a Southland Company; DOCKET NUMBER: 2019-1486-WQ-E; IDENTIFIER: RN110012838; LOCATION: Hunstville, Walker County; TYPE OF FACILITY: road construction; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System General Permit Number TXR15164L, Part III, Section F, Number 6, by failing to maintain best management practices at the site which resulted in a discharge of sediment; PENALTY: $18,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Jon David Stover; DOCKET NUMBER: 2019-0997-WQ-E; IDENTIFIER: RN110761574; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: TWC, §26.121(a)(2), by failing to prevent an unauthorized discharge of sediment into or adjacent to any water in the state; and 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; PENALTY: $22,125; ENFORCEMENT COORDINATOR:

Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: JOSEPH ADAM CORPORATION; DOCKET NUMBER: 2019-1210-PST-E; IDENTIFIER: RN101843126; LOCATION: Slaton, Lubbock County; TYPE OF FACILITY: out-of-service underground storage tank system; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition or within 30 days from the date on which the owner or operator first became aware of the change or addition; 30 TAC §334.49(a)(2) and (c)(2)(C) and (4)(C), §334.54(b)(3), and TWC, §26.3475(d), by failing to ensure the UST corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection; 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances which remain in the temporarily out-of-service USTs did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator, Class A, Class B, and Class C, for the facility; PENALTY: $9,462; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(14) COMPANY: Legacy Reserves Operating LP; DOCKET NUMBER: 2019-1248-AIR-E; IDENTIFIER: RN100222223; LOCATION: Tennessee Colony, Anderson County; TYPE OF FACILITY: sour gas treatment plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O960, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O960, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.7(c) and (d)(2), New Source Review (NSR) Permit Numbers 33486 and PSDTX872, Special Conditions (SC) Number 7.A, FOP Number O960, GTC and STC Numbers 4.A and 6, and THSC, §382.085(b), by failing to submit an excess emissions and monitoring systems performance report and/or summary report form semiannually by the 30th day following the end of each six-month period; 30 TAC §§101.20(1) and (3), 116.115(c), 122.143(4), and 122.147(a), 40 CFR §60.13(e)(2), NSR Permit Numbers 33486 and PSDTX872, SC Number 7, FOP Number O960, GTC and STC Numbers 4.E, 5, and 6, and THSC, §382.085(b), by failing to maintain a continuous emissions monitoring system to measure and record the in-stack concentration of oxygen and sulfur dioxide; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 33486 and PSDTX872, SC Number 10.A, FOP Number O960, GTC and STC Number 6, and THSC, §382.085(b), by failing to maintain records; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Numbers 33486 and PSDTX872, SC Number 7.B.(1), FOP Number O960, GTC and STC Number 6, and THSC, §382.085(b), by failing to conduct a relative accuracy test audit at least once every four calendar quarters; PENALTY: $26,405; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Midcoast G & P (East Texas) L.P.; DOCKET NUMBER: 2019-1311-AIR-E; IDENTIFIER: RN100223783; LOCATION: Pittsburg, Camp County; TYPE OF FACILITY: natural gas processing and treatment plant; RULES VIOLATED: 30 TAC §§111.111(a)(1)(B), 116.115(c), 116.615(2), and 122.143(4), New Source Review Permit Number 8986, Special Conditions Number 1, Standard Permit Registration Number 142024, Federal Operating Permit Number O2961, General Terms and Conditions and Special Terms and Conditions Numbers 3.A(i), 9, and 12.B, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $26,431; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: OUTBACK ON THE LAKE, L.L.C.; DOCKET NUMBER: 2019-0383-MWD-E; IDENTIFIER: RN101522621; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: a wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0011435001, Special Provisions Number 9, by failing to submit annual soil analysis results with copies of the laboratory reports and a map depicting the land application; 30 TAC §305.125(1) and TCEQ Permit Number WQ0011435001, Sludge Provisions, Section IV.C, by failing to submit annual sludge reports to the TCEQ by September 30th of each year; 30 TAC §305.125(1) and TCEQ Permit Number WQ0011435001, Monitoring Requirements Number 3.c.ii, and Special Provisions Number 4, by failing to maintain accurate records of monitoring activities and wastewater application at the facility and make them readily available for review by a TCEQ representative; 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0011435001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5) and §319.11(d) and TCEQ Permit Number WQ0011435001, Monitoring Requirements Number 2.a, by failing to comply with flow measurements, equipment, installation and procedures that conform to those prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the executive director; 30 TAC §305.125(1) and §319.11(c) and TCEQ Permit Number WQ0011435001, Monitoring Requirements Number 2.a., by failing to comply with the test procedures for the analysis of pollutants; and 30 TAC §305.125(1), and TCEQ Permit Number WQ0011435001, Monitoring Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of the noncompliance; PENALTY: $13,807; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: Paper Retriever of Texas, LLC; DOCKET NUMBER: 2019-1547-MLM-E; IDENTIFIER: RN103028684; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: paper and cardboard recycling facility; RULES VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), and TWC, §26.121, by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; 30 TAC §37.921 and §328.5(c)(1) and (d), by failing to provide a written estimate showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials, and failing to establish and maintain financial assurance for the closure of a facility that stores combustible materials outdoors; and 30 TAC §328.5(h), by failing to have a fire prevention and suppression plan and make it available to the local fire prevention authority; PENALTY: $10,596; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Seaport Lakes Estates Associates, Incorporated; DOCKET NUMBER: 2019-0740-PWS-E; IDENTIFIER: RN104394176; LOCATION: Seadrift, Calhoun County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligram per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $250; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(19) COMPANY: Total Petrochemicals & Refining USA, Incorporated; DOCKET NUMBER: 2019-1645-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemical refining plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 21538, Special Conditions (SC) Number 1, NSR Permit Number 3908B, SC Number 1, Federal Operating Permit (FOP) Number O1293, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), NSR Permit Number 3908B, SC Number 1, FOP Number O1293, GTC and STC Number 14, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §§116.115(c), 117.345(c), and 122.143(4), NSR Permit Number 3908B, SC Number 22.E, FOP Number O1293, GTC and STC Number 14, and THSC, §382.085(b), by failing to submit copies of the final sampling report within 60 days after the sampling is completed; PENALTY: $59,064; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Town of Combes; DOCKET NUMBER: 2019-1638-PWS-E; IDENTIFIER: RN101259299; LOCATION: Combes, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligram per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; PENALTY: $50; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-202001542
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 21, 2020

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Enforcement Orders

A default order was adopted regarding Keith Woodard, Docket No. 2017-1772-WQ-E on April 22, 2020 assessing $3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding FATIMA ALI LLC dba F & A Food Mart, Docket No. 2018-0092-PST-E on April 22, 2020 assessing $5,394 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AGRIUM U.S. INC., Docket No. 2018-0910-MLM-E on April 22, 2020 assessing $109,650 in administrative penalties with $21,930 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 290 East Bush, Inc., Docket No. 2018-1058-EAQ-E on April 22, 2020 assessing $19,000 in administrative penalties with $3,800 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Eldorado, Docket No. 2018-1195-MSW-E on April 22, 2020 assessing $15,125 in administrative penalties with $3,025 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding C.M.T. ENTERPRISES, LLC dba In N Out C Store Gas, Docket No. 2018-1255-PST-E on April 22, 2020 assessing $19,720 in administrative penalties with $1,827 deferred. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LAGUNA VISTA LIMITED, Docket No. 2018-1291-PWS-E on April 22, 2020 assessing $974 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rohm and Haas Texas Incorporated, Docket No. 2018-1364-AIR-E on April 22, 2020 assessing $39,767 in administrative penalties with $7,952 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pure Utilities, L.C., Docket No. 2018-1403-PWS-E on April 22, 2020 assessing $1,462 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lhoist North America of Texas, Ltd., Docket No. 2018-1473-AIR-E on April 22, 2020 assessing $20,386 in administrative penalties with $4,077 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Junction, Docket No. 2018-1480-PWS-E on April 22, 2020 assessing $417 in adminis-

trative penalties. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Atmos Energy Corporation, Docket No. 2018-1500-AIR-E on April 22, 2020 assessing $43,559 in administrative penalties with $8,711 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Big Lake, Docket No. 2018-1512-MWD-E on April 22, 2020 assessing $21,563 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Cameron, Docket No. 2018-1553-PWS-E on April 22, 2020 assessing $690 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Nome, Docket No. 2018-1727-PWS-E on April 22, 2020 assessing $3,100 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Byers, Docket No. 2018-1731-PWS-E on April 22, 2020 assessing $1,027 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LLANO WEST MHP, L.P., Docket No. 2019-0038-PWS-E on April 22, 2020 assessing $1,067 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TERRA SOUTHWEST, INC., Docket No. 2019-0083-PWS-E on April 22, 2020 assessing $594 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shintech Incorporated, Docket No. 2019-0104-AIR-E on April 22, 2020 assessing $105,741 in administrative penalties with $21,148 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ARNOLD TRUCKING, INC., Docket No. 2019-0129-WQ-E on April 22, 2020 assessing $3,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RPM Oilfield Services Inc., Docket No. 2019-0148-SLG-E on April 22, 2020 assessing $15,325 in administrative penalties with $3,065 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Motiva Enterprises LLC, Docket No. 2019-0377-AIR-E on April 22, 2020 assessing $26,251 in administrative penalties with $5,250 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding SAI SUMU INC dba Andy's Food Store, Docket No. 2019-0380-PST-E on April 22, 2020 assessing $40,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding Rupinderjit Singh dba Family Mart, Docket No. 2019-0486-PST-E on April 22, 2020 assessing $4,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lion Elastomers LLC, Docket No. 2019-0490-AIR-E on April 22, 2020 assessing $13,688 in administrative penalties with $2,737 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding CATALPA WATER SUPPLY CORPORATION, Docket No. 2019-0546-PWS-E on April 22, 2020 assessing $812 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Anthony Reed, Docket No. 2019-0653-LII-E on April 22, 2020 assessing $1,243 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Eagle Railcar Services, L.P., Docket No. 2019-0696-AIR-E on April 22, 2020 assessing $22,250 in administrative penalties with $4,450 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bell County Water Control & Improvement District 5, Docket No. 2019-0757-PWS-E on April 22, 2020 assessing $205 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grassland Water Supply Corporation, Docket No. 2019-0834-PWS-E on April 22, 2020 assessing $360 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PeroxyChem LLC, Docket No. 2019-0872-AIR-E on April 22, 2020 assessing $10,800 in administrative penalties with $2,160 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202001559
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 22, 2020

♦ ♦ ♦

Enforcement Orders

An agreed order was adopted regarding CHAHAL R&R, INC dba Alvin Express, Docket No. 2018-0970-PST-E on April 21, 2020 assessing $3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding REWARI INVESTMENTS INC dba Haltom Corner, Docket No. 2018-1536-PST-E on April 21, 2020 assessing $4,855 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Alldoc's, Inc, Docket No. 2019-0208-PST-E on April 21, 2020 assessing $4,800 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding S. J. LOUIS CONSTRUCTION OF TEXAS LTD., Docket No. 2019-0454-WQ-E on April 21, 2020 assessing $963 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202001560
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 22, 2020

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Notice of Correction to Agreed Order Number 19

In the December 7, 2018, issue of the *Texas Register* (43 TexReg 7926), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 19, for Santek Environmental of Texas, LLC dba Polk County Landfill, Docket Number 2018-0842-MSW-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "Santek Environmental of Texas, LLC dba Polk County Landfill and Polk County dba Polk County Landfill."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202001543
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 21, 2020

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Notice of Minor Amendment: Radioactive Material License Number R04100

APPLICATION: Waste Control Specialists LLC (WCS) applied to the Texas Commission on Environmental Quality (TCEQ) for minor amendment to Radioactive Material License R04100 with an application received July 19, 2019, to authorize the use of two new modular concrete canister (MCC) designs and the removal of the requirement that rebar used for MCCs and concrete barriers have an epoxy coating. WCS submitted modifications to this application dated October 9, 2019, to change the Waste Acceptance Criteria to clarify that the five day advance shipment notification is only for the Compact Waste Facility; dated October 25, 2019, to modify procedure EV-1.1.0, Consolidated Radiological Environmental Monitoring Program; dated January 15, 2020, to add two new financial assurance tiers and two new waste categories for the financial assurance calculations for the storage and processing facility; dated January 24, 2020, to modify the License Condition 192 exemption concentration limits in procedure RS-5.0.0, Radiological Waste Process for the RCRA Landfill; dated March 10, 2020, to remove the October 25, 2019, request to modify procedure EV-1.1.0; and dated March 26, 2020, to correct an error in the January 15, 2020, modification letter.

Radioactive Material License R04100 authorizes commercial disposal of low-level radioactive waste (LLRW) and storage and processing of radioactive waste. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas and is the licensed operator of the Compact Waste Facility and the Federal Waste Facility for commercial and federal LLRW disposal. The land disposal facility and the storage and processing facility are located at 9998 State Highway 176 West in Andrews County, Texas.

The Executive Director has determined that a minor amendment to the license is appropriate because the amendment application does not pose a detrimental impact and is in consideration of maintaining public health and safety, worker safety, and environmental health. The license will be amended to modify the Waste Acceptance Criteria in Attachment C to add that the five day advance shipment notification only applies to the Compact Waste Facility; authorize the use of two new Modular Concrete Canister (MCC) designs in waste disposal operations; authorize the use of standard uncoated rebar in the reinforced concrete structures used for MCCs and concrete barriers; update all monetary values to 2018 dollars for the financial assurance (FA) of the storage and processing facility; add two additional FA tiers (whose monetary values are between the two current tiers) for the storage and processing facility; add two new waste categories for the FA of the storage and processing facility; and add tie-down documents to the license. By initiative of the Executive Director, the proposed amendment will also modify several license conditions for clarity, add requirements to the site topography report that is required every five years, and add a total activity cap of radium-226 placed for disposal in cells E to J of the RCRA facility (under the exemption authorized by license condition 192) of 1,764 Ci, which is equal to a final average concentration of 10% of the Class A limit for low level radioactive waste in 30 TAC §336.362.

The following link to an electronic map of the facility's general location is provided as a public courtesy and is not part of the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-

103.063055%2C32.4425&level=12. For an exact location, refer to the application.

The TCEQ Executive Director has completed the technical review of the amendment and supporting documents and has prepared a draft license. The draft license, if approved, would refine and add detail to the conditions under which the land disposal facility and the storage and processing facility must operate with regard to existing authorized receipt of wastes and does not change the type or concentration limits of wastes to be received. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license amendment application with supporting documents, the Executive Director's technical summary, and the amended draft license are available for viewing at the TCEQ webpage https://www.tceq.texas.gov/response/covid-19/pending-permit-applications-during-covid-19-disaster.

INFORMATION AVAILABLE ONLINE: For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION: Public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

PUBLIC COMMENT/PUBLIC MEETING: The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the amendment. The TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the applications/amendments or if requested by a local legislator. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director may consider all timely comments and prepare a response to all relevant material or significant public comments.

EXECUTIVE DIRECTOR ACTION: The amendment is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval of the application for amendment after consideration of all timely comments submitted on the application.

MAILING LIST: If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license or permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www.tceq.texas.gov/about/comments.html within 10 days from the date of this notice or 10 days from the date of publication in the *Texas Register,* whichever is later.

AGENCY CONTACTS AND INFORMATION: If you need more information about this license application or the licensing process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information about the TCEQ can be found at our web site at https://www.tceq.texas.gov.

Further information may also be obtained from WCS at the address stated above or by calling Mr. Jay Cartwright at (432) 525-8698.

TRD-202001555
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 22, 2020

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Texas Ethics Commission

List of Late Filers

April 6, 2020

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2020 for Candidates and Office Holders

LaDeitra D. Adkins, P.O. Box 195763, Dallas, Texas 75219

Gregory C. Alvord, 1221 Spanish Moss Dr., Aubrey, Texas 76227

Michael D. Antalan, 9550 Spring Green Blvd. #123, Katy, Texas 77494

David A. Ayon, 225 E. Elmira St., San Antonio, Texas 78212

Ezekiel Barron, P.O. Box 148, Hart, Texas 79043

Te'iva J. Bell, 9800 Northwest Freeway Ste. 600, Houston, Texas 77092

Rob D. Block, 4315 Darter St., Houston, Texas 77009

Richard A. Bonton, 12680 West Lake Houston Pkwy. Ste. 510 PMB 180, Houston, Texas 77044

James R. Dickey Sr., 900 Ranch Rd. 620 S., Ste. C205, Lakeway, Texas 78734-5625

Cristo R. Fernandez, 22518 Bassett Hollow Lane, Richmond, Texas 77469

Armando Gamboa, 9851 W. 23rd St., Odessa, Texas 79763

Richard Gonzales, 1404 May Dr., Edinburg, Texas 78539

Stephen P. Gunnels, 13815 Barons Bridge, Houston, Texas 77069

Whitney D. Hatter, 16646 Cairngrove Ln., Houston, Texas 77084

Juan R. Hernandez, P.O. Box 29275, San Antonio, Texas 78229

Van Q. Huynh, P.O. Box 420893, Houston, Texas 77242

Terah C. Isaacson, P.O. Box 7188, Houston, Texas 77248

Michael Krusee, 13231 Briar Hollow, Austin, Texas 78729-3655

John Lujan III, 20003 FM 1937, San Antonio, Texas 78221

Heather M. Mather, 1612 Westmoor Drive, Austin, Texas 78723

Shannon K. McClendon, 1302 Overland Stage Rd., Ste. 200, Dripping Springs, Texas 78620

Tessa McGlynn, 2806 Andrea Ln., Garland, Texas 75040

Larry McKinzie, 3930 Porter Street, Houston, Texas 77021

Jose Menendez, P.O. Box 100833, San Antonio, Texas 78201

Bill Metzger, (no address on file)

Sandre Streete Moncriffe, P.O. Box 221, De Soto, Texas 75123-0221

Deondre Moore, 9803 W. Sam Houston Pkwy. S 2260, Houston, Texas 77099

Melissa M. Morris, 7650 Springhill St. Unit 704, Houston, Texas 77021

Anna L. Nunez, P.O. Box 30129, Houston, Texas 77249

Osbert G. Rodriguez III, 1020 Dennet Rd., Brownsville, Texas 78526

Byron K. Ross, 3223 North Park Dr., Missouri City, Texas 77459

Colin D. Ross, 813 Henderson St., Houston, Texas 77007

Jason D. Rowe, 1720 Bissonnet, Houston, Texas 77005

Martina Salinas, 5408 Black Oak Ln., River Oaks, Texas 76114

Jonathan Sibley, 202 Cypress Court, Woodway, Texas 76712

Sam N. Smith, 8600 Stirlingshire Apt. 40, Houston, Texas 77078

Shawn Nicole Thierry, 5100 Westheimer #200, Houston, Texas 77056

Vanessa Tijerina, P.O. Box 702, Raymondville, Texas 78580

Ruben Villarreal, P.O. Box 1975, Pasedena, Texas 77501

Joshua A. Wilkinson, 2910 Chaparral Cir., Bryan, Texas 77802

Likeithia D. Williams, P.O. Box 2019, Harker Heights, Texas 76548

Sherry Ann Williams, P.O. Box 407, Sour Lake, Texas 77659

Joseph R. Willie II, 4151 Southwest Freeway Ste. 490, Houston, Texas 77027

Matthew G. Wright, P.O. Box 522, Rosebud, Texas 76570

Deadline: Runoff Report due January 21, 2020 for Candidates and Office Holders

James A. Armstrong III, 1839 Leath St., Dallas, Texas 75212

TRD-202001545
Anne Peters
Executive Director
Texas Ethics Commission
Filed: April 21, 2020

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Texas Facilities Commission

Request for Proposals (RFP) #303-1-20685

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-1-20685. TFC seeks a five (5) or ten (10) year lease of approximately 26,804 square feet of space that consists of 26,609 sq. ft. of office space and 195 sq. ft. of outdoor employee lounge area space in Eagle Pass, Texas.

The deadline for questions is May 14, 2020, and the deadline for proposals is May 26, 2020, at 3:00 p.m. The award date is June 18, 2020. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel at Evelyn.Esquivel@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/spdetails/view/303-1-20685.

TRD-202001501
Rico Gamino
Director of Procurement
Texas Facilities Commission
Filed: April 17, 2020

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Request for Proposals (RFP) #303-2-20692

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS), announces the issuance of Request for Proposals (RFP) #303-2-20692. TFC seeks a five (5) or ten (10) year, lease of approximately 11,907 square feet of office space in Mercedes, Texas.

The deadline for questions is May 22, 2020, and the deadline for proposals is June 5, 2020, at 3:00 p.m. The award date is July 16, 2020. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at Evelyn.Esquivel@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/spdetails/view/303-2-20692.

TRD-202001558
Rico Gamino
Director of Procurement
Texas Facilities Commission
Filed: April 22, 2020

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Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendments Related to the COVID-19 Pandemic

The Texas Health and Human Services Commission (HHSC) announces its intent to submit a disaster amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act as authorized under the Presidential emergency in response to the COVID-19 pandemic. The proposed amendment is effective March 18, 2020, during the period of the Presidential emergency declarations related to the COVID-19 outbreak. The amendment expires at the end of the emergency period.

The purpose of the amendment is for Medicaid to provide coverage of specific services for individuals who meet Medicaid citizenship or immigration status requirements, are uninsured, and do not have Medicaid, CHIP, or another form of minimum essential coverage health insurance (as defined in the Social Security Act, Section 1902(ss)). The amendment is for Medicaid to cover the following services:

In vitro COVID-19 diagnostic testing and administration of that testing.

When available, financial impacts will be released. COVID-19 testing and administration of the testing are 100 percent federally-funded.

Copy of Proposed Amendments. Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. At this time, HHSC is encouraging communications be sent via e-mail.

TRD-202001480
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 17, 2020

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Supreme Court of Texas

Final Approval of Amendments to Texas Rule of Civil Procedure 277

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9056

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULE OF CIVIL PROCEDURE 277

ORDERED that:

1. On January 8, 2020, in Misc. Docket No. 20-9008, the Court approved amendments to Rule 277 of the Texas Rules of Civil Procedure, to be effective May 1, 2020, and invited public comment.

2. No comments were received, and no additional changes have been made to the rule. This order gives final approval to the amendments set forth in Misc. Docket No. 20-9008.

3. The amendments are effective May 1, 2020, and supersede *Texas Department of Human Services v. E.B.*, 802 S.W.2d 647 (Tex. 1990).

4. The Texas Pattern Jury Charges Family and Probate Committee should continue its work as directed in Misc. Docket No. 20-9008.

5. The Clerk is directed to:

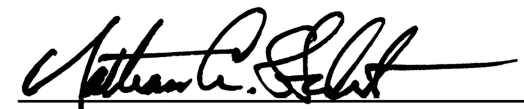
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

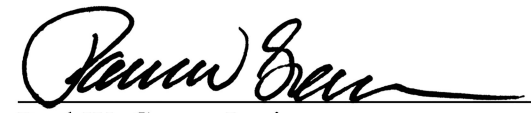
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

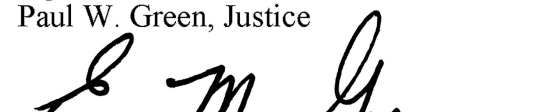
Dated: April 14, 2020



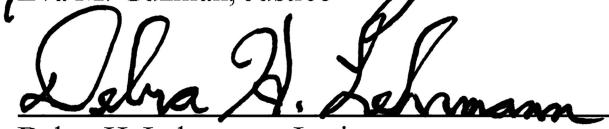
Nathan L. Hecht, Chief Justice



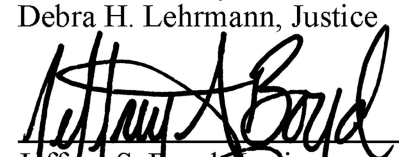
Paul W. Green, Justice



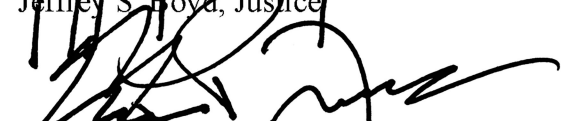
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

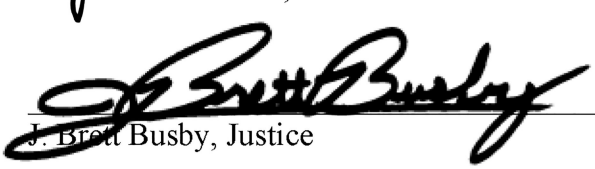


Jeffrey S. Boyd, Justice



John P. Devine, Justice

James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

TRD-202001478
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: April 15, 2020

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Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Wednesday, May 20, 2020 at 10:00 a.m. Central Standard Time (CST) to receive public comments on the May 2020 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2019-2022. The hearing will be conducted via electronic means due to the public health precautions surrounding COVID-19. Instructions for accessing the hearing will be published on the department's website at: https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html

The STIP reflects the federally funded transportation projects in the FY 2019-2022 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed May 2020 Quarterly Revisions to the FY 2019-2022 STIP will be available for review, at the time the notice of hearing is published, on the department's website at: https://www.txdot.gov/inside-txdot/division/transportation-planning/stips.html

Persons wishing to speak at the hearing may register in advance by notifying Angela Erwin, Transportation Planning and Programming Division, at (512) 416-2187 no later than 12:00 p.m. CST on Tuesday, May 19, 2020. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate in the hearing are encouraged to contact the Transportation Planning and Programming Division, at (512) 486-5003. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to participate in the hearing may submit comments regarding the proposed May 2020 Quarterly Revisions to the FY 2019-2022 STIP to Peter Smith, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. CST on Monday, June 1, 2020.

TRD-202001473
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: April 15, 2020

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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