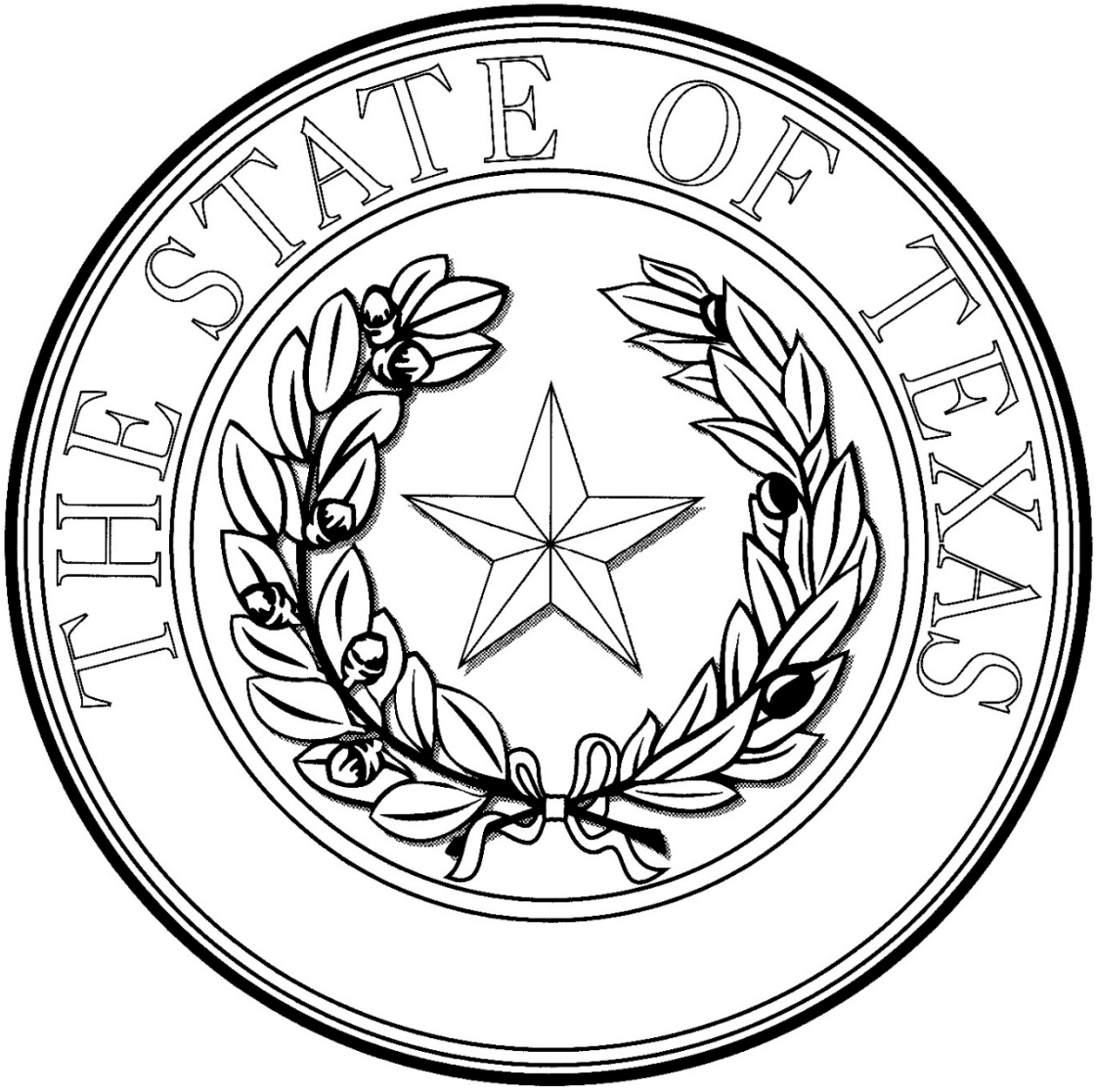
TEXAS REGISTER

Volume 47 Number 10 *March 11, 2022* *Pages 1131 - 1326*



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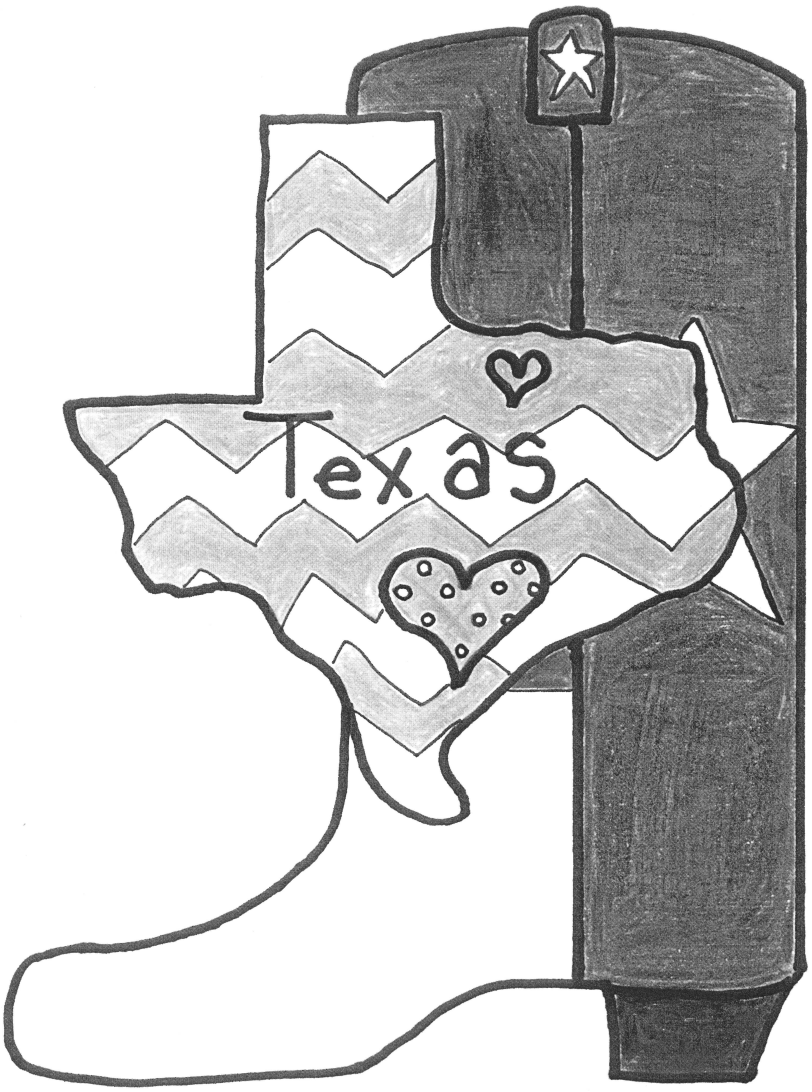
In This Issue

IN ADDITION


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.

Appointments

Appointments for February 23, 2022

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Gina R. Bellinger of San Antonio, Texas (replacing Karen D. Manning of Houston, whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Gita P. Bolt of Houston, Texas (replacing Starr-Renee "Starr" Corbin of Georgetown, whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Denise Castillo-Rhodes of Houston, Texas (replacing Rienke Radler of Fort Worth, whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Cynthia T. "Cindy" Conroy of El Paso, Texas (Ms. Conroy is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Sasha S. Crane of McAllen, Texas (Ms. Crane is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Marie E. "Maru" De La Paz of Harlingen, Texas (replacing Christina "Tina" Yturria Buford of Harlingen, whose term expired.

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Karen H. Harris of San Marcos, Texas (Ms. Harris is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Amy J. Henderson of Amarillo, Texas (Ms. Henderson is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Elisabeth A."Ashlee" Kleinert of Dallas, Texas (Ms. Kleinert is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Jinous M. Rouhani of Austin, Texas (Ms. Rouhani is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Catherine Gilbert Susser of Dallas, Texas (Ms. Susser is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Nathali Parker Weisman of New Braunfels, Texas (Ms. Weisman is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Patsy C. Wesson of Fort Worth, Texas (Ms. Wesson is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2023, Laura Koenig Young of Tyler, Texas (Ms. Young is being reappointed).

Designated as chair of the Governor's Commission for Women for a term to expire at the pleasure of the Governor, Nathali Parker Weisman of New Braunfels (Ms. Weisman is replacing Karen H. Harris of San Marcos).

Designated as vice-chair of the Governor's Commission for Women for a term to expire at the pleasure of the Governor, Amy J. Henderson of Amarillo (Ms. Henderson is replacing Nathali Parker Weisman of New Braunfels).

Appointments for February 24, 2022

Appointed to the Motor Vehicle Crime Prevention Authority for a term to expire February 1, 2025, Charla K. Brotherton of Fort Worth, Texas (replacing Ashley M. Hunter of Fredericksburg, who resigned).

Appointments for March 1, 2022

Appointed as presiding officer of the North East Texas Regional Mobility Authority for a term to expire February 1, 2024, Gary N. Halbrooks of Bullard, Texas (Mr. Halbrooks is being reappointed).

Appointments for March 2, 2022

Appointed as presiding officer of the Webb County - City of Laredo Regional Mobility Authority for a term to expire February 1, 2024, Jed A. Brown of Laredo, Texas (Mr. Brown is being reappointed).

Greg Abbott, Governor

TRD-202200759

♦ ♦ ♦

Proclamation 41-3884

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the 87th Texas Legislature, Second Called Session, convened in August of 2021 and the 87th Texas Legislature, Third Called Session, convened in September of 2021 in accordance with Article III, Sections 5 and 40, and Article IV, Section 8, of the Texas Constitution; and

WHEREAS, during those special sessions, the Legislature approved two joint resolutions proposing two particular constitutional amendments by a vote of two-thirds of all the members of each house, pursuant to Article XVII, Section 1, of the Texas Constitution; and

WHEREAS, pursuant to the terms of those resolutions and in accordance with the Texas Constitution, the Legislature has set the date of the election for voting on the two proposed constitutional amendments to be May 7, 2022; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held throughout the State of Texas on the FIRST SATURDAY IN MAY, the same being the SEVENTH day of MAY, 2022; and

NOTICE THEREOF IS HEREBY GIVEN to the COUNTY JUDGE of each county, who is directed to cause said election to be held in the county on such date for the purpose of adopting or rejecting the two constitutional amendments proposed by two joint resolutions, as submitted by the 87th Texas Legislature, Second Called Session, and the 87th Texas Legislature, Third Called Session, of the State of Texas.

Pursuant to Sections 52.095, 274.001, and 274.002 of the Texas Election Code, the propositions for the joint resolutions will appear as follows:

STATE OF TEXAS PROPOSITION No. 1

"The constitutional amendment authorizing the legislature to provide for the reduction of the amount of a limitation on the total amount of ad valorem taxes that may be imposed for general elementary and secondary public school purposes on the residence homestead of a person who is elderly or disabled to reflect any statutory reduction from the preceding tax year in the maximum compressed rate of the maintenance and operations taxes imposed for those purposes on the homestead."

STATE OF TEXAS PROPOSITION No. 2

"The constitutional amendment increasing the amount of the residence homestead exemption from ad valorem taxation for public school purposes from $25,000 to $40,000."

The secretary of state shall take notice of this proclamation and shall immediately mail a copy of this order to every county judge of this state, and all appropriate writs will be issued, and all proper proceedings will be followed, to the end that said election may be held and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of February, 2022.

Greg Abbott, Governor

TRD-202200662

♦ ♦ ♦

Proclamation 41-3885

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, I have issued 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 state of disaster continues to exist in all counties due to COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of February, 2022.

Greg Abbott, Governor

TRD-202200663

♦ ♦ ♦

Proclamation 41-3886

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation on June 25, June 30, July 15, July 30, August 29, September 28, October 28, November 27, December 23, 2021, and January 22, 2022, including to modify the list of affected counties and therefore declare a state of disaster in those counties, and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for Bee, Brewster, Brooks, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, Frio, Galveston, Goliad, Gonzales, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala counties, and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed on June 25, June 30, July 15, July 30, August 29, September 28, October 28, November 27, December 23, 2021, and January 22, 2022, are in full force and effect.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of February 21, 2022.

Greg Abbott, Governor

TRD-202200665

♦ ♦ ♦

Proclamation 41-3887

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that exceptional drought conditions pose a threat of imminent disaster in Andrews, Angelina, Archer, Armstrong, Atascosa, Bailey, Baylor, Borden, Bosque, Bowie, Brewster, Briscoe, Brown, Callahan, Cameron, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Coke, Coleman, Collin, Collingsworth, Comanche, Cooke, Coryell, Cottle, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Frio, Gaines, Garza, Gray, Grayson, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Hidalgo, Hill, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Jack, Jeff Davis, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lampasas, La Salle, Lipscomb, Live Oak, Loving, Lubbock, Lynn, Marion, Martin, Maverick, McLennan, McMullen, Midland, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Red River, Reeves, Roberts, Rockwall, Runnels, Rusk, San Augustine, San Saba, Scurry, Shackleford, Shelby, Sherman, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Upton, Val Verde, Van Zandt, Ward, Webb, Wheeler, Wichita, Wilbarger, Winkler, Wise, Young, and Zavala counties; and

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat of widespread or severe damage, injury, or loss of life or property to public health, property, and the economy;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of February, 2022.

Greg Abbott, Governor

TRD-202200664

♦ ♦ ♦

Proclamation 41-3888

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable Garnet F. Coleman, and its acceptance, have caused a vacancy to exist in Texas State House of Representatives District No. 147, which is wholly contained within Harris County; and

WHEREAS, Article III, Section 13, of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such a vacancy, and Section 3.003 of the Texas Election Code requires the special election to be ordered by proclamation of the Governor; and

WHEREAS, Section 203.004(a) of the Texas Election Code provides that the special election generally must be held on the first uniform date occurring on or after the 36th day after the date the election is ordered; and

WHEREAS, pursuant to Section 41.001 of the Texas Election Code, the first uniform election date occurring on or after the 36th day after the date the special election is ordered is Saturday, May 7, 2022;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Texas State House of Representatives District No. 147 on Saturday, May 7, 2022, for the purpose of electing a state representative to serve out the unexpired term of the Honorable Garnet F. Coleman.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Monday, March 7, 2022, in accordance with Section 201.054(a)(1) of the Texas Election Code.

Early voting by personal appearance shall begin on Monday, April 25, 2022, and end on Tuesday, May 3, 2022, in accordance with Sections 85.001(a) and (e) of the Texas Election Code.

A copy of this order shall be mailed immediately to the Harris County Judge, which is the county within which Texas State House of Representatives District No. 147 is wholly contained, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said election may be held to fill the vacancy in Texas State House of Representatives District No. 147 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 25th day of February, 2022.

Greg Abbott, Governor

TRD-202200747

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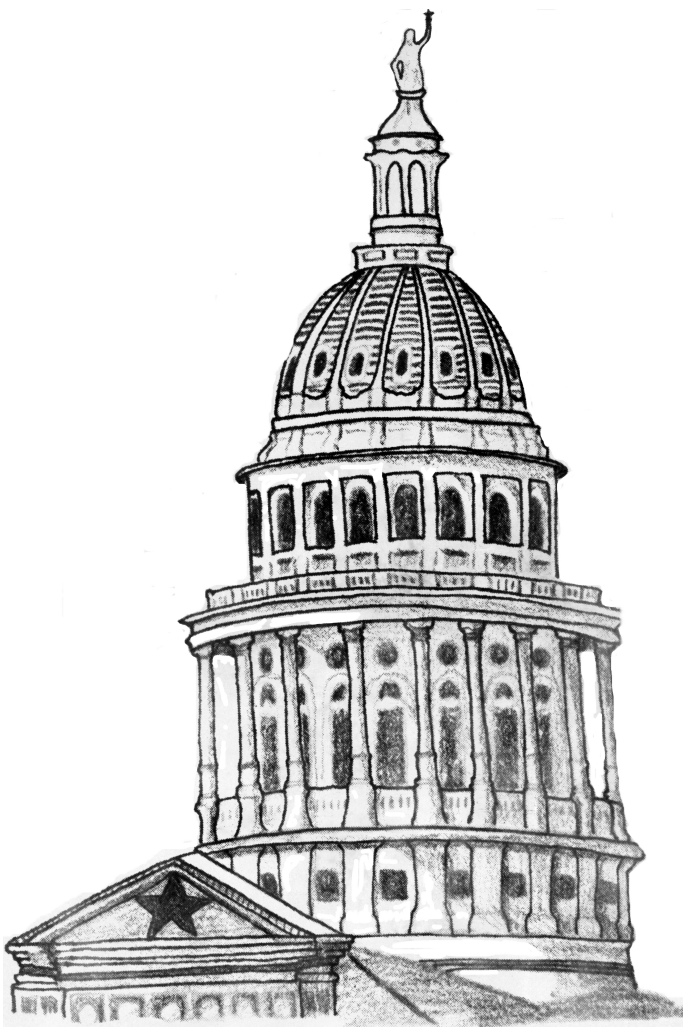

THE ATTORNEY GENERAL

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.)

Opinions

Opinion No. KP-0401

The Honorable Matt Krause

Chair, House Committee on General Investigating

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether certain medical procedures performed on children constitute child abuse (RQ-0426-KP)

S U M M A R Y

Each of the "sex change" procedures and treatments enumerated above, when performed on children, can legally constitute child abuse under several provisions of chapter 261 of the Texas Family Code.

When considering questions of child abuse, a court would likely consider the fundamental right to procreation, issues of physical and emotional harm associated with these procedures and treatments, consent laws in Texas and throughout the country, and existing child abuse standards.

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

TRD-202200661
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 24, 2022

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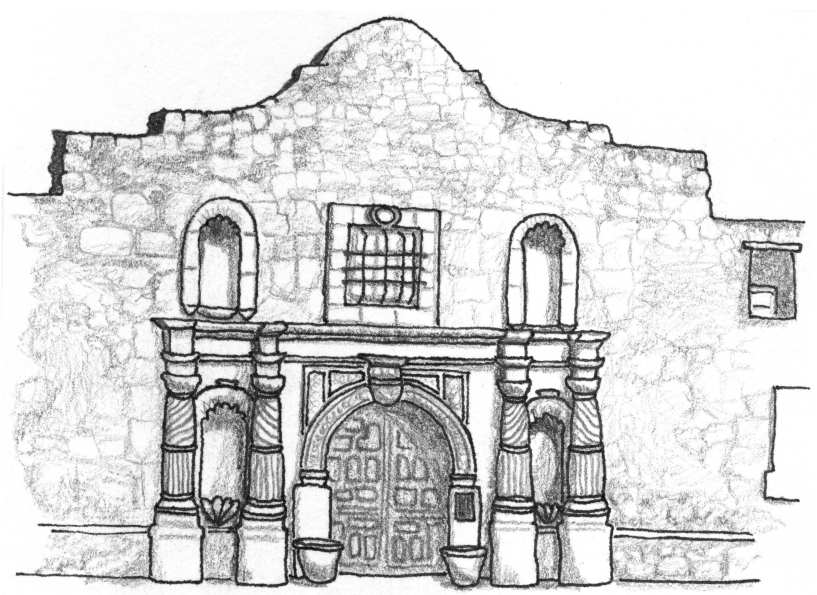

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinions

EAO-570: Whether the revolving door provision in Government Code section 572.054(b) prohibits a former employee of a regulatory agency who participated in canceling a request for proposal ("RFP") during her state service from receiving compensation for assisting with a response to a subsequent RFP for the same service or product. (AOR-655)

SUMMARY

Like separate contracts, separate RFPs leading to separate contracts are separate "matters" for purposes of the revolving door provision in Government Code section 572.054(b). However, the conclusion that a specific work activity constitutes "participation in" one matter does not necessarily preclude the conclusion that the same work also constitutes "participation in" another matter. Tex. Ethics Comm'n Op. No. 397 (1998).

When an officer or employee of an agency participates in the decision to cancel or rescind an RFP, and the agency subsequently issues another RFP for the same service or product, the employee may have participated in both the rescinded RFP and the reissued RFP for purposes of section 572.054(b), even if the RFP is not reissued until after the employee's state service has concluded. Whether the former officer or employee participated in the reissued RFP depends on, among other things, whether the agency reviews or analyzes the former officer's or employee's work in connection with reissuing the RFP.

Here, the requestor has asked the Commission to rely on facts that would demonstrate her lack of participation in the subsequent RFP, so this opinion concludes that she is not precluded from working on a response. However, we caution agency officers and employees against using their authority to cancel a procurement for essential state services with an intent to profit from their knowledge of the agency's inevitable search for a new provider.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on February 25, 2022.

TRD-202200726
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: February 28, 2022

♦ ♦ ♦

EAO-571: Whether Chapter 572 of the Government Code prohibits a former employee of a regulatory agency from accepting certain employment pertaining to Medicaid applications. (AOR-657)

SUMMARY

None of the revolving door provisions in Chapter 572 of the Government Code prohibit the requestor from accepting the prospective employment. The requestor is not a member of the governing body or the executive head of a regulatory agency, so section 572.054(a) does not apply. Section 572.054(b) would prohibit the requestor from working on any specific Medicaid application on which she participated during her state service, but would not prohibit her from working on all Medicaid applications generally. And section 572.069 does not prohibit the requestor from accepting the employment because Medicaid applications are not procurements or contract negotiations.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on February 25, 2022.

TRD-202200723
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: February 28, 2022

♦ ♦ ♦

EAO-572: Whether section 572.069 of the Government Code prohibits a former employee of a regulatory agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during her state service. (AOR-658)

SUMMARY

No. Affiliates are different persons for purposes of Chapter 572 of the Government Code. Therefore, we conclude that section 572.069 of the Government Code does not prohibit a former employee of a regulatory agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during her state service.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on February 25, 2022.

TRD-202200724
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: February 28, 2022

♦ ♦ ♦

EAO-573: Whether the laws under the Commission's jurisdiction prohibit a former employee of a state agency from accepting employment at another state agency. (AOR-661)

SUMMARY

Nothing in Chapter 572 of the Government Code prohibits the requestor from accepting the employment with another state agency. All three revolving door provisions prohibit former state officers and employees from representing, accepting employment, or receiving compensation from certain "person[s]." As defined by Chapter 572, a state agency is not a "person," so none of the revolving door provisions restrict former state officers and employees from accepting employment with another state agency.

Provisions of chapter 39 of the Penal Code prohibit public servants from misusing government property, services, personnel, and information to obtain a personal benefit. However, the requestor has not presented any facts that would indicate the requisite intent to find a violation.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on February 25, 2022.

TRD-202200725
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: February 28, 2022

♦ ♦ ♦

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 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal 7 TAC §80.204, concerning Books and Records. The commission further proposes a new rule concerning the same or similar subject matter at 7 TAC §80.204, concerning Books and Records. This proposal and the rules as repealed or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The department, under Chapter 156, licenses residential mortgage loan companies that originate residential mortgage loans (a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other security interest on a dwelling or residential real estate) made to consumers (for purposes of the proposed rules, "residential mortgage loan company" has the meaning assigned by Finance Code §156.002; mortgage company). A mortgage company acts by and through one or more individuals licensed by the department as a residential mortgage loan originator under Finance Code Chapters 157 and 180 (originator).

Books and Recordkeeping Changes

Pursuant to Finance Code §156.301(a), the department's commissioner (commissioner) may conduct inspections (including examinations) of a mortgage company or an originator sponsored by a mortgage company (sponsored originator) to determine compliance with the requirements of Chapter 156 and the rules adopted thereunder. Inspections include inspection of the mortgage company's or sponsored originator's "books, records, documents, operations, and facilities . . . and access to any documents required under rules adopted under *Chapter 156"* (Finance Code §156.301(a)). Pursuant to Finance Code §156.301(b), the commissioner, upon receipt of a signed written complaint against a mortgage company, "shall investigate the actions and records" of the mortgage company or its sponsored originator. Pursuant to Finance Code §156.301(e), the commission "by rule shall . . . determine the information and records to which the commissioner may demand access during an inspection or an investigation." Pursuant to Finance Code §156.102(c), the commission "may adopt rules regarding books and records that a *mortgage company* is required to keep, including the location at which the books and records must be kept." Existing §80.204 establishes requirements concerning the books and records that a mortgage company must maintain. The proposed rules, if adopted, would: (i) establish a new requirement concerning the location where required records must be maintained; (ii) clarify existing requirements concerning the mortgage transaction log a mortgage company is required to maintain under existing §80.204, with respect to the description of the purpose for the mortgage loan, and the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the mortgage loan; (iii) expand an existing requirement under existing §80.204 by requiring that the mortgage transaction log include information concerning the type of lien anticipated after consummation of the mortgage loan (first lien, second lien, or wrap mortgage); and (iv) clarify existing requirements concerning the books and records that a mortgage company must maintain under existing §80.204 by specifically identifying certain records a mortgage company is required to maintain to comply with the requirements of applicable state law (other than the proposed rules; including in connection with wrap mortgage loans made in accordance with Finance Code Chapter 159, Wrap Mortgage Loan Financing, which became effective on January 1, 2022), and federal law.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rule including: removing unnecessary or duplicative provisions; updating terminology; and reorganizing and restating the requirements of existing §80.204 for clarity and to improve readability, including the insertion of explanatory headings throughout the rule.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed

rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the rule to better facilitate inspection by the commissioner of a mortgage company and its sponsored originators (including in response to a complaint by a member of the public against a mortgage company) which will enable the commissioner to better detect and address violations of the requirements of Chapter 156 (and the rules adopted thereunder), and thereby better protect those members of the public utilizing the services of a mortgage company, while simultaneously streamlining the inspections/investigations process for the department and regulated persons alike.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). The proposed rules generally establish requirements concerning the books and records a mortgage company must maintain, nearly all of which are already required under existing §80.204. The maintenance of such records may have some attendant costs. However, the statutory requirements of Finance Code §156.301 direct a mortgage company to maintain records sufficient to facilitate an inspection by the commissioner to determine compliance with Chapter 156, and not the proposed rules. Moreover, most of the records required to be maintained under the proposed rules are already maintained by the mortgage company to comply with the requirements of applicable state law (other than the proposed rules), and federal law; or, are otherwise maintained by the mortgage company in the ordinary course of doing business. Such maintenance costs are therefore not direct costs attributable to the proposed rules. Applicable state and federal law that a mortgage company is required to comply with and that triggers the maintenance of records identified in the proposed rules includes, but is not limited to: (i) Article XVI, Section 50, Texas Constitution (ii) Finance Code Chapter 156; (iii) Finance Code Chapter 159; (iv) Finance Code Chapter 343; (v) the federal Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.); (vi) the federal Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.); (vii) the federal Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.); (viii) the federal Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.); (ix) the federal Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.); (x) the federal Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and (xi) federal Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.). The proposed rules require a mortgage company to record additional information on the mortgage transaction log that it is already required to maintain under existing §80.204 (specifically, information concerning the type of lien anticipated after consummation of the mortgage loan). However, such additional information is created and exists as a by-product of the mortgage loan origination process, and is thus generated by the mortgage company in the ordinary course of doing business. The proposed rules merely require that the mortgage company transpose such information to the existing mortgage transaction log for review by the department's examiners and investigators in the same manner as the other information required to be on the mortgage transaction log under existing §80.204. A mortgage company may be using electronic forms or physical (paper) logs for purposes of maintaining its mortgage transaction log. A mortgage company that uses such electronic forms may be inclined to update the forms to more easily comply with the proposed rules, and which may have some attendant costs. However, any such costs are anticipated to be insignificant. Moreover, the use of electronic forms is not required by the proposed rules, and is discretionary (not a direct cost attributable to the proposed rules). Physical logs established prior to the potential adoption of the proposed rules may still be used and supplemented with the required information, at no cost. Taking the foregoing into consideration, the proposed rules do not impose substantial economic costs on persons required to comply with the proposed rules.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Books and Recordkeeping Changes establish a requirement concerning the location where required records must be maintained; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Books and Recordkeeping Changes expand an existing rule requirement under existing §80.204 that a mortgage company maintain a mortgage transaction log by requiring the mortgage company to include on the mortgage transaction log information concerning the type of lien anticipated after consummation of the mortgage loan; (7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

7 TAC §80.204

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act; 12 U.S.C. §5101 et seq.).

This proposal affects the statutes contained in Finance Code Chapter 156, Residential Mortgage Loan Companies.

§80.204. Books and Records.

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 February 22, 2022.

TRD-202200612
Iain A. Berry
Deputy General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 475-1535

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7 TAC §80.204

Statutory Authority

This proposal is made under the authority of Finance Code §156.102(a) and (a-1), which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act; 12 U.S.C. §5101 et seq.). This proposal is also made under the authority of Finance Code §156.102(c), which authorizes the commission to adopt rules regarding books and records that a person licensed under Finance Code 156 is required to keep, including the location at which the books and records must be kept. This proposal is also made under the authority of, and to implement, Finance Code §156.301.

This proposal affects the statutes contained in Finance Code Chapter 156, Residential Mortgage Loan Companies.

§80.204. Books and Records.

(a) Maintenance of Records, Generally. In order to ensure a mortgage company will have all records necessary to facilitate an inspection (including an examination) of the mortgage company by the Commissioner or the Commissioner's designee, enable the Commissioner or the Commissioner's designee to investigate complaints against a mortgage company or its sponsored originators, and otherwise ensure compliance with the requirements of Finance Code Chapter 156, and this chapter, a mortgage company must maintain records as prescribed by this section.

(1) Format. The records required by this section may be maintained by using a physical, electronic, or digitally-imaged record-keeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage company must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage company or the location the mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by §80.206 of this title (relating to Office Locations; Remote Work.)

(3) Production of Records; Disciplinary Action. All records required by this section must be maintained in good order and produced for the Commissioner or the Commissioner's designee upon request. Failure to produce records upon request after a reasonable time for compliance may result in disciplinary action against the mortgage company, including, but not limited to, suspension or revocation of the mortgage company's license.

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law.

(5) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage company differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.

(b) Required Records. A mortgage company is required to maintain the following items:

(1) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means all entries must be made within no more than 7 days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant;

(B) the date of the initial loan application;

(C) the full name of the originator who took the initial loan application, and his or her NMLS identification number;

(D) a description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);

(E) a description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured

by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));

(F) the lien type (e.g., first lien, second lien, or wrap mortgage);

(G) a description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied); and

(H) if the loan is closed, the identity of the person who initially funded and/or acquired the loan;

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction, a residential mortgage loan file containing, at a minimum:

(A) All Transactions. For all transactions, the following records:

(i) the initial and any final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B, 12 C.F.R. §1002.4(c);

(ii) the initial and any revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;

(iii) the final settlement statement (Regulation X, 12 C.F.R §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) the disclosure statement required by Finance Code §156.004 and §80.200(a) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Pre-Qualification Letter, or similar, as specified by Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms);

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Approval Letter, or similar, as specified by Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms);

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) if the loan is a "home loan" as defined by Finance Code §343.001, the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate sales contract or real estate purchase agreement for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the loan or prospective loan, and if a fee is paid by or imposed on the mortgage applicant for such consumer report or credit report, invoices and proof of payment for the purchase of the consumer report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the residential real estate secured or designed to be secured by the loan, and if a fee is paid by or imposed on the mortgage applicant for such appraisal report or written valuation report, invoices and proof of payment for the appraisal report or written valuation report;

(xii) invoices and proof of payment for any third party fees paid by or imposed on the mortgage applicant;

(xiii) refund checks issued to the mortgage applicant;

(xiv) if applicable, the risk-based pricing notice required by Regulation V, 12 C.F.R. §1022.72;

(xv) if applicable, invoices for independent loan processors or underwriters;

(xvi) if the mortgage company or sponsored originator acts in a dual capacity as the loan originator and real estate broker, sales agent, or attorney in the transaction, the disclosure of multiple roles in a consumer real estate transaction, signed and dated by each mortgage applicant, as required by Finance Code §156.303(a)(13) and §157.024(a)(10);

(xvii) the initial privacy notice required by Regulation P, 12 C.F.R. §1016.4 or 16 C.F.R. §313.4;

(xviii) the mortgage applicant's written authorization to receive electronic documents;

(xix) records reflecting compensation paid to employees or independent contractors in connection with the transaction;

(xx) any other agreements, notices, disclosures, or affidavits required by federal or state law in connection with the transaction; and

(xxi) any written agreements or other records governing the origination of the loan or prospective loan;

(B) Lender Transactions. For transactions where the mortgage company acted as the lender, the following records:

(i) the promissory note, loan agreement, or repayment agreement, signed by the borrower (mortgage applicant);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document, signed by the borrower (mortgage applicant);

(iii) any verifications of income, employment, or deposits obtained in connection with the loan;

(iv) copies of any title insurance policies with endorsements or title search reports obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such title insurance policies or title search reports, invoices and proof of payment for the title insurance policy or title search report; and

(v) if applicable, the flood determination certificate obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such flood certificate, invoices and proof of payment for the flood determination certificate;

(C) Truth in Lending Act (TILA). For transactions that are subject to the requirements of TILA (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.), the following records:

(i) the initial Truth-in-Lending statement for home equity lines of credit and reverse mortgage transactions required by Regulation Z, 12 C.F.R. §1026.19;

(ii) if the transaction is an adjustable rate mortgage transaction, the adjustable rate mortgage program disclosures;

(iii) records relating to the mortgage applicant's ability to repay the loan, as required by Regulation Z, 12 C.F.R. §1026.43(c);

(iv) if the mortgage applicant is permitted to shop for a settlement service, the written list of providers required by Regulation Z, 12 C.F.R. §1026.19(e)(1)(vi)(C);

(v) the notice of intent to proceed with the transaction required by Regulation Z, 12 C.F.R. §1026.19(e)(2)(i)(A);

(vi) if applicable, records related to a changed circumstance required by Regulation Z, 12 C.F.R. §1026.19(e)(3)(iv);

(vii) the notice of right to rescission required by Regulation Z, 12 C.F.R. §1026.15 or §1026.23;

(viii) for high-cost mortgage loans, the disclosures required by Regulation Z, 12 C.F.R. §1026.32(c);

(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z, 12 C.F.R. §1026.34(a)(5)(i); and

(x) any other notice or disclosure required by TILA or Regulation Z;

(D) Real Estate Settlement Procedures Act (RESPA). For transactions that are subject to the requirements of RESPA (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.), the following records:

(i) records reflecting delivery of the special information booklet required by Regulation X, 12 C.F.R. §1024.6;

(ii) any affiliated business arrangement disclosure statement provided to the mortgage applicant in accordance with Regulation X, 12 C.F.R. §1024.15;

(iii) records reflecting delivery of the list of homeownership counseling organizations required by Regulation X, 12 C.F.R. §1024.20; and

(iv) any other notice or disclosure required by RESPA or Regulation X;

(E) Equal Credit Opportunity Act - Transactions Not Resulting in Approval. For residential mortgage loan applications where a notice of incompleteness is issued, a counteroffer is made, or adverse action is taken, as provided by Regulation B (12 C.F.R. §1002.1 et seq.), the following records, as applicable:

(i) the notice of incompleteness required by Regulation B, 12 C.F.R. §1002.9(c)(2);

(ii) the counteroffer letter sent to the mortgage applicant in accordance with Regulation B, 12 C.F.R. §1002.9; and

(iii) the adverse action notification (a/k/a turndown letter) required by Regulation B, 12 C.F.R. §1002.9(a);

(F) Home Equity Transactions. For home equity loan or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refers to Article XVI, Section 50, Texas Constitution):

(i) the preclosing disclosures required by Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii); as provided by such section, the closing disclosure or account-opening disclosures required by Regulation Z fulfills this requirement);

(ii) the consumer disclosure required by Section 50(g) and §153.51 of this tile (relating to Consumer Disclosure: Section 50(g));

(iii) if an attorney-in-fact executes the closing documents on behalf of the owner or owner's spouse, a copy of the executed power of attorney and any other documents evidencing execution of such power of attorney at the permanent physical address of an office of the lender, an attorney at law, or a title company, as required by §153.15 of this title (relating to Location of Closing: Section 50(a)(6)(N));

(iv) if the borrower (mortgage applicant) uses the proceeds of the loan to pay off a non-homestead debt with the same lender, a written statement, signed by the mortgage applicant, indicating the proceeds of the home equity loan were voluntarily used to pay such debt (see Section 50(a)(6)(Q)(i));

(v) notice of the right of rescission, as required by Section 50(a)(6)(Q)(viii) (as provided by §153.25 of this title (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), the notice of right of rescission required by TILA and Regulation Z fulfills this requirement);

(vi) the written acknowledgement as to the fair market value of the homestead property, as required by Section 50(a)(6)(Q)(ix) and §153.26 of this title (relating to Acknowledgement of Fair Market Value: Section 50(a)(6)(Q)(ix)); and

(vii) if the home equity loan is refinanced into a non-home equity loan, the Texas Notice Concerning Refinance of Existing Home Equity to Non-Home Equity Loan, as required by Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f));

(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:

(i) the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), signed and dated by each mortgage applicant, and any foreign language disclosure statement required by Finance Code §159.102;

(ii) the disclosure statement required by Tex. Prop. Code §5.016 provided to each existing lienholder (the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure) referenced in clause (i) of this subparagraph fulfills this requirement if it was provided to each existing lienholder); and

(iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105;

(H) Home Improvement Loans. For home improvement transactions (including repair, renovation, and new construction), the following records:

(i) the mechanic's lien contract;

(ii) documents evidencing the transfer of lien from the contractor to the lender;

(iii) the residential construction contract;

(iv) notice of the right of rescission required by Article XVI, Section 50(a)(5)(C), Texas Constitution (the notice of right of rescission required by TILA and Regulation Z fulfills this requirement); and

(v) any other notice or disclosure required by Texas Property Code Chapter 53;

(I) Reverse Mortgages. For reverse mortgage transactions, the following records:

(i) the disclosure required by Article XVI, Section 50(k)(9), Texas Constitution;

(ii) the certificate of counseling required by Article XVI, Section 50(k)(8), Texas Constitution;

(iii) the servicing disclosure statement required by Regulation X, 12 C.F.R. §1024.33(a);

(iv) the disclosures required by Regulation Z, 12 C.F.R. §1026.33(b); and

(v) any other notice or disclosure required by federal or state law to originate a reverse mortgage;

(3) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to residential mortgage loan origination business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage company employees, independent contractors and all others compensated by the mortgage company in connection with residential mortgage loan origination business;

(D) all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) all reports of audits, examinations, inspections, reviews, investigations, or similar, performed by any third party, including any regulatory or supervisory authorities;

(G) all advertisements in the medium (e.g., recorded audio, video, Internet or social media site posting, or print) in which they were published or distributed; and

(H) policies and procedures related to the origination of residential mortgage loans by the mortgage company and its sponsored originators, including, but not limited to:

(i) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));

(ii) anti-money laundering program (31 C.F.R. §1029.210);

(iii) information security program (16 C.F.R. §314.3(a));

(iv) ability-to-repay underwriting policies, if any (Regulation Z, 12 C.F.R. §1026.43(c));

(v) quality control policy, if any;

(vi) compliance manual, if any; and

(vii) personnel administration/employee policies, if any;

(4) Other Records Required by Federal Law. A mortgage company must maintain such other books and records as may be required to evidence compliance with applicable federal laws and regulations, including, but not limited to:

(A) the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(B) the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.);

(C) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and

(D) Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.);

(5) Other Records Designated by the Commissioner. A mortgage company must maintain such other books and records as the Commissioner or the Commissioner's designee may, from time to time, specify in writing;

(6) Records Concerning Administrative Offices. A mortgage company must maintain a list reflecting any office constituting an "administrative office" of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work); and

(7) Records Concerning Remote Work. A mortgage company must maintain records reflecting its compliance with the requirements for remote work, as provided by §80.206 of this title (relating to Office Locations; Remote Work).

(c) Records Retention After Terminating Operations. Within 10 days of termination operations, a mortgage company must provide the Department with written notice of where the records required by this section will be maintained for the prescribed period. If such records are transferred to another mortgage company licensed by the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.

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 February 22, 2022.

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Iain A. Berry
Deputy General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal 7 TAC §81.204, Books and Records. The commission further proposes a new rule concerning the same or similar subject matter at 7 TAC §81.204, Books and Records. This proposal and the rules as repealed or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157. The department, under Chapter 157, registers mortgage bankers (for purposes of the proposed rules, "mortgage banker" has the meaning assigned by Finance Code §157.002). Under Chapter 157 and the Texas SAFE Act the department also licenses individuals to act a residential mortgage loan originator (originator). Mortgage bankers and originators (acting on behalf of either a mortgage banker or a residential mortgage loan company licensed by the department under Finance Code Chapter 156 (mortgage company)) originate residential mortgage loans (a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other security interest on a dwelling or residential real estate) made to consumers.

Books and Recordkeeping Changes

With respect to originators, pursuant to Finance Code §157.021(a), the department's commissioner (commissioner) may conduct inspections (including examinations) of an originator to determine compliance with Chapter 157 and the Texas SAFE Act, or the rules of the department adopted thereunder. Inspections include inspection of the originator's "books, records, documents, operations, and facilities" (Finance Code §157.021(a)). Pursuant to Finance Code §157.021(b), the commissioner, upon receipt of a signed written complaint against an originator, "shall investigate the actions and records" of the originator. Pursuant to Finance Code §157.021(e), the commission "by rule shall . . . determine the information and records [of the originator] to which the commissioner may demand access during an inspection or an investigation." Pursuant to Finance Code §157.02015(b), the commission "may adopt rules regarding books and records that [an originator] is required to keep, including the location at which the books and records must be kept." With respect to mortgage bankers, pursuant to Finance Code §157.0022, the commissioner "may request documentary and other evidence [from a mortgage banker] considered by the commissioner as necessary to effectively evaluate [a consumer] complaint, including correspondence, loan documents, and disclosures . . . [and a] mortgage banker shall promptly provide any evidence requested by the commissioner." In conducting an inspection of an originator the commissioner may also "request the assistance and cooperation of the sponsoring mortgage banker in providing needed documents and records" (Finance Code §157.021(a)). Existing §81.204 establishes requirements concerning the books and records that a mortgage banker and an originator must maintain. The proposed rules, if adopted, would: (i) establish a new requirement concerning the location where required records must be maintained; (ii) clarify existing requirements concerning the mortgage transaction log an originator is required to maintain under existing §81.204, with respect to the description of the purpose for the mortgage loan, and the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the mortgage loan; (iii) expand an existing requirement under existing §81.204 by requiring that the mortgage transaction log include information concerning the type of lien anticipated after consummation of the mortgage loan (first lien, second lien, or wrap mortgage); (iv) clarify existing requirements concerning the books and records that an originator must maintain under existing §81.204 by specifically identifying certain records an originator is required to maintain to comply with the requirements of applicable state law (other than the proposed rules; including in connection with wrap mortgage loans made in accordance with Finance Code Chapter 159, Wrap Mortgage Loan Financing, which became effective on January 1, 2022), and federal law; and (v) establish a new requirement for a mortgage banker to maintain records concerning its general business operations, and simultaneously repeal such requirement as it pertains to originators under existing §81.204 as being inapplicable to an originator when considering that, in practice, such records are actually maintained in the ordinary course of business by the mortgage banker or mortgage company sponsoring the originator.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rule including: removing unnecessary or duplicative provisions; updating terminology; and reorganizing and restating the requirements of existing §81.204 for clarity and to improve readability, including the insertion of explanatory headings throughout the rule.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the rule to better facilitate inspection by the commissioner of an originator (including in response to a complaint by a member of the public against an originator), and the investigation by the commissioner of consumer complaints made against a mortgage

banker (including by a member of the public) which will enable the commissioner to better detect and address violations of the requirements of Chapter 157 and the Texas SAFE Act (and the rules of the department adopted thereunder), and thereby better protect those members of the public utilizing the services of a mortgage banker or an originator, while simultaneously streamlining the inspections/investigations process for the department and regulated persons alike.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). The proposed rules generally establish requirements concerning the books and records a mortgage banker or an originator must maintain, nearly all of which are already required under existing §81.204. The maintenance of such records may have some attendant costs. However, the statutory requirements of Finance Code §157.021 direct an originator to maintain records sufficient to facilitate an inspection by the commissioner (and further requires the assistance and cooperation of a mortgage banker sponsoring an originator to provide relevant documents and records) to determine compliance with Chapter 157 and the Texas SAFE Act, and not the proposed rules. Moreover, most of the records required to be maintained under the proposed rules are already maintained by the mortgage banker or originator to comply with the requirements of applicable state law (other than the proposed rules), and federal law; or, are otherwise maintained by the mortgage banker or originator in the ordinary course of doing business. Such maintenance costs are therefore not direct costs attributable to the proposed rules. Applicable state and federal law that a mortgage banker or originator is required to comply with and that triggers the maintenance of records identified in the proposed rules includes, but is not limited to: (i) Article XVI, Section 50, Texas Constitution (ii) Finance Code Chapter 156; (iii) Finance Code Chapter 157; (iv) Finance Code Chapter 159; (v) Finance Code Chapter 180; (vi) Finance Code Chapter 343; (vii) the federal Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.); (viii) the federal Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.); (ix) the federal Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.); (x) the federal Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.); (xi) the federal Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.); (xii) the federal Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and (xiii) federal Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.). The proposed rules require an originator to record additional information on the mortgage transaction log that the originator is already required to maintain under existing §81.204 (specifically, information concerning the type of lien anticipated after consummation of the mortgage loan). However, such additional information is created and exists as a byproduct of the mortgage loan origination process, and is thus generated by the originator in the ordinary course of doing business. The proposed rules merely require that the originator transpose such information to the existing mortgage transaction log for review by the department's examiners and investigators in the same manner as the other information required to be on the mortgage transaction log under existing §81.204. An originator may be using electronic forms or physical (paper) logs for purposes of maintaining its mortgage transaction log. An originator that uses such electronic forms may be inclined to update the forms to more easily comply with the proposed rules, and which may have some attendant costs. However, any such costs are anticipated to be insignificant. Moreover, the use of electronic forms is not required by the proposed rules, and is discretionary (not a direct cost attributable to the proposed rules). Physical logs established prior to the potential adoption of the proposed rules may still be used and supplemented with the required information, at no cost. Taking the foregoing into consideration, the proposed rules do not impose substantial economic costs on persons required to comply with the proposed rules.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed 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 rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Books and Recordkeeping Changes establish a requirement concerning the location where required records must be maintained. The proposed rules related to Books and Recordkeeping Changes further establish a requirement that a mortgage banker maintain records concerning its general business operations; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Books and Recordkeeping Changes expand an existing rule requirement under existing §81.204 that an originator maintain a mortgage transaction log by requiring the originator to include on the mortgage transaction log information concerning the type of lien anticipated after consummation of the mortgage loan. The proposed rules related to Books and Recordkeeping Changes repeal an existing rule requirement under existing §81.204 for an originator to maintain general business records, and instead, appropriately reassign such requirement to the mortgage banker sponsoring the originator, as related above; (7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code§2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

7 TAC §81.204

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 which authorizes the commission to adopt rules necessary to implement or fulfill the purpose of Finance Code Chapter 157, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act; 12 U.S.C. §5101 et seq.).

This proposal affects the statutes contained in Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators, and Finance Code Chapter 180, Residential Mortgage Loan Originators, with respect to persons licensed under Finance Code Chapter 157.

§81.204. Books and Records.

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 February 22, 2022.

TRD-202200614
Iain A. Berry
Deputy General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 475-1535

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7 TAC §81.204

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023(a) and (c) which authorizes the commission to adopt rules necessary to implement or fulfill the purpose of Finance Code Chapter 157, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act; 12 U.S.C. §5101 et seq.). This proposal is also made under the authority of Finance Code §157.02015(b) which authorizes the commission to adopt rules regarding books and records that a person licensed under Finance Code Chapter 157 is required to keep, including the location at which the books and records must be kept. This proposal is also made under the authority of, and to implement, Finance Code §§157.0022(b), 157.003(b)(6), 157.009(d), and 157.021.

This proposal affects the statutes contained in Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators, and Finance Code Chapter 180, Residential Mortgage Loan Originators, with respect to persons licensed under Finance Code Chapter 157.

§81.204. Books and Records.

(a) Maintenance of Records, Generally. In order to ensure a mortgage banker or an originator will have all records necessary to facilitate an inspection (including an examination) of an originator, enable the Commissioner or the Commissioner's designee to investigate complaints against a mortgage banker or an originator, and otherwise ensure compliance with the requirements of Finance Code Chapters 157 and 180, and this chapter, a mortgage banker and an originator must maintain records as prescribed by this section.

(1) Format. The records required by this section may be maintained by using a physical, electronic, or digitally-imaged record-keeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage banker must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage banker or the location the mortgage banker has designated in its MU1 filing under "Books and Records Information" in NMLS. An originator must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from the main office of the mortgage banker or the mortgage company sponsoring the originator, or the location the mortgage banker or mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by §81.206 of this title (relating to Office Locations; Remote Work), with respect to a mortgage banker, and §80.206 of this title (relating to Office Locations; Remote Work), with respect to a mortgage company.)

(3) Production of Records; Disciplinary Action or Violation. All records required by this section must be maintained in good order and produced for the Commissioner or the Commissioner's designee upon request. Failure by an originator to produce records upon request after a reasonable time for compliance may result in disciplinary action against the originator, including, but not limited to, suspension or revocation of the originator's license. Failure by a mortgage banker to produce records upon request after a reasonable time for compliance in response to a complaint investigation conducted by the Department may be treated as a failure by the mortgage banker to provide evidence in violation of the requirements of Finance Code §157.0022(b).

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law.

(5) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage banker or originator differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.

(6) Compliance by the Mortgage Banker or Mortgage Company on Behalf of the Originator. An originator fulfills the requirements of subsection (b) of this section if his or her sponsoring

mortgage banker or mortgage company maintains the required books and records on behalf of the originator.

(b) Required Records of an Originator. An originator is required to maintain the following items:

(1) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means all entries must be made within no more than 7 days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant;

(B) the date of the initial loan application;

(C) the full name of the originator who took the initial loan application, and his or her NMLS identification number;

(D) a description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);

(E) a description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));

(F) the lien type (e.g., first lien, second lien, or wrap mortgage);

(G) a description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied); and

(H) if the loan is closed, the identity of the person who initially funded and/or acquired the loan;

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction, a residential mortgage loan file containing, at a minimum:

(A) All Transactions. For all transactions, the following records:

(i) the initial and any final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B, 12 C.F.R. §1002.4(c);

(ii) the initial and any revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;

(iii) the final settlement statement (Regulation X, 12 C.F.R §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) for an originator sponsored by a mortgage banker, the disclosure statement required by Finance Code §157.0021 and §81.200(a) of this title (relating to Required Disclosures); or, for an originator sponsored by a mortgage company, the disclosure statement required by Finance Code §156.004 and §80.200(a) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Pre-Qualification Letter, or similar, as specified by Finance Code §157.02012 and §81.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage banker, or Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage company;

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Approval Letter, or similar, as specified by Finance Code §157.02012 and §81.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage banker, or Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage company;

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) if the loan is a "home loan" as defined by Finance Code §343.001, the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate sales contract or real estate purchase agreement for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the loan or prospective loan, and if a fee is paid by or imposed on the mortgage applicant, invoices/receipts for the purchase of the consumer report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the residential real estate secured or designed to be secured by the loan, and if a fee is paid by or imposed on the mortgage applicant for such appraisal report or written valuation report, invoices and proof of payment for the appraisal report or written valuation report;

(xii) invoices and proof of payment for third party fees paid by or imposed on the mortgage applicant;

(xiii) refund checks issued to the mortgage applicant;

(xiv) if applicable, the risk-based pricing notice required by Regulation V, 12 C.F.R. §1022.72;

(xv) if applicable, invoices for independent loan processors or underwriters;

(xvi) if the originator or the mortgage banker or mortgage company sponsoring the originator acts in a dual capacity as the loan originator and real estate broker, sales agent, or attorney in the transaction, the disclosure of multiple roles in a consumer real estate transaction, signed and dated by each mortgage applicant, as required by Finance Code §157.024(a)(10) and §156.303(a)(13);

(xvii) the initial privacy notice required by Regulation P, 12 C.F.R. §1016.4 or 16 C.F.R. §313.4;

(xviii) the mortgage applicant's written authorization to receive electronic documents;

(xix) records reflecting compensation paid to employees or independent contractors in connection with the transaction;

(xx) any other agreements, notices, disclosures, or affidavits required by federal or state law in connection with the transaction; and

(xxi) any written agreements or other records governing the origination of the loan or prospective loan;

(B) Lender Transactions. For transactions where the mortgage banker or mortgage company sponsoring the originator acted as the lender, the following records:

(i) the promissory note, loan agreement, or repayment agreement, signed by the borrower (mortgage applicant);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document, signed by the borrower (mortgage applicant);

(iii) any verifications of income, employment, or deposits obtained in connection with the loan;

(iv) copies of any title insurance policies with endorsements or title search reports obtained in connection with the loan, and receipts/invoices for the title insurance policy or title search report; and

(v) if applicable, the flood determination certificate obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such flood certificate, invoices and proof of payment for the flood determination certificate;

(C) Truth in Lending Act (TILA). For transactions that are subject to the requirements of TILA (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.), the following records:

(i) the initial Truth-in-Lending statement for home equity lines of credit and reverse mortgage transactions required by Regulation Z, 12 C.F.R. §1026.19;

(ii) if the transaction is an adjustable rate mortgage transaction, the adjustable rate mortgage program disclosures;

(iii) records relating to the mortgage applicant's ability to repay the loan, as required by Regulation Z, 12 C.F.R. §1026.43(c);

(iv) if the mortgage applicant is permitted to shop for a settlement service, the written list of providers required by Regulation Z, 12 C.F.R. §1026.19(e)(1)(vi)(C);

(v) the notice of intent to proceed with the transaction required by Regulation Z, 12 C.F.R. §1026.19(e)(2)(i)(A);

(vi) if applicable, records related to a changed circumstance required by Regulation Z, 12 C.F.R. §1026.19(e)(3)(iv);

(vii) the notice of right to rescission required by Regulation Z, 12 C.F.R. §1026.15 or §1026.23;

(viii) for high-cost mortgage loans, the disclosures required by Regulation Z, 12 C.F.R. §1026.32(c);

(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z, 12 C.F.R. §1026.34(a)(5)(i); and

(x) any other notice or disclosure required by TILA or Regulation Z;

(D) Real Estate Settlement Procedures Act (RESPA). For transactions that are subject to the requirements of RESPA (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.), the following records:

(i) records reflecting delivery of the special information booklet required by Regulation X, 12 C.F.R. §1024.6;

(ii) any affiliated business arrangement disclosure statement provided to the mortgage applicant in accordance with Regulation X, 12 C.F.R. §1024.15;

(iii) records reflecting delivery of the list of homeownership counseling organizations required by Regulation X, 12 C.F.R. §1024.20; and

(iv) any other notice or disclosure required by RESPA or Regulation X;

(E) Equal Credit Opportunity Act - Transactions Not Resulting in Approval. For residential mortgage loan applications where a notice of incompleteness is issued, a counteroffer is made, or adverse action is taken, as provided by Regulation B (12 C.F.R. §1002.1 et seq.), the following records, as applicable:

(i) the notice of incompleteness required by Regulation B, 12 C.F.R. §1002.9(c)(2);

(ii) the counteroffer letter sent to the mortgage applicant in accordance with Regulation B, 12 C.F.R. §1002.9; and

(iii) the adverse action notification (a/k/a turndown letter) required by Regulation B, 12 C.F.R. §1002.9(a);

(F) Home Equity Transactions. For home equity loan or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refers to Article XVI, Section 50, Texas Constitution):

(i) the preclosing disclosures required by Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii); as provided by such section, the closing disclosure or account-opening disclosures required by Regulation Z fulfills this requirement);

(ii) the consumer disclosure required by Section 50(g) and §153.51 of this tile (relating to Consumer Disclosure: Section 50(g));

(iii) if an attorney-in-fact executes the closing documents on behalf of the owner or owner's spouse, a copy of the executed power of attorney and any other documents evidencing execution of such power of attorney at the permanent physical address of an office of the lender, an attorney at law, or a title company, as required by §153.15 of this title (relating to Location of Closing: Section 50(a)(6)(N));

(iv) if the borrower (mortgage applicant) uses the proceeds of the loan to pay off a non-homestead debt with the same lender, a written statement, signed by the mortgage applicant, indicating the proceeds of the home equity loan were voluntarily used to pay such debt (see Section 50(a)(6)(Q)(i));

(v) notice of the right of rescission, as required by Section 50(a)(6)(Q)(viii) (as provided by §153.25 of this title (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), the notice of right of rescission required by TILA and Regulation Z fulfills this requirement);

(vi) the written acknowledgement as to the fair market value of the homestead property, as required by Section 50(a)(6)(Q)(ix) and §153.26 of this title (relating to Acknowledgement of Fair Market Value: Section 50(a)(6)(Q)(ix)); and

(vii) if the home equity loan is refinanced into a non-home equity loan, the Texas Notice Concerning Refinance of Existing Home Equity to Non-Home Equity Loan, as required by Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f));

(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:

(i) the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), signed and dated by each mortgage applicant, and any foreign language disclosure statement required by Finance Code §159.102;

(ii) the disclosure statement required by Tex. Prop. Code §5.016 provided to each existing lienholder (the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure) referenced in clause (i) of this subparagraph fulfills this requirement if it was provided to each existing lienholder); and

(iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105;

(H) Home Improvement Loans. For home improvement transactions (including repair, renovation, and new construction), the following records:

(i) the mechanic's lien contract;

(ii) documents evidencing the transfer of lien from the contractor to the lender;

(iii) the residential construction contract;

(iv) notice of the right of rescission required by Article XVI, Section 50(a)(5)(C), Texas Constitution (the notice of right of rescission required by TILA and Regulation Z fulfills this requirement); and

(v) any other notice or disclosure required by Texas Property Code Chapter 53;

(I) Reverse Mortgages. For reverse mortgage transactions, the following records:

(i) the disclosure required by Article XVI, Section 50(k)(9), Texas Constitution;

(ii) the certificate of counseling required by Article XVI, Section 50(k)(8), Texas Constitution;

(iii) the servicing disclosure statement required by Regulation X, 12 C.F.R. §1024.33(a);

(iv) the disclosures required by Regulation Z, 12 C.F.R. §1026.33(b); and

(v) any other notice or disclosure required by federal or state law to originate a reverse mortgage;

(3) Other Records Required by Federal Law. An originator must maintain such other books and records as may be required to evidence compliance with applicable federal laws and regulations, including, but not limited to:

(A) the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(B) the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.);

(C) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and

(D) Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.); and

(4) Other Records of an Originator Designated by the Commissioner. An originator must maintain such other books and records as the Commissioner or the Commissioner's designee may, from time to time, specify in writing.

(c) Required Records of a Mortgage Banker. A mortgage banker must maintain the following records:

(1) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to residential mortgage loan origination business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees of the mortgage banker, independent contractors, and all others compensated by the mortgage banker in connection with residential mortgage loan origination business;

(D) all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) all reports of audits, examinations, inspections, reviews, investigations, or similar, performed by any third party, including any regulatory or supervisory authorities;

(G) all advertisements in the medium (e.g., recorded audio, video, Internet or social media site posting, or print) in which they were published or distributed; and

(H) policies and procedures related to the origination of residential mortgage loans by the mortgage banker and its sponsored originators, including, but not limited to:

(i) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));

(ii) anti-money laundering program (31 C.F.R. §1029.210);

(iii) information security program (16 C.F.R. §314.3(a));

(iv) ability-to-repay underwriting policies, if any (Regulation Z, 12 C.F.R. §1026.43(c));

(v) quality control policy, if any;

(vi) compliance manual, if any; and

(vii) personnel administration/employee policies, if any;

(2) Records Concerning Administrative Offices. A mortgage banker must maintain a list reflecting any office constituting an

"administrative office" of the mortgage banker for purposes of §80.206 of this title (relating to Office Locations; Remote Work); and

(3) Records Concerning Remote Work. A mortgage banker must maintain records reflecting its compliance with the requirements for remote work, as provided by §80.206 of this title (relating to Office Locations; Remote Work).

(d) Records Retention After Terminating Operations. Within 10 days of terminating operations, a mortgage banker or originator must provide the Department with written notice of where the required records will be maintained for the prescribed period. If such records are transferred to another mortgage banker registered with the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.

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 February 22, 2022.

TRD-202200615
Iain A. Berry
Deputy General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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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 March 11, 2022, issue of the Texas Register.)

The Texas State Library and Archives Commission (commission) proposes amendments to 13 TAC Chapter 6, State Records, §6.10, Texas State Records Retention Schedule, which establishes minimum records retention requirements for state agencies and universities.

The proposed amendments are necessary to improve retention of public records by different types of state government entities, including universities.

Government Code, §441.006 directs the commission to aid and encourage, by adoption of policies and programs, the development of effective records management and preservation programs in state agencies and the local governments of the state. Government Code, §441.185(f) authorizes the 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. Under this authority, the commission has established the State Records Retention Schedule, 13 TAC §6.10(a) (RRS), and the University Records Retention Schedule, 13 TAC §6.10(b) (URRS). These schedules indicate the minimum length of time records series must be retained by Texas state agencies and Texas state universities before destruction or archival preservation. The records series on these schedules are intended to reflect the records commonly found in most state agencies and universities. The retention periods are required minimums; however, the commission also recommends these periods as appropriate for maximum retention.

In developing the proposed amendments to §6.10(a) and §6.10(b), the commission referred to previously suggested changes and questions regarding the RRS and the URRS collected over time for future incorporation. In addition, the commission consulted with Texas state university records management officers, who were given an opportunity to review the draft proposed changes and provide informal comments and feedback. The proposed amendments to the schedules reflect the commission's consideration of all informal comments and feedback received.

SUMMARY. A proposed amendment changes the section title from "Texas State Records Retention Schedule" to "Texas State Records Retention Schedules" to account for both the RRS in §6.10(a) and the URRS in §6.10(b).

Proposed amendments to §6.10(a), the RRS, include the addition of two record series from the URRS: Copyright Records (1.1.079) and Grant Records - Non-Awarded (4.7.008b), both of which apply to all state agencies. A new series for Polygraph Examination Results (3.1.043) was also added, as federal law mandates longer retention period for this specific employee selection record, previously located under Employment Selection Records (3.1.014). The commission also proposes revisions to various record series to include withdrawn record series from the URRS. In addition, proposed amendments to the RRS correct minor grammar, punctuation, and typographical errors in the 5th edition of the RRS and improve clarity and readability of cross references, legal citations, and archives notes. Finally, a proposed amendment would also remove a record series, Record Center Storage Approval Forms (RMD 106) (1.2.011), marked as obsolete in previous RRS editions.

Proposed amendments to §6.10(b), the URRS, include the addition of four new record series: Title IX Complaints (15.5.010), Broadcast Station Public Inspection Files (18.1.004), Animal Research Controlled Substances (17.3.018), and Pharmacy Records - Personnel Log (16.1.031b), and the withdrawal of 96 record series. Many withdrawn record series were either combined with other record series of like function/type on the URRS or removed due to redundancy with the RRS. Other record series were withdrawn due to obsolescence of program records (e.g., Financial Aid Disbursement and Repayment Records - Health Education Assistance Loan (HEAL) Program (15.3.017)), maintenance of records by other entities (e.g., National Board of Medical Examiners Test Scores (15.1.005)), and series not fitting the definition of a state record (e.g., External Committee Records (11.1.008), Athletic Scholarship and Grant-In-Aid Award Records - All records Except NCAA (18.2.003). Additional proposed changes include bucketing and simplifying record series within Sections 15.3 Financial Aid and Scholarship Records and 17.3 Research. In Section 15.3 Financial Aid and Scholarship Records, changes include more

clearly delineating between grant/scholarship and loan record series. In Section 17.3 Research, changes include combining redundant record series and more clearly delineating between funded/non-funded research records. Overall, the proposed changes aim to simplify, condense, and improve the usability of the URRS independently and in conjunction with the RRS.

Proposed amendments to §6.10(b) would change specific retention periods as follows:

13.2.003, Gift and Fundraising Records: the proposed amendment would change the retention period from five to seven years. This change is proposed to simplify the retention of fundraising records for universities. This record series has been combined with other fundraising-related record series carrying a seven-year retention period, Fundraising Records (13.2.002) and Gift Records - Department or Program (13.2.004).

15.1.006, National Exams - Test Administration Records: the proposed amendment would change the title of this series to Standardized Test Administration Records and change the retention period from FE+3 years to AC+1 year. This change is proposed because payment vouchers were removed from this series and a cross reference was added to Accounts Receivable Information (4.1.009) and there is no administrative value to justify a minimum retention period beyond one year after test administration.

15.1.007, Residency Affidavits and Documentation: the proposed amendment would change the retention period from AC+6 years to AC+3 years. This change is proposed to match updated American Association of Collegiate Registrars and Admissions Officers (AACRAO) guidance.

15.2.017, Hazlewood Act Documentation: the proposed amendment would change the retention period from PM to AC+3 years to match legal citations, which inform appropriate minimum retention.

15.2.022, Internship Program Records: the proposed amendment would change the retention period from AC+5 years to AC+3 years. This change is proposed to be consistent with other post-graduation record series and reduce the burden on universities.

15.5.007, Student Conduct Records/Disciplinary Action Records: the proposed amendment would change the retention period from AC+5 years to AC+3 years. This change is proposed for consistency with Departmental Student Information Files (15.2.009) and to reduce the burden on universities.

16.1.009, Disclosure of Protected Health Information: the proposed amendment would change the retention period from FE+6 years to AC+6 years to align with legal citation and incorporate required policies and procedures. This change is proposed because legal citations inform appropriate minimum retention.

16.1.016, Health Assessment: the proposed amendment would change the retention period from two years to AV. This change is proposed because this series does not contain medical records or documentation of medical treatment and allows universities maximum discretion for determining retention period.

16.1.030, Patient Valuables Inventory: the proposed amendment would change the retention period from CE+10 years to AC. This change is proposed because this series should not include unclaimed property reports and a longer retention period is not required. A cross reference to Unclaimed Property Reports and Documentation (4.5.010), has been added.

16.1.041, Surgical Instrument Sterilization Records: the proposed amendment would change the retention period from three years to two years. This change is proposed to align with Quality Control Reports (5.2.018) and reduce the burden on universities.

16.2.003, Collection or Artifact Loan Records: the proposed amendment would change the retention period from AC+4 years to AC+7 years. This change is proposed to adhere to minimum retention requirements for contracts and agreements.

16.2.007, Interlibrary Loan (ILL) Records: the proposed amendment would change the retention period from FE+3 years to AC where transaction is completed. This change is proposed because this series does not include third party service payment records and the retention period now aligns with Circulation Records (16.2.001). A cross reference to Accounts Payable Information (4.1.001) has been added.

16.2.012, Reference Request Records: the proposed amendment would change the retention period from FE+3 years to AV. This change is proposed to reflect the transitory nature of records after the information is compiled for reporting purposes and reduce the burden on universities. Cross references were added to those reporting record series carrying longer retention periods: Agency Performance Measure Documentation (1.1.064) and Activity Reports (1.1.069).

16.3.004, Campus Fire Statistics - Annual Fire Safety Report: the proposed amendment would change the title of this record series to Annual Fire Safety Report and the retention period from PM to three years. This change is proposed to correspond with the legal citation only requiring institutions to report statistics for three most recent calendar years.

16.4.004, Student Housing Judicial Record: the proposed amendment would change the retention period from AC+4 years to AC+7 years. This change is proposed to correspond with minimum retention requirements for contracts and agreements.

16.4.005, Student Housing Tenant Records: the proposed amendment would change the retention period from AC+4 years to AC+7 years. This change is proposed to correspond with minimum retention requirements for contracts and agreements.

16.5.001, ADA (Americans with Disabilities Act) Accommodation Requests: the proposed amendment would change the title of this record series to Disability Accommodation Requests and change the retention period from AC+3 years to AC+2 years. This change is proposed to include all disability accommodation requests and be consistent with ADA Accommodation Records (3.1.042).

16.5.003, Child and Youth Program Participant Records: the proposed amendment would change the title of this record series to Child and Youth Program Staff Records and change the retention period from AC+3 years to AC+2 years. This change is proposed to include staff records and match the retention period required by the legal citation. Child and youth student records should be classified under Non-Institution Student Records (16.5.009).

17.1.006, Continuing Education Course Records - Working Files: the proposed amendment would change the title of this record series to Continuing Education Course Records and change the retention period from 5 years to AC+2 years to be based on semester. This change is proposed to be consistent with related record series, Course Records (17.1.009), and to ensure records are kept until after the completion of courses.

17.1.007, Cooperative Program Records - Administrative: the proposed amendment would change the title of this record series to Cooperative Program Records and change the retention period from PM to AC+7 years. This change is proposed to reflect an appropriate retention period after the combination with Cooperative Program Records - Program Records (17.1.008). The archival code "O" remains to allow for permanent retention of long-term records.

17.1.012, Degree Program Proposal, Development and Review Records - Final Reports, Minutes, Proposals, and Degree Program Reviews: the proposed amendment would change the title of this record series to Degree and Special Academic Program Proposal, Development and Review Records to accommodate various withdrawn record series and change the retention period from PM to AC. This change is proposed to allow for transfer to archives after the degree program is terminated.

18.1.001, Daily Broadcast Logs: the proposed amendment would change the retention period from three years to two years to adhere to legal citations, which inform appropriate minimum retention.

18.2.005, Competition Records - NCAA Reporting Requirements: the proposed amendment would change the title of this record series to NCAA and NAIA Reporting Requirements to accommodate records from withdrawn record series: Athletic Eligibility Records (18.1.001), Athletic Scholarship and Grant-In-Aid Award Records - National Collegiate Athletic Association (NCAA) Records (18.2.002), Practice Schedule Records (18.2.017), and Student Athletes Medical Records (18.2.024). The proposed amendment would change the retention period from ten years to six years. This change is proposed to simplify retention of NCAA required reporting records by matching the retention period to the longest retention period required by NCAA guidelines

18.2.007, Drug Test Records - Negative Results: the proposed amendment would change the title of this record series to Student Athlete Drug Test Records' Negative Results and change the retention period from two years to one year. This change is proposed to align with the retention period of Employee Drug Testing and Screening Records - Negative Results (3.1.040c) and reduce the burden on universities.

18.2.012, Game Statistics: the proposed amendment would change the title of this record series to Game Records to accommodate Competition Scheduling Records (18.2.006) and Game Arrangement Records (18.2.009) and change the retention period from seventy-five years to AV. This change is proposed to allow for more university discretion in determining long-term value of records prior to performing the archival review for potential permanent retention in university archives.

FISCAL NOTE. Craig Kelso, Director, State and Local Records Management, has determined that for each of the first five years the proposed rules are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kelso has also determined that for the first five-year period the amendments are in effect, the public benefit will be clarity and consistency in state government entities' and state universities' records management retention, leading to better access to public records.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments, as proposed. There is no effect on local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The commission has determined that the proposed amendments do not require an environmental impact analysis because the new rules are not major environmental rules under the Government Code, §2001.0225.

COSTS TO REGULATED PERSONS. The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, are not subject to Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kelso has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Government Code, §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code §2001.0221. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed rules will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rules may be directed to Megan Carey, Manager, Records Management Assistance, via email at rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY. The amendments are proposed under Government Code, §441.185, which authorizes the 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. In addition, the amendments are proposed under Government Code, §441.199, which authorizes the commission to adopt rules it determines necessary for cost reduction and efficiency of recordkeeping by state agencies and for the state's management and preservation of records.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§6.10. Texas State Records Retention Schedules [~~Schedule~~].

(a) A record listed in the Texas State Records Retention Schedule (Revised 5th Edition) [(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)
[Figure: 13 TAC §6.10(a)]

(b) A record listed in the Texas State University Records Retention Schedule (2nd Edition) must be retained for the minimum retention period indicated by any university or institution of higher education.
Figure: 13 TAC §6.10(b)
[Figure: 13 TAC §6.10(b)]

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 February 24, 2022.

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 463-5591

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CHAPTER 10. ARCHIVES AND HISTORICAL RESOURCES

13 TAC §10.1, §10.2

The Texas State Library and Archives Commission (commission) proposes new Chapter 10, Archives and Historical Resources, to Title 13, Texas Administrative Code, to include new §10.1, Definitions, and new §10.2, Public Access to Archival State Records and Other Historical Resources.

The proposed new rules are necessary to ensure the continued preservation and availability of archival state records and other historical resources for future generations. Many of the documents held by the commission are fragile and susceptible to damage from repeated handling. In addition, some records have significant intrinsic and/or monetary value which necessitates protection from damage or theft.

Government Code, §441.190 authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records. The statute further directs the commission to pay particular attention to the maintenance and storage of archival and vital state records and authorizes the commission to adopt rules as it considers necessary to protect those records.

In addition, and more specifically, Government Code, §441.193 authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission. The statute further provides that in rules adopted under this section, the commission may restrict access to any original archival state record or other historical resource in its possession and provide only copies if, in the opinion of the state archivist, such access would compromise the continued survival of the original record. The new sections are proposed under this authority to ensure the continued survival of original archival state records and other historical resources.

SUMMARY. Proposed new §10.1 establishes the definitions section for the proposed new Chapter 10, clarifying that the statutory definitions in Government Code, §441.180 apply to terms used in the chapter, unless the context clearly indicates otherwise.

Proposed new §10.2(a) establishes the conditions under which public access to archival state records and other historical resources may be granted, including the time when and location where access will be granted, the requirement for registration and presentation of a photo identification to verify information provided on the registration form, age requirements, the requirement to comply with Reading Room policies and instructions from staff, and requirement to complete a materials request form.

Proposed new §10.2(b) provides that the commission may restrict public access to any original archival state record or other historical resource in its possession and provide only copies if, in the opinion of the state archivist, such access would compromise the continued survival of the original item. The subsection also outlines the factors the state archivist will consider when considering requests for access to original archival state records and other historical resources. As noted in the rule and in the statute authorizing adoption of the rule, the determination of whether to grant or restrict public access to an original archival state record or other historical resource will be based on the record and its condition to ensure continued survival of the record.

FISCAL NOTE. Jelain Chubb, State Archivist, has determined that for each of the first five years the proposed rules are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the new rules, as proposed.

PUBLIC BENEFIT/COST NOTE. Ms. Chubb has also determined that for the first five-year period the new rules are in effect, the public benefit will be clarity in the agency's procedures for determining when access to original archival state records and other historical resources will be denied and copies provided instead to ensure continued survival of the original records.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the new rules, as proposed. There is no effect on local economy for the first five years that the proposed rules are in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The commission has determined that the proposed new rules do not require an environmental impact analysis because the new rules are not major environmental rules under the Government Code, §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, are not subject to Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Ms. Chubb has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these new rules, and, therefore, no regulatory flexibility analysis, as specified in Government Code, §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code §2001.0221. During the first five years that the new rules would be in effect, the proposed new rules: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will create a new regulation as authorized by Government Code, §441.190 and §441.193; will not repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the new rules would be in effect, the proposed rules will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rules may be directed to Jelain Chubb, State Archivist, via email at *rules@tsl.texas.gov,* or mail, P.O. Box 12927, Austin, Texas 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY. The new rules are proposed under Government Code, §441.190 and §441.193.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§10.1. Definitions.

Except as otherwise provided by this subchapter, all words and terms used in this subchapter shall have the meaning ascribed to them by Government Code, §441.180, unless the context clearly indicates otherwise.

§10.2. Public Access to Archival State Records and Other Historical Resources.

(a) Public access to archival state records and other historical resources in the possession of the commission will be granted under the following conditions, subject to subsection (b) of this section:

(1) Access to archival state records and other historical resources maintained in Austin will be provided in the State Archives Reading Room of the Lorenzo de Zavala State Archives and Library Building.

(2) Access to archival state records and other historical resources maintained at the Sam Houston Regional Library and Research Center in Liberty, Texas will be provided in the Center's Reading Room.

(3) Registration and presentation of a current photo identification is required to use original archival state records and other resources.

(4) Researchers between the ages of 13 and 16 are permitted to use original archival state records and other resources if supervised by an adult. One adult per juvenile researcher is required. Children aged 12 and under are not permitted to use original archival state records or historical resources.

(5) All researchers and supervising adults, if applicable, must agree to and comply with the Reading Room Policies and instructions as provided by staff members.

(6) Access will be granted during business hours for each location as posted on the agency's website or as may be amended from time to time by additional notice.

(7) Request for access to archival state records or other historical resources must be submitted on a material request form whether the request is a Research Request or a Public Information Act (PIA) Request.

(b) The commission may restrict access to any original archival state record or other historical resource in its possession and provide only copies if, in the opinion of the state archivist, such access would compromise the continued survival of the original item. The state archivist will consider the following factors in the consideration of requests for access to original archival state records or other historical resources:

(1) physical condition of the archival state record or resource;

(2) availability of a digital or other facsimile copy of the archival state record or resource;

(3) the intrinsic or monetary value of the item to the State; and

(4) any other factor that, in the opinion of the state archivist, may compromise the continued survival of the original item.

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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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5591

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

The Public Utility Commission of Texas (commission) proposes repealing 16 Texas Administrative Code (TAC) §25.505, relating to Reporting Requirements and the Scarcity Pricing Mechanism in the Electric Reliability Council of Texas (ERCOT) Power Region. This proposed rulemaking would split the current 16 TAC §25.505 into three sections, creating new 16 TAC §25.505, relating to Resource Adequacy Reporting Requirements in the Electric Reliability Council of Texas Power Region; new 16 TAC §25.506, relating to Publication of Resource and Load Information in the Electric Reliability Council of Texas Power Region; and new 16 TAC §25.509, Scarcity Pricing Mechanism for the

Electric Reliability Council of Texas Power Region. Additionally, the proposed new rules would decouple the value of lost load from the system-wide offer cap in effect and require ERCOT to submit to the commission a biannual report on the operating reserve demand curve.

Growth Impact Statement

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

(1) the proposed rules will not create a government program and will not eliminate a government program;

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

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

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

(5) the proposed rules will effectively not create a new regulation, because this is primarily a reorganization of a rule into three separate rules;

(6) the proposed rules will effectively not expand, limit, or repeal an existing regulation, because this is primarily a reorganization of a rule into three separate rules;

(7) the proposed rules will effectively not change the number of individuals subject to the rules' applicability, because this is primarily a reorganization of a rule into three separate rules; and

(8) the proposed rules 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 rules. 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 rules 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

Werner Roth, Senior Market Economist, Market Analysis Division, has determined that for the first five-year period the proposed rules 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

Mr. Roth has also determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be increased clarity on the specific information contained in each section and improved administrative efficiency for amending the proposed new rules going forward. There will be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed sections 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 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. The request for a public hearing must be received by *March 18, 2022.* If a request for public hearing is received, commission staff will file in this project details on the time and location of the hearing and instructions on how a member of the public can participate in the hearing.

Public Comments

Comments may be filed through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by *March 18, 2022.* Comments should be *limited to five pages* and organized in a manner consistent with the organization of the proposed rules. 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 modify the proposed rules on adoption. All comments should refer to Project Number 53191.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required. This executive summary does not count toward the five-page limit.

16 TAC §25.505

Statutory Authority

The repeal is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity and gives the commission the authority to adopt and enforce rules to carry out these provisions; and §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT, directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT responsibilities for establishing or enforcing such rules.

Cross reference to statutes: PURA §14.002, §39.101, and §39.151.

§25.505. Reporting Requirements and the Scarcity Pricing Mechanism in the Electricity Reliability Council of Texas Power Region.

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 February 25, 2022.

TRD-202200692
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 936-7244

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16 TAC §§25.505, 25.506, 25.509

Statutory Authority

These new rules are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity and gives the commission the authority to adopt and enforce rules to carry out these provisions; and §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT, directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT responsibilities for establishing or enforcing such rules.

Cross reference to statutes: PURA §14.002, §39.101, and §39.151.

§25.505. Resource Adequacy Reporting Requirements in the Electric Reliability Council of Texas Power Region.

(a) General. The purpose of this section is to prescribe resource adequacy reporting requirements for the Electric Reliability Council of Texas (ERCOT) and market participants.

(b) Definitions. The following terms, when used in this section, have the following meanings, unless the context indicates otherwise:

(1) Generation entity--An entity that owns or controls a generation resource. A generation resource is a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

(2) Load entity--An entity that owns or controls a load resource. A load resource is a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(3) Resource entity--An entity that is a generation entity or a load entity.

(c) Resource adequacy reports. ERCOT must publish a resource adequacy report by December 31 of each year that projects, for at least the next five years, the capability of existing and planned electric generation resources and load resources to reliably meet the projected system demand in the ERCOT power region. ERCOT may publish other resource adequacy reports or forecasts as it deems appropriate. ERCOT must prescribe requirements for generation entities and transmission service providers (TSPs) to report their plans for adding new facilities, upgrading existing facilities, and mothballing or retiring existing facilities. ERCOT also must prescribe requirements for load entities to report their plans for adding new load resources or retiring existing load resources.

(d) Daily assessment of system adequacy. Each day, ERCOT must publish a report that includes the following information for each hour for the seven days beginning with the day the report is published:

(1) system-wide load forecast; and

(2) aggregated information on the availability of resources, by ERCOT load zone, including load resources.

(e) Filing of resource and transmission information with ERCOT. ERCOT must prescribe reporting requirements for resource entities and TSPs for the preparation of the assessment required by subsection (d) of this section. At a minimum, the following information must be reported to ERCOT:

(1) TSPs will provide ERCOT with information on planned and existing transmission outages.

(2) Generation entities will provide ERCOT with information on planned and existing generation outages.

(3) Load entities will provide ERCOT with information on planned and existing availability of load resources, specified by type of ancillary service.

(4) Generation entities will provide ERCOT with a complete list of generation resource availability and performance capabilities, including, but not limited to:

(A) the net dependable capability of generation resources;

(B) projected output of non-dispatchable resources such as wind turbines, run-of-the-river hydro, and solar power; and

(C) output limitations on generation resources that result from fuel or environmental restrictions.

(5) Load serving entities (LSEs) will provide ERCOT with complete information on load response capabilities that are self-arranged or pursuant to bilateral agreements between LSEs and their customers.

(f) Development and implementation. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

§25.506. Publication of Resource and Load Information in the Electric Reliability Council of Texas Power Region.

(a) Purpose. This section sets forth the requirements for the publication of resource and load information in the Electric Reliability Council of Texas (ERCOT) markets.

(b) General Requirements. To increase the transparency of the ERCOT-administered markets, ERCOT must post the information required in this section at a publicly accessible location on its website. In no event will ERCOT disclose competitively sensitive consumption

data. The information released must be made available to all market participants.

(1) ERCOT will post the following information in aggregated form, for each settlement interval and for each area where available, two calendar days after the day for which the information is accumulated:

(A) quantities and prices of offers for energy and each type of ancillary capacity service, in the form of supply curves;

(B) self-arranged energy and ancillary capacity services, for each type of service;

(C) actual resource output;

(D) load and resource output for all entities that dynamically schedule their resources;

(E) actual load; and

(F) energy bid curves, cleared energy bids, and cleared load.

(2) ERCOT will post the following information in entity-specific form, for each settlement interval, 60 calendar days after the day for which the information is accumulated, except where inapplicable or otherwise prescribed. Resource-specific offer information must be linked to the name of the resource (or identified as a virtual offer), the name of the entity submitting the information, and the name of the entity controlling the resource. If there are multiple offers for the resource, ERCOT must post the specified information for each offer for the resource, including the name of the entity submitting the offer and the name of the entity controlling the resource. ERCOT will use §25.502(d) of this title (relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas) to determine the control of a resource and must include this information in its market operations data system.

(A) Offer curves (prices and quantities) for each type of ancillary service and for energy in the real time market, except that, for the highest-priced offer selected or dispatched for each interval on an ERCOT-wide basis, ERCOT will post the offer price and the name of the entity submitting the offer three calendar days after the day for which the information is accumulated.

(B) If the clearing prices for energy or any ancillary service exceeds a calculated value that is equal to 50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, during any interval, the portion of every market participant's price-quantity offer pairs for balancing energy service and each other ancillary service that is at or above a calculated value that is equal to 50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, for that service and that interval must be posted seven calendar days after the day for which the offer is submitted.

(C) Other resource-specific information, as well as self-arranged energy and ancillary capacity services, and actual resource output, for each type of service and for each resource at each settlement point;

(D) The load and generation resource output, for each entity that dynamically schedules its resources; and

(E) For each hour, transmission flows, voltages, transformer flows, voltages and tap positions (i.e., State Estimator data). Notwithstanding the provisions of this subparagraph and the provisions of subparagraphs (A) through (D) of this paragraph, ERCOT must release relevant State Estimator data earlier than 60 days after the day for which the information is accumulated if, in its sole discretion, it determines the release is necessary to provide a complete and timely explanation and analysis of unexpected market operations and results or system events, including but not limited to pricing anomalies, recurring transmission congestion, and system disturbances. ERCOT's release of data in this event must be limited to intervals associated with the unexpected market or system event as determined by ERCOT. The data released must be made available simultaneously to all market participants.

(c) Development and implementation. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

§25.509. Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region.

(a) General. The purpose of this section is to establish a scarcity pricing mechanism for the Electric Reliability Council of Texas (ERCOT) market.

(b) Definitions. The following terms, when used in this section, have the following meanings, unless the context indicates otherwise:

(1) Generation entity -- an entity that owns or controls a generation resource. A generation resource is a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

(2) Load entity -- an entity that owns or controls a load resource. A load resource is a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(3) Resource entity -- an entity that is a generation entity or a load entity.

(c) Scarcity pricing mechanism (SPM). ERCOT will administer the SPM. The SPM will operate as follows:

(1) The SPM will operate on a calendar year basis.

(2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.

(4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: $\sum$((RTEP - POC) * (number of minutes in a settlement interval / 60 minutes per hour)) for each settlement interval when RTEP - POC >0.

(5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).

(6) System-Wide Offer Caps.

(A) The low system-wide offer cap (LCAP) will be set at $2,000 per MWh and $2,000 per MW per hour.

(B) The high system-wide offer cap (HCAP) will be $5,000 per MWh and $5,000 per MW per hour.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this

level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus $1 for the remainder of that calendar year.

(7) Reimbursement for Operating Losses when the LCAP is in Effect. When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

(8) Operating Reserve Demand Curve (ORDC) report. ERCOT must publish, by November 1 of every even numbered year, a report analyzing the efficacy, utilization, related costs, and contribution of the ORDC to grid reliability in the ERCOT power region.

(d) Development and implementation. ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in 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 February 25, 2022.

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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 10, 2022
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 §61.1010

The Texas Education Agency (TEA) proposes an amendment to §61.1010, concerning additional state aid for school districts that contract to partner to operate a district campus. The proposed amendment would implement House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, by allowing resource campuses to receive additional funding under Texas Education Code (TEC), §48.252.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1010 provides an additional entitlement through the Foundation School Program (FSP) for school districts that enter contracts to partner to operate a district campus under TEC, §11.174 and §11.157(b).

HB 1525, 87th Texas Legislature, Regular Session, 2021, amended TEC, §48.252(a), to expand the entitlement to a school district that operates a resource campus as provided by new TEC, §29.934(c). A designated resource campus qualifies for funding for each year the campus maintains approval to operate as a resource campus. To align with HB 1525, the proposed amendment to §61.1010 would add language throughout the rule referencing resource campuses and add a definition for resource campus in subsection (b)(3).

Further, HB 1525 repealed advanced career and technology funding while preserving the P-TECH and New Tech Network funding under TEC, §48.106, *Career and Technology Education Allotment.* Therefore, the proposed amendment to subsection (e)(1) would update the allotment name and statutory reference. Also, the Fast Growth Allotment under TEC, §48.111, would be added as an excluded allotment in new subsection (e)(6) because the allotment is no longer applicable on the campus level.

The proposed amendment would also update the statutory reference related to the School Safety Allotment to reflect the recodification of TEC, §42.168 to §48.115.

Finally, technical edits would be made throughout the rule for consistency.

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.

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 allowing a resource campus under TEC, §29.934, to be eligible to receive funding.

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. 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 to provide additional funding to districts that contract to partner to operate district campuses, contracted campus programs, or resource programs. The additional funding will assist with improving academic performance and will incentivize contracting to partner to provide innovative governance arrangements. 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: 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 March 11, 2022, and ends April 11, 2022. 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 March 11, 2022. 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/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §48.252, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner of education to adopt rules necessary for the implementation of an entitlement for school districts that enter into a contract to operate a district campus under TEC, §11.174 or §11.157(b), or school districts that operate a resource campus under TEC, §29.934; and TEC, §29.934, added by HB 1525, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to adopt rules related to resource campuses.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.252, as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021; and §29.934, added by HB 1525, 87th Texas Legislature, Regular Session, 2021.

§61.1010. Additional State Aid for School Districts that Contract to Partner to Operate a District Campus.

(a) General provisions. This section implements [~~the~~] Texas Education Code (TEC), §48.252 (School District Entitlement for Certain Students), which provides for additional funding for a school district [~~districts~~] that has [~~have~~] entered into a contract to partner to operate a district campus under [~~the~~] TEC, §11.174; a school district that has[~~, and for districts that~~] entered into a contract with a partner to jointly operate a campus or campus program under TEC, §11.157(b); or a school district that operates a resource campus as provided by TEC, §29.934.

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

(1) Contracted campus--A campus for which the board of trustees of a school district has contracted to partner to operate a campus under [~~the~~] TEC, §11.174 or §11.157(b).

(2) Contracted campus program--A program on a campus operated by a charter school under TEC, Chapter 12, Subchapter D, for which the board of trustees of a school district has contracted to jointly operate the program under TEC, §11.157(b).

(3) Resource campus--A campus designated by the commissioner of education to operate as a campus under TEC, §29.934.

(c) Entitlement.

(1) In the fall of each school year, as part of the settle-up process for the preceding school year, the Texas Education Agency (TEA) will use the attendance reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) summer data submission, as well as campus-level data regarding the number of students eligible for compensatory education funding under TEC, §48.104, from the TSDS PEIMS fall submission, to calculate the following for a contracted campus, [~~or~~] contracted campus program, or resource campus:

(A) the entitlement for each student in average daily attendance at the contracted campus, [~~or~~] contracted campus program, or resource campus, as if the campus, [~~or~~] contracted campus program, or resource campus were a charter school under [~~the~~] TEC, §12.106, using the state average basic allotment as defined under [~~the~~] TEC, §12.106(a-1), and state average tax effort for enrichment funding as defined by [~~the~~] TEC, §12.106(a-2);

(B) the entitlement for each student in average daily attendance at the contracted campus, [~~or~~] contracted campus program, or resource campus under [~~the~~] TEC, Chapter 48, Subchapters B, C, and E, as adjusted by subsection (d) of this section, using the district's basic allotment and enrichment tax effort without a local share component for those entitlements; and

(C) any positive difference that results from subtracting the amount calculated under subparagraph (B) of this paragraph from the amount calculated under subparagraph (A) of this paragraph, which shall be added to the district's Foundation School Fund Allotment.

(2) Campus program attendance must be reported on a separate track to receive funding.

(d) Estimates. School districts will be provided with estimated funding during a school year for eligible contracted campuses, [~~or~~] contracted campus programs, or resource campuses based on the prior year's attendance data using the same methodology used in subsection (c)(1) of this section to calculate the entitlement. The final entitlement will be based on data from the current school year as provided for in subsection (c)(1) of this section. Any difference from the estimated entitlement will be addressed as part of the Foundation School Program settle-up process according to the provisions of TEC, §48.272.

(e) Exclusions. For purposes of the calculation in subsection (c) of this section, the following allotments shall be excluded from the entitlement:

(1) the [~~Advanced~~] Career and Technology Education Allotment under [~~the~~] TEC, §48.106(a-1) [~~§48.106(a)(2)~~], for students enrolled in P-TECH or New Tech Network campuses;

(2) the College, Career, or Military Readiness Outcomes Bonus under TEC, §48.110;

(3) the Teacher Incentive Allotment under TEC, §48.112;

(4) the Mentor Program Allotment under TEC, §48.114; [and]

(5) the School Safety Allotment under TEC, §48.115; and [§42.168.]

(6) the Fast Growth Allotment under TEC, §48.111.

(f) Funding for instructional facilities for charter schools. Effective September 1, 2018, for purposes of the calculation in subsection (c)(1)(A) of this section, any funding to which the contracted campus, [or] contracted campus program, or resource campus would be entitled under [the] TEC, §12.106(d), will be included in the calculation.

(g) Recovery of funds. If a contract is found to be out of compliance with [the] TEC, §11.157 or §11.174, or §97.1075 of this title (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174), [the] TEA will eliminate any funding provided for that campus, [or] contracted campus program, or resource campus under [the] TEC, §48.252, and recover any funds overallocated under the provisions of [the] TEC, §48.272.

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 February 28, 2022.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 475-1497

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CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING TECHNOLOGY AND INSTRUCTIONAL MATERIALS ALLOTMENT

19 TAC §66.1307

The Texas Education Agency (TEA) proposes an amendment to §66.1307, concerning technology and instructional materials allotment. The proposed amendment would provide clarifications based on House Bill (HB) 1525 and HB 3261, 87th Texas Legislature, Regular Session, 2021, update terminology, make technical edits, and remove outdated information.

BACKGROUND INFORMATION AND JUSTIFICATION: The rules in Chapter 66, Subchapter CC, implement Texas Education Code, §31.0211, which establishes the instructional materials and technology allotment and gives the commissioner rulemaking authority over the allotment. The proposed amendment would update the subchapter as follows.

The title of §66.1307, Technology and Instructional Materials Allotment, would be updated to "Instructional Materials and Technology Allotment" to align with the name of the allotment used in statute. Subsection (a) would also be updated to reflect this change.

The proposed amendment would update allowable purchases and expenses using allotment funds based on HB 1525 and HB 3261, 87th Texas Legislature, Regular Session, 2021, and outline district considerations related to the purchase of technological equipment.

In addition, the proposed amendment would make technical edits and update the outdated term EMAT with "the state ordering system."

FISCAL IMPACT: Kristen Hole, associate commissioner for instructional strategy, has determined that 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 increasing allowable uses of allotment funding.

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: Ms. Hole 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 an updated list of allowable expenditures in alignment with statute. There is no anticipated economic cost to persons who are required to comply with the proposal. 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: 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 March 11, 2022, and ends April 11, 2022. 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 March 11, 2022. 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/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §31.0211, as amended by House Bill (HB) 1525 and HB 3261, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to adopt rules regarding the instructional materials and technology allotment, including the amount of the per-student allotment, the authorization of juvenile justice alternative education program allotments, allowed expenditures, required priorities, and adjustments to the number of students for which a district's allotment is calculated; TEC, §31.0212, which requires the commissioner to adopt rules regarding the documentation required for requisitions and disbursement to be approved, rules regarding districts' online instructional materials ordering system accounts, and rules requiring school districts to submit to the commissioner the title and publication information for any materials the districts purchase with their allotments; TEC, §31.0215, which authorizes the commissioner to adopt rules regarding allotment purchases, including announcing to districts the amount of their allotments and delayed payment options; TEC, §31.0231, which requires the commissioner to adopt rules regarding the Commissioner's List of Instructional Materials, including electronic or other tools, models, and investigative materials for Kindergarten-Grade 5 science and Kindergarten-Grade 8 personal financial literacy, various requirements for adoption, criteria the materials must meet, coverage of the Texas Essential Knowledge and Skills, teacher training, accessibility standards, and allowed changes; TEC, §31.029, which requires the commissioner to adopt rules regarding instructional materials for use in bilingual education classes; TEC, §31.031, which requires the commissioner to adopt rules regarding the purchase of college preparatory instructional materials with the allotment; TEC, §31.076, which authorizes the commissioner to adopt rules regarding state-developed open-source instructional materials; and TEC, §31.104, which requires the commissioner to adopt rules that include criteria for determining whether instructional materials and technological equipment are returned in an acceptable condition.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§31.0211, as amended by House Bill (HB) 1525 and HB 3261, 87th Texas Legislature, Regular Session, 2021; 31.0212; 31.0215; 31.0231; 31.029; 31.031; 31.076; and 31.104.

§66.1307. [~~Technology and~~] Instructional Materials and Technology Allotment.

(a) The commissioner of education shall determine the amount of the [~~technology and~~] instructional materials and technology allotment for a school district or an open-enrollment charter school based on Texas Student Data System Public Education Information Management System (TSDS PEIMS) student enrollment data from the fall snapshot collection of the school year preceding the first year of each biennium.

(b) The commissioner shall determine the amount of the allotment for Texas Juvenile Justice Department facilities.

(c) The commissioner shall determine the amount of the allotment for bilingual education based on TSDS PEIMS bilingual enrollment data from the fall collection of the school year preceding the first year of each biennium.

(d) The amount of the allotment determined by the commissioner is final and may not be appealed.

(e) Each school district's or open-enrollment charter school's allotment funds must be expended according to the following priorities established in [~~the~~] Texas Education Code (TEC), §31.0211:

(1) first, instructional materials necessary to permit the school district or open-enrollment charter school to certify that the school district or open-enrollment charter school has instructional materials that cover all elements of the essential knowledge and skills of the required curriculum, other than physical education, for each grade level as required by [~~the~~] TEC, §28.002; and

(2) then, any other instructional materials or allowed technological equipment.

(f) Maintaining the priorities provided in subsection (e) of this section, the allotment funds may be used to pay for:

(1) instructional materials on the list adopted by the commissioner under [~~the~~] TEC, §31.0231;

(2) instructional materials on the list adopted by the State Board of Education under [~~the~~] TEC, §31.024;

(3) non-adopted instructional materials;

(4) consumable instructional materials;

(5) instructional materials for use in bilingual education classes, as provided by [~~the~~] TEC, §31.029;

(6) versions of non-adopted instructional materials that are fully accessible to students with disabilities;

(7) instructional materials for use in college preparatory courses under [~~the~~] TEC, §28.014, as provided by [~~the~~] TEC, §31.031;

(8) supplemental instructional materials, as provided by [~~the~~] TEC, §31.035;

(9) state-developed open-source instructional materials, as provided by [~~the~~] TEC, Chapter 31, Subchapter B-1;

(10) instructional materials and technological equipment under any continuing contracts of the school district or open-enrollment charter school in effect on September 1, 2011;

(11) activities related to the local review and adoption of instructional materials;

(12) technological equipment that contributes to student learning, including equipment that supports the use of instructional materials;

(13) training educational personnel directly involved in student learning in the appropriate use of instructional materials;

(14) providing access to technological equipment for instructional use;

(15) the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning;

(16) inventory software or systems for storing, managing, and accessing instructional materials; [~~and~~]

(17) software for analyzing the use and effectiveness of instructional materials;[.]

(18) services, equipment, and technology infrastructure necessary to ensure internet connectivity and adequate bandwidth;

(19) costs associated with distance learning, including services, equipment, and technology such as Wi-Fi, internet access hotspots, wireless network service, broadband service, and other services and technological equipment to ensure internet access; and

(20) training for personnel in the electronic administration of assessment instruments.

(g) The allotment funds may not be used to pay for:

(1) services for installation;

(2) the physical conduit that transmits data such as cabling and wiring or electricity, except to the extent allotment funds are necessary to pay for allowable expenses under subsection (f)(18) and (19) of this section;

(3) office and school supplies;

(4) items that are not directly related to student instruction such as furniture, athletic equipment, extension cords, temporary contractors, or video surveillance equipment;

(5) travel expenses; or

(6) equipment used for moving or storing instructional materials.

(h) The allotments for each biennium will be made available for school district and open-enrollment charter school use through the state's online instructional materials ordering system [(~~EMAT~~)] as early as possible in the fiscal year preceding the beginning of the biennium for which the funds have been appropriated.

(i) A school district or an open-enrollment charter school may access its allotment funds for any upcoming school year upon completion of all of the following:

(1) submission to the commissioner certification that:

(A) the school district or open-enrollment charter school has instructional materials that cover all the required Texas Essential Knowledge and Skills [~~essential knowledge and skills~~] (TEKS), except those for physical education, as required by [~~the~~] TEC, §31.004; and

(B) the school district or open-enrollment charter school has used its allotment for only the allowable expenditures provided in subsection (f) of this section; and

(2) preparation by Texas Education Agency [~~the agency~~] of the state ordering system [~~EMAT~~] for the new school year with the new allotment amounts.

(j) Upon completion of the requirements listed in subsection (i) of this section, school districts and open-enrollment charter schools may access their allotment funds by correctly providing all the information required in the state ordering system [~~EMAT~~].

(k) Information required in the state ordering system [~~EMAT~~] may include verification of TEKS coverage for certain disbursement requests.

(l) In purchasing technological equipment under this section, school districts and open-enrollment charter schools shall:

(1) secure technological solutions that meet the varying and unique needs of students and teachers in their respective districts and charter schools; and

(2) consider both the long-term cost of ownership of the technological equipment and flexibility for innovation.

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 February 28, 2022.

TRD-202200728
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 79. UNPROFESSIONAL CONDUCT

22 TAC §79.5

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §79.5, Associating with an Unlicensed Individual. Texas Occupations Code §201.5025(a)(5 - 7) (Prohibited Practices by Chiropractor or License Applicant) forbids a licensee from associating with an individual whose license to practice chiropractic has been suspended or revoked in any jurisdiction. This language does not explicitly prohibit a licensee from associating with an individual who surrendered a license to the Board in lieu of disciplinary action, although the Board has that authority implicitly through other statutes and Board rules.

The Board offers licensees who have been arrested for serious violent or financial crimes the option of immediately surrendering their licenses to the Board instead of going through the time and expense of a revocation hearing at the State Office of Administrative Hearings. The Board believes this option better fulfills its duty to protect the public than an administrative hearing by quickly removing from the ranks of licensed chiropractors an individual who has shown to be a danger to patients.

Occupations Code §201.5025(a)(5 - 7) prohibits licensees from associating with, in any manner, individuals who have had their license to practice chiropractic suspended or revoked in any jurisdiction. This proposed rule makes explicit that the prohibition includes individuals who have surrendered their licenses in lieu of discipline.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the

proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to protect patients from individuals who have surrendered their chiropractic license as a result of committing serious violent or financial crimes.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §79.5. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal rule does not repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: *rules@tbce.state.tx.us;* or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed rule.

§79.5. Associating with an Unlicensed Individual.

(a) A licensee may not knowingly employ, contract with, or associate with an individual whose license to practice chiropractic has been:

(1) suspended;

(2) revoked; or

(3) surrendered in lieu of discipline.

(b) A licensee may not knowingly employ, contract with, or associate with an individual who has been convicted of the unlawful practice of chiropractic in any jurisdiction.

(c) A licensee may not aid or abet the practice of chiropractic by an unlicensed individual.

(d) A licensee violating this section is subject to disciplinary action.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 305-6700

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CHAPTER 80. COMPLAINTS

22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to 22 TAC §80.1 (Duty to Respond to Complaint). The purpose is to simplify the process of Board notification to an individual of a complaint filed against him.

This amendment simply removes email as one of the two formal methods the Board must use to notify an individual of a complaint filed against him. The proposed amendment keeps the procedural requirement that the Board must notify an individual of a complaint by registered mail.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the amendment as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that, for each year of the first five years the amended rule will be in effect, the public benefit is to simplify the process of Board notification to an individual of a complaint filed against him.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed amended 22 TAC §80.1. For each year of the first five years the proposed amended rule is in effect, Mr. Fortner has determined:

(1) The amended rule does not create or eliminate a government program.

(2) Implementation of the proposed amended rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amended rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed amended rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed amended rule does not create a new regulation.

(6) The proposed amended rule does not repeal existing Board rules for an administrative process.

(7) The proposed amended rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed amended rule does not positively or adversely affect the state economy.

Comments on the proposed amended rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The amended rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.205, which requires the Board to adopt rules concerning the investigation of a complaint filed with the Board.

No other statutes or rules are affected by this proposed amended rule.

§80.1. Duty to Respond to Complaint.

(a) A licensee shall fully cooperate with the Board in its investigation of any complaint.

(b) A licensee shall fully cooperate with any Board request for information or documents relating to any complaint.

(c) The Board shall send notice of a complaint by registered mail [~~and email~~] to a licensee's physical address [~~and email address~~] on file with the Board.

(d) A licensee's last known physical and email address filed with the Board is presumed current.

(e) A licensee's response to a complaint or request for information or documents shall be in writing and sent to the Board no later than the 15th day after receipt of the notice of complaint or request.

(f) A licensee's response to a complaint or request for information or documents shall be complete.

(g) A licensee shall make any request to extend the time to respond in writing before the deadline in subsection (e) of this section expires.

(h) A licensee who fails to timely respond to a complaint or request is subject to disciplinary action.

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 February 25, 2022.

TRD-202200699

Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 305-6700

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22 TAC §80.3

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to 22 TAC §80.3 (Disciplinary Guidelines) by adding new subsection (m). The new subsection (m) will make it a violation of Board rules if an individual fails to comply with any term of an agreed order approved by the Board.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the amendment as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that, for each year of the first five years the amended rule will be in effect, the public benefit is to make respondents who voluntarily sign agreed orders with the Board to be liable for failing to honor that agreement.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed amended 22 TAC §80.3. For each year of the first five years the proposed amended rule is in effect, Mr. Fortner has determined:

(1) The amended rule does not create or eliminate a government program.

(2) Implementation of the proposed amended rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amended rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed amended rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed amended rule does not create a new regulation.

(6) The proposed amended rule does not repeal existing Board rules for an administrative process.

(7) The proposed amended rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed amended rule does not positively or adversely affect the state economy.

Comments on the proposed amended rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published

in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The amended rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this proposed amended rule.

§80.3. Disciplinary Guidelines.

(a) The Board may take disciplinary action against a licensee or other person who violates a statute or rule under the Board's jurisdiction.

(b) The Board's disciplinary actions shall consider the seriousness of the violation, any harm to a patient, the circumstances of the licensee, and the Board's duty to protect the public.

(c) Disciplinary action may include one or more of the following:

(1) revocation of license;

(2) suspension of license;

(3) suspension with probation;

(4) written formal reprimand;

(5) administrative penalty;

(6) repeat taking of the jurisprudence exam; and

(7) additional continuing education.

(d) The Board may impose additional conditions or restrictions to aid a licensee's rehabilitation and education, including:

(1) completion of specific continuing education beyond the minimum required of all licensees;

(2) passing a specific examination;

(3) restrictions on the type of treatment, treatment procedures, or class of patients to be treated;

(4) restrictions on the supervision of others; or

(5) undergoing a psychological or medical evaluation and undergoing any recommended treatment.

(e) During a suspension, a licensee may not:

(1) receive any remuneration from the practice of chiropractic;

(2) communicate with any patients other than to ensure continuation of care;

(3) provide any chiropractic services to any person; or

(4) be present at any location where chiropractic services are provided.

(f) The Board shall memorialize all final disciplinary actions in a Board order.

(g) All Board final disciplinary actions are public record unless otherwise exempted by law.

(h) The Board shall publish final disciplinary actions.

(i) The Board shall transmit all final disciplinary actions involving criminal acts, physical or economic harm to patients, or serious violations of statute or rule to the Chiropractic Information Network-Board Action Data Bank (CIN-BAD) or other national data bank as required by law.

(j) To the extent allowed by law, the Board shall only transmit final disciplinary actions that involve criminal acts, physical or economic harm to patients, or serious violations of statute or rule.

(k) The Board shall consider reinstating a license that has been finally revoked for more than a year.

(l) The Board may deny reinstatement of a revoked license or grant reinstatement with or without conditions.

(m) A person who fails to comply with any term of an agreed order approved by the Board shall be subject to disciplinary action for failure to follow a final Board order.

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 February 25, 2022.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 305-6700

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CHAPTER 81. ENFORCEMENT ACTIONS AND HEARINGS

22 TAC §81.2

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to 22 TAC §81.2 (Notice for Enforcement and Other Hearings) by removing the requirement that, before a hearing at the State Office of Administrative Hearings (SOAH), a notice of hearing and formal complaint be sent to a respondent by registered or certified mail.

Under the Board's current rules, the Board uses certified mail to initially notify a respondent of a complaint by sending a certified notice of complaint to the respondent's physical address on file with the Board (22 TAC §80.1), which gives notice to the respondent of the allegations against him. During complaint investigations, respondents (and their attorneys, if any) usually formally communicate with Board investigators and legal staff using email. All Board licensees are required to maintain a current physical and email address on file with the Board (22 TAC §72.13). Additionally, as of March 2020, SOAH requires all parties in a contested case to use the eFileTexas electronic filing system for judicial filings, including for notices of hearing and formal complaint; certified mail is no longer a procedural requirement.

By removing the certified mail requirement, the Board anticipates saving over $500 per year in mailing costs.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to

comply with the amendment as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that, for each year of the first five years the amended rule will be in effect, the public benefit is to remove out-of-date notice requirements and to save money for the agency.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed amended 22 TAC §81.2. For each year of the first five years the proposed amended rule is in effect, Mr. Fortner has determined:

(1) The amended rule does not create or eliminate a government program.

(2) Implementation of the proposed amended rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amended rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed amended rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed amended rule does not create a new regulation.

(6) The proposed amended rule does not repeal existing Board rules for an administrative process.

(7) The proposed amended rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed amended rule does not positively or adversely affect the state economy.

Comments on the proposed amended rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The amended rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic,

No other statutes or rules are affected by this proposed amended rule.

§81.2. Notice for Enforcement and Other Hearings.

(a) The Board shall file a docket request with the State Office of Administrative Hearings (SOAH) for any enforcement or other case requiring a formal hearing.

(b) All hearings shall be conducted in accordance with the Administrative Procedures Act (Texas Government Code Chapter 2001) and SOAH's rules of procedures (1 Texas Administrative Code Chapter 155).

(c) In an enforcement case where the Board has the burden of proof, the Board is the petitioner and the licensee or other person against whom a complaint has been filed is the respondent.

(d) In a case where the Board does not have the burden of proof, the licensee or other person is the petitioner and the Board is the respondent.

(e) The Board shall provide notice to a respondent not less than 10 days before the hearing.

(f) The notice shall contain a citation to 1 Texas Administrative Code Chapter 155 and include:

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

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

(3) a reference to the specific sections of Texas Occupations Code Chapter 201, Board rules (22 Texas Administrative Code Chapters 71 - 82), or other law or rules which the respondent is alleged to have violated; and

(4) a statement of the alleged acts relied on by the Board as a violation of the law and rules.

(g) The Board shall serve the notice of hearing and formal complaint on the respondent at the respondent's last known address on file with the Board.

(h) The Board shall serve the notice of hearing and formal complaint by [~~registered or certified mail, return receipt requested, and by~~] regular mail and email.

(i) [~~A respondent may agree in writing to accept service by email or other electronic means.~~]

[~~(j)~~)] SOAH acquires jurisdiction over an enforcement case when the Board files a docket 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 February 25, 2022.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 305-6700

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CHAPTER 82. INTERNAL BOARD PROCEDURES

22 TAC §82.4

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §82.4 (Family Leave) to comply with the requirements of Government Code §§661.021 - 661.028.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There

will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that, for each year of the first five years the proposed rule will be in effect, the public benefit is to permit agency employees to contribute earned hours to a family leave pool.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §82.4. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal rule does not repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: 512-305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Government Code §§661.021 - 661.028, which requires the Board to establish a family leave pool by rule.

No other statutes or rules are affected by this proposed rule.

§82.1. Family Leave Pool.

(a) The Board establishes a family leave pool in accordance with Government Code §§661.021 - 661.028.

(b) The Board's executive director shall administer the family leave pool.

(c) The executive director shall develop and prescribe operating procedures for the family leave pool and include them in the agency's personnel manual.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.7

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.7, concerning the minimum standard of care. House Bill 2056 was passed during the 87th Texas Legislature, Regular Session (2021). The bill amended Chapter 111, Texas Occupations Code, which allows dental health professionals to provide teledentistry dental services to patients. The bill's intent is to eliminate barriers pertaining to access to care, and allow dental health professionals to treat patients without having an in-person visit if the standard of care is met. This proposed amendment changes §108.7(3) - (4) to allow for the provision of teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. A dentist must ask the patient to come into the office for a physical examination if the diagnosis or treatment utilizing teledentistry is not adequate or consistent with the standard of care.

FISCAL NOTE: Casey Nichols, 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: Casey Nichols 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: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols 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 amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by e-mail 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.

This proposed rule implements Chapter 111, Texas Occupations Code.

§108.7. Minimum Standard of Care, General.

Each dentist shall:

(1) conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;

(2) maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist);

(3) obtain, maintain, and review an initial medical history. The medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list," for consistency, may be utilized in obtaining information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a medical history should be reviewed and updated annually;

~~[(3) maintain and review an initial medical history and perform a limited physical evaluation for all dental patients;]~~

~~[(A) The medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list," for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist would do so under the same or similar circumstances.]~~

~~[(B) The limited physical examination shall include, but shall not necessarily be limited to, measurement of blood pressure and pulse/heart rate. Blood pressure and pulse/heart rate measurements are not required to be taken on any patient twelve (12) years of age or younger, unless the patient's medical condition or history indicates such a need.]~~

(4) maintain and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a limited physical examination should be reviewed and updated annually;

~~[(4) obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a medical history and limited physical evaluation should be obtained and reviewed at the initial appointment and updated annually;]~~

(5) for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order;

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience under the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist under the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies;

(6) successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross;

(7) maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient, if the patient is a minor, or the patient has been adjudicated incompetent to manage the patient's personal affairs. A signed, written informed consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, or the treatment plans and procedures involve risks or hazards that could influence a reasonable person in making a decision to give or withhold consent. Such consents must disclose any and all complications, risks and hazards;

(8) safeguard patients against avoidable infections as required by this chapter;

(9) not be negligent in the provision of dental services;

(10) use proper diligence in the dentist's practice;

(11) maintain a centralized inventory of drugs;

(12) report patient death or hospitalization as required by this chapter;

(13) abide by sanitation requirements as required by this chapter;

(14) abide by patient abandonment requirements as required by this chapter;

(15) abide by requirements concerning notification of discontinuance of practice as required by this chapter; and

(16) hold a Level 1 permit (Minimal Sedation permit) issued by the Board before prescribing and/or administering Halcion (triazolam), and should administer Halcion (triazolam) in an in-office setting.

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 February 25, 2022.

TRD-202200697
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 305-8910

22 TAC §108.16

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §108.16, concerning teledentistry. The proposed rule pertains to standards for the provision of teledentistry dental services as set out in House Bill 2056 of the 87th Texas Legislature, Regular Session (2021), and Chapter 111, Texas Occupations Code.

This rule was initially proposed at the September 10, 2021 board meeting and published in the November 12, 2021 issue of the *Texas Register.* During the public comment period, the Board received several stakeholder comments pertaining to the reference of §108.7 in §108.16(e)(2)(A). As a result of stakeholder feedback, the Board voted to amend §108.7 at the February 18, 2022 board meeting, and also voted to re-propose §108.16 with no changes. This will allow the Regulatory Compliance Division to review both §108.7 and §108.16 concurrently.

FISCAL NOTE: Casey Nichols, 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: Casey Nichols 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: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols 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 rule may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, 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.

This proposed rule implements Chapter 111, Texas Occupations Code.

§108.16. Teledentistry.

(a) Purpose. Pursuant to Texas Occupations Code Chapter 111, and Texas Occupations Code §254.001(a), the Board is authorized to adopt rules relating to the practice of dentistry, including teledentistry dental services. This section establishes the standards of practice for teledentistry.

(b) Definition. "Teledentistry dental service" is defined in Texas Occupations Code §111.001(2-a).

(c) Prevention of Fraud and Abuse. Dentists who utilize teledentistry dental services must adopt protocols to prevent fraud and abuse through the use of teledentistry dental services.

(d) Complaints to the Board. Dentists who utilize teledentistry dental services must provide notice of how patients may file a complaint with the Board. Content and method of the notice must contain the same information as set out in §108.3(a)(2) - (3) of this title (relating to Consumer Information).

(e) Practice of Teledentistry.

(1) A dentist, dental hygienist, or dental assistant who delivers teledentistry services to a patient located in Texas must hold an active Texas license or registration issued by the Board.

(2) A dental health professional providing a dental health care service or procedure as a teledentistry dental service:

(A) is subject to the same standard of care that would apply to the provision of the same dental health care service or procedure in an in-person setting as established in §108.7 of this title (relating to Minimum Standard of Care, General);

(B) must establish a practitioner-patient relationship; and

(C) must maintain complete and accurate dental records as set out in §108.8 of this title (relating to Records of the Dentist).

(3) A dentist may simultaneously delegate to and supervise through a teledentistry dental service not more than five health professionals who are not dentists.

(4) Adequate measures must be implemented to ensure that patient communications, recordings, and records are protected consistent with federal and state privacy laws.

(5) Any individual may provide any photography or digital imaging to a Texas licensed dentist or Texas licensed dental hygienist for the sole and limited purpose of screening, assessment, or examination.

(f) Informed Consent. In addition to the informed consent requirements in §108.7 of this title, and §108.8 of this title, informed consent must include the following:

(1) the delegating dentist's name, Texas license number, credentials, qualifications, contact information, and practice location involved in the patient's care. Additionally, the name, Texas license number, credentials, and qualifications of all dental hygienists and dental assistants involved in the patient's care. This information must be publicly displayed and provided in writing to the patient; and

(2) a dentist who delegates a teledentistry dental service must ensure that the informed consent of the patient includes disclosure to the patient that the dentist delegated the service.

(g) Issuance of Prescriptions.

(1) The validity of a prescription issued as a result of a teledentistry dental service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(2) This rule does not limit the professional judgment, discretion, or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a teledentistry dental service.

(3) A valid prescription must be:

(A) issued for a legitimate dental purpose by a practitioner as part of patient-practitioner relationship as set out in Texas Occupations Code §111.005; and

(B) meet all other applicable laws and rules before prescribing, dispensing, delivering, or administering a dangerous drug or controlled substance.

(4) Any prescription drug orders issued as the result of a teledentistry dental service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act, and any other applicable federal and state law.

(h) Limitation on Certain Prescriptions.

(1) In this subsection, the following definitions apply:

(A) "Controlled substance", "opiate", and "prescribe" have the meanings assigned by Texas Health and Safety Code §481.002.

(B) "National holiday" means a day described by Texas Government Code §662.003(a).

(2) When prescribing a controlled substance to a patient as a teledentistry dental service, a dentist must not prescribe more than is necessary to supply a patient for:

(A) if the prescription is for an opiate, a two-day period; or

(B) if the prescription is for a controlled substance other than an opiate, a five-day period.

(3) For each day in a period described by paragraph (2) of this subsection that is a Saturday, Sunday, or national holiday, the period is extended to include the next day that is not a Saturday, Sunday, or national holiday.

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 February 25, 2022.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 305-8910

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§157.4, 157.7, 157.8

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.4, Computation of Time; Mailbox Rule; §157.7, Denial of a License, Renewal or Reinstatement; Adverse Action Against a License Holder; and §157.8, Order Modifications. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The proposed amendments to §157.4 account for circumstances when the agency's physical building may be closed, but the agency is otherwise open for business. The proposed amendment to §157.7 clarify the rule's applicability to unlicensed activity. The proposed amendments to §157.8 clarify when a request for modification should be filed.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed

amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules 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; and

- increase the number of individuals subject to the rule's applicability.

- For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

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

The statute affected by these amendments are Chapter 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.4. Computation of Time; Mailbox Rule.

(a) Computation of Time. The following rules apply when computing any time period specified in Chapters 153, 157 or 159, or in any statute that does not specify a method of computing time:

(1) Exclude the day of the event that triggers the time period;

(2) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(3) Include the last day of the period, except if the last day of the period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(4) [~~Board office closed or inaccessible.~~] If the Board [~~Board's office in Austin~~] is closed [~~or inaccessible~~] on the last day of the period as computed under subsection (a)(3) of this section, then the time period is extended to the first day the Board is open [~~and accessible~~] that is not a Saturday, Sunday, or legal holiday.

(b) Mailbox rule.

(1) Service by mail is complete upon deposit of the notice in a prepaid, properly addressed envelope in a post office or official depository under the care and custody of the United States Postal Service.

(2) Service by electronic mail is complete upon sending an email to the respondent's or applicant's email address as shown in the Board's records.

(3) Presumption of receipt. Unless proven by evidence submitted to the contrary, a rebuttable presumption that respondent or applicant received proper notice from the Board will arise:

(A) immediately after sending electronic mail to the respondent's or applicant's email address as shown in the Board's records; or

(B) three business days after the date the notice is deposited with the United States Postal Service.

(4) Failure to claim or refusal of properly addressed certified or registered mail does not support a finding of nonreceipt.

(c) Definitions. For purposes of this section, the following definitions apply:

(1) Last day - Unless a different time is set in statute or Board order, the last day ends:

(A) For electronic filing, at midnight in the Board's time zone;

(B) For filing by other means, when the Board's office is scheduled to close.

(2) Next day - The next day is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(3) Legal holiday - the term "legal holiday" includes:

(A) a national holiday as defined in Government Code §662.003(a);

(B) a state holiday as defined in Government Code §662.003(b); and

(C) any day declared a holiday by the President or the Governor.

§157.7. Denial of a License, Renewal or Reinstatement; Adverse Action [~~Against a License Holder~~].

(a) Denial of a License, Renewal or Reinstatement.

(1) If the Board denies the issuance, renewal or reinstatement of a license, the Board shall promptly give written notice of denial to the applicant. If the applicant is supervised by another license holder, the Board shall send a copy of the notice of denial to the supervisory appraiser.

(2) The notice of denial shall include:

(A) a statement of the Board's action;

(B) a summary of the facts and laws on which the action is based;

(C) a statement of the right of the person to request a hearing; and

(D) the following language in capital letters in boldface type: IF YOU FAIL TO REQUEST A HEARING IN WRITING WITHIN 30 DAYS, THIS DETERMINATION WILL BECOME FINAL.

(3) If a person fails to request a hearing in writing within 30 days of receiving the notice, the Board's determination will become final.

(b) Adverse Action [~~Against a License Holder~~].

(1) If the Board proposes to take adverse action against a license holder, former license holder, [~~or~~] registrant, or a person for unlicensed activity, the Board shall promptly give written notice to the person against whom the action is proposed to be taken. If an appraiser trainee is the respondent, the Board shall send a copy of the notice to the supervisory appraiser.

(2) The notice of adverse action shall include:

(A) a summary of the facts and laws on which the proposed action is based;

(B) a statement of the action proposed by the Board, including the proposed sanction and/or the amount of any administrative penalties; and

(C) a statement of the right of the person to a hearing.

(c) A license holder who has agreed in writing to suspension or revocation for failure to comply with the terms of a consent order, consent agreement, or agreed order in connection with an application or a previous disciplinary matter is deemed to have had notice and an opportunity for a hearing in a subsequent action resulting from failure to comply with an administrative requirement of probation, such as payment of a fee or completion of coursework.

(d) Notices sent under this section are complete and effective if sent in the manner described in §157.9.

(e) The mailbox rule described in §157.9 applies to notices sent under this section if the notice was sent to the respondent's or applicant's mailing address or email address as shown in the Board's records in the manner described in §157.9.

§157.8. Order Modifications.

The Board will consider a modification of an existing agreed or consent order at its next scheduled Board meeting if the license holder or registrant:

(1) is in compliance with the existing order at the time the request for modification is submitted; and

(2) submits a written request that sets out the specific modification requested and the reason for the modification to the Board's general counsel on or before the 14th day prior to the next [~~a~~] scheduled Board meeting. Submission of a request for modification of an agreed or consent order to the Board does not relieve the license holder or registrant of compliance obligations under the existing order.

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 February 28, 2022.

TRD-202200704
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 936-3088

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SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.9, §157.10

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.9, Notice of Hearing, and §157.10, Right to Counsel; Right to Participate. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The proposed amendments to §157.9 clarify TALCB's procedure for providing notice of hearing consistent with Section 1103.502 of the Texas Occupations Code.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules 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; and

- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register*.

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

which authorizes TALCB to adopt rules relating to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

The statute affected by these amendments are Chapter 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.9. Notice of Hearing.

(a) The notice of hearing must comply with Chapter 2001, Texas Government Code.

(b) The notice of hearing shall be served not later than the 30th day before the hearing date.

(c) Service of notice of hearing must be made in the manner prescribed by Chapter 2001, Texas Government Code, and the rules of the State Office of Administrative Hearings. Notice to a person who is a current license holder or applicant of the Board is complete and effective if sent by certified mail, return receipt requested, to the respondent's or applicant's mailing [~~or email~~] address [~~as shown in the Board's records~~] and sent by:

(1) electronic mail to the address as shown in the Board's records; or

(2) first class mail.[~~; or~~]

[~~(3) certified mail, return receipt requested.~~]

(d) The notice must include the following language in capital letters in boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE AND A DEFAULT JUDGMENT BEING TAKEN AGAINST YOU.

§157.10. Right to Counsel; Right to Participate.

(a) All parties, at their own expense, may be represented by counsel.[~~, which~~] This right may be expressly waived. Parties are entitled to respond and present evidence and argument on all issues involved, and to conduct cross examinations for full and true disclosure of the facts.

(b) Costs of a transcript of a SOAH proceeding ordered by a party shall be paid by that party. Costs of a transcript of a SOAH proceeding ordered by the judge shall be split equally between the parties.

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 February 25, 2022.

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 936-3088

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SUBCHAPTER C. POST HEARING

22 TAC §157.17, §157.18

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.17, Final Decisions and Orders, and §157.18, Motions for Rehearing. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The proposed amendments to §157.17 align the section more closely with the applicable statute (§ 2001.058(e), Government Code). The proposed amendments to §157.18 define the methods in which a motion for rehearing may be filed with TALCB.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules 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; and

- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

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

The statute affected by these amendments are Chapter 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.17. Final Decisions and Orders.

(a) After a proposal for decision has been issued by an administrative law judge, the Board will render the final decision in the contested case or remand the proceeding for further consideration by the administrative law judge.

(b) The Board is responsible for imposing disciplinary action and/or assessing administrative penalties, if any, against a respondent who is found to have violated any of the Board's statutes or rules. The Board welcomes recommendations from an administrative law judge as to the sanctions to be imposed, but the Board is not required to give presumptively binding effect to the judge's recommendations and is not bound by such recommendations.

(c) If the Board remands the case to the administrative law judge, the Board may direct that further consideration be accomplished with or without reopening the hearing and may limit the issues to be considered. If, on remand, additional evidence is admitted that results in a substantial revision of the proposal for decision, or the underlying facts, an amended or supplemental proposal for decision shall be prepared by the administrative law judge and the provisions of this subchapter shall apply. Exceptions and replies shall be limited to items contained in the amended or supplemental proposal for decision.

(d) The proposal for decision may be acted upon by the Board after the expiration of the applicable time periods for filing exceptions and replies to exceptions, and after the administrative law judge has ruled on any exceptions and replies.

(e) Any party may request oral arguments before the Board prior to the final disposition of the contested case. If the Board grants oral argument, oral argument will be conducted in accordance with this subsection.

(1) The chairperson or the Board member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) Oral arguments on the proposal for decision shall be limited to the record established at the contested case hearing. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the contested case hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the contested case hearing.

(3) In presenting oral arguments, the party bearing the burden of proof shall open and close. The party responding may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Board may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the record and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Board, and any discussion by the member of the Board, the presiding member shall call for a motion regarding disposition of the contested case. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) Final orders on contested cases shall be in writing and signed by the presiding officer of the Board. Final orders shall include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed. Parties shall be notified as provided in Chapter 2001, Texas Government Code. On written request, a copy of the decision or order shall be delivered or mailed to any party and to the respondent's attorney of record.

(g) The Board may change a finding of fact or conclusion of law in a proposal for decision when the Board determines that:

(1) the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) a technical error in a finding of fact should be changed.

(h) If the Board modifies, amends, or changes a finding of fact or conclusion of law in a proposal for decision, the order shall reflect the Board's changes [~~as stated in the record of the meeting~~] and state the specific reason and legal basis for the changes.

(i) If the Board does not follow the recommended disciplinary action and/or administrative penalty in a proposal for decision, the order shall explain why the Board chose not to follow the recommendation [~~as stated in the record of the meeting~~].

(j) Imminent Peril. If the Board finds that an imminent peril to the public health, safety, or welfare requires immediate effect on a final decision or order in a contested case, it shall recite the factual and legal basis for its finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered, and no motion for rehearing is required as a prerequisite for appeal.

(k) Conflict of Interest. A Board member shall recuse himself or herself from all deliberations and votes regarding any matter:

(1) the Board member reviewed as a member of a Peer Investigative Committee;

(2) involving persons or transactions about which the Board member has a conflict of interest;

(3) involving persons or transactions related to the Board member such that it creates [~~sufficiently closely as to create~~] the appearance of a conflict of interest; or

(4) in which the Board member participated in the negotiation of a consent order.

§157.18. Motions for Rehearing.

(a) Motions for rehearing in proceedings under Chapter 1103, Texas Occupations Code, are governed by §§2001.144 - 2001.147, Texas Government Code, and this section.

(b) Motions for rehearing in proceedings under Chapter 1104, Texas Occupations Code, are governed by §1104.216, Texas Occupations Code, §§2001.144 - 2001.147, Texas Government Code, and this section.

(c) A timely-filed motion for rehearing is a prerequisite to appeal, except as provided in §157.17 of this subchapter. The motion must be filed with the Board by:

(1) delivering the motion in-person to the Board's headquarters;

(2) sending the motion via email to general.counsel@talcb.texas.gov; or

(3) sending the motion via fax to (512) 936-3788, ATTN: TALCB General Counsel.

(d) Replies to a motion for rehearing may be filed as provided in Chapter 2001, Texas Government Code.

(e) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Board will take no action, and the motion will be overruled by operation of law.

(f) Any party may request oral arguments before the Board prior to the final disposition of the motion for rehearing. If the Board grants a request for oral argument, oral arguments will be conducted in accordance with this subsection.

(1) The chairperson or the Board member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) Oral arguments on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the contested case hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the contested case hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Board may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Board, and any discussion by the member of the Board, the presiding member shall call for a vote on the motion. A member of the Board need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(g) A decision is final and appealable on the date rendered if:

(1) the Board finds that an imminent peril to the public health, safety or welfare requires immediate effect; and

(2) the Board's decision or order recites this finding and the fact that the decision is final and effective on the date rendered.

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

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SUBCHAPTER E. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §§157.30 - 157.33, 157.36 - 157.38

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC § 157.30, Alternative Dispute Resolution; §157.31, Investigative Conference; §157.32, Negotiated Settlement; §157.33, Mediation; §157.36, Stipulations; §157.37, Agreements; and §157.38, Confidentiality. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The proposed amendments to §§157.31(j); 157.33(a); and 157.37(b) reflect changes to TALCB division names. In §157.32, the proposed amendments add an additional method for conducting negotiations, consistent with §157.31. Finally, the proposed amendments to §157.33(e) clarify the equal splitting of fees incurred between parties attending mediation.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules 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; and

increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

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

The statute affected by these amendments are Chapter 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.30. Alternative Dispute Resolution.

(a) It is the Board's policy to encourage the fair and expeditious resolution of all formal complaint matters through voluntary settlement procedures. The Board's Alternative Dispute Resolution (ADR) procedures are set out in this subchapter, however, the Board encourages the resolution of disputes at any time, whether under this subchapter or not.

(b) ADR [~~procedures~~] may be requested by the Board, a respondent or an applicant any time after the Board initiates a formal complaint against a respondent or denies an application.

(c) This subchapter may apply to a contested case upon unanimous motion of the parties and at the discretion of the administrative law judge. In such cases, it is within the discretion of the judge to grant a continuance of the hearing to allow the use of ADR [~~procedures~~].

(d) A contingent dismissal is a method of alternative dispute resolution available only at the discretion of the Board and its staff. An administrative law judge may not recommend a contingent dismissal as a method to resolve a contested case.

§157.31. Investigative Conference.

(a) The Board may request an applicant or respondent to schedule an investigative conference to discuss a pending license application or the allegations of a pending complaint.

(b) The applicant or respondent may choose to have the investigative conference:

(1) in person at the Board's office in Austin, Texas;

(2) by telephone;

(3) by video conference; or

(4) in writing.

(c) An applicant or respondent may, but is not required to, have an attorney or other advocate present at an investigative conference.

(d) An applicant or respondent will be provided with a Statement of Investigative Conference Procedures and Rights (IC Form) not later than three days before the date of the investigative conference. The applicant or respondent and the applicant's or respondent's attorney, if any, must acknowledge receipt of the IC Form by signing it and delivering it to the Board at the beginning of the investigative conference.

(e) The Board will provide a copy of the investigative report to the applicant or respondent and the applicant's or respondent's representative(s), if any, not later than three days before the date of the investigative conference if the applicant or respondent and the applicant's or respondent's representative(s)[, ~~if any~~]:

(1) Submit a written request for a copy of the investigative report not later than five days before the date of the investigative conference; and

(2) Sign the Board's confidentiality agreement prohibiting the re-release of the investigative report, without written permission of the Board or a court order, to anyone other than the:

(A) applicant;

(B) respondent;

(C) applicant's or respondent's supervisory appraiser, if any;

(D) applicant's or respondent's legal representative(s); or

(E) an expert witness for the applicant or respondent.

(f) Participation in an investigative conference is not mandatory and may be terminated at any time by any person.

(g) Recording Investigative Conferences. Any person may record an investigative conference by providing the notice required in this section.

(1) Notice Required.

(A) A person choosing to record an investigative conference must provide written notice to the other person(s) participating in the investigative conference three days before the date of the conference.

(B) The notice must state how the person intends to record the investigative conference.

(C) For purposes of this section, the term "written notice" includes a letter or e-mail.

(2) Audio Recordings. A person who chooses to make an audio recording of an investigative conference must provide:

(A) the recording equipment; and

(B) if requested by another person during or after the investigative conference, a copy of the audio recording at the recording person's expense within seven days after the date of the request.

(3) Recording by Court Reporter. A person who chooses to have a court reporter record an investigative conference does so at the person's own expense and must:

(A) allow any person who participates in the investigative conference to make corrections to the court reporter's transcript; and

(B) provide an electronic copy of the final transcript to all persons who participate in the investigative conference at the recording person's expense within seven days after the transcript is final.

(h) At the conclusion of the investigative conference, the Board staff may propose a settlement offer that can include administrative penalties and any other disciplinary action authorized by the Act or recommend that the complaint be dismissed.

(i) The respondent may accept, reject, or make a counter offer to the proposed settlement not later than ten (10) days following the date of the investigative conference.

(j) If the parties cannot reach a settlement not later than ten (10) days following the date of the investigative conference, the matter will be referred to the Director of TALCB or his or her designee [~~Standards and Enforcement Services~~] to pursue appropriate action.

(k) In this section, the term "person" includes:

(1) an applicant for a license or registration;

(2) a respondent to a complaint; and

(3) the Board.

§157.32. Negotiated Settlement.

(a) The Board staff and the respondent or applicant may enter into a settlement agreement following negotiations at any time without first engaging in an investigative conference.

(b) Negotiations may be conducted in person, by telephone, video conference, or through any form of written communication, including email.

§157.33. Mediation.

(a) If a resolution cannot be reached through an investigative conference or negotiated settlement and with the consent of all parties, the Board may schedule an original mediation with SOAH before filing a petition on the formal complaint with SOAH. Mediation will be set for either a four (4) hour or eight (8) hour session, at the discretion of the Board, based on the nature and complexity of the formal complaint. The Board will not refuse any reasonable request for mediation, as determined by the Director of TALCB or his or her designee [~~Standards and Enforcement Services~~]. Neither a petition nor a reply is required to be filed with SOAH with an original mediation request.

(b) After the Board files a Request to Docket form for mediation, SOAH will advise the parties of the mediator and the date, time and place for the mediation.

(c) The parties at the mediation must have authority to settle, provided however, all agreements signed by Board staff at the mediation are subject to final approval by the Board.

(d) If the mediator is a SOAH judge, that person will not also sit as the administrative law judge for the contested case hearing if mediation is not successful.

(e) A respondent or applicant participating in a mediation at SOAH will pay one-half (1/2) of SOAH's fees incurred [~~fee~~] for the mediation directly to the Board before the date of the mediation. SOAH's fee for mediation will be based on the contract rate that SOAH bills the Board. If mediation does not take place due to settlement or cancellation by one of the parties, the Board will return the fee paid by the respondent or applicant, less one-half (1/2) any fees incurred in connection with mediation. [~~for a four (4) or eight (8) hour mediation session as applicable.~~]

§157.36. Stipulations.

If [~~When the~~] Alternative Dispute Resolution does [~~procedures do~~] not result in the full settlement of a matter, the parties, in conjunction with the mediator if applicable, may limit the issues in a contested case through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the administrative law judge assigned to conduct the contested case hearing on the merits and shall be made part of the hearing record.

§157.37. Agreements.

(a) Except for contingent dismissals, all agreements between or among parties that are reached as a result of Alternative Dispute Resolution must be committed to writing, signed by the respondent or applicant and a Board staff attorney and submitted to the Board for approval. Once signed by the Board, the agreement will have the same force and effect as a written contract.

(b) If the Board does not approve a proposed settlement, the respondent or applicant will be so informed and the matter will be referred to the Director of TALCB or his or her designee [~~Standards and Enforcement~~] to pursue appropriate action.

§157.38. Confidentiality.

(a) Except as provided in subsections (c) and (d) of this section, communications [~~a communication relating to the subject matter~~] made by a participant during [~~in an~~] Alternative Dispute Resolution (ADR) concerning the subject matter of the ADR, are [~~procedure, whether before or after the institution of formal ADR proceedings, is~~] confidential, [~~is~~] not subject to disclosure, and may not be used as evidence in any [~~further~~] proceeding.

(b) Any notes or record made of or during [~~an~~] ADR [~~procedure~~] are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of [~~an~~] ADR [~~procedure~~] is admissible or discoverable only if it is admissible or discoverable independent of ADR [~~the procedure~~].

(d) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(e) All communications in a mediation between parties and between each party and the mediator are confidential. No shared information will be given to the other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator will not be provided to other parties and will not be filed or become part of the contested case record. All notes taken during [~~the~~] mediation [~~conference~~] will be destroyed at the end of the process.

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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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §§531.1 - 531.3

The Texas Real Estate Commission (TREC) proposes the repeal of 22 TAC §531.1, Fidelity; §531.2, Integrity; and §531.3, Competency. The proposed repeal of these sections is made as a result of the Commission's quadrennial rule review, and more specifically, is the result of a proposed new definitions section in this chapter, which will require the renumbering of these sections. TREC will renumber and replace these rules, with some proposed changes.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the repeal. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed repeal. There is no significant economic cost anticipated for persons who are required to comply with the proposed repeal. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the repeal as proposed will be greater clarity in the rules.

For each year of the first five years the proposed repeal is in effect the repeal 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 an existing regulation;

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

- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeals are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeals.

§531.1. Fidelity.
§531.2. Integrity.
§531.3. Competency.

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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Abby Lee
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22 TAC §§531.1 - 531.4, 531.19, 531.20

The Texas Real Estate Commission (TREC) proposes new 22 TAC §531.1, Definitions; §531.2, Fidelity; §531.3, Integrity; §531.4, Competency; and amendments to §531.19, Discriminatory Practices; and §531.20, Information About Brokerage Services.

The proposed new rules and amendments to Chapter 531 are made as a result of the Commission's quadrennial rule review. The proposed changes add a new definitions section for ease of reading and update terminology for consistency throughout the chapter. Importantly, the proposed amendments to 22 TAC 531.20, Information About Brokerage Services, are not intended to change who must comply with these rules *(i.e.,* active real estate brokers and sales agents), but merely to use more consistent and concise language.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed new rules and amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed new rules or amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rules or amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules.

For each year of the first five years the proposed new rules and amendments are in effect the new rules and amendments 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 rules' applicability;

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

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rules and amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed new rules and amendments.

§531.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Texas Real Estate Commission.

(2) License Holder--A real estate broker or sales agent licensed under Chapter 1101, Occupations Code.

§531.2. Fidelity.

A license holder, while acting as an agent for another, is a fiduciary. Special obligations are imposed when such fiduciary relationships are created. They demand:

(1) that the primary duty of the license holder is to represent the interests of the client, and the license holder's position, in this respect, should be clear to all parties concerned in a real estate transaction; that, however, the license holder, in performing duties to the client, shall treat other parties to a transaction fairly;

(2) that the license holder be faithful and observant to trust placed in the license holder, and be scrupulous and meticulous in performing the license holder's functions; and

(3) that the license holder place no personal interest above that of the client.

§531.3. Integrity.

A license holder has a special obligation to exercise integrity in the discharge of the license holder's responsibilities, including employment of prudence and caution so as to avoid misrepresentation, in any way, by acts of commission or omission.

§531.4. Competency.

It is the obligation of a license holder to be knowledgeable and competent as a real estate brokerage practitioner. The license holder must:

(1) be informed on local market issues and conditions affecting real estate in the geographic area where a license holder provides services to a client;

(2) be informed on national, state, and local issues and developments in the real estate industry;

(3) exercise judgment and skill in the performance of brokerage activities; and

(4) be educated in the characteristics involved in the specific type of real estate being brokered for others.

§531.19. Discriminatory Practices.

(a) No [~~real estate~~] license holder shall inquire about, respond to or facilitate inquiries about, or make a disclosure of an owner, previous or current occupant, potential purchaser, lessor, or potential lessee of real property which indicates or is intended to indicate any preference, limitation, or discrimination based on the following:

(1) race;

(2) color;

(3) religion;

(4) sex;

(5) national origin;

(6) ancestry;

(7) familial status; or

(8) disability.

(b) For the purpose of this section, disability includes AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the United States Public Health Service.

§531.20. Information About Brokerage Services.

(a) The Commission adopts by reference the Information About Brokerage Services Notice, TREC No. IABS 1-0 (IABS Notice). The IABS Notice is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) Each license holder [~~active real estate broker and sales agent~~] shall provide:

(1) a link to a completed IABS Notice in a readily noticeable place on the homepage of each business website, labeled:

(A) "Texas Real Estate Commission Information About Brokerage Services", in at least 10 point font; or

(B) "TREC Information About Brokerage Services", in at least 12 point font; and

(2) the completed IABS Notice at the first substantive communication as required under §1101.558, Texas Occupations Code.

(c) For purposes of §1101.558, Texas Occupations Code, the completed IABS Notice can be provided:

(1) by personal delivery by the license holder [~~broker or sales agent~~];

(2) by first class mail or overnight common carrier delivery service;

(3) in the body of an email; or

(4) as an attachment to an email, or a link within the body of an email, with a specific reference to the IABS Notice in the body of the email.

(d) The link to a completed IABS Notice may not be in a footnote or signature block in an email.

(e) For purposes of this section, business website means a website on the internet that:

(1) is accessible to the public;

(2) contains information about a license holder's real estate brokerage services; and

(3) the content of the website is controlled by the license holder.

(f) For purposes of providing the link required under subsection (b)(1) on a social media platform, the link may be located on:

(1) the account holder profile; or

(2) a separate page or website through a direct link from the social media platform or account holder profile.

(g) License holders may reproduce the IABS Notice published by the Commission, provided that the text of the IABS Notice is copied verbatim and the spacing, borders and placement of text on the page must appear to be identical to that in the published version of the IABS Notice, except that the Broker Contact Information section may be prefilled.

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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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 936-3057

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CHAPTER 533. PRACTICE AND PROCEDURE

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §533.1, Definitions; §533.2, Purpose and Scope; §533.3, Filing and Notice; §533.4, Failure to Answer, Failure to Attend Hearing and Default; §533.5, Transcript Cost; §533.7, Final Decisions and Orders; §533.8, Motions for Rehearing; §533.21, Negotiated Settlement; §533.25, Informal Proceedings; §533.30, Staff Mediation; §533.32, Appointment of Mediator; §533.33, Outside Mediation; §533.36, Agreements; and §533.40, Negotiated Rulemaking.

The proposed amendments to Chapter 533 are made as a result of the Commission's quadrennial rule review. The proposed changes update terminology for consistency throughout the chapter. The language "Interpreters and Translators" is added to the title of 22 TAC §533.5, Transcript Cost, to better reflect the content of the section and language is removed from subsection (b) that was inconsistent with applicable law. Subsection (f) of 22 TAC §533.7, is amended to more closely align with the applicable statute (§2001.058(e), Government Code). Finally, subsection (d) of 22 TAC §533.8 is amended to increase transparency regarding the motion for rehearing process.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules.

For each year of the first five years the proposed amendments are in effect the amendments 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;

- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

22 TAC §533.1

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§533.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) ADR--Alternative dispute resolution.

(2) ADR Procedures--Alternatives to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third-party.

(3) APA--The Administrative Procedure Act (Texas Government Code, Chapter 2001).

(4) Applicant--Any person seeking a license, certificate, registration, approval, or permit from the Commission.

(5) Commission--The Texas Real Estate Commission.

(6) Complainant--Any person who has filed a complaint with the Commission against any person whose activities are subject to the jurisdiction of the Commission.

(7) Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Commission and/or the Executive Director [~~Administrator~~] after an opportunity for adjudicative hearing.

(8) Executive Director--The Executive Director of the Texas Real Estate Commission.

(9) Mailing Address--The mailing address as provided to the Commission by a license holder and maintained as required by the Commission's rules or as provided to the Commission by an applicant [~~Applicant~~] or as shown in the Commission's records for a respondent [~~Respondent~~] who is not a license holder. The mailing address for a respondent [~~Respondent~~] that holds an active sales agent license shall be the mailing address of the sales agent's sponsoring broker as shown in the Commission's records.

(10) License--The whole or part of any registration, license, certificate, approval, permit, or similar form of permission required or permitted by law issued by the Commission.

(11) Party--A person admitted to participate in a case before the Commission or the Executive Director [~~Administrator~~].

(12) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(13) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal arguments [~~argument~~], or otherwise addresses matters involved in the case.

(14) Respondent--Any person, licensed or unlicensed, who has been charged with violating a law that establishes a regulatory program administered by the Commission or a rule or order issued by the Commission.

(15) Sanctions--Any administrative penalty, disciplinary or remedial action imposed by the Commission for violations of Texas Occupations Code, Chapter 1101, 1102, or 1105 or the Rules adopted by the Commission pursuant to those chapters.

(16) SOAH--State Office of Administrative Hearings.

(17) TAC--Texas Administrative Code.

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

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SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE

22 TAC §§533.2 - 533.5, 533.7, 533.8

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§533.2. Purpose and Scope.

This subchapter provides for an efficient and uniform system of practice and procedure before the Commission. This subchapter governs the institution, conduct, and determination of adjudicative proceedings required or permitted by law, whether instituted by the Commission or by the filing of an application, claim, complaint, or any other pleading. This subchapter does not enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Commission, the Executive Director [~~Administrator~~], or the substantive rights of any person or agency.

§533.3. Filing and Notice.

(a) If the Commission denies an application for a license, the Commission shall send the applicant written notice of the denial. An applicant may accept the denial or make a written request for a hearing on that denial. If an applicant fails to request a hearing in writing not later than the 30th day after the date the notice denying an application is sent, the Commission's denial is final.

(b) When an application is denied by the Commission, no subsequent application will be accepted from the applicant until two years after the date of the Commission's written notice of denial under subsection (a) of this section.

(c) If after investigation of a possible violation and the facts surrounding that possible violation the Commission determines that a violation has occurred, the Commission may issue a written Notice of Alleged Violation to the respondent [~~Respondent~~]. The Commission shall provide notice in accordance with the APA.

(d) Not later than the 30th day after the date on which the Notice of Alleged Violation is sent, the respondent [~~Respondent~~] may:

(1) accept the determination of the Commission, including sanctions recommended by the Commission; or

(2) make a written request for a hearing on that determination.

(e) Upon receipt of a written request for hearing, the Commission shall submit a request to docket case to SOAH accompanied by copies of relevant documents giving rise to a contested case.

(f) When the Commission submits a request to docket case with SOAH, SOAH acquires jurisdiction over a contested case until SOAH issues final amendments or corrections to the Proposal for Decision. In case of a conflict with the Commission's rules, SOAH's rules control while SOAH has jurisdiction.

(g) Pleadings, other documents, and service to SOAH shall be filed in accordance with SOAH's rules.

(h) If a [~~real estate~~] sales agent is a respondent [~~Respondent~~], the Commission will notify the sales agent's sponsoring broker of the hearing. If an apprentice inspector or real estate inspector is a respondent [~~Respondent~~], the Commission will notify the sponsoring professional inspector of the hearing. Notice under this subsection need not be provided by certified or registered mail.

(i) Any document served upon a party is prima facie evidence of receipt, if it is directed to the party's mailing address or email address. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of nondelivery.

§533.4. Failure to Answer, Failure to Attend Hearing and Default.

(a) If, not later than the 30th day after the date a Notice of Alleged Violation is sent, the respondent [~~Respondent~~] fails to accept the Commission's determination and recommended sanctions, or fails to make a written request for a hearing on the determination, the Commission shall enter a default order against the respondent [~~Respondent~~], incorporating the findings of fact and conclusions of law in the Notice of Alleged Violation, which shall be deemed admitted.

(b) The Commission may delegate to the Executive Director the Commission's authority to act under Texas Occupations Code, §1101.704(b) and subsection (a) of this section.

(c) SOAH rules relating to Default Proceedings and Dismissal Proceedings apply when a respondent [~~Respondent~~] or applicant [~~Applicant~~] fails to appear on the day and time set for administrative hearing. In that case, the Commission's staff may move either for dismissal of the case from SOAH's docket or for the issuance of a default Proposal for Decision by the administrative law judge. If the administrative law judge issues an order dismissing the case from the SOAH docket or issues a default Proposal for Decision, the factual allegations against the respondent [~~Respondent~~] or applicant [~~Applicant~~] filed at SOAH are admitted and the Commission shall enter a default order against the respondent [~~Respondent~~] or applicant [~~Applicant~~] as set out in the Notice of Hearing sent to the respondent [~~Respondent~~] or applicant [~~Applicant~~]. No additional proof is required to be submitted to the Commission before the Commission enters the final order.

§533.5. Transcript Cost; Interpreters and Translators.

(a) Cost of a transcript of a SOAH proceeding ordered by a party is [~~are~~] paid by that party. Cost of a transcript of a SOAH proceeding ordered by the administrative law judge is [~~are~~] split equally between the parties.

(b) A party or witness who needs an interpreter or translator is responsible for making the request under SOAH rules. [~~The cost of the interpreter or translator is borne by the party requesting the service.~~]

§533.7. Final Decisions and Orders.

(a) After a Proposal for Decision has been issued by an administrative law judge, the Commission will render the final decision in a contested case or remand the proceeding for further consideration by the administrative law judge. The Commission is responsible for imposing disciplinary action and/or assessing administrative penalties against respondents [~~Respondents~~] who are found to have violated any of the Commission's statutes or rules. The Commission welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the Commission is not required to give presumptively binding effect to the administrative law judges' recommendations and is not bound by such recommendations.

(b) If the Commission remands the case to the administrative law judge, the Commission may direct that further consideration be accomplished with or without reopening the hearing and may limit the issues to be considered. If, on remand, additional evidence is admitted that results in a substantial revision of the Proposal for Decision, or the underlying facts, the administrative law judge shall prepare an amended or supplemental Proposal for Decision and this subchapter applies. Exceptions and replies are limited to items contained in the supplemental Proposal for Decision.

(c) The Proposal for Decision may be acted on by the Commission after the administrative law judge has ruled on any exceptions or replies to exceptions or on the day following the day exceptions or replies to exceptions were due if no such exceptions or replies were filed.

(d) Any party may request oral argument before the Commission before the final disposition of the contested case. An oral argument is conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) The chairperson or the Commission member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments presented by the parties.

(2) The hearing on the Proposal for Decision is limited to the record. New evidence may not be presented on the substance of the case unless the party submitting the evidence establishes that the new evidence was not reasonably available at the time of the original hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting an oral argument, the party bearing the burden of proof opens and closes. The party responding may offer a rebuttal argument. A party may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Commission may ask questions of the parties. If a party is represented by counsel, the Commission must direct the questions to the party's attorney. Questions must be limited to the record and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Commission, and any discussion by the members [~~member~~] of the Commission, the presiding member shall call for a motion regarding disposition of the contested case. The presiding member may vote on the motion. A motion is granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(e) It is the policy of the Commission to change a finding of fact or conclusion of law in a Proposal for Decision of an administrative law judge when the Commission determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(f) If the Commission modifies, amends, or changes a finding of fact or conclusion of law in a Proposal for Decision, the order shall reflect the Commission's changes [~~as stated in the record of the meeting~~] and state the specific reason and legal basis for the changes. If the Commission does not follow the recommended sanctions in a Proposal

for Decision, the order shall explain why the Commission chose not to follow the recommendation [~~as stated in the record of the meeting~~].

(g) Final orders on contested cases shall be in writing and signed by the presiding officer of the Commission. Final orders shall include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed. Parties will be notified and given a copy of the decision as provided by the APA. A decision is final as provided by the APA.

(h) If the Commission or the Executive Director finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, that finding shall be recited in the decision or order as well as the fact that the decision or order is final and effective on the date signed. The decision or order is then final and appealable on the date signed and a motion for rehearing is not required as a prerequisite for appeal.

(i) Conflict of Interest. A Commission member shall recuse themselves [~~himself or herself~~] from all deliberations and votes regarding any matter:

(1) the member reviewed during an informal proceeding pursuant to §533.25 of this chapter [~~Informal Proceeding~~];

(2) involving persons or transactions about which the member has a conflict of interest; or

(3) involving persons or transactions related to the member such that it creates [~~sufficiently closely as to create~~] the appearance of a conflict of interest.

§533.8. Motions for Rehearing.

(a) The timely filing of a motion for rehearing is a prerequisite to appeal. The motion must be filed with the Commission by:

(1) delivering the motion in-person to the Commission's headquarters;

(2) sending the motion via email to administration@trec.texas.gov; or

(3) sending the motion via fax to (512) 936-3788, ATTN: TREC General Counsel.

(b) Motions for rehearing are controlled by the APA, §§2001.145 - 2001.147 and this section.

(c) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error, such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Commission will take no action and the motion will be overruled by operation of law.

(d) The Commission delegates authority to hear and rule on motions for rehearing to the Commission's Enforcement Committee, consisting of three Commission members appointed by the Commission chair. A motion for rehearing may be ruled upon pursuant to §2001.146(d), Texas Government Code.

(e) Any party may request oral arguments before the Enforcement Committee prior to the final disposition of the motion for rehearing. If the Enforcement Committee grants a request for oral argument, oral arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) The chair of the Enforcement Committee or the member designated by the chair to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence, such as excerpts of the record before the presiding officer, may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidenced can establish that the new evidence was not reasonably available at the time of the original hearing, or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal, subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Enforcement Committee may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Enforcement Committee, and any discussion by the members of the Enforcement Committee, the presiding member shall call for a vote on the motion. A member of the Enforcement Committee need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the Enforcement Committee members are present and vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) A petition for judicial review must be filed in a District Court of Travis County Texas as provided by the APA. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(g) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

(h) If, after judicial review, the administrative penalty is reduced or not assessed, the Executive Director shall remit to the person charged the appropriate amount, plus accrued interest if the administrative penalty has been paid, or shall execute a release of the bond if a supersedes bond has been posted. The accrued interest on amounts remitted by the Executive Director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed administrative penalty is paid to the Commission and ending on the date the administrative penalty is remitted.

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 C. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §§533.21, 533.25, 533.30, 533.32, 533.33, 533.36

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§533.21. Negotiated Settlement.

(a) Commission staff and the respondent [~~Respondent~~] or applicant [~~Applicant~~] may enter into a settlement agreement following negotiations at any time.

(b) Negotiations may be conducted in person[~~,~~] or by electronic, telephonic, or [~~phone, or through any form of~~] written communication.

§533.25. Informal Proceedings.

(a) Informal disposition of any contested case involving a respondent may be made through an informal conference pursuant to Texas Occupations Code, §1101.660.

(b) A respondent may request an informal conference; however, the decision to hold a conference shall be made by the Director of [~~Standards and~~] Enforcement [~~Services~~].

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) An informal conference may be conducted in person[~~,~~] or by electronic, telephonic, or written communication.

(e) The Director of [~~Standards and~~] Enforcement [~~Services~~] or the director's designee shall decide upon the time, date, and place of the informal conference[~~,~~] and provide written notice to the respondent. Notice shall be provided by certified mail no less than ten days prior to the date of the conference to the last known mailing address of the respondent. The ten days shall begin on the date of mailing. The respondent may waive the ten-day notice requirement.

(f) A copy of the Commission's rules concerning informal conferences shall be enclosed with the notice of the informal conference. The notice shall inform the respondent of the following:

(1) that the respondent may be represented by legal counsel;

(2) that the respondent may offer documentary evidence as may be appropriate;

(3) that at least one public member of the Commission shall be present;

(4) that two staff members, including the staff attorney assigned to the case, with experience in the regulatory area that is the subject of the proceedings, shall be present;

(5) that the respondent's attendance and participation is voluntary; and

(6) that the complainant involved in the alleged violations may be present.

(g) The notice of the informal conference shall be sent to the complainant at their [~~his or her~~] last known mailing address. The complainant shall be informed that they [~~he or she~~] may appear in person or may submit a written statement for consideration at the informal conference.

(h) The conference shall be informal and need not follow the procedures established in this chapter for contested cases and formal hearings.

(i) The respondent, the respondent's attorney, the Commission member, and the staff members may question the respondent or complainant, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(j) The staff attorney assigned to the case shall attend each informal conference. The Commission member or other staff member may call upon the attorney at any time for assistance in the informal conference.

(k) No formal record of the proceedings of the informal conference shall be made or maintained.

(l) The complainant may be excluded from the informal conference except during the complainant's oral presentation. The respondent, the respondent's attorney, and Commission staff may remain for all portions of the informal conference, except for consultation between the Commission member and Commission staff.

(m) The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(n) At the conclusion of the informal conference, the Commission member or staff members may propose an informal settlement of the contested case. The proposed settlement may include administrative penalties or any disciplinary action authorized by the Act. The Commission member or staff members may also recommend that no further action be taken.

(o) The respondent may either accept or reject the proposed settlement recommendations at the conference. If the proposed settlement recommendations are accepted, a proposed agreed order shall be prepared by the staff attorney and forwarded to the respondent. The order shall contain agreed findings of fact and conclusions of law. The respondent shall execute the proposed agreed order and return the executed order to the Commission not later than the 10th day after their [~~his or her~~] receipt of the proposed agreed order. If the respondent fails to sign and return the executed proposed agreed order within the stated time period, the inaction shall constitute rejection of the proposed settlement recommendation.

(p) If the respondent rejects the proposed settlement recommendation, the matter shall be referred to the Director of [~~Standards and~~] Enforcement [~~Services~~] for appropriate action.

(q) If the respondent signs and accepts the proposed agreed order, it shall be signed by the staff attorney and submitted to the Executive Director [~~Administrator~~] for approval.

(r) If the Executive Director [~~Administrator~~] does not approve a proposed agreed order, the respondent shall be so informed and the matter shall be referred to the Director of [~~Standards and~~] Enforcement [~~Services~~] for other appropriate action.

(s) A license holder's opportunity for an informal conference under this subchapter shall satisfy the requirements [~~requirement~~] of the APA, §2001.054(c).

(t) The Commission may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal conference instead of or in addition to imposing an administrative penalty pursuant to Texas Occupations Code, §1101.659. The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this title. The Commission may not require payment of other damages or estimate harm in a refund order.

§533.30. Staff Mediation.

(a) Commission staff, who have received a minimum of 40 hours of formal mediation training, may mediate a resolution of a complaint between the Commission, a respondent [~~Respondent~~], and a complainant upon agreement of all parties.

(b) After receipt of a complaint that meets the requirements to be investigated under Texas Occupations Code, §1101.204(b), Commission staff may refer a complaint for mediation to a Commission staff mediator.

(c) Mediation under this section is voluntary.

(d) If an agreed resolution between the Commission, a respondent [~~Respondent~~], and a complainant cannot be reached, the Commission staff mediator will not have any further involvement with the continued investigation or resolution of the complaint.

§533.32. Appointment of Mediator.

(a) For each matter referred for ADR procedures, the ADR administrator [~~Administrator~~] shall mediate or assign another Commission [~~commission~~] mediator unless the parties agree upon the use of another agency's mediator or private mediator. The ADR administrator [~~Administrator~~] may assign a substitute or additional mediator to a proceeding as the ADR administrator [~~Administrator~~] deems necessary.

(b) A private mediator may be hired for Commission [~~commission~~] ADR procedures provided that:

(1) the parties unanimously agree to use a private mediator;

(2) the parties unanimously agree to the selection of the person to serve as the mediator; and

(3) the mediator agrees to be subject to the direction of the Commission's [~~commission's~~] ADR administrator [~~Administrator~~] and to all time limits imposed by the administrator [~~Administrator~~], statute, or regulation.

(c) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the parties, unless otherwise agreed upon by the parties, and shall be paid directly to the mediator.

(d) All mediators in Commission [~~commission~~] mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

§533.33. Outside Mediation.

(a) At the discretion of the Director of [~~Standards and~~] Enforcement [~~Services~~] and with the consent of all parties, mediation with an outside mediator may be scheduled between the Commission and a respondent [~~Respondent~~] or applicant [~~Applicant~~] when the Commission anticipates initiation of an adverse action against a respondent [~~Respondent~~] or applicant [~~Applicant~~] or any time after initiation.

(b) SOAH mediators, employees of other agencies who are mediators, and private pro bono mediators[,] may be assigned to contested matters as needed. Each such mediator shall:

(1) have received at least 40 hours of Texas mediation training; and

(2) have some expertise in the area of the contested matter.

(c) If the mediator is a SOAH judge, that person will not [~~also~~] sit as the administrative law judge for the case if the contested matter goes to a SOAH hearing.

(d) Upon unanimous motion of the parties and at the discretion of the administrative law judge, this section applies to a case referred to SOAH.

(e) Respondents or applicants [~~Applicants~~] participating in a mediation will pay one-half of any fees incurred for the mediation directly to the Commission before mediation begins.

§533.36. Agreements.

All agreements between or among parties that are reached as a result of ADR must be committed to writing, signed by respondents [~~Respondents~~] or applicants [~~Applicants~~] and a Commission staff attorney, and submitted to the Commission or Executive Director [~~Administrator~~] for approval. Once signed by the Commission or Executive Director [~~Administrator~~], the agreement will have the same force and effect as a written contract.

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 D. NEGOTIATED RULEMAKING

22 TAC §533.40

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§533.40. Negotiated Rulemaking.

(a) It is the Commission's policy to employ negotiated rulemaking procedures when appropriate. When the Commission is of the opinion that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking will be considered.

(b) When negotiated rulemaking is to be considered, the Commission will appoint a convener to assist it in determining whether it is advisable to proceed. The convener shall have the duties described by Texas Government Code, §2008.052, and shall make a recommendation to the Executive Director [~~Administrator~~] to proceed or to defer negotiated rulemaking. The recommendation shall be made after the convener, at a minimum, has considered all of the items enumerated in Texas Government Code, §2008.052(c).

(c) Upon the convener's recommendation to proceed, the Commission shall initiate negotiated rulemaking according to the provisions of Texas Government Code, Chapter 2008.

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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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 936-3057

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CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.1

The Texas Real Estate Commission (TREC) proposes the repeal of 22 TAC §534.1, Charges for Copies of Public Information, in Chapter 534, General Administration, as the result of TREC's quadrennial rule review. Specifically, the proposed repeal is the result of a proposed new definitions section in this chapter, which will require the renumbering of this section. TREC will renumber and replace this repealed section.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the repeal. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed repeal. There is no significant economic cost anticipated for persons who are required to comply with the proposed repeal. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the repeal will be greater clarity in the rules.

For each year of the first five years the proposed repeal is in effect the repeal 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 an existing regulation;

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

- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeal.

§534.1. Charges for Copies of Public Information.

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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22 TAC §§534.1 - 534.5, 534.7

The Texas Real Estate Commission (TREC) proposes new 22 TAC §534.1, Definitions; and §534.2, Charges for Copies of Public Information; and amendments to §534.3, Employee Training and Education; §534.4, Historically Underutilized Businesses Program; §534.5, Bid Opening and Tabulation; and §534.7, Vendor Protest Procedures.

The proposed new rules and amendments to Chapter 534 are made as a result of the Commission's quadrennial rule review. The proposed changes add a new definitions section for ease of reading and update terminology for consistency throughout the chapter. Additionally, 22 TAC §534.4, Historically Underutilized Businesses program, and 22 TAC §534.5, Bid Opening and Tabulation, are amended to correct references to applicable regulations.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed new rules and amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rules or amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity in the rules.

For each year of the first five years the proposed new rules or amendments are in effect the amendments 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;

- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rules and amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed new rules and amendments.

§534.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board.

(2) Board--The Texas Appraiser Licensing and Certification Board.

(3) Chief Financial Officer--The Chief Financial Officer of the Texas Real Estate Commission.

(4) Commission--The Texas Real Estate Commission.

(5) Comptroller--The Comptroller of Public Accounts.

(6) DIR--The Department of Information Resources.

(7) Executive Director--The Executive Director of the Texas Real Estate Commission.

(8) TAC--The Texas Administrative Code.

(9) TFC--The Texas Facilities Commission.

§534.2. Charges for Copies of Public Information.

(a) Any charges associated with copies of public information provided by the Commission shall be based upon the current charges established by the Office of the Attorney General.

(b) If the actual costs of providing copies exceed the charges established by the Office of the Attorney General, the Commission shall charge its actual costs, if approved by the Office of the Attorney General.

(c) The Commission may furnish copies of public information without charge, or at a reduced charge, if the Commission determines that waiver or reduction of the charge is in the public interest. The Commission also may waive the charge if the cost of processing the collection of a charge exceeds the amount of the charge.

§534.3. Employee Training and Education.

(a) The Commission may provide training and education for its employees in accordance with Subchapter C, Chapter 656, Texas Government Code.

(b) The Commission may spend public funds as appropriate to pay the costs associated with employee training, including, but not limited to, salary, tuition and other fees, travel, and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

(c) The Executive Director [~~executive director~~] shall adopt policies related to training for Commission employees, including eligibility and obligations assumed upon completion.

(d) Before an employee may receive reimbursement of tuition expenses for successful completion of a training or education program offered by an accredited institution of higher education, the Executive Director [~~executive director~~] must pre-approve the program and authorize the tuition reimbursement payment.

(e) Approval to participate in any portion of the Commission's training and education program does not affect an employee's at-will status.

(f) Participation in the training and education program does not constitute a guarantee or indication of continued employment, nor does it constitute a guarantee or indication of future employment in a current or prospective position.

§534.4. Historically Underutilized Businesses Program.

To comply with Texas Government Code §2161.003, the Commission adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter D [~~B~~] (relating to the Historically Underutilized Business Program).

§534.5. Bid Opening and Tabulation.

To comply with Texas Government Code, §2156.005(d), the Commission adopts by reference the rules of the Texas Comptroller of Public

Accounts in 34 TAC §20.207 [§20.35] (relating to Competitive Sealed Bidding [Bid Submission, Bid Opening, and Tabulation]).

§534.7. Vendor Protest Procedures.

(a) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Commission [Texas Real Estate Commission ("Commission")] and the Board [Texas Appraiser Licensing and Certification Board (collectively "the agency")]. Protests of purchases made by the TFC [Texas Facilities Commission ("TFC")] on behalf of the Agency [agency] are addressed in 1 TAC [Texas Administrative Code] Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution). Protests of purchases made by DIR [the Department of Information Resources (DIR)] on behalf of the Agency [agency] are addressed in 1 TAC [Texas Administrative Code] Chapter 201, §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by the Statewide Procurement Division of the Comptroller [of Public Accounts ("CPA")] on behalf of the Agency [agency] are addressed in 34 TAC [Texas Administrative Code] Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals). The rules of TFC, DIR, and the Comptroller [CPA] are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml.

(b) Any actual or prospective bidder, offeror, or contractor who believes they are aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Agency [agency]. Such protests must be in writing and received in the office of the Chief Financial Officer [Director of Finance] within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements set forth in subsection (c) of this section. Copies of the protest must be mailed or delivered by the protesting party to all vendors who have submitted bids or proposals for the contract involved.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) The Chief Financial Officer [Director of Finance] shall have the authority, prior to appeal to the Executive Director or the Executive Director's [his or her] designee, to settle and resolve the dispute concerning the solicitation or award of a contract. The Chief Financial Officer [Director of Finance] may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the Chief Financial Officer [Director of Finance] will issue a written determination on the protest.

(1) If the Chief Financial Officer [Director of Finance] determines that no violation of rules or statutes has occurred, the Chief Financial Officer [he or she] shall so inform the protesting party and interested parties by letter which sets forth the reasons for the determination.

(2) If the Chief Financial Officer [Director of Finance] determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, the Chief Financial Officer [he or she] shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action.

(3) If the Chief Financial Officer [Director of Finance] determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, the Chief Financial Officer [he or she] shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action. Such remedial action may include, but is not limited to, declaring the purchase void,[;] reversing the award,[;] and re-advertising the purchase using revised specifications.

(f) The Chief Financial Officer's [Director of Finance's] determination on a protest may be appealed by an interested party to the Executive Director or the Executive Director's [his or her] designee. An appeal of the Chief Financial Officer's [Director of Finance's] determination must be in writing and must be received in the office of the Executive Director or the Executive Director's [his or her] designee no later than ten working days after the date of the Chief Financial Officer's [Director of Finance's] determination. The appeal shall be limited to review of the Chief Financial Officer's [Director of Finance's] determination. Copies of the appeal must be mailed or delivered by the appealing party to other interested parties and must contain an affidavit that such copies have been provided.

(g) The general counsel [General Counsel] shall review the protest, the Chief Financial Officer's [Director of Finance's] determination, and the appeal and prepare a written opinion with recommendation to the Executive Director [executive director] or the Executive Director's [his] designee. The Executive Director [executive director] or the Executive Director's [his or her] designee may, in their [his or her] discretion, refer the matter to the Commission [TREC] at a regularly scheduled open meeting or issue a final written determination.

(h) When a protest has been appealed to the Executive Director or the Executive Director's [his or her] designee under subsection (f) of this section and has been referred to the relevant Commission or Board [of TREC] by the Executive Director or the Executive Director's [his or her] designee under subsection (g) of this section, the following requirements shall apply:

(1) Copies of the appeal, responses of interested parties, if any, and the general counsel's [General Counsel] recommendation shall be mailed to the Commission [TREC] members and interested parties. Copies of the general counsel's recommendation and responses of interested parties shall be mailed to the appealing party.

(2) All interested parties who wish to make an oral presentation at the Commission's [TREC's] open meeting are requested to notify the office of general counsel [General Counsel] at least two working days in advance of the open meeting.

(3) The Commission [TREC] may consider oral presentations and written documents presented by staff, the appealing party, and interested parties. The chair of the Commission [chairman] shall set the order and amount of time allowed for presentations.

(4) The Commission's [TREC's] determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.

(i) Unless good cause for delay is shown or the Executive Director or the Executive Director's [~~his or her~~] designee determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j) In the event of a timely protest or appeal under this section, a protestor or appellant may request in writing that the Agency [~~agency~~] not proceed further with the solicitation or with the award of the contract. In support of the request, the protestor or appellant is required to show why a stay is necessary and that harm to the Agency [~~agency~~] will not result from the stay. If the Executive Director determines that it is in the interest of the Agency [~~agency~~] not to proceed with the contract, the Executive Director may make such a determination in writing and partially or fully suspend contract activity.

(k) A decision issued either by the Commission [~~TREC~~] in open meeting, or in writing by the Executive Director or the Executive Director's [~~his or her~~] designee, shall constitute the final administrative action of the Agency [~~agency~~].

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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Texas Real Estate Commission
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CHAPTER 535. GENERAL PROVISIONS

The Texas Real Estate Commission (TREC) proposes amendments to current 22 TAC §535.61, Approval of Providers of Qualifying Courses; §535.63, Qualifications for Instructors of Qualifying Courses; §535.65, Responsibilities and Operations of Providers of Qualifying Courses; §535.66, Credit for Courses Offered by Accredited Colleges or Universities; §535.71, Approval of CE Providers; §535.73, Approval of Elective Continuing Education Courses; §535.75, Responsibilities and Operations of Continuing Education Providers; §535.400, Registration of Easement or Right-of-Way Agents; §535.403, Renewal of Registration; and proposes the addition of two new sections: 22 TAC §535.68, Content Requirements for Easement or Right-of-Way Qualifying Courses (NEW), and 22 TAC §535.406, Continuing Education Requirements, in Chapter 535, General Provisions. All proposed amendments implement statutory changes enacted by the 87th Legislature in HB 2730. In §§535.61, 535.63, 535.65, 535.66, 535.71, 535.73, and 535.75, the proposed amendments add the term "easement or right-of-way" to conform to statutory changes that require completion of qualifying and continuing education courses to obtain or maintain a certificate of registration. The proposed amendments to §535.61 allow an accredited college or university, as well as a United States armed forces institute, to submit easement or right-of-way qualifying courses for approval for credit without becoming approved providers, similar to the exemptions that currently exist for both real estate and inspector qualifying courses. The proposed changes also clarify that the calculation for the exam passage rate only includes license categories for which the provider offers courses and an examination is required. The proposed amendments to §535.66 add a new subsection and make other conforming changes to address credit for easement or right-of way courses offered by an accredited college or university, consistent with the proposed change in §535.61 and current rules related to real estate and inspection qualifying courses. New rule §535.68 mirrors the content requirements for the easement or right-of-way qualifying course as required by HB 2730 and adopts a course approval form by reference that outlines the units required to be addressed in each course topic.

The proposed amendments to §535.400 add specific requirements for the issuance of a probationary certificate, as required by HB 2730. For consistency in application, this proposed language mirrors rule language in 22 TAC §535.54 applicable to other license holders. Because HB 2730 requires certificate holders seeking to renew to successfully complete continuing education, the proposed amendments to §535.403 clarify that a certificate holder who fails to timely renew, rather than simply failing to timely pay the renewal fee, must apply for and receive a new registration. These proposed changes also modify the section that clarifies what happens if a registration expires on a Saturday, Sunday, or other day the Commission is not open for business to be consistent with rule language applicable to other license holders in 22 TAC §535.91. Lastly, new §535.406 is proposed to implement the continuing education requirements in HB 2730.

Vanessa Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be increased efficiency within the Commission, improved clarity and greater transparency for members of the public, certificate holders, and education providers, as well as requirements that are consistent with the statute.

Except as noted below, for each year of the first five years the proposed amendments are in effect the amendments 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;

- positively or adversely affect the state's economy.

The proposed amendments to §§535.61, 535.63, 535.65, 535.66, 535.71, 535.73, and 535.75 will expand an existing regulation, and new §§ 535.68 and 535.406, as well as the proposed changes to 535.400, will create a new regulation, all as a result of the requirements of HB 2730.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §§535.61, 535.63, 535.65, 535.66, 535.68

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.61. Approval of Providers of Qualifying Courses.

(a) Application for approval.

(1) Unless otherwise exempt under subsection (b) of this section, a person desiring to be approved by the Commission to offer real estate, easement or right-of-way, or real estate inspection qualifying courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 or §535.210 of this title (relating to Fees);

(C) submit the statutory bond or other security acceptable to the Commission under §1101.302 of the Act; and

(D) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the provider is required to maintain by this subchapter [~~Subchapter~~].

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(3) An approved provider is permitted to offer courses in [~~both~~] real estate, easement or right-of-way, and real estate inspection that have been approved by the Commission.

(b) Exempt Providers.

(1) The following persons may submit real estate qualifying courses for approval for credit in §535.62(i) of this subchapter (relating to Approval of Qualifying Courses) without becoming an approved provider of qualifying courses:

(A) a person approved by a real estate regulatory agency to offer qualifying real estate courses in another state that has approval requirements for providers that are substantially equivalent to the requirements for approval in this state;

(B) an accredited college or university in accordance with §535.66 of this subchapter (relating to Credit for Courses Offered by Accredited Colleges or Universities) where courses are offered in accordance with national or regional accreditation standards;

(C) a post-secondary educational institution established in and offering qualifying real estate courses in another state;

(D) a United States armed forces institute; and

(E) a nationally recognized professional designation institute or council in the real estate industry.

(2) The following persons may submit real estate inspector qualifying courses for approval for credit under §535.62(i) of this subchapter without becoming an approved provider of qualifying courses:

(A) a provider approved by an inspector regulatory agency of another state that has approval requirements for providers that are substantially equivalent to the requirements for approval in this state;

(B) an accredited college or university in accordance with §535.66 of this subchapter where courses are offered in accordance with national or regional accreditation standards;

(C) a United States armed forces institute;

(D) a unit of federal, state or local government;

(E) a nationally recognized building, electrical, plumbing, mechanical or fire code organization;

(F) a professional trade association in the inspection field or in a related technical field; or

(G) an entity whose courses are approved and regulated by an agency of this state.

(3) The following persons may submit easement or right-of-way qualifying courses for approval for credit in §535.62(i) of this subchapter without becoming an approved provider of qualifying courses:

(A) an accredited college or university in accordance with §535.66 of this subchapter where courses are offered in accordance with national or regional accreditation standards; and

(B) a United States armed forces institute.

(c) Standards for approval. To be approved as a provider by the Commission, the applicant must meet the following standards:

(1) the applicant must satisfy the Commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If the applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant;

(2) the applicant must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students taking courses; and

(3) that any proposed facilities will be adequate and safe for conducting courses.

(d) Financial review. An applicant shall provide the following information to enable the Commission to determine if an applicant has sufficient financial resources to conduct its proposed operations:

(1) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current income statement and balance sheet;

(2) a proposed budget for the first year of operation; and

(3) a market survey indicating the anticipated enrollment for the first year of operation.

(e) Insufficient financial condition. The existence of any of the following conditions shall constitute prima facie evidence that an applicant's financial condition is insufficient:

(1) nonpayment of a liability when due, if the balance due is greater than 5% of the approved provider's current assets in the current or prior accounting period;

(2) nonpayment of three or more liabilities when due, in the current or prior accounting period, regardless of the balance due for each liability;

(3) a pattern of nonpayment of liabilities when due, in two or more accounting periods, even if the liabilities ultimately are repaid;

(4) a current ratio of less than 1.75 for the current or prior accounting period, this ratio being total current assets divided by total current liabilities;

(5) a quick ratio of less than 1.60 for the current or prior accounting period, this ratio being the sum of all cash equivalents, marketable securities, and net receivables divided by total current liabilities;

(6) a cash ratio of less than 1.40 for the current or prior accounting period, this ratio being the sum of cash equivalents and marketable securities divided by total current liabilities;

(7) a debt ratio of more than .40 for the current or prior accounting period, this ratio being total liabilities divided by total assets;

(8) a debt-to-equity ratio of greater than .60 for the current or prior accounting period, this ratio being total liabilities divided by owners' or shareholders' equity;

(9) a final judgment obtained against the approved provider for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

(10) the execution of a writ of garnishment on any of the assets of the approved provider.

(f) Approval notice. An applicant shall not act as or represent itself to be an approved provider until the applicant has received written notice of approval from the Commission.

(g) Period of initial approval. The initial approval of a provider of qualifying courses is valid for four years.

(h) Statutory bond or other security. An approved provider whose statutory bond or other security has been cancelled will be placed on inactive status until the bond or security is reinstated.

(i) Payment of an annual operation fee.

(1) An approved provider shall submit the Commission approved form and pay an annual operation fee prescribed by §535.101 of this title no later than the last day of the month of each anniversary date of the provider's approval.

(2) An approved provider who fails to pay the annual operation fee as prescribed shall be placed on inactive status and notified in writing by the Commission.

(3) The approved provider will remain on inactive status and unable to offer courses until the annual fee is paid.

(4) The Commission will not give credit for courses offered by a provider on inactive status.

(j) Disapproval of application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

(k) Renewal.

(1) A provider may not enroll a student in a course during the 60-day period immediately before the expiration of the provider's current approval unless the provider has submitted an application for renewal for another four year period not later than the 60th day before the date of expiration of its current approval.

(2) Approval or disapproval of a renewal shall be subject to:

(A) the standards for initial applications for approval set out in this section; and

(B) whether the approved provider has met or exceeded the exam passage rate benchmark established by the Commission under subsection (l) of this section.

(3) The Commission will not require a financial review for renewal if the applicant has provided a statutory bond or other security acceptable to the Commission under §1101.302 of the Act, and there are no unsatisfied final money judgments against the applicant.

(4) The Commission may deny an application for renewal if the provider is in violation of a Commission order.

(l) Exam passage rates and benchmark.

(1) The exam passage rate for an approved provider shall be:

(A) calculated for each license category for which the provider offers courses and an examination is required; and

(B) displayed on the Commission website by license category.

(2) A student is affiliated with a provider under this subsection if the student took the majority of his or her qualifying education with the provider in the two year period prior to taking the exam for the first time.

(3) The Commission will calculate the exam passage rate of an approved provider on a monthly basis, rounded to two decimal places on the final calculated figure, by:

(A) determining the number of students affiliated with that approved provider who passed the examination on their first at-

tempt in the two-year period ending on the last day of the previous month; and

(B) dividing that number by the total number of students affiliated with that provider who took the exam for the first time during that same period.

(4) For purposes of approving a renewal application under subsection (j), the established exam passage rate benchmark for each license category is 80% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month.

(5) If at the time the Commission receives a renewal application from the provider requesting approval for another four year term, the provider's exam passage rate does not meet the established benchmark for a license category the provider will be:

(A) denied approval to continue offering courses for that license category if the provider's exam passage rate is less than 50% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month; or

(B) placed on probation by the Commission if the provider's exam passage rate is greater than 50% but less than 80% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month.

(6) The exam passage rate of a provider on probation will be reviewed annually at the time the annual operating fee is due to determine if the provider can be removed from probation, remain on probation or have its license revoked, based on the criteria set out in paragraph (5) of this subsection.

§535.63. Qualifications for Instructors of Qualifying Courses.

(a) A provider must ensure that an instructor who teaches real estate, easement or right-of-way, or real estate inspection qualifying courses is competent in the subject matter to be taught and has the ability to teach effectively.

(b) Except as provided by subsection (c) of this section, the provider must use an instructor who possesses the following qualifications:

(1) a college degree in the subject area to be taught and three years of experience in teaching or training;

(2) five years of active experience as a license holder (broker for Real Estate Brokerage and Broker Responsibility courses) and three years of experience in teaching or training; or

(3) the equivalent of subsection (b)(1) or (2) of this section as determined by the provider after consideration of the instructor's professional experience, research, authorship, or other significant endeavors in real estate, easement or right-of-way, or real estate inspection.

(c) For Texas Standards of Practice, Standards of Practice Review, or Inspector Legal and Ethics, the provider must use an instructor who has five years of active licensure as a Texas professional inspector, and has:

(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(2) three years of experience in teaching and/or sponsoring trainees or inspectors.

§535.65. Responsibilities and Operations of Providers of Qualifying Courses.

(a) Responsibility of Providers.

(1) A provider is responsible for:

(A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;

(B) maintaining student attendance records and pre-enrollment agreements;

(C) verifying instructor qualification, performance and attendance;

(D) proper examination administration;

(E) validation of student identity acceptable to the Commission;

(F) maintaining student course completion records;

(G) ensuring all advertising complies with subsection (c) of this section;

(H) ensuring that instructors or other persons do not recruit or solicit prospective sales agents, brokers, easement or right-of-way agents, or inspectors during course presentation; and

(I) ensuring staff is reasonably available for public inquiry and assistance.

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently qualified under §535.63 of this subchapter (relating to Qualifications for Instructors of Qualifying Courses) to teach the specified course.

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor.

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection.

(4) An instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval.

(5) A provider may use the services of a guest instructor who does not meet the instructor qualifications under §535.63 of this subchapter for qualifying real estate, easement or right-of-way, or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

(A) using any advertising which does not clearly and conspicuously contain the provider's name on the first page or screen of the advertising;

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates if the provider also displays next to the passage rate in a readily noticeable fashion:

(i) A hyperlink to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for digital media; or

(ii) A URL to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for non-digital media;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program;

(E) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression;

(F) advertising a course under a course name other than the course name approved by the Commission; or

(G) advertising using a name that implies the course provider is the Texas Real Estate Commission, including use of the acronym "TREC", in all or part of the course provider's name.

(2) Any written advertisement by a provider that includes a fee that the provider charges for a course must display any additional fees that the provider charges for the course in the same place in the advertisement and with the same degree of prominence.

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(4) The provider is responsible for and subject to sanctions for any violation of this subsection by any affiliate or other third party marketer or web hosting site associated with or used by the provider.

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

(A) the tuition for the course;

(B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;

(C) the provider's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(D) the attendance requirements;

(E) the acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions;

(F) the procedure and fees, if applicable, associated with exam proctoring;

(G) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits; and

(H) the notices regarding potential ineligibility for a license based on criminal history required by Section 53.152, Texas Occupations Code.

(2) A pre-enrollment agreement must be signed by a representative of the provider and the student.

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider shall inform the Commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(4) If a provider fails to give the notice required by subsection (d)(1)(H) of this section, and an individual's application for a license is denied by the Commission because the individual has been convicted of a criminal offense, the provider shall reimburse the individual the amounts required by Section 53.153, Texas Occupations Code.

(f) Course materials.

(1) Before the course starts, a provider shall give each student copies of or, if a student has online access, provide online access to any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this subchapter (relating to Approval of Qualifying Courses).

(g) Presentation of courses.

(1) Classroom Delivery:

(A) The location for the course must be:

(i) conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;

(ii) adequate for the class size;

(iii) pose no threat to the health or safety of students; and

(iv) allow the instructor to see and hear each student and the students to see and hear the instructor, including when offered through the use of technology.

(B) The provider must:

(i) check the photo identification of each student at class sign up and when signing in for each subsequent meeting of the class;

(ii) ensure the student is present for the course for the hours of time for which credit is awarded;

(iii) provide a 10 minute break per hour at least every two hours; and

(iv) not have daily course segments that exceed 12 hours.

(C) If the course is a qualifying or non-elective continuing education course delivered through the use of technology and there are more than 20 students registered for the course, the provider will also use:

(i) a monitor at the broadcast origination site to verify identification of each student, monitor active participation of each student and facilitate questions for the instructor; and

(ii) a proctor at each remote site with more than 20 students to verify identification of each student, monitor active participation of each student and proctor any on-site examination.

(D) Makeup Session for Classroom Courses.

(i) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(ii) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(I) attendance in corresponding class sessions in a subsequent offering of the same course; or

(II) the supervised presentation by audio or video recording of the class sessions actually missed.

(iii) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(iv) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall automatically be dropped from the course with no credit.

(2) Distance Education Delivery. The provider must ensure that:

(A) the student taking all topics of the course and completing all quizzes and exercises is the student receiving credit for the course through a student identity verification process acceptable to the Commission;

(B) a qualified instructor is available to answer students' questions or provide assistance as necessary in a timely manner;

(C) a student has completed all instructional modules and attended any hours of live instruction required for a given course; and

(D) a qualified instructor is responsible for providing answers and rationale for the grading of the written course work.

(3) A provider is not required to present topics in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

(h) Course examinations.

(1) The final examination given at the end of each course must be given in the manner submitted to and approved by the Commission. All final examinations must be closed book.

(2) Final examination questions must be kept confidential and be significantly different from any quiz questions and exercises used in the course.

(3) A provider shall not permit a student to view or take a final examination before the completion of regular course work and any makeup sessions required by this section.

(4) A provider must rotate all versions of the examination required by §535.62(b)(7) of this subchapter throughout the approval period for a course in a manner acceptable to the Commission and examinations must:

(A) require an unweighted passing score of 70%; and

(B) be proctored by a member of the provider faculty or staff, or third party proctor acceptable to the Commission, who:

(i) is present at the test site or able to monitor the student through the use of technology acceptable to the Commission; and

(ii) has positively identified that the student taking the examination is the student registered for and who took the course.

(5) The following are examples of acceptable third party proctors:

(A) employees at official testing or learning/tutoring centers;

(B) librarians at a school, university, or public library;

(C) college or university administrators, faculty, or academic advisors;

(D) clergy who are affiliated with a specific temple, synagogue, mosque, or church; and

(E) educational officers of a military installation or correctional facility.

(6) A provider may not give credit to a student who fails a final examination and a subsequent final examination as provided for in subsection (i) of this section.

(i) Subsequent final course examination.

(1) If a student fails a final course examination, a provider may permit the student to take a subsequent final examination only after the student has completed any additional course work prescribed by the provider.

(2) A student shall complete the subsequent final examination no later than the 90th day after the date the original class concludes. The subsequent final examination must be a different version of the original final examination given to the student and must comply with §535.62(b)(1)(G) of this subchapter and subsection (h) of this section.

(3) If a student fails to timely complete the subsequent final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.

(4) A student who fails the final course examination a second time is required to retake the course and the final course examination.

(j) Course completion certificate.

(1) Upon successful completion of a qualifying course, a provider shall issue a course completion certificate that a student can submit to the Commission. The course completion certificate shall show:

(A) the provider's name and approval number;

(B) the instructor's name;

(C) the course title;

(D) course numbers;

(E) the number of classroom credit hours;

(F) the course delivery method;

(G) the dates the student began and completed the course; and

(H) printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(k) Instructor and course evaluations.

(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation form and provide a link to an online version of the form that a student can complete and submit any time after course completion.

(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.

(3) When evaluating an instructor or course, a provider shall use all of the questions from the evaluation form approved by the Commission, in the same order as listed on that form. A provider may add additional questions to the end of the Commission evaluation questions or request the students to also complete the provider's evaluation form.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(l) Maintenance of records for a provider of qualifying courses.

(1) A provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) A provider shall maintain financial records sufficient to reflect at any time the financial condition of the school.

(3) A school's financial statement and balance sheets must be available for audit by Commission staff, and the Commission may require presentation of financial statements or other financial records.

(4) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(m) Changes in Ownership or Operation of an approved provider of qualifying courses.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operations of the provider by submitting the Qualifying Education Provider Supplement Application, including but not limited to changes in:

(A) operations [~~Operations~~] or records management; and

(B) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide all of the following information or documents to the Commission:

(A) an Education Provider Application reflecting all required information for each owner and the required fee;

(B) a Principal Information Form for each proposed new owner who holds at least 10% interest in the school;

(C) financial documents to satisfy standards imposed by §535.61 of this subchapter (relating to Approval of Providers of Qualifying Courses), including a $20,000 surety bond for the proposed new owner; and

(D) business documentation reflecting the change.

§535.66. Credit for Courses Offered by Accredited Colleges or Universities.

(a) For the purposes of this section, an "accredited college or university" is defined as a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or by a recognized national or international accrediting body.

(b) Exemption. Pursuant to §1101.301 of Tex. Occ. Code, the Commission does not approve qualifying educational programs or courses of study in real estate and real estate inspection offered by an accredited college or university; however, the Commission has the authority to determine whether a real estate or real estate inspection course satisfies the requirements of the Act and Chapter 1102.

(c) Credit for real estate courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university must meet the following requirements:

(1) cover the subject and topics set out in §1101.003 of Tex. Occ. Code in substantially the same manner as clarified by the Commission in §535.64; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design and delivery method.

(d) Credit for real estate inspector courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university meet the following requirements:

(1) meet the subject and topic definitions set out in §1102.001(5) of Tex. Occ. Code as clarified by the Commission in §535.213; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design and delivery method.

(3) any courses offered to fulfill the substitute experience requirements allowed under §1102.111 must meet the requirements set out in §535.212 of this title, including instructor qualifications.

(e) Credit for easement or right-of-way courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university must meet the following requirements:

(1) cover the subject and topics set out in §1101.509, Occupations Code, in substantially the same manner as clarified by the Commission in §535.68; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design, and delivery method.

(f) Preapproval of a course offered under subsections (c), [~~or~~] (d), or (e).

(1) An accredited college and university may submit qualifying courses to the Commission for preapproval by filing a form approved by the Commission.

(2) Any course offered by an accredited college and university without preapproval by the Commission will be evaluated by the Commission, using the standards set out in this section, to determine whether it qualifies for credit at such time as a student submits a transcript with the course to the Commission for credit.

(3) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been preapproved for credit.

(g) [~~(f)~~] Required approval of qualifying courses not offered under subsections (c), [~~or~~] (d), or (e) or that are not subject to academic accreditation standards.

(1) To be eligible for credit from the Commission, a qualifying course offered by an accredited college and university that is not offered under subsections (c), [~~or~~] (d), or (e) or that is not subject to academic accreditation standards is required to be submitted for approval by the Commission in accordance with §535.62 of this subchapter, including payment of any fee required.

(2) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been approved.

(h) [~~(g)~~] Complaints and audits.

(1) If the Commission receives a complaint, or is presented with other evidence acceptable to the Commission, alleging that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate, easement or right-of-way, or real estate inspection course offered under subsections (c), [~~or~~] (d), or (e), or is not complying with the requirements of this Subchapter for a real estate, easement or right-of-way, or real estate inspection course not offered under subsections (c), [~~or~~] (d), or (e), the Commission may investigate the allegation and/or anonymously audit the course in question.

(2) If after an investigation and/or audit, the Commission determines that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate, easement or right-of-way, or real estate inspection course offered under subsections (c), [~~or~~] (d), or (e), or is not complying with the requirements of this Subchapter for a real estate, easement or right-of-way, or real estate inspection course not offered under subsections (c), [~~or~~] (d), or (e), the Commission will no longer issue credit to applicants for that course.

(i) [~~(h)~~] Required approval of CE program and courses. An accredited college or university is not exempt from approval for real estate and real estate inspection CE programs and courses and must comply with all requirements for approval for providers, courses and instructors required by Subchapter G of this chapter.

§535.68. Content Requirements for Easement or Right-of-Way Qualifying Course.

To be approved by the Commission, the easement or right-of-way mandatory qualifying course must contain the topics required by §1101.509(b), Occupations Code, and the units outlined in the ERW_QE-0, Qualifying Easement or Right-of-Way Course Approval (ERW--QE-0) Form, hereby adopted by reference.

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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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 936-3057

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SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §§535.71, 535.73, 535.75

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code, §1101.509, which requires the Commission to adopt rules for the approval of coursework that an applicant must successfully complete to be eligible for the issuance or renewal of a certificate of registration.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.71. Approval of CE Providers.

(a) Application for approval.

(1) A person desiring to be approved by the Commission to offer real estate, easement or right-of-way, or real estate inspection continuing education courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 or §535.210 of this title; and

(C) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the continuing education provider is required to maintain by this subchapter.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission sends the request.

(3) A CE provider is permitted to offer continuing education courses in [~~both~~] real estate, easement or right-of-way, and real estate inspector that have been approved by the Commission.

(b) Standards for approval. To be approved by the Commission to offer real estate, easement or right-of-way, or real estate inspector continuing education courses, the applicant must satisfy the Commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness, and integrity. If the applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(c) Approval notice. An applicant shall not act as or represent itself to be an approved CE provider until the applicant has received written notice of the approval from the Commission.

(d) Period of initial approval. The initial approval of a CE provider is valid for two years.

(e) Disapproval.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

(f) Renewal.

(1) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another two year period.

(2) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in this section.

(3) The Commission may deny an application for renewal if the provider is in violation of a Commission order.

§535.73. Approval of Elective Continuing Education Courses.

(a) General requirements.

(1) This subsection applies to continuing education providers seeking to offer an elective CE course approved by the Commission.

(2) Non-elective CE courses are approved and regulated under §535.72 of this subchapter (related to Approval of Non-elective Continuing Education Courses).

(b) Application for approval of an elective CE course.

(1) For each continuing education course an applicant intends to offer, the applicant must:

(A) submit the appropriate CE Course Application form;

(B) pay the fee required by §535.101 (relating to Fees) and §535.210 of this title (relating to Fees); and

(C) submit a timed course outline that includes:

(i) course topics;

(ii) assignments and activities, if applicable;

(iii) topic or unit quizzes, if applicable; and

(iv) the amount of time dedicated for each item listed in clauses (i) - (iii) of this subparagraph.

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Standards for course approval of elective CE course.

(1) To be approved as an elective CE course by the Commission, the course must:

(A) cover subject matter appropriate for a continuing education course for real estate, easement or right-of-way, or real estate inspection license holders;

(B) be current and accurate; and

(C) be at least one hour long with daily presentations no more than 10 hours long.

(2) A provider must demonstrate that a course meets the requirements under paragraph (1) of this subsection by submitting a statement describing the objective of the course and the relevance of the subject matter to activities for which a real estate, easement or right-of-way, or inspector license is required, including but not limited to relevant issues in the real estate market or topics which increase or support the license holder's development of skill and competence.

(3) The course must be presented in full hourly units.

(4) The course must be delivered by one of the following delivery methods:

(A) classroom delivery;

(B) distance education delivery; or

(C) a combination of (A) and (B), if at least 50% of the combined course is offered by classroom delivery.

(d) Approval notice. A CE provider shall not offer elective continuing education courses until the provider has received written notice of the approval from the Commission.

(e) Renewal of elective CE course approval.

(1) An elective CE course expires two years from the date of approval.

(2) Not earlier than 90 days before the expiration of a course approval, a provider may apply for a renewal of course approval for another two-year period.

(3) Approval of an application to renew an elective CE course approval shall be subject to the standards for initial approval set out in this section.

(4) The Commission may deny an application to renew an elective CE course approval if the provider is in violation of a Commission order.

(f) Approval of currently approved courses by a subsequent provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that subsequent provider must:

(A) submit the applicable course approval form(s);

(B) submit written authorization to the Commission from the owner of the rights to the course material granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the subsequent provider is required to:

(A) offer the course as originally approved, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter (relating to Responsibilities and Operations of Continuing Education Providers).

§535.75. Responsibilities and Operations of Continuing Education Providers.

(a) Except as provided by this section, CE providers must comply with the responsibilities and operations requirements of §535.65 of this title (relating to Responsibilities and Operations of Providers of Qualifying Courses).

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a CE provider must use an instructor that:

(A) is currently qualified under §535.74 of this title (relating to Qualifications for Continuing Education Instructors) ; and

(B) has expertise in the subject area of instruction and ability as an instructor;

(2) A CE instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval form;

(3) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this title for real estate, easement or right-of-way, or inspector elective CE courses provided that:

(A) the guest instructor instructs for no more than a total of 50% of the course; and

(B) a CE instructor qualified under §535.74 of this title remains in the classroom during the guest instructor's presentation.

(4) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this title for 100% of a real estate, easement or right-of-way, or inspector elective CE courses provided that:

(A) The CE provider is:

(i) an accredited college or university;

(ii) a professional trade association that is approved by the Commission as a CE provider under §535.71 of this subchapter (relating to Approval of Continuing Education Providers); or

(iii) an entity exempt under §535.71 of this subchapter; and

(B) the course is supervised and coordinated by a CE instructor qualified under §535.74 of this title who is responsible for verifying the attendance of all who request CE credit.

(c) CE course examinations.

(1) For real estate CE courses, examinations are only required for non-elective CE courses and must comply with the requirements in §535.72(g) of this subchapter (relating to Approval of Non-elective Continuing Education Courses) and have a minimum of four questions per course credit hour.

(2) For inspector CE courses, examinations are only required for CE courses offered through distance education delivery and must comply with the requirements in §535.72(g) of this subchapter (relating to Approval of Non-elective Continuing Education Courses) and have a minimum of four questions per course credit hour.

(d) Course completion roster. Instead of providing a course completion certificate, upon completion of a course, a CE provider shall submit a class roster to the Commission as outlined by this subsection.

(1) Classroom:

(A) A provider shall maintain a course completion roster and submit information contained in the roster by electronic means acceptable to the Commission not sooner than the number of course credit hours has passed and not later than the 10th calendar day after the date a course is completed.

(B) A course completion roster shall include:

(i) the provider's name and license;

(ii) a list of all instructors whose services were used in the course;

(iii) the course title;

(iv) the course numbers;

(v) the number of classroom credit hours;

(vi) the course delivery method;

(vii) the dates the student started and completed the course; and

(viii) the signature of an authorized representative of the provider for whom an authorized signature is on file with the Commission.

(C) The Commission shall not accept unsigned course completion rosters.

(2) Distance Education delivery method. A provider shall maintain a Distance Education Reporting form and submit information contained in that form by electronic means acceptable to the Commission, for each student completing the course not sooner than the number of course credit hours has passed after the student starts the course and not later than the 10th calendar day after the student completed the course.

(3) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(4) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(e) Maintenance of records. Maintenance of CE provider's records is governed by this subsection.

(1) A CE provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) All records may be maintained electronically but must be in a common format that is legibly and easily printed or viewed without additional manipulation or special software.

(3) A CE provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(4) Upon request, a CE provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(f) Changes in Ownership or Operation of an approved CE Provider. Changes in ownership or operation of an approved CE provider are governed by this subsection.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(A) ownership;

(B) management; and

(C) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide a CE Provider Application including all required information and the required fee.

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 February 22, 2022.

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3057

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §§535.400, 535.403, 535.406

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code, §1101.508, which requires the Commission to adopt by rule reasonable requirements for the issuance of a probationary certificate, and §1101.509, which requires the Commission to adopt rules for the approval of coursework that an applicant must successfully complete to be eligible for the issuance or renewal of a certificate of registration.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.400. Registration of Easement or Right-of-Way Agents.

(a) A person who intends to be registered by the Commission as an easement or right-of-way agent must:

(1) file an application for the registration:

(A) through the online process approved by the Commission; or

(B) on the form prescribed by the Commission for that purpose; and

(C) submit the required fee under §535.404 of this subchapter.

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) To be eligible for registration, an applicant must:

(1) meet the following requirements at the time of the application:

(A) be 18 years of age;

(B) be a citizen of the United States or a lawfully admitted alien;

(2) comply with the fingerprinting and education requirements of the Act;

(3) meet the honesty, trustworthiness, and integrity requirements under the Act; and

(4) If the applicant is a business entity, the applicant must designate one of its managing officers who is registered under this title as agent for the business entity.

(c) Texas residents who enter military service and resume their Texas residence immediately upon separation from the military are not considered to have lost their Texas residence unless they have affirmatively established legal residence elsewhere.

(d) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

(e) The Commission will assign a registration number to each registrant and provide each registrant with a certificate of registration. Each registration issued by the Commission is valid until the last day of the month two years after the date the registration was issued.

(f) Termination of application. An application is terminated and is subject to no further evaluation or processing if the applicant fails to satisfy the requirements of subsection (b)(1) of this section within one year from the date the application is filed.

(g) The Commission may disapprove an application for registration with written notice to the applicant if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title or the applicant has engaged in conduct prohibited by the Act. Provided a timely written request for a hearing is made by the applicant in accordance with the Act, an applicant whose application for registration has been disapproved is entitled to a hearing. The hearing on the application will be conducted in accordance with §1101.364 of the Act and Chapter 533 of this title.

(h) If the Commission determines that issuance of a probationary certificate is appropriate, the order entered by the Commission with regard to the application must set forth the terms and conditions for the probationary certificate. Terms for a probationary certificate may include any of the following:

(1) that the probationary certificate holder comply with the Act and with the rules of the Commission;

(2) that the probationary certificate holder fully cooperate with the Commission in the investigation of any complaint filed against the certificate holder;

(3) that the probationary certificate holder attend a prescribed number of classroom hours in specific areas of study during the probationary period;

(4) that the probationary certificate holder limit acts as an easement or right-of-way agent as prescribed in the order;

(5) that the probationary certificate holder report regularly to the Commission on any matter which is the basis of the probationary certificate;

(6) that the probationary certificate holder comply with any other terms contained in the order which have been found to be reasonable and appropriate by the Commission after consideration of the circumstances involved in the particular application; or

(7) that the probationary certificate holder comply with any other terms contained in an order from any other court or administrative agency under which the probationary certificate holder is bound.

(i) Unless the order granting a probationary certificate specifies otherwise, a probationary certificate holder may renew the certificate after the probationary period by satisfying the requirements under §535.403.

(j) [~~(h)~~] Each registrant shall display the certificate of registration issued by the Commission in a prominent location in the registrant's place of business, as required by §1101.507 of the Act. If the registrant maintains more than one place of business, the registrant shall display either the certificate or a copy of the certificate in each place of business.

(k) [~~(i)~~] Each registrant shall provide a mailing address, phone number, and email address used in business, if available, to the Commission and shall report all subsequent changes not later than the 10th day after the date of a change of any of the listed contact information. If a registrant fails to update the contact information, the last known contact information provided to the Commission is the registrant's contact information.

§535.403. Renewal of Registration.

(a) Renewal application.

(1) A registration expires on the date shown on the face of the registration issued to the license holder.

(2) If a license holder intends to renew an unexpired registration, the license holder must, on or before the expiration date of the current registration:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) submit the appropriate fee required by §535.404 of this title (relating to Fees); and

(C) comply with the fingerprinting and education requirements under the Act.

(b) Failure to provide information requested by the Commission in connection with a renewal application is grounds for disciplinary action under§1101.653 of the Act.

(c) A registrant who fails to timely renew [~~to pay a renewal fee~~] must apply for and receive a new registration in order to act as an easement or right-of-way agent.

(d) The Commission will deliver a registration renewal notice to a license holder three months before the expiration of the license holder's current registration. Failure to receive the certificate renewal notice does not relieve a certificate holder of the obligation to renew a certificate.

(e) The Commission is not required to notify a business entity such as a corporation, limited liability company, or partnership that has failed to designate an officer, manager, or general partner who meets the requirements of §1101.502 of the Act. The Commission may not renew a registration issued to a business entity that has not designated an officer, manager, or general partner who meets the requirements of the Act.

(f) If the registration expires on a Saturday, Sunday or any other day on which the Commission is not open for business [~~When the last day of the renewal period falls on a non-business day~~], a renewal application is considered to be timely filed when the application is received or postmarked no later than the first business day after the expiration date of the registration [~~not later than the first business day following the last day of the renewal period. "Non-business" days are Saturday, Sunday, and any other day upon which the Commission offices are closed due to a state holiday designated in the General Appropriations Act or by other law~~].

(g) Denial of Renewal. The Commission may deny an application for renewal of a registration if the registrant is in violation of the terms of a Commission order.

§535.406. Continuing Education Requirements.

To renew a certificate under this subchapter, a certificate holder must have completed 16 hours of approved continuing education prior to renewal as required by §1101.509, Occupations Code.

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-202200643
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3057

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CHAPTER 541. RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

22 TAC §541.1, §541.2

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §541.1, Criminal Offense Guidelines; and §541.2, Criminal History Evaluation Letters.

The proposed amendments to Chapter 541 are made as a result of the Commission's quadrennial rule review. The proposed changes define "Texas Real Estate Commission" for ease of reading and consistency. Subsection (d) of 22 TAC §541.1 is amended to better reflect the applicable statutory requirements found in §53.023, Occupations Code. Additionally, the title of 22 TAC §541.2, Criminal History Evaluation Letters, is amended to add "Determination of Fitness" to reflect the terminology used in §1101.353, Occupations Code.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules.

For each year of the first five years the proposed amendments are in effect the amendments 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;

- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed pursuant to Chapter 53, Occupations Code.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§541.1. Criminal Offense Guidelines.

(a) For the purposes of Chapter 53, Texas Occupations Code, the Texas Real Estate Commission (the Commission) considers that a deferred adjudication deemed a conviction under §53.021 or a conviction of the following criminal offenses directly relates to the duties and responsibilities of a real estate broker and real estate sales agent because committing these offenses tends to demonstrate a person's inability to represent the interest of another with honesty, trustworthiness, and integrity:

(1) offenses involving fraud or misrepresentation;

(2) offenses involving forgery, falsification of records, or perjury;

(3) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(4) offenses against real or personal property belonging to another;

(5) offenses against the person;

(6) offenses against public administration;

(7) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(8) offenses involving moral turpitude;

(9) offenses in violation of Chapter 21, Texas Penal Code (sexual offenses);

(10) offenses for which the person has been required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure;

(11) felonies involving the manufacture, delivery, or intent to deliver controlled substances;

(12) offenses of attempting or conspiring to commit any of the foregoing offenses;

(13) offenses involving aiding and abetting the commission of an offense listed in this section;

(14) repeated violations of one criminal statute or multiple violations of different criminal statutes; and

(15) felonies involving driving while intoxicated (DWI) or driving under the influence (DUI).

(b) For the purposes of Chapter 53, Texas Occupations Code, the [~~Texas Real Estate~~] Commission considers that a deferred adjudication deemed a conviction under §53.021, or a conviction of the following criminal offenses, directly relate to the duties and responsibilities

of a professional inspector, real estate inspector, apprentice inspector, and easement or right-of-way agent for the reason that the commission of the offenses tends to demonstrate the person's inability to represent the interest of another with honesty, trustworthiness, and integrity:

(1) offenses involving fraud or misrepresentation;

(2) offenses involving forgery, falsification of records, or perjury;

(3) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(4) offenses against real or personal property belonging to another;

(5) offenses against the person;

(6) offenses against public administration;

(7) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(8) offenses involving moral turpitude;

(9) offenses in violation of Chapter 21, Texas Penal Code (sexual offenses);

(10) offenses for which the person has been required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure;

(11) felonies involving the manufacture, delivery, or intent to deliver controlled substances;

(12) offenses of attempting or conspiring to commit any of the foregoing offenses;

(13) offenses involving aiding and abetting the commission of an offense listed in this section; and

(14) repeated violations of one criminal statute or multiple violations of different criminal statutes.

(c) In determining whether a criminal offense not listed in subsections (a) and (b) of this section is directly related to an occupation regulated by the Commission, the Commission shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) 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;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation; and

(5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(d) When determining a person's present fitness for a license, the Commission shall also consider:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed [~~at the time of the commission of the offense~~];

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after [~~following~~] the criminal activity;

[~~(5) the person's compliance with the court-ordered terms and conditions while on parole, supervised release, probation, or community supervision;~~]

[~~(6) the time remaining, if any, on the person's term of parole, supervised release, probation, or community supervision;~~]

(5) [~~(7)~~] evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after [~~following~~] release; [~~and~~]

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) [~~(8)~~] other evidence of the person's present fitness, including letters of recommendation.

(e) It is the applicant's or license holder's responsibility, to the extent possible, to obtain and provide the recommendations described in subsection (d)(7) [~~(d)(8)~~] of this section.

(f) When determining a person's fitness to perform the duties and discharge the responsibilities of a licensed occupation regulated by the Commission, the Commission does not consider an arrest that did not result in a conviction or placement on deferred adjudication community supervision.

§541.2. Criminal History Evaluation Letters/Determination of Fitness.

Pursuant to Texas Occupations Code, Chapter 53, Subchapter D and §1101.353, a person may request that the Texas Real Estate Commission (the Commission) evaluate the person's eligibility for a specific occupational license regulated by the Commission by:

(1) submitting a request on a form approved by the Commission for that purpose; and

(2) paying the required fee.

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 February 22, 2022.

TRD-202200632
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §157.41

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of §157.41, concerning Automated External Defibrillators for Public Access Defibrillation.

BACKGROUND AND PURPOSE

The proposed repeal of §157.41 is necessary to comply with Senate Bill (S.B.) 199, 87th Legislature, Regular Session, 2021, related to the usage and education requirement for automated external defibrillators for public access defibrillation. S.B. 199 repealed Texas Health and Safety Code §779.002 (Automated External Defibrillators), which removed the rulemaking authority from the Executive Commissioner concerning training requirements and amended Texas Education Code §21.0541 to revise the requirement for the State Board for Educator Certification to adopt rules for automated external defibrillator training.

This rule was reviewed by the Governor's EMS and Trauma Advisory Council (as required by Texas Health and Safety Code §773.012) in a public meeting on September 17, 2021. No comments were received from the advisory council.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §157.41 removes the rule from 25 TAC Chapter 157, Subchapter C.

FISCAL NOTE

Donna Shepperd, DSHS Chief Financial Officer, has determined that for each year of the first five years that the repeal will be in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

(1) the proposed repeal will not create or eliminate a government program;

(2) implementation of the repeal will not affect the number of DSHS employee positions;

(3) implementation of the repeal will result in no assumed change in future legislative appropriations;

(4) the proposed repeal will not affect fees paid to DSHS;

(5) the proposed repeal will not create a new rule;

(6) the proposed repeal will repeal an existing rule;

(7) the proposed repeal will not change the number of individuals subject to the rule; and

(8) the proposed repeal will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Under the proposed repeal there are no requirements to alter current business practices and there are no new fees or costs imposed.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Timothy Stevenson, DVM, PhD, Associate Commissioner, has determined that for each year of the first five years the repeal of the rule is in effect, the public benefit will result in a reduced burden and education responsibilities on the owner of a public access automated external defibrillator.

Donna Sheppard has also determined that for each year of the first five years the repeal of the rule is in effect that there are no anticipated economic costs to persons who are required to comply with the repeal of the rule.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Joseph W. Schmider, State EMS Director, Department of State Health Services, EMS/Trauma Systems, 1100 West 49th Street, Room 441, Mail Code 1876, Austin, Texas 78756, or email EMSInfo@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period or (2) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R142" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services of the health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001; Texas Health and Safety Code, Chapter 773, Emergency Medical Services; and S.B. 199, 87th Legislature, Regular Session, 2021, which repealed Texas Health and Safety Code, §779.002 (Automated External Defibrillators) removing the rulemaking authority from the Executive Commissioner and amending the Texas Education Code §21.0541 to revise the requirement for the State Board for Educator Certification to adopt rules for automated external defibrillator training.

The repeal affects Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapter 1001.

§157.41. Automated External Defibrillators for Public Access Defibrillation.

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 February 25, 2022.

TRD-202200688
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 484-5470

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION
SUBCHAPTER A. PRACTICE AND PROCEDURES
DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §1.1

The Comptroller of Public Accounts proposes amendments to §1.1, concerning scope and construction of rules. The amendments implement Senate Bill 248, 87th Legislature, 2021. Senate Bill 248 repealed Tax Code, §154.1142 and §155.0592, and enacted new Health and Safety Code, §161.0901 (Disciplinary Action Against Cigarette, E-cigarette, and Tobacco Product Retailers).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no fiscal impact on the state government, units of local government, or individuals. The proposal would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to James D. Arbogast, General Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings) and Health and Safety Code, §161.0901 (Disciplinary Action Against Cigarette, E-cigarette, and Tobacco Product Retailers).

§1.1. Scope and Construction of Rules.

(a) Matters subject to these rules. These rules apply to all phases of contested case proceedings that may be referred to the jurisdiction of SOAH as provided by Tax Code, §111.00455 and Government Code, §2003.101. Contested cases under those sections relate to the collection, receipt, administration, and enforcement of a tax imposed under Tax Code, Title 2 and any other tax, fee, or other amount that the comptroller is required to collect, receive, administer, or enforce under a law not included under Tax Code, Title 2. Contested cases within the scope of these rules include disputed deficiency determinations, disputed jeopardy determinations, and disputed denials of refund claims. Pursuant to Tax Code, §111.1042(b), an informal review of a claim for refund is not a contested case.

(1) Deficiency determinations. Tax Code, §111.008 provides that if the comptroller is not satisfied with a tax report or the amount of the tax required to be paid to the state, the comptroller may compute and determine the amount of tax to be paid from information contained in the report or from any other information available to the comptroller. Tax Code, §111.009 provides that a person having a direct interest in a deficiency may petition the comptroller for a redetermination.

(2) Jeopardy determinations. Tax Code, §111.022 provides that if the comptroller believes that the collection of a tax required to be paid to the state or the amount due for a tax period is jeopardized by delay, the comptroller shall issue a determination stating the amount and that the tax collection is in jeopardy. The amount is due and payable immediately unless the taxpayer timely files a request for redetermination.

(3) Denial of refund claims. Tax Code, §111.105 provides that if the comptroller denies a refund claim filed pursuant to Tax Code, §111.104, the person claiming a refund may request a refund hearing.

(b) Matters not subject to these rules. These rules do not apply to hearings on the following matters that are not conducted by SOAH pursuant to Tax Code, §111.00455(b) and Government Code, §2003.101:

(1) a show cause hearing or any hearing not related to the collection, receipt, administration, or enforcement of the amount of tax or fee imposed, or the penalty or interest associated with that amount, except for a hearing under Tax Code, §§151.157(f), 151.1575(c), or 151.712(g), or Health and Safety Code, §161.0901 [~~154.1142,~~ ~~or 155.0592~~];

(2) a property value study hearing under Government Code, Chapter 403, Subchapter M, which is conducted pursuant to Chapter 9, Subchapter A of this title (relating to Practice and Procedure);

(3) a hearing in which the issue relates to:

(A) Property Code, Chapters 72-75;

(B) forfeiture of a right to do business;

(C) a certificate of authority;

(D) articles of incorporation;

(E) a penalty imposed under Tax Code, §151.703(d);

(F) the refusal or failure to settle under Tax Code, §111.101; or

(G) a request for or revocation of an exemption from taxation; and

(4) any other hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount.

(c) Application of SOAH Rules of Procedure. The SOAH Rules of Procedure, 1 TAC Chapter 155, govern contested cases while SOAH has jurisdiction. SOAH has jurisdiction of a contested case from the time the case is docketed at SOAH until the case is returned to the agency following the issuance of a proposal for decision or remanded to the agency for any reason.

(d) Construction. The principles of statutory construction and of Code Construction Act, Government Code, Chapter 311, apply to these rules.

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 February 28, 2022.

TRD-202200716
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 475-8387

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34 TAC §1.5

The Comptroller of Public Accounts proposes amendments to §1.5, concerning filing documents with SOAH or the Office of Special Counsel for Tax Hearings. The amendments reorganize the contact information for the Office of Special Counsel for Tax Hearings. In addition, the amendments correct the mailing address for the Office of Special Counsel, revising it from Post Office Box 13025 to Post Office Box 13528.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. The proposal amends a current rule.

Mr. Reynolds also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no fiscal impact on the state government, units of local government, or individuals. The new proposals would benefit the public by updating contact information for the Office of Special Counsel for Tax Hearings. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to James D. Arbogast, General Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section Implements Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings).

§1.5. Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings.

(a) Filing requirement with SOAH. A party shall file documents that are required to be filed with SOAH in accordance with SOAH Rules of Procedure. The date of filing is determined by SOAH Rules of Procedure. The parties should refer to SOAH Rules of Procedure, 1 TAC §§155.51 (Jurisdiction); 155.53 (Request to Docket Case); and 155.101 (Filing Documents).

(b) Filing requirement with the Office of Special Counsel for Tax Hearings. Contested case documents required to be filed with the Office of Special Counsel for Tax Hearings are:

(1) a motion to dismiss under Government Code, §2001.056 (Informal Disposition of Contested Case);

(2) a motion for rehearing and related motions under Government Code, §§2001.141 - 2001.147 (Contested Cases: Final Decisions and Orders; Motions for Rehearing);

(3) a reply to a motion filed with the Office of Special Counsel for Tax Hearings; and

(4) a brief or reply brief under §1.34 of this title (relating to Comptroller's Decisions and Orders).

(c) Contact information for the Office of Special Counsel for Tax Hearings. Contested case documents required to be filed with the Office of Special Counsel for Tax Hearings may be filed by email to specialcounsel.filings@cpa.texas.gov; by fax to (512) 936-6190; [~~by hand-delivery addressed to Office of Special Counsel for Tax Hearings, 111 E. 17th Street, Austin, Texas 78774;~~] by mail addressed to Office of Special Counsel for Tax Hearings, P.O. Box 13528 [~~13025~~], Austin, Texas 78711-3025; or by hand-delivery addressed to Office of Special Counsel for Tax Hearings, 111 E. 17th Street, Austin, Texas 78774 [~~email to specialcounsel.filings @cpa.texas.gov~~].

(d) Date of filing with the Office of Special Counsel for Tax Hearings.

(1) The filing date of a document filed by mail is determined by the date-stamp affixed by the comptroller's mail room.

(2) The filing date of a document filed by hand-delivery is determined by the date recorded by staff at the comptroller's security desk at 111 E. 17th Street, Austin, Texas 78774.

(3) The filing date of a document filed electronically is determined by the date stamp recorded on the electronic transmission received by the comptroller. The date will be based on the 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m. The filing date of an electronic document received on a date that the comptroller's office is closed will be the next date that the comptroller's office is open.

(4) Non-conforming documents. The Office of Special Counsel for Tax Hearings may notify a filing party about a filing error when a filed document fails to conform to this title. To preserve the filing date when a filed document fails to include a certificate of service required by §1.6 of this title (relating to Service of Documents on Parties), the Office of Special Counsel for Tax Hearings may identify the error and request the filing party to resubmit the document in a conforming format by a deadline.

(e) Upon a taxpayer's request, the Office of Special Counsel for Tax Hearings will provide documentation demonstrating the actual date a document is filed with the Office of Special Counsel for Tax Hearings.

(f) If the Office of Special Counsel for Tax Hearings provides no document to demonstrate the actual date of receipt of a document properly filed in accordance with this section, then other relevant and reliable documents are acceptable proof of date of receipt. A certificate of service under §1.6 of this title is not acceptable proof that a document was filed or the date it was received in accordance with this section.

(g) Settlement documents. The parties should refer to §1.31 of this title (relating to Resolution Agreements) and §1.32 of this title (relating to Dismissal of Case), for guidance regarding the process for resolving a contested case by agreement and, if applicable, guidance on when to file a motion to dismiss after a resolution agreement.

(h) Service required. On the same date that a document is filed, it must also be served as described in §1.6 of this title.

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 February 28, 2022.

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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §1.10

The Comptroller of Public Accounts proposes amendments to §1.10, concerning requesting a hearing. The amendments implement Senate Bill 296, 87th Legislature, 2021, and add a statutory citation.

The comptroller amends subsection (a)(4) to implement Senate Bill 296, which amended Tax Code, §151.054(e) (Gross Receipts Presumed Subject to Tax). As amended, Tax Code, §151.054(e) gives taxpayers 90 days, rather than 60 days, to provide resale or exemption certificates to the comptroller after the comptroller makes a written request. The statutory amendments also provide that the comptroller may allow taxpayers to provide such certificates by a later agreed-upon date. The amendments to subsection (a)(4) adopt these statutory changes.

The comptroller also amends subsection (a)(4) to add a reference to Tax Code, § 151.104 (Sale for Storage, Use, or Consumption Presumed).

In addition, the comptroller amends subsection (d) to replace the reference to "Chief Counsel" with the title "General Counsel."

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no fiscal impact on the state government, units of local government, or individuals. The proposal would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to James D. Arbogast, General Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §151.054 (Gross Receipts Presumed Subject to Tax) and §151.104 (Sale for Storage, Use, or Consumption Presumed).

§1.10. Requesting a Hearing.

(a) Requesting a redetermination hearing.

(1) If a taxpayer disagrees with a deficiency or jeopardy determination, the taxpayer may request a redetermination hearing by timely submitting a written request for redetermination. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.11 of this title (relating to Statement of Grounds; Preliminary Conference).

(2) The request for a redetermination hearing must be submitted before the expiration of 60 days after the date the notice of determination is issued, or before the expiration of 20 days after the statement date on the notification of a jeopardy determination. A request for a redetermination hearing that is not timely submitted will not be granted. An extension of time for initiating a redetermination hearing may be requested subject to the requirements of subsection (c) of this section. A taxpayer who cannot obtain a redetermination hearing may pay the determination and request a refund in order to raise any objection to the determination.

(3) The request for redetermination and Statement of Grounds must be timely submitted to the agency's Audit Processing Section by one of the following methods:

(A) by regular (United States Postal Service or private mail service), certified, or registered mail, or by hand-delivery, to the following address: Texas Comptroller of Public Accounts, Audit Processing Section, 111 E. 17th Street, Austin, Texas 78774-0100;

(B) by email to audit.processing@cpa.texas.gov; or

(C) by fax to (512) 463-2274.

(4) Required documentary evidence following request for redetermination hearing. After a taxpayer timely requests a redetermination hearing, the agency may request in writing that the taxpayer produce documentary evidence for inspection that would support the taxpayer's Statement of Grounds. The written request may specify that resale or exemption certificates to support tax-free sales must be submitted within 90 [~~60~~] days from the date of the request, or by the date

agreed to by the comptroller and the seller. Pursuant to Tax Code, §151.054 and §151.104, resale or exemption certificates that are not submitted within the [~~60-day~~] time limit will not be accepted as evidence to support a claim of tax-free sales by the ALJ in SOAH proceedings.

(b) Requesting a refund hearing.

(1) If a taxpayer disagrees with the agency's denial of a refund claim, the taxpayer may request a refund hearing by timely submitting to the agency a written request for a refund hearing. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.11 of this title and Tax Code, §111.104 and §111.105.

(2) The request for a refund hearing must be filed on or before the 60th day after the date the comptroller issues a letter denying the claim for refund. A request for a refund hearing that is not timely submitted will not be granted. An extension of time for initiating a refund hearing may be requested subject to the requirements of subsection (c) of this section.

(3) The request for a refund hearing and Statement of Grounds must be timely submitted to the agency's Audit Processing Section by one of the following methods:

(A) by regular (United States Postal Service or private mail service), certified, or registered mail, or by hand-delivery, to the following address: Texas Comptroller of Public Accounts, Audit Processing Section, 111 E. 17th Street, Austin, Texas 78774-0100;

(B) by email to audit.processing@cpa.texas.gov; or

(C) by fax to (512) 463-2274.

(4) A refund hearing will not be granted if neither the original request for a refund, nor the Statement of Grounds accompanying a request for a refund hearing, state grounds on which a refund may be granted.

(5) A taxpayer may not subsequently maintain a suit for refund if a refund claim is denied and the taxpayer does not timely request a hearing. See Tax Code, §111.104 and §112.151.

(c) Timely submission of the hearing request.

(1) A hearing request submitted by mail is considered submitted by the date-stamp affixed by the agency mail room.

(2) A hearing request submitted by hand-delivery is considered submitted on the date received by agency staff.

(3) A hearing request that is submitted electronically is considered submitted on a date when it is received at any time during the 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m. on that date, and a hearing request received on a day the agency is closed is considered filed on the next calendar day on which the agency is open. The date of receipt shall be determined by the time and date stamp recorded on the electronic transmission by the agency's system.

(d) Extensions of time for initiating hearing process. Requests to extend the due date for requesting a hearing under this section may be granted in case of emergency or extraordinary circumstances. Requests for extension will not be routinely granted. Requests received after the expiration of the original due date will not be considered. Requests will be granted or denied by the General [~~Chief~~] Counsel of the Hearings and Tax Litigation Division of the agency, and must be submitted by one of the following methods:

(1) by regular (United States Postal Service or private mail service), certified, or registered mail, or by hand-delivery, to the following address: Texas Comptroller of Public Accounts, Administrative Hearings Section, 1700 N. Congress Ave., Suite 320, Austin, Texas 78701-1436;

(2) by email to ahs.service@cpa.texas.gov; or

(3) by fax to (512) 463-4617.

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 February 28, 2022.

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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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34 TAC §1.11

The Comptroller of Public Accounts proposes amendments to §1.11, concerning statement of grounds; preliminary conference. The amendments implement Senate Bill 296, 87th Legislature, 2021, and add a statutory citation.

The comptroller revises subsection (b) to waive the signature requirement for taxpayers who file a Statement of Grounds by e-mail, provided that the Statement of Grounds identifies the individual who is the taxpayer's designated representative.

In addition, the comptroller amends subsection (f) to implement Senate Bill 296, which amended Tax Code, §151.054(e) (Gross Receipts Presumed Subject to Tax). As amended, Tax Code, §151.054(e) gives taxpayers 90 days, rather than 60 days, to provide resale or exemption certificates to the comptroller after the comptroller makes a written request. The statutory amendments also provide that the comptroller may allow taxpayers to provide such certificates by a later agreed-upon date. The amendments to subsection (f) adopt these statutory changes.

The comptroller also amends subsection (f) to add a reference to Tax Code, §151.104 (Sale for Storage, Use, or Consumption Presumed).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no fiscal impact on the state government, units of local government, or individuals. The proposal would benefit the public by conforming the rule to current statute. There would be no significant anticipated economic cost to the public.

Comments on the proposal may be submitted to James D. Arbogast, General Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbo-

gast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings), §151.054 (Gross Receipts Presumed Subject to Tax) and §151.104 (Sale for Storage, Use, or Consumption Presumed).

§1.11. Statement of Grounds; Preliminary Conference.

(a) Content of Statement of Grounds. The Statement of Grounds must contain the reasons the taxpayer disagrees, in whole or in part, with the agency's determination, refund denial, or other action. The taxpayer must list and number the contested items or transactions, individually, or state one or more general contentions that identify a category or categories of contested items or transactions. For each contested item, transaction, or general contention, the taxpayer must also state the factual basis and the legal grounds that the tax should not be assessed or the tax should be refunded. If the taxpayer disagrees with the agency's interpretation of the law, specific legal authority must be cited in support of the taxpayer's arguments.

(b) Signature requirement.

(1) The Statement of Grounds must be signed by the taxpayer or by the authorized representative of the taxpayer. The individual signing the Statement of Grounds will be the taxpayer's designated representative for notice pursuant to §1.3 of this title (relating to Representation and Participation).

(2) A Statement of Grounds that is filed by e-mail or other electronic means complies with the signature requirement under paragraph (1) of this subsection if the Statement of Grounds identifies the individual who is the taxpayer's designated representative for notice pursuant to §1.3 of this title.

(c) Defective Statement of Grounds. If the Statement of Grounds or the power of attorney authorizing an individual to sign the Statement of Grounds is defective, the agency will notify the taxpayer of the actions required to correct the defect. Defects in the Statement of Grounds include, but are not limited to, a failure to state any contested items or contentions under subsection (a) of this section, or a failure to include a signature as required by subsection (b) of this section. If the taxpayer does not correct the defect by the deadline specified by the agency, the hearing request may not be granted.

(d) Contested items or contentions not included in Statement of Grounds. If an item, transaction, or contention is not listed in the Statement of Grounds or otherwise provided consistent with this subchapter, it may be excluded from the Notice of Hearing.

(e) Motion to dismiss for failure to state a contested case issue in the Statement of Grounds. If the taxpayer's Statement of Grounds fails to list and number items or transactions, individually or by category, or fails to state the factual basis and legal grounds upon which relief is sought, the contested case may be dismissed for failure to state a contested case issue for which relief can be granted. For the procedures by which the AHS may move for dismissal based on a Statement of Ground's failure to state a contested case issue for which relief may be granted, see §1.32 of this title (relating to Dismissal of Case).

(f) Preliminary conference and request to provide additional information. If a taxpayer's Statement of Grounds raises issues that cannot be resolved from the material contained in the audit or Statement of Grounds, the agency may ask the taxpayer to participate in a preliminary conference or to provide additional evidence. The preliminary conference or request for additional information is intended to encourage an early resolution of the contested case before it is assigned to a Tax Hearings Attorney. A request for additional information may include a written request that resale or exemption certificates to support tax-free sales must be submitted within 90 [~~60~~] days from the date of the request, or by the date agreed to by the comptroller and the seller. Pursuant to Tax Code, §151.054 and §151.104, resale or exemption certificates that are not submitted within the [~~60-day~~] time limit will not be accepted as evidence to support a claim of tax-free sales by the ALJ in SOAH proceedings.

(g) The Statement of Grounds may be amended up to the time that a Reply to the Position Letter is due, subject to any applicable limitations periods. The Statement of Grounds does not toll the limitations period for any additional contested items, transactions, or general contentions related to refund claims. See §1.13 of this title (relating to Taxpayer's Acceptance or Rejection of Position Letter, and Reply to Position Letter) for more information about the Reply to the Position Letter.

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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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §1.13

The Comptroller of Public Accounts proposes amendments to §1.13, concerning taxpayer's acceptance of rejection of position letter, and reply to position letter.

The comptroller amends subsection (b)(1) to replace the reference to "Chief Counsel" with the title "General Counsel."

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends current rule.

Mr. Reynolds also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no fiscal impact on the state government, units of local government, or individuals. The proposal would benefit the public by updating a reference to the General Counsel. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to James D. Arbogast, General Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section Implements Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings).

§1.13. Taxpayer's Acceptance or Rejection of Position Letter, and Reply to Position Letter.

(a) Due date to accept or reject the Position Letter; extensions. The taxpayer must accept or reject the Position Letter, in whole or in part, within 45 days after the day the Position Letter is dated. The taxpayer may request an extension of this deadline from the assigned Tax Hearings Attorney. The first request to extend the deadline up to an additional 45 days will be granted by the assigned Tax Hearings Attorney. Additional extensions of the deadline to accept or reject the Position Letter will not be granted unless the taxpayer demonstrates there is good cause for the extension and that the need is not caused by neglect, indifference, or lack of diligence.

(b) Selection form. The taxpayer must sign and return to the assigned Tax Hearings Attorney the selection form provided as an attachment to the Position Letter. The taxpayer must select one of the following options.

(1) Option One: Agree with the Position Letter. If the taxpayer selects this option, the General [~~Chief~~] Counsel of the Hearings and Tax Litigation Section will also sign the form, which will then be considered a resolution agreement under §1.31 of this title (relating to Resolution Agreements). The tax liability or refund will be calculated consistent with the Position Letter, including any applicable penalty or interest, and a final billing will be sent to the taxpayer. The taxpayer will not be required to respond to the amended determination and final billing, other than by payment, unless the taxpayer disagrees with the amount of the amended determination or final billing.

(2) Option Two: Disagree with the Position Letter. The taxpayer may reject some or all of the conclusions of the Position Letter by selecting this option and may include a Reply to the Position Letter as provided in subsection (c) of this section.

(c) Reply to the Position Letter. At the time the taxpayer submits the selection form described in subsection (b)(2) of this section, the taxpayer may also submit a Reply to the Position Letter. The Reply to the Position Letter should address all unresolved contentions and provide legal and factual support for the taxpayer's position. If the Position Letter does not address specific contentions or contested items that the taxpayer believes should be included as part of the contested case, the Reply to the Position Letter should state those contentions or contested items so that they may be included in the Notice of Hearing for consideration by the ALJ. If the taxpayer has previously provided the facts, legal arguments, information, and documents it intends to submit for consideration at the time the Reply to the Position Letter is due, the taxpayer may return the selection form indicating disagreement with the Position Letter without a Reply to the Position Letter.

(d) If the taxpayer fails to timely respond to the Position Letter, the comptroller may dismiss the contested case. See §1.32 of this title (relating to Dismissal of Case). In such case, an amended final determination or final billing in accordance with the positions set forth in the Position Letter will be sent to the taxpayer. The contested case will be concluded unless the taxpayer files a motion for rehearing following the procedures stated in §1.35 of this title (relating to Motion for Rehearing).

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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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 475-0387

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34 TAC §1.21

The Comptroller of Public Accounts proposes amendments to §1.21, concerning notice of setting and permit holder reply for certain cigarette, cigar, and tobacco tax cases. The amendments implement Senate Bill 248, 87th Legislature, 2021. Senate Bill 248 repealed Tax Code, §154.1142 (Disciplinary Action for Certain Violations) and §155.0592 (Disciplinary Action for Certain Violations), and enacted new Health and Safety Code, §161.0901 (Disciplinary Action Against Cigarette, E-cigarette, and Tobacco Product Retailers).

The comptroller revises the title of this section to add the term e-cigarette. Health and Safety Code, §161.0901 allows the comptroller to impose civil penalties on e-cigarette retailers, as well as retailers of cigarettes, cigars, and tobacco products.

New subsection (a) explains how a permit holder may request a hearing after the comptroller issues a written notice of violation of Health and Safety Code, §161.0901. This subsection adds a reference to §3.1204 of this title (relating to Administrative Remedies for Violations of Health and Safety Code, Chapter 161, Subchapter H or K). This subsection memorializes the comptroller's current practice that a permit holder must make a written request for a hearing within 20 calendar days of the date on the written notice of violation. This subsection also explains that a written request for a hearing is considered submitted by the date-stamp affixed by the agency mail room, consistent with §1.10(c) of this title (relating to Requesting a Hearing).

New subsection (b) explains that the Rules of Practice and Procedure generally apply to hearings held pursuant Health and Safety Code, §161.0901, except that a permit holder is not required to submit a statement of grounds, and the AHS will not issue a position letter. When a hearing is timely requested, the AHS will docket the hearing at the State Office of Administrative Hearings. This subsection memorializes the comptroller's current practice.

The comptroller proposes to delete existing subsections (a) - (c). The substance of these subsections is addressed in greater detail in other sections of this title. In addition, existing subsections (a) and (c) reference Tax Code provisions that were repealed by Senate Bill 248.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no fiscal impact on the state government, units of local government, or individuals. The proposal would benefit the public by modernizing and conforming the rule to current statute. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to James D. Arbogast, General Counsel for Hearings and Tax Litigation, P.O. Box 13528, Austin, Texas 78711-3528, or james.arbogast@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings) and Health and Safety Code, §161.0901 (Disciplinary Action Against Cigarette, E-cigarette, and Tobacco Product Retailers).

§1.21. [~~Notice of Setting and Permit Holder Reply for Certain~~] Cigarette, E-cigarette, Cigar, and Tobacco Tax Hearings [~~Cases~~].

(a) Initiating a hearing. A permit holder that receives a written notice of a violation of Health and Safety Code, §161.0901, as provided in §3.1204 of this title (relating to Administrative Remedies for Violations of Health and Safety Code, Chapter 161, Subchapter H or K), may file a written request for a hearing on or before the 20th day after the date on the written notice of violation. A hearing request must be sent by mail to the address shown on the notice of violation. A hearing request is considered submitted by the date-stamp affixed by the agency mail room.

[~~(a) Hearings pursuant to Tax Code, §154.1142 or §155.0592, will receive a notice of setting from the agency that will include:~~]

[~~(1) the date, time, and place of the oral hearing;~~]

[~~(2) the legal authority and jurisdiction under which the hearing is to be held;~~]

[~~(3) the asserted factual basis for the alleged violation(s); and~~]

[~~(4) the date any legal brief or additional facts in reply to the notice of setting is due.~~]

(b) A hearing pursuant to Health and Safety Code, §161.0901 shall be conducted in accordance with the relevant portions of §§1.1 - 1.35 of this title (relating to Rules of Practice and Procedure), except that §§1.10 - 1.14 of this title (relating to Requesting a Hearing; Statement of Grounds; Preliminary Conference; Position Letter; Taxpayer's Acceptance or Rejection of Position Letter, and Reply to Position Letter; and The Administrative Hearings Section's Response to the Reply to the Position Letter) shall not apply. After a hearing is requested, AHS will file a Request to Docket Case form with SOAH, as provided in §1.20 of this title (relating to Docketing Oral and Written Submission Hearings). Unless otherwise required by law, service of the Notice of Hearing shall be made in the manner required by Government Code, Chapter 2001.

[~~(c) After reviewing a notice of setting issued for hearings under Tax Code, §154.1142 or §155.0592, a permit holder may present facts or legal arguments for consideration by filing a Reply to the notice of setting by the specified due date. The notice of setting may not set the due date for the Reply earlier than 20 days from the date the notice of setting is issued.~~]

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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Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 437. FEES

37 TAC §437.5, §437.15

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code, Chapter 437, Fees, concerning §437.5, Renewal Fees, and §437.15, International Fire Service Accreditation Congress (IFSAC) Seal Fees.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §437.5, Renewal Fees, reduces the annual certification renewal fee from $75 to $60. The amendment is an effort to grant relief to municipal departments and individual certification holders when renewing their certifications. It is anticipated to have an overall positive economic impact on municipalities and fire protection personnel. In addition, if renewal fees are not received by the last day of the certification period additional late fees will be assessed. All certification renewal fees received from one to 30 days late will be reduced from $37.50 to $30 and certification renewal fees received more than 30 days late will be reduced from $75 to $60.

The proposed amendments to §437.15, International Fire Service Accreditation Congress (IFSAC) Seal, increases the fee for individuals seeking an International Fire Service Accreditation Congress (IFSAC) Seal from $15 to $30. IFSAC seals are not required for fire protection licensure by the state. This accreditation is totally voluntary and offered in various certification disciplines. The seals will allow direct reciprocity from one IFSAC institution or program to another. The purpose of the fee increase

is to cover the cost of diverted agency time and resources for processing these seals.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be minor fiscal impact to state government by reducing the amount of state funds collected by the commission for certification renewals. There will be a benefit to local governments as a result of enforcing or administering these amendments since municipalities are required to pay for certification renewal fees for all fire protection personnel certified by the commission.

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be lower fees for individuals and entities when renewing all certifications with the agency. Also, there will be a public benefit in that an individual who possesses an IFSAC seal has demonstrated reasonable assurance of the content and quality of the testing program offered by one entity to other institutions and programs. It verifies that the individual has successfully met the requirements of the applicable National Fire Protection Association (NFPA) standard.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Codes §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. As a result, the commission asserts that the preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

(1) the rules will not create or eliminate a government program;

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will result in a decrease in fees paid to the agency by reducing the fees collected for certification renewals;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

(7) the rules will not increase the number of individuals subject to the rule; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

The proposed amendment to rule §437.5 reduces the cost on regulated persons by lowering the annual certification renewal fees that local governments are required to pay by $15. This is expected to decrease the total cost to regulated persons in FY 2022. The proposed amendment to §437.15 increases the cost of International Fire Service Accreditation Congress (IFSAC) Seal by $15, but does not impose a cost on regulated persons, including another state agency, a special district, or a local government. IFSAC seals are not required for fire protection licensure and is an optional national accreditation. In FY 2021, the total revenue from IFSAC seals was $120,000, and with the $15 increase, the anticipated revenue in FY 2022 is $240,000. Accordingly, the commission is amending rule §437.5 to decrease the total cost imposed on regulated persons by an amount that will be greater than the cost imposed on the persons by the proposed increase in rule §437.15 pursuant to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register,* to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to *deborah.cowan@tcfp.texas.gov.*

STATUTORY AUTHORITY

The amended rules are proposed under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rules are also proposed under Texas Government Code §419.026, which authorizes the commission to adopt rules establishing fees for certifications.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§437.5. Renewal Fees.

(a) A non-refundable annual renewal fee of $60 [~~$75~~] shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the commission may collect only one renewal fee of $60 [~~$75~~], which will renew all certificates held by the individual or certified training facility.

(b) A regulated employing entity shall pay the renewal fee for each individual who is required to possess certification as a condition of employment.

(c) If a person re-enters the fire service whose certificate(s) has been expired for less than one year, the regulated entity must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fees, the certificates previously held by the individual, for which he or she continues to qualify, will be renewed.

(d) If a person wishes to renew a certificate(s) which has been expired less than one year and the individual is not employed by a regulated employing entity as defined in subsection (b) of this section, the individual must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fee(s), the certificate(s) previously held by the individual, for whom he or she continues to qualify, will be renewed.

(e) Nothing in this section shall prohibit an individual from paying a renewal fee for any certificate which he or she is qualified to hold, providing the certificate is not required as a condition of employment.

(f) Certification renewal information will be sent to all regulated employing entities and individuals holding certification at least 60 days prior to October 31 of each calendar year. Certification renewal information will be sent to certified training facilities at least 60 days prior to February 1 of each calendar year.

(g) If renewal payment is submitted by mail, all certification renewal fees must be submitted with the renewal invoice to the commission.

(h) All certification renewal fees must be paid on or before the last day of the certification period (see subsection (i) of this section) to avoid additional fee(s).

(i) The certification period shall be a period not to exceed one year. The certification period for employees of regulated employing entities[,] and individuals holding certification is November 1 to October 31. The certification period of certified training facilities is February 1 to January 31.

(j) All certification renewal fees received from one to 30 days after the last day of the certification period will cause the individual or entity responsible for payment to be assessed a non-refundable late fee of $30 [~~$37.50~~] in addition to the renewal fee for each individual or training provider for which a renewal fee was due.

(k) All certification renewal fees received more than 30 days after the last day of the certification period will cause the individual or entity responsible for payment to be assessed a non-refundable late fee of $60 [~~$75~~] in addition to the renewal fee for each individual or training provider for which a renewal fee was due.

(l) In addition to any non-refundable late fee(s) assessed for certification renewal, the commission may hold an informal conference to determine if any further action(s) is to be taken.

(m) An individual or entity may petition the commission for a waiver of the late fees required by this section if the person's certificate expired because of the individual or regulated employing entity's good faith clerical error[,] or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

(n) An individual, who is a military service member, or returning from activation to military service, must notify the commission in writing if the individual wishes to renew an expired certification. Provided other qualifications for renewal are met, the individual will have any normally associated late fees waived and will be required to pay a renewal fee of $60 [~~$75~~].

§437.15. International Fire Service Accreditation Congress (IFSAC) Seal Fees.

A non-refundable $30 [~~$15~~] fee shall be charged for each IFSAC seal issued by the commission.

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 February 22, 2022.

TRD-202200623
Michael Wisko
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 936-3812

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CHAPTER 461. INCIDENT COMMANDER

37 TAC §461.1

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code, Chapter 461, Incident Commander, concerning §461.1, Incident Commander Certification.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §461.1 is to remove the "grandfathering" provision from rule language for Incident Commander that expired on January 1, 2022. Without the Special Temporary Provision in this rule, all individuals seeking an Incident Commander certification will be required to comply with the minimum standards for Incident Commander certification in this chapter.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be more accurate, clear, and concise rules regarding obtaining Incident Commander certification.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are is in effect; therefore, no local employment impact statement is required under Texas Government Codes §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

(1) the rules will not create or eliminate a government program;

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

(7) the rules will not increase the number of individuals subject to the rule; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register,* to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to *deborah.cowan@tcfp.texas.gov.*

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§461.1. Incident Commander Certification.

(a) An Incident Commander is defined as an individual responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources, who has overall authority and responsibility for conducting and managing all incident operations at the incident site.

(b) All individuals holding an Incident Commander certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

~~[(c) Special temporary provision. Individuals are eligible to take the commission examination for Incident Commander by:]~~

~~[(1) holding as a minimum, Fire Officer II certification through the commission; and]~~

~~[(2) providing documentation of completion of the National Incident Management System courses 100, 200, 700 and 800; and]~~

~~[(3) providing documentation acceptable to the commission that the individual has successfully completed Incident Commander training that meets the minimum requirements of the National Fire Protection Association Standard 1026; or]~~

~~[(4) providing documentation acceptable to the commission, in the form of an affidavit from the individual's Head of Department or Chief Training Officer, that the individual has met the departments requirements to perform as an Incident Commander and has demonstrated proficiency as an Incident Commander.]~~

~~[(5) This subsection will expire on January 1, 2022.]~~

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 February 22, 2022.

TRD-202200622
Michael Wisko
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: April 10, 2022
For further information, please call: (512) 936-3812

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 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.16

The State Board of Dental Examiners withdraws proposed new §108.16 which appeared in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7705).

Filed with the Office of the Secretary of State on February 28, 2022.

TRD-202200738
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: February 28, 2022
For further information, please call: (512) 305-8910

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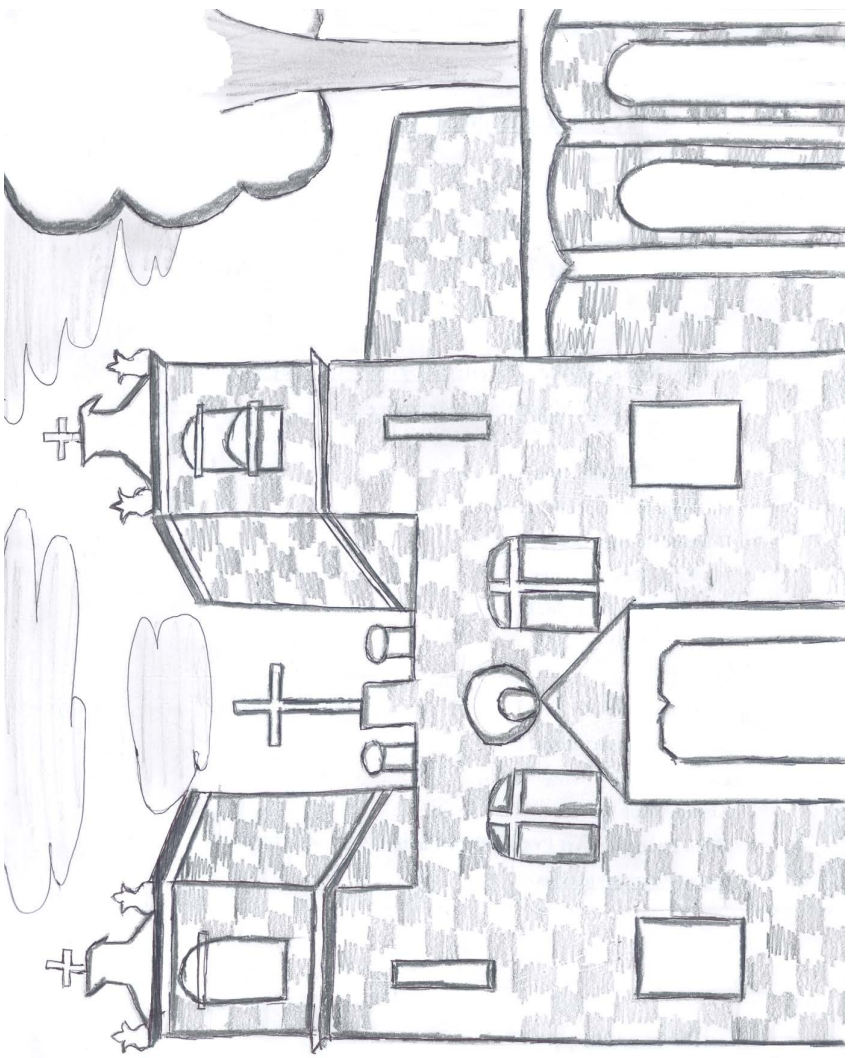

ADOPTED RULES

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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER F. COLLECTIONS AND DISTRIBUTIONS

1 TAC §55.143

The Office of the Attorney General (OAG) adopts a new rule at 1 Texas Administrative Code (TAC), Part 3, Chapter 55, Subchapter F, §55.143. The rule addresses an incentive program for paying child support arrears and is adopted with minor non-substantive edits to the text as published in the November 5, 2021, issue of the *Texas Register* (46 TexReg 7479). The rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rule prescribes how the OAG, a Title IV-D agency (Texas Family Code §231.001) will administer a payment incentive program to promote payment by obligors who are delinquent in satisfying child support arrearages assigned to the Title IV-D agency. The adopted new §55.143 identifies the program requirements. The current program, however, is not changing with §55.143's implementation.

SECTION SUMMARY

Section 55.143 identifies criteria, conditions, procedures, and financial incentives for the program. The OAG will make the application form available on its website (Texas Attorney General, Child Support Division's Arrears Payment Incentive Program Application (Form 1575)).

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Ruth Anne Thornton, Director of Child Support, has determined that for the first five-year period the adopted rule is in effect there are no foreseeable additional costs to state or local government as a result of enforcing or administering the adopted rule. In addition, enforcing or administering the rule does not have foreseeable implications relating to revenues of state or local governments.

There are, however, foreseeable reductions in costs to state or local government as a result of enforcing or administering the adopted rules. The program will likely reduce costs to the OAG and allow for reallocation of resources by increasing case closures. This is because the state's cost to maintain indefinitely non-paying cases solely for the purpose of attempting to collect state-owned arrearage balances likely exceeds the funds that might eventually be collected and retained by the state through various collection remedies.

By creating an incentive for obligors to make increased payments to satisfy their arrearage balances more quickly, this program will result in increased case closures and reduced state costs.

PUBLIC BENEFITS

Ms. Thornton has also determined that for each year of the first five years the adopted rule is in effect the public will benefit from increased payments by obligors who are delinquent in satisfying child support arrearages assigned to the OAG.

Because state-owned arrearages are often the last portion of a child support obligation collected, the program has demonstrated to be a proven incentive for obligors to send in more payments in higher amounts and in an expedited manner. As a result, families' collections have increased. In cases with only state-owned arrearages remaining, the program has proven to be an incentive for many noncompliant obligors to start making voluntary payments to satisfy their remaining obligations.

PROBABLE ECONOMIC COSTS

Ms. Thornton has determined that for each year of the first five-year period the adopted rules are in effect, there are no anticipated economic costs to persons who are required to comply with the adopted rules. The adopted new §55.143 identifies the program requirements, but the current program is not changing with §55.143's implementation.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Ms. Thornton has determined that for each of the first five-year period the adopted rule is in effect, there will be no foreseeable adverse fiscal impact on small business, micro-businesses, or rural communities. As stated, the adopted new §55.143 identifies the program requirements, but the current program is not changing with §55.143's implementation.

Since the adopted rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

LOCAL EMPLOYMENT OR ECONOMY IMPACT

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- will not create or eliminate a government program (the program was first authorized by the Texas legislature in 2011, and the OAG has successfully operated the program since 2012, first as a limited pilot program, and then as a statewide program beginning in 2018);

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

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

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

- will create a new regulation;

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

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

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

TAKINGS IMPACT ASSESSMENT

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

SUMMARY OF PUBLIC COMMENTS

The adopted rule was published in the November 5, 2021 issue of the *Texas Register* (46 TexReg 7479). The deadline for public comment was December 6, 2021. The OAG did not receive any comments from interested parties on the rule, as proposed, during the 30-day public comment period.

STATUTORY AUTHORITY. OAG adopts new 1 TAC §55.143 pursuant to Texas Family Code §§231.003 and 231.124. Texas Family Code §231.001 designates OAG as Texas's Title IV-D agency. Section 231.003 authorizes the Title IV-D agency to by rule promulgate procedures for the implementation of Chapter 231. Section 231.124 provides that the OAG may establish and administer a payment incentive program to promote payment by obligors who are delinquent in satisfying child support arrearages.

Cross-reference to Statute. New §55.143 implements an incentive program to promote payment of child support arrearages as permitted by Texas Family Code §231.124.

§55.143. Arrears Payment Incentive Program.

(a) The Arrears Payment Incentive Program is a voluntary program administered by the Office of the Attorney General (OAG), a Title IV-D agency, to promote payment by obligors who are delinquent in satisfying child support arrearages assigned to the Title IV-D agency under Texas Family Code §231.104(a). The program is established pursuant to Texas Family Code §231.124. The program provides a credit for every dollar amount paid by the obligor on interest and arrearage balances during each month of the obligor's voluntary enrollment in the program. Participation by an obligor in the program does not prohibit the OAG from pursuing any other collection method authorized by law.

(b) The following criteria must be met for an obligor to be eligible to participate in the program:

(1) There must be a final Texas child support order in the obligor's case;

(2) The obligor must have and maintain a current address on record with the OAG;

(3) There must be at least $500 in both state-owned arrears (the child support obligation assigned to the state under Texas Family Code §231.104(a) that accrued during any month the obligee received TANF/AFDC public assistance benefits), and unrecovered assistance (the amount of money paid in the form of public assistance under the Title IV-A program that has not yet been recovered from collections applied to state-owned arrears for the case);

(4) the child support obligation must not be payable to the Department of Family and Protective Services;

(5) the obligor must not have a pending bankruptcy case;

(6) the obligor's case must not be one in which the OAG is providing intergovernmental services under Texas Family Code Chapter 159; and

(7) the obligor must not be currently incarcerated.

(c) The following conditions apply to an obligor's continued participation in the program:

(1) to receive program matching payment credits reducing state-owned arrears, an obligor must pay the current support obligations for the month in full, including medical and dental support, if any, plus make a payment toward the child support arrears balance;

(2) an obligor must make at least one qualifying arrearage payment within any 180-day period for continued participation in the program. Failure by an obligor to make at least one qualifying arrearage payment within any 180-day period may result in the OAG removing the obligor from the program;

(3) payments must be voluntarily paid by the obligor or by the obligor's employer through income withholding; and

(4) if an obligor enrolled in the program seeks federal bankruptcy protection, the obligor will no longer be eligible to receive program matching payment credits and will be removed from the program while the bankruptcy proceeding is pending.

(d) The following procedures apply to enrollment in the program:

(1) the OAG will make the Texas Attorney General, Child Support Division's Arrears Payment Incentive Program Application (Form 1575) available on its website;

(2) if an obligor has multiple cases and wants each case enrolled in the program, the obligor will need to apply to the program for each case;

(3) the obligor may apply for initial enrollment in the program, regardless of whether the obligor is currently making payments on the case;

(4) if the obligor is removed from the program, there will be a six-month waiting period to be eligible to re-apply; and

(5) an obligor may be immediately eligible for re-enrollment if a lump sum payment equaling at least three full months of support obligations, including any periodic court-ordered arrears payments, is paid through the Texas Child Support State Disbursement Unit.

(e) The following terms apply to the financial incentives to be offered under the program:

(1) if the obligor pays all current support obligations for the month, any additional amounts paid towards the child support arrears will be matched with a dollar-for-dollar credit that will be applied to reduce state-owned child support arrears. Program matching payment credits will not be applied to reduce medical support or dental support arrears. Program matching payment credits will not reduce any family-owned arrears;

(2) an obligor is eligible to earn program matching payment credits from the date of acceptance into the program;

(3) program matching payment credits automatically stop once unrecovered assistance is paid in full or state-owned child support arrears are paid in full, whichever occurs first; and

(4) payments received on other cases involving the obligee may impact the portion of arrears on the obligor's case that are eligible for program matching payment credits.

(f) The following payments are not eligible for program matching payment credits:

(1) federal offsets;

(2) state debt setoffs;

(3) lottery intercepts;

(4) bond forfeitures;

(5) monies received as the result of child support liens or levies; or

(6) payments made directly to the obligee and not through the Texas Child Support State Disbursement Unit.

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 February 24, 2022.

TRD-202200670
Austin Kinghorn
General Counsel
Office of the Attorney General
Effective date: March 16, 2022
Proposal publication date: November 5, 2021
For further information, please call: (512) 460-6673

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §351.843

The Texas Health and Human Services Commission (HHSC) adopts new §351.843, concerning the Early Childhood Intervention Advisory Committee, in Texas Administrative Code (TAC), Part 15, Chapter 351, Subchapter B, Division 1.

Section 351.843 is adopted without changes to the proposed text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8159). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adoption of new §351.843 is to move the ECI advisory committee requirements from 40 TAC Chapter 101, Subchapter C, Division 3 to 1 TAC Chapter 351 and format the advisory committee rule so it aligns with other HHSC advisory committee rules.

The proposed repeal of 40 TAC Chapter 101, Subchapter C, Division 3, will remove rules related to ECI from the chapter related to the Department of Assistive and Rehabilitative Services, which was abolished September 1, 2016, and relocate them to 1 TAC Chapter 351, where other HHSC advisory committee rules are located. The repeal was published elsewhere in this same issue of the *Texas Register.*

COMMENTS

The 31-day comment period ended January 3, 2022.

During this period, HHSC received a comment regarding the proposed rule from one commenter, a parent. A summary of comments relating to §351.843 and HHSC's response follows.

Comment: The commenter suggested new §351.843 not be added if moving the rule negatively impacts the visibility of the committee, makes referrals to ECI more difficult, or gives child-care providers more latitude in determining if children should be referred.

Response: HHSC declines to revise the rule in response to this comment. The new rule does not change any impacts or requirements.

STATUTORY AUTHORITY

New §351.843 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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

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 February 25, 2022.

TRD-202200674
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: March 17, 2022
Proposal publication date: December 3, 2021
For further information, please call: (512) 438-5429

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES
SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.246

The Public Utility Commission of Texas (commission) adopts amendments to existing 16 Texas Administrative Code (TAC) §22.246, relating to Administrative Penalties. The commission adopts this rule with changes to the proposed rule as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5517). The rule will be republished. This rule will implement an amendment to the Public Utility Regulatory Act (PURA) §15.023(b-1) enacted by the 87th Texas Legislature that establishes an administrative penalty not to exceed $1,000,000 for violations of PURA §35.0021 or §38.075, each relating to Weather Emergency Preparedness. In response to filed comments, these rules will also clarify the application of certain statutory provisions relating to the commission's penalty authority and applicable remedy periods.

The commission received comments on the proposed rule from AEP Texas Inc., CenterPoint Energy Houston Electric, LLC, Oncor Electric Delivery Company LLC, and Texas-New Mexico Power Company (collectively, the Joint ERCOT TDUs); Texas Electric Cooperatives, Inc. (TEC); Texas Competitive Power Advocates (TCPA); Texas Public Power Association (TPPA); and Lower Colorado River Authority and Lower Colorado River Authority Transmission Services Corporation (collectively, LCRA).

General Comments

Statutory Interpretation of PURA §15.023(a), §15.024(c), §35.0021(g), and §38.075(d)

PURA §15.023(a) and §15.024(c) were in effect prior to the 87th session of the Texas Legislature and will be referred to as preexisting law. PURA §35.0021 and §38.075 were both enacted by the 87th Texas Legislature and will be referred to as the weather preparedness statutes. Rules adopted and orders issued under these statutes will be referred to as weather preparedness rules and weather preparedness orders respectively.

Commission Comment

Commenters have noted, either explicitly or by implication, several conflicts between the weather preparedness statutes and preexisting law. The commission addresses the specifics of these comments throughout this order where relevant. The statutory underpinnings for the resolution of these conflicts are discussed under this General Comments heading. The weather preparedness statutes were enacted after the preexisting statutes and are more specific in their application. Accordingly, under the Code Construction Act §311.025-31.026, the weather preparedness statutes prevail in any conflicts.

The first issue involving the interaction of preexisting law and the weather preparedness statutes relates to circumstances in which the commission has authority to issue an administrative penalty for a violation of a weather preparedness statute, rule, or order.

Under PURA §15.023(a), "[t]he commission may impose an administrative penalty against a person regulated under [PURA, Title II] who violates [PURA, Title II] or a rule or order adopted under [PURA, Title II]." Notably, the weather preparedness statutes are located in PURA, Title II. Under the Code Construction Act §311.016, "may" creates discretionary authority. Therefore, under preexisting law, the commission has general discretion to impose administrative penalties for violation of a weather preparedness statute, rule, or order.

Each of the weather preparedness statutes contains an identical provision that reads "[t]he commission shall impose an administrative penalty on an entity, including a municipally owned utility or an electric cooperative, that violates a [weather preparedness rule] and does not remedy that violation within a reasonable period of time." Under the Code Construction Act, "shall" imposes a duty. Accordingly, if an entity violates a weather preparedness rule, the commission is required to impose an administrative penalty.

In comments submitted on various provisions throughout the two proposed rules, TCPA, TEC, Joint ERCOT TDUs, and LCRA each interpret the language of the weather preparedness statutes to mean that the commission *cannot* impose an administrative penalty against an entity that violates a weather preparedness statute, rule, or order *unless* the entity fails to remedy the violation within a reasonable period of time.

Commission Response

The commission disagrees that it cannot impose an administrative penalty against an entity that violates a weather preparedness requirement unless the entity fails to remedy the violation within a reasonable period of time. As the commenters point out, each of the weather preparedness statutes indicate the commission *shall* impose a penalty if a violation is not remedied in a reasonable period of time. However, neither of the weather preparedness statutes impose or suggest any limitation on PURA §15.023(a), which provides the commission with discretionary authority to issue a penalty for a violation of PURA, Title II or a rule or order adopted under Title II.

The interpretation that the commission is prevented from issuing an administrative penalty without first giving an entity an opportunity to remedy the violation fails on a policy level as well, as such a limitation would create a significant compliance loophole. Under such an interpretation, an entity would be incentivized to delay implementing any costly weather preparedness measure until after it was identified by the Electric Reliability Council of Texas (ERCOT) or the commission, because the regulatory risk of noncompliance would be eliminated. If the violation is discovered, the entity would be assured a reasonable period of time to remedy the violation, regardless of the circumstances surrounding the violation. If it is not discovered, potentially costly upgrades could be avoided completely. Moreover, an entity could even fail to meet the same requirement multiple times, each time relying upon a built-in cure period to address any compliance issues.

The commission adopts amended §22.246(g)(5)(C) to clarify the commission's discretionary penalty authority under preexisting law.

The next interaction of potentially conflicting statutes involves potential exceptions to the commission's discretionary penalty

authority under §15.023(a). The first exception originates from the aforementioned provision of the weather preparation statutes that requires the commission to impose a penalty if a weather preparation rule is violated and not remedied in a reasonable period of time. The second comes from PURA §15.024(c), which states that "[a] penalty may not be assessed under this section if the person against whom the penalty may be assessed remedies the violation before the 31st day after the date the person receives [a formal notice of violation]. A person who claims to have remedied an alleged violation has the burden of proving to the commission that the alleged violation was remedied and was accidental or inadvertent." Under the Code Construction Act §311.016, "may not" imposes a prohibition. Therefore, the commission is prohibited from imposing a penalty for a violation of Title II or a rule or order adopted under Title II if the entity can demonstrate that the violation was accidental or inadvertent and was remedied before the 31st day after receiving notice under Subsection (b).

Commission Response

The commission modifies §22.246 to reflect two exceptions to the commission's discretionary penalty authority. First, consistent with the weather preparedness statutes, under adopted §22.246(g)(5)(C)(ii), the commission is required to issue an administrative penalty for a violation of a weather preparedness rule that was not remedied within a specified timeframe. Second, consistent with PURA §15.024(c), under adopted §22.246(g)(5)(C)(ii), the commission is prohibited from issuing an administrative penalty for a violation of a weather preparedness statute, rule, or order if the violation is remedied within a specified timeframe, and was accidental or inadvertent. In this instance, the alleged violator has the burden of proving that each of these conditions was met. Each of these exceptions to the commission's general discretionary authority is justified because under the Code Construction Act, the more specific provisions of PURA §15.024(c) and the weather preparedness statutes control over PURA §15.023(a). The commission addresses the specified timeframes below. The commission also modifies the rule to clarify that neither of the above exceptions apply to a violation that is not remediable.

The third potential conflict of laws relates to the appropriate remedy period for purposes of the exceptions to the commission's discretionary administrative authority. Under preexisting law, the general remedy period for any violation is 30 days after the receipt of a formal notice of violation. Under the weather preparedness statutes, the remedy period is a reasonable period of time. TPPA contends that these are two distinct remedy periods and argued that the commission should clarify that the two periods are different. Conversely, Joint ERCOT TDUs argue that the reasonable remedy period takes precedence over the generic 30-day remedy period, because the reasonable remedy period is specific to weather preparedness violations. Joint ERCOT TDUs further argue that a reasonable remedy period is "a fact question, dependent on the particular facts and circumstances attendant to the situation. A reasonable period of time for remedying a violation of a rule established pursuant to the Weatherization Statutes may not, therefore, be established by rule, or without any consideration of the particular facts and circumstances giving rise to a violation."

Commission Response

The commission agrees with Joint ERCOT TDUs - while acknowledging that Joint ERCOT TDUs were making this argument in support of a different ultimate position - that there is only a single, reasonability-based remedy period for violations of weather preparation requirements. Weather preparedness violations pose a serious risk to reliability of the bulk electric system, and an entity that violates these rules must remedy those violations as expediently as reasonably possible. Applying a generic remedy period, as provided by preexisting law, or two separate remedy periods, as recommended by TPPA, would lead to contradictory results and would undermine the effectiveness of the commission's statutorily mandated regulatory objectives. If, for example, the reasonable remedy period for a violation is 20 days, if an entity fails to remedy that violation within 20 days, the commission is required by the weather preparedness statutes to impose an administrative penalty. Affording that entity a second remedy period after it has received a formal notice of violation from the executive director clearly conflicts with the plain language of the weather preparedness statutes.

Under the adopted §22.246(g)(5)(C), the remedy period for both exceptions to the commission's discretionary penalty authority is a "reasonable" period of time. The commission agrees with Joint ERCOT TDUs that the weather preparedness statutes establish a remedy period that is dependent upon the particulars of the violation and, potentially, the circumstances surrounding the violation.

The final potential conflict between preexisting law and the weather preparedness statutes is the process and timing surrounding the remedy periods. Under preexisting law, the remedy period begins after the entity has received a formal notice of violation from the executive director. Under the weather preparedness statutes, the remedy period, in many cases, will begin when ERCOT provides the entity with the results of a weather preparedness inspection. This is a significant distinction, because §22.246 provides specific notice and process requirements that are not applicable to a remedy period that takes place prior to the issuance of a formal notice of violation.

Commission Response

The process surrounding the application of the period for remedying violations is determined by the applicable substantive weather preparedness rules. However, because the commission has not yet adopted its final Phase II weather preparedness rules, adopted §22.246(g)(5)(D) establishes default procedural rules surrounding remedying weather preparedness violations that supplement the other notice of violation provisions of that section. These procedural provisions mirror the preexisting process for the generic remedy period under §22.246(g)(1).

Specifically, under adopted §22.246(g)(5)(D) an entity that remedies a violation discovered during an ERCOT inspection by the deadline provided by ERCOT is deemed to have remedied that violation in a reasonable period of time. If ERCOT has not provided a deadline, the executive director will provide the entity with a written notice describing the violation and a deadline for remedying the violation. Finally, if the commission disagrees that the deadline provided by ERCOT or the executive director is reasonable, the commission will determine what the deadline should have been. The commission will use this updated deadline to determine the applicability of the exceptions to the commission's discretionary penalty authority and, if appropriate, as a factor in determining the magnitude of the administrative penalty assessed against the entity for the violation. This updated deadline does not, however, guarantee that the entity will be provided additional time to remedy the violation in the future. Accordingly, an entity should continue its remedial efforts even after it misses the deadline provided by ERCOT or the executive director.

§22.246(b)(5), Definition of violation

§22.246(b)(5) defines the term "Violation" as "[a]ny activity or conduct prohibited by PURA...commission rule, or commission order."

TCPA recommended adding a subparagraph to §22.246(b)(5) that would clarify that with regard to weather preparedness standards, a violation does not occur until after ERCOT has conducted an inspection, found a potential violation, and provided the entity with a reasonable opportunity to cure the potential violation. TCPA argued this is required by PURA §35.0021(c).

Commission Response

The commission declines to modify the definition of violation as requested by TCPA. A violation occurs when an entity fails to comply with PURA, a commission rule, or a commission order. Whether ERCOT identifies this violation in one of its inspections or the entity eventually remedies the violation has no bearing on whether a violation occurred.

The plain language of PURA §35.0021 requires ERCOT to provide an entity with a reasonable period of time to "remedy any *violation"* and "report to the commission any *violation"* related to weather emergency preparedness. (Emphasis added). At no point does it refer to "potential violations" as suggested by TCPA. Moreover, acknowledging and documenting each failure to comply as a violation is important for establishing whether an entity has a history of violations, an important consideration in determining appropriate penalty amounts in any future enforcement proceedings related to that issue under §25.246(c)(3)(C).

§22.246(c), Penalty amounts

Existing §22.246(c) outlines the maximum penalty amounts that can be assessed for violations of PURA or a rule or order adopted under PURA and provides a list of penalty factors that the commission must consider when determining what level of penalty to impose for a particular violation. Proposed §22.246(c) clarifies that for violations of PURA §35.0021 and §38.075, or a rule or order adopted under those provisions, the commission may impose a penalty of up to §1,000,000 per violation per day.

LCRA recommended the addition of a new paragraph in §22.246(c) clarifying that the commission would not assess an administrative penalty for an entity's first violation of a weather preparedness requirement if the risk posed by the violation is low or if the entity cures the violation in a reasonable period of time.

Commission Response

The commission declines to limit its ability to assess an administrative penalty for an entity's first violation of a weather preparedness rule or statute. Neither PURA §35.002 or §38.075 include any penalty exemptions for first time offenders. The commission will consider the facts and circumstances surrounding each violation in determining whether to assess an administrative penalty, including the history of previous violations and efforts made to correct the violation, as required by this subsection.

§22.246(c)(1), Separate violations

Under paragraph §22.246(c)(1), each day a violation continues is a separate violation for which an administrative penalty can be assessed.

TCPA requested that the commission insert language clarifying that an administrative penalty will not be assessed until after the entity has been provided a reasonable period of time to remedy a violation discovered in an inspection or to appeal the inspector's determination that a violation has occurred. TCPA also requested language that a violation would not be assessed if a generation resource is following the process to mothball or retire a resource.

Commission Response

The commission declines to add language to §22.246(c)(1) that a penalty will not be assessed until after the entity has been provided a reasonable amount of time to remedy any potential violation discovered in an inspection or to appeal the inspection. Remedy periods are discussed in the commission's response to general comments above. With regard to the ability of an entity to appeal the results of an ERCOT inspection before a penalty is issued, the commission, not ERCOT, retains authority to determine whether a violation has occurred, whether the violation was remedied in a reasonable amount of time, and whether the assessment of an administrative penalty is appropriate. The commission will not assess any administrative penalties without providing the entity an opportunity to request a hearing on any contested issues.

The commission also declines to specify that a violation will not be assessed if a generation resource is following the process to mothball or retire a resource as requested by TCPA. Whether a particular fact pattern constitutes a violation of the commission's weather preparedness rules or which scenarios might excuse such a violation is beyond the scope of this rulemaking.

§22.246(c)(2), Maximum penalties

Proposed paragraph §22.246(c)(2) identifies the maximum administrative penalty of $1,000,000 for violations of PURA §35.002 and §38.075 and maximum administrative penalty of $25,000 for all other violations of PURA and commission rules.

TPPA pointed out typographical errors in citations of PURA §35.002 and §38.075 in §22.246(c)(2).

Commission Response

The commission makes the recommended changes.

TEC and LCRA each recommended modifying §22.246(c)(2) to limit the imposition of penalties to "continuing violations." TEC's suggested language appears to only permit penalties for continuing violations, and the LCRA's proposed language only allows for a penalty of over $5,000 for a violation "that is a continuing violation that was not accidental or inadvertent and was not remedied within a reasonable period of time."

TCPA made general comments regarding §22.246(c)(2) requesting that the commission clarify what constitutes a "separate violation" and proper metrics for consideration of a violation of the weatherization rule to mitigate the risk of loss by a respondent facing a prospective violation.

Commission Response

TEC and LCRA misconstrue the meaning of the defined term "continuing violation." A continuing violation is not, as these parties suggest, merely an ongoing violation after parties have had an opportunity to remedy. A continuing violation is "any instance in which the person alleged to have committed a violation attests that the violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent." In other words, if an entity attempts to avail itself of the provisions under §22.246(g)(1)(B) by attesting that a viola-

tion has been remedied and was accidental, but that attestation was invalid, that violation becomes a continuing violation. Under §22.246(g)(1)(E), the executive director will institute further proceedings against the entity, rather than permit the entity an opportunity to remedy the violation.

The commission adds adopted §22.246(g)(2)(D)(vii), which requires the executive director to institute further proceedings if the executive director determines a violation is a continuing violation.

§22.246(c)(3), Penalty factors

§22.246(c)(3) identifies aggravating and mitigating factors that the commission must consider when assessing a penalty for an administrative violation.

TCPA and LCRA recommended additional mitigating and aggravating factors be added to §22.246(c)(3) to inform the commission's assessment of an administrative penalty. TCPA specifically recommended the addition of whether the violation was attributable to mechanical or electrical failures, whether the violation could have been reasonably anticipated and avoided, and whether the asset owner demonstrated good faith, including preventive or corrective actions.

LCRA recommended new penalty factors that account for "risk, severity, and repeat offenses" when assessing penalties for weatherization.

Commission Response

The commission declines to implement the specific recommendations of TCPA and general recommendations of LCRA regarding the addition of new penalty factors to §22.246(c)(3). Paragraph §22.246(c)(3) is intended to mirror penalty factors the commission is required to consider when establishing its penalty classification system under PURA §15.023(c). Further, the additional factors proposed by commenters are already encompassed by §22.246(c)(3)(A), (C), (E) and (F), which specify that the amount of an administrative penalty must be based on the seriousness of the violation, history of previous violations, efforts to correct the violation, and any other matter that justice may require.

§22.246(f)(2), Notice of report

Existing §22.246(f) allows the executive director to initiate an enforcement proceeding by providing the commission a report alleging a violation by a specific entity. Subparagraph §22.246(f)(2)(A) requires the executive director to provide notice of this report to the entity alleged to have committed the violation by regular or certified mail.

TCPA, citing concerns related to increased remote work due to the pandemic, recommended that §22.246(f)(2)(A) require e-mail notice of the report from the executive director regarding the violation in addition to regular or certified mail.

Commission Response

PURA §15.024(b) requires that this notice be given by regular or certified mail and (b-1) specifies that notice is deemed to have been received on the fifth day after the commission sends written notice *by mail* addressed to the person's mailing address as maintained in commission records or, if sent by certified mail, on the date the written notice is received, or delivery is refused. Therefore, the commission cannot, by rule, materially alter the conditions upon which notice is deemed to have been received by imposing additional e-mail requirements. The executive director is not, however, prohibited from sending email notice in addition to notice by mail.

§22.246(g), Options for response

Subsection §22.246(g) provides a list of options for a respondent who has been issued a notice of violation or notice of continuing violation. The options consist of an opportunity to remedy the violation, pay the administrative penalty or disgorge excess revenue, or both, or request a hearing. The rule also identifies the consequences for failure to respond to a notice of violation or notice of continuing violation.

LCRA recommended the addition of a new paragraph under this subsection that would prohibit the commission from issuing an administrative penalty for violations of weather preparedness standards if a person self-reports the violation and certifies that the violation has been remedied. LCRA's proposed new paragraph would also require the self-report to submitted in writing, under oath, supported by necessary documentation, and delivered to the executive director by certified mail.

Commission Response

The commission declines to restrict its penalty authority in circumstances where an entity self-reports and corrects a violation as requested by LCRA. Such a restriction on the commission's penalty authority would create a compliance loophole that would allow an entity to strategically delay compliance without consequence. Under §22.246(c)(3), when establishing the appropriateness and magnitude of an administrative penalty, the commission will consider efforts to correct the violation and any other matter that justice may require, including the manner in which the respondent has cooperated with the commission during an investigation of the alleged violation.

TPPA and Joint ERCOT TDUs each commented that §22.246(g)(1) did not properly apply to weather preparedness violations. TPPA recommended that the commission clarify that the 31-day cure period provided by §22.246(g) was not the same as the reasonable period of time that an entity has to remedy a weather preparedness violation under the weather preparedness statutes. TPPA argued that if ERCOT did not give entities a 31-day period following an inspection, it could conflict with this procedural rule.

Joint ERCOT TDUs, on the other hand, argued that all of §22.246(g) should not apply to weather preparedness violations and instead proposed an entirely new section applicable to such violations. Joint ERCOT TDUs proposal mirrors §22.246(g) and imposes an extremely detailed regulatory structure for the commission's processing of weather preparedness violations, including timelines and specific standards for responses and mitigation plans. Joint TDUs' full proposal will not be fully detailed in this preamble.

Commission Response

The commission agrees with TPPA and Joint ERCOT TDUs that §22.246(g) does not fully align with the weather preparedness statutes with regards to the applicable remedy period. As discussed in the commission's response to General Comments above, this is primarily due to a conflict of laws between the weather preparedness statutes and preexisting law. As detailed above, the commission modifies §22.246(g)(1) to clarify that it does not apply to weather preparedness violations and adopts new §22.246(g)(5). This new paragraph clarifies the commission's penalty authority and adapts the procedural requirements of §22.246(g) to the requirements of the weather

preparedness statutes. The commission declines to adopt TPPA's recommended approach for reasons discussed under General Comments. The commission declines to adopt Joint ERCOT TDU's approach, because it is unnecessarily detailed. The commission will further address the process surrounding weather preparedness violations in its Phase II weather preparedness rulemaking.

§22.246(g)(1)(C), Grace period

Under §22.246(g)(1)(C), if the executive director determines that an alleged violation was remedied within 30 days and the violation was accidental or inadvertent, no administrative penalty will be assessed.

LCRA recommended that §22.246(g)(1)(C) be amended to specify that no administrative penalty will be assessed for weather preparedness violations if the executive director determines that the violation was remedied within a reasonable period of time.

Commission Response

The commission declines to amend subparagraph §22.246(g)(1)(C) to specify that no administrative penalty will be assessed for weather preparedness violations if the executive director determines that the violation was remedied within a reasonable period of time. The commission addressed this issue of remediation in its response to general comments above.

§25.8, Classification system for violations of statutes, rules, and orders applicable to electric service providers.

§25.8(b), Classification system

Subsection 25.8(b) classifies violations of PURA and commission rules into C, B, and A class violations, in increasing order of severity and maximum assignable administrative penalty amount. The proposed rule added language to §25.8(b)(3)(A), which addresses class A violations, that a violation of PURA §35.0021, PURA §38.075. or a commission rule or commission order adopted under PURA §35.0021 or PURA §38.075, is a Class A violation and the administrative penalty will not exceed $1,000,000 per violation per day. The proposed rule further clarifies that other class A violations retain the prior maximum assignable penalty amount of $25,000 per violation per day.

TPPA, TEC, and LCRA each criticized the proposed rule's grouping of all weather preparedness violations as class A violations with a million-dollar penalty ceiling. TPPA argued that two tiers of class A violations is confusing and that establishing separate tiers for weather preparedness violations would set expectations and "provide valuable instruction to the market before any violations occur."

Each of these commenters argued that non-material violations, such as failure to file a report, should not result in million-dollar penalties. TEC and LCRA suggested that paperwork violations should be classified as class C violations, and LCRA further specified that a weather-preparedness violation should only be a class A violation if it "creates economic harm in excess of $5,000 to a person or persons, property, or the environment, or creates an economic benefit to the violator in excess of $5,000; creates a hazard or potential hazard to the health or safety of the public; or causes a risk to the reliability of a transmission or distribution system or a portion thereof."

Commission Response

The commission declines to classify "paperwork violations" as class C violations or otherwise adopt any language that would limit the commission's ability to assign significant administrative penalties for any violation of its weather preparedness rules or orders. As has been repeatedly pointed out by commenters, the weather preparedness statutes create a *preparation* standard, not a *performance* standard, and couple this standard with a million-dollar penalty ceiling. Therefore, it is clear that the commission is to utilize the increased penalty authority *prior* to the occurrence of any actual weather-related performance failures - not after it is too late to prevent any human suffering, loss of life, or property damage caused by those failures. Furthermore, even violations such as "paperwork violations," could materially interfere with the commission's and ERCOT's compliance regimen, which may require the inspection of hundreds of facilities and the review and evaluation of remediation plans for any instances of noncompliance identified during these inspections. Seemingly minor violations, such as missing submission deadlines or errors in those submissions, could impede the timely completion and review of inspections or otherwise interfere with the commission's and ERCOT's ability to evaluate and ensure the weather-readiness of the grid.

The commission disagrees with TPPA that having two tiers of class A violations is confusing. The language of the rule articulates, with precision, the maximum penalty associated with each type of violation.

The commission also disagrees with TPPA's argument that more nuanced penalty classifications of weather-preparedness violations would provide meaningful guidance to market participants. Establishing penalty categories for certain types of violations only provides meaningful guidance to an entity that is evaluating *whether* to comply with a particular rule based on the severity of the penalty for each class of infraction. The commission expects all entities to fully comply with all applicable weather-preparedness rules to ensure the reliability of the grid. The specter of significant administrative penalties is specifically meant to deter any economic calculation that might distract an entity from directing its full efforts to achieving compliance with these standards.

TPPA argued that the commission should create a separate tiering system for weatherization-related violations. TPPA noted that the "chief author" of SB 3, Senator Charles Schwertner, produced an explanatory document that clarified that it was his intent that the commission create a penalty matrix, "to ensure that the $1 million penalty cap is focus on extreme violations and not simple violations like paperwork errors."

Commission Response

The commission also declines to create a separate penalty classification system for weather-preparedness violations as requested by TPPA. The commission is not persuaded by TPPA's argument that a summary document distributed by one of the bill's authors prior to a committee hearing on the bill constitutes definitive legislative intent for how the statute should be interpreted. Moreover, the Legislature explicitly required creation of penalty classification systems in sections 6, 20, and 31 of SB 3, each addressing other issues. Had the Legislature intended the creation of a penalty classification system for electric weather-preparedness violations, it would have included a similar requirement. Finally, under PURA §15.023(d), a classification system established under PURA §15.023(c) "shall provide that a penalty in an amount that exceeds §5,000 may be assessed only if the violation is included in the highest class of violations in the classification system." Categorically limiting any

type of weather-preparedness violation to $5,000 per violation per day is inappropriate, given the extremely high priority that both the commission and the Legislature places on compliance in this area.

TEC argued that a violation should only be a class A violation if it was a "continuing violation" and there had been "notice and a reasonable opportunity to cure the violation." TCPA argued that §25.8(b)(3)(A) should incorporate text reflecting that separate violations mean a company's distinct action or inaction that directly results in a violation, rather than a resource-by-resource, unit-by-unit, or other duplicative violation that results in the "stacking of penalties where a single action or inaction results in multiple units or resources failing to abide by the commission rule or commission order."

Commission Response

The commission disagrees with TEC for the reasons discussed in its response to §22.246(c)(2). and TCPA for the reasons discussed in its response to §22.246(c)(1).

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

These rule amendments are adopted under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §15.023, which establishes that the penalty for a violation of a provision of PURA §35.0021 or PURA §38.075 may be in an amount not to exceed $1,000,000 for a violation and that each day a violation continues is a separate violation for purposes of imposing a penalty.

Cross reference to statutes: PURA §§14.001, 14.002, and 15.023, 35.0021, and 38.075.

§22.246. Administrative Penalties.

(a) Scope. This section addresses enforcement actions related to administrative penalties or disgorgement of excess revenues only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.

(b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise:

(1) Affected wholesale electric market participant -- An entity, including a retail electric provider (REP), municipally owned utility (MOU), or electric cooperative, that sells energy to retail customers and served load during the period of the violation.

(2) Excess revenue -- As defined in §25.503 of this title (relating to Oversight of Wholesale Market Participants).

(3) Executive director -- The executive director of the commission or the executive director's designee.

(4) Person -- Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.

(5) Violation -- Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), the Texas Water Code (TWC), commission rule, or commission order.

(6) Continuing violation -- Except for a violation of PURA chapter 17, 55, or 64, and commission rules or commission orders adopted or issued under those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.

(c) Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.

(1) Each day a violation continues or occurs is a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation of PURA §35.0021, PURA §38.075, or a commission rule or commission order adopted under PURA §35.0021 or PURA §38.075 will be in an amount not to exceed $1,000,000 per violation per day. For all other violations, the administrative penalty for each separate violation will be in an amount not to exceed $25,000 per violation per day. An administrative penalty in an amount that exceeds $5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.

(3) The amount of the administrative penalty must be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts to correct the violation; and

(F) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.

(d) Amount of administrative penalty for violations of the TWC or a rule or order adopted under chapter 13 of the TWC.

(1) Each day a violation continues may be considered a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed $5,000 per day.

(3) The amount of the penalty must be based on:

(A) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violations;

(E) the amount necessary to deter future violations; and

(F) any other matters that justice requires.

(e) Initiation of investigation. Upon receiving an allegation of a violation or of a continuing violation, the executive director will determine whether an investigation should be initiated.

(f) Report of violation or continuing violation. If, based on the investigation undertaken in accordance with subsection (e) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

(1) Contents of the report. The report must state the facts on which the determination is based and a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the administrative penalty and, if applicable under §25.503 of this title, a recommendation that excess revenue be disgorged.

(2) Notice of report.

(A) Within 14 days after the report is issued, the executive director will give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice may be given by regular or certified mail.

(B) For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, within ten days after the report is issued, the executive director will, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(C) The notice must include:

(i) a brief summary of the alleged violation or continuing violation;

(ii) a statement of the amount of the recommended administrative penalty;

(iii) a statement recommending disgorgement of excess revenue, if applicable, under §25.503 of this title;

(iv) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the administrative penalty, or both the occurrence of the violation or continuing violation and the amount of the administrative penalty;

(v) a copy of the report issued to the commission under this subsection; and

(vi) a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(D) If the commission sends written notice to a person by mail addressed to the person's mailing address as maintained in the commission's records, the person is deemed to have received notice:

(i) on the fifth day after the date that the commission sent the written notice, for notice sent by regular mail; or

(ii) on the date the written notice is received or delivery is refused, for notice sent by certified mail.

(g) Options for response to notice of violation or continuing violation.

(1) Opportunity to remedy.

(A) This paragraph does not apply to a violation of PURA chapters 17, 55, or 64; PURA §35.0021 or §38.075; or chapter 13 of the TWC; or of a commission rule or commission order adopted or issued under those chapters or sections.

(B) Within 40 days of the date of receipt of a notice of violation set out in subsection (f)(2) of this section, the person against whom the administrative penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent must be evidenced in writing, under oath, and supported by necessary documentation.

(C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no administrative penalty will be assessed against the person who is alleged to have committed the violation.

(D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director will make a determination as to what further proceedings are necessary.

(E) If the executive director determines that the alleged violation is a continuing violation, the executive director will institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(2) Payment of administrative penalty, disgorged excess revenue, or both. Within 20 days after the date the person receives the notice set out in subsection (f)(2) of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person must take all corrective action required by the commission. The commission by written order will approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue or order a hearing on the determination and the recommended penalty.

(3) Request for hearing. Not later than the 20th day after the date the person receives the notice set out in subsection (f)(2) of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:

(A) the occurrence of the violation or continuing violation;

(B) the amount of the administrative penalty; and

(C) the amount of disgorged excess revenue, if applicable.

(4) Failure to respond. If the person fails to timely respond to the notice set out in subsection (f)(2) of this section, the commission by order will approve the determination and impose the recommended

penalty or order a hearing on the determination and the recommended penalty.

(5) Opportunity to remedy a weather preparedness violation.

(A) This paragraph applies to a violation of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections.

(B) PURA §15.024(c), as written, does not apply to a violation of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections. This paragraph implements PURA §15.024(c), as modified by PURA §15.023(a), §35.0021(g), and §38.075(d), for violations of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections.

(C) The commission may impose an administrative penalty against an entity regulated under PURA §35.0021 or §38.075 that violates those sections, or a commission rule or order adopted under those sections, except:

(i) the commission will assess a penalty for a violation of PURA §35.0021, §38.075, or a commission rule adopted under those sections if the entity against which the penalty may be assessed does not remedy the violation within a reasonable amount of time; and

(ii) the commission will not assess a penalty for a violation of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections if the violation was accidental or inadvertent, and the entity against which the penalty may be assessed remedies the violation within a reasonable period of time.

(D) For purposes of this paragraph, the following provisions apply unless a provision conflicts with a commission rule or order adopted under PURA §35.0021 or §38.075, in which case, the commission rule or order applies.

(i) Not all violations to which this paragraph applies can be remedied. Clauses (C)(i) and (C)(ii) of this paragraph do not apply to a violation that cannot be remedied.

(ii) For purposes of clauses (C)(i) and (C)(ii) of this paragraph, an entity that claims to have remedied an alleged violation and, if applicable, that the alleged violation was accidental or inadvertent has the burden of proving its claim to the commission. Proof that an alleged violation has been remedied and, if applicable, that the alleged violation was accidental or inadvertent must be evidenced in writing, under oath, and supported by necessary documentation.

(iii) An entity that remedies a violation that is discovered during an inspection by the independent organization certified under PURA §39.151 for the ERCOT power region prior to the deadline provided to that entity by the independent organization in accordance with PURA §35.0021 or §38.075 is deemed to have remedied that violation in a reasonable period of time.

(iv) If the independent organization certified under PURA §39.151 has not provided an entity with a deadline, the executive director will determine whether the deadline can be remedied and, if so, the deadline for remedying a violation within a reasonable period of time. The executive director will provide the entity with written notice of the violation and the deadline for remedying the violation within a reasonable period of time. This notice does not constitute notice under paragraph (f)(2) of this section unless it fulfills the other requirements of that subsection. However, the provisions of subparagraph (f)(2)(D) of this section apply to notice under this clause.

(v) The executive director will determine if and when a report should be issued to the commission under subsection (f) of this section and will make a determination as to what further proceedings are necessary.

(vi) If the executive director determines that the alleged violation was not remedied within a reasonable period of time or is a continuing violation, the executive director will issue a report to the commission under subsection (f) of this section and will institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(vii) If the commission determines that the deadline for remedying a violation provided by the independent organization certified under PURA §39.151 or determined by the executive director is unreasonable, the commission will determine what the deadline should have been. The commission will use this updated deadline to determine the applicability of subclauses (C)(i) and (C)(ii) of this paragraph and, if appropriate, as a factor in determining the magnitude of administrative penalty to impose against the entity for the violation.

(h) Settlement conference. A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1) If a settlement is reached:

(A) the parties must file a report with the executive director setting forth the factual basis for the settlement;

(B) the executive director will issue the report of settlement to the commission; and

(C) the commission by written order will approve the settlement.

(2) If a settlement is reached after the matter has been referred to the State Office of Administrative Hearings, the matter will be returned to the commission. If the settlement is approved, the commission will issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

(i) Hearing. If a person requests a hearing under subsection (g)(3) of this section, or the commission orders a hearing under subsection (g)(4) of this section, the commission will refer the case to SOAH under §22.207 of this title (relating to Referral to State Office of Administrative Hearings) and give notice of the referral to the person. For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order will assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing, the case will then proceed as set forth in paragraphs (1) - (5) of this subsection.

(1) The commission will provide the SOAH administrative law judge a list of issues or areas that must be addressed.

(2) The hearing must be conducted in accordance with the provisions of this chapter and notice of the hearing must be provided in accordance with the Administrative Procedure Act.

(3) The SOAH administrative law judge will promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A) the occurrence of the alleged violation or continuing violation;

(B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA chapters 17, 55, or 64; of a commission rule or commission order adopted or issued under those chapters; or of chapter 13 of the TWC; and

(C) the amount of the proposed administrative penalty and, if applicable, disgorged excess revenue.

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) determine that a violation or continuing violation has occurred and impose an administrative penalty and, if applicable, disgorged excess revenue;

(B) if applicable, determine that a violation occurred but that, as permitted by subsection (g)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no administrative penalty will be imposed; or

(C) determine that no violation or continuing violation has occurred.

(5) Notice of the commission's order issued under paragraph (4) of this subsection must be provided under the Government Code, chapter 2001 and §22.263 of this title (relating to Final Orders) and must include a statement that the person has a right to judicial review of the order.

(j) Parties to a proceeding. The parties to a proceeding under chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue will be limited to the person who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection (k) of this section.

(k) Distribution of Disgorged Excess Revenues. Disgorged excess revenues must be remitted to an independent organization, as defined in PURA §39.151. The independent organization must distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. The load of any market participants that are no longer active at the time of the distribution will be removed prior to calculating the load proportions of the affected wholesale electric market participants that are still active. However, if the commission determines other wholesale electric market participants are affected or a different distribution method is appropriate, the commission may direct commission staff to open a subsequent proceeding to address those issues.

(1) No later than 90 days after the disgorged excess revenues are remitted to the independent organization, the monies must be distributed to affected wholesale electric market participants active at the time of distribution, or the independent organization must, by that date, notify the commission of the date by which the funds will be distributed. The independent organization must include with the distributed monies a communication that explains the docket number in which the commission ordered the disgorged excess revenues, an instruction that the monies must be used to reduce costs or fees incurred by retail electric customers, and any other information the commission orders.

(2) The commission may require any affected wholesale electric market participants receiving disgorged funds to demonstrate how the funds were used to reduce the costs or fees incurred by retail electric customers.

(3) Any affected wholesale electric market participant receiving disgorged funds that is affiliated with the person from whom the excess revenue is disgorged must distribute all of the disgorged excess revenues directly to its retail customers and must provide certification under oath to the commission that the entirety of the revenues was distributed to its retail electric customers.

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

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.8

The Public Utility Commission of Texas (commission) adopts amendments to existing 16 Texas Administrative Code (TAC) §25.8, relating to a Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers. The commission adopts this rule with changes to the proposed rule as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5518). The rule will be republished. This rule will implement an amendment to the Public Utility Regulatory Act (PURA) §15.023(b-1) enacted by the 87th Texas Legislature that establishes an administrative penalty not to exceed $1,000,000 for violations of PURA §35.0021 or §38.075, each relating to Weather Emergency Preparedness. In response to filed comments, these rules will also clarify the application of certain statutory provisions relating to the commission's penalty authority and applicable remedy periods.

The commission received comments on the proposed rule from AEP Texas Inc., CenterPoint Energy Houston Electric, LLC, Oncor Electric Delivery Company LLC, and Texas-New Mexico Power Company (collectively, the Joint ERCOT TDUs); Texas Electric Cooperatives, Inc. (TEC); Texas Competitive Power Advocates (TCPA); Texas Public Power Association (TPPA); and Lower Colorado River Authority and Lower Colorado River Authority Transmission Services Corporation (collectively, LCRA).

General Comments

Statutory Interpretation of PURA §15.023(a), §15.024(c), §35.0021(g), and §38.075(d)

PURA §15.023(a) and §15.024(c) were in effect prior to the 87th session of the Texas Legislature and will be referred to as preexisting law. PURA §35.0021 and §38.075 were both enacted by the 87th Texas Legislature and will be referred to as the weather

preparedness statutes. Rules adopted and orders issued under these statutes will be referred to as weather preparedness rules and weather preparedness orders respectively.

Commission Comment

Commenters have noted, either explicitly or by implication, several conflicts between the weather preparedness statutes and preexisting law. The commission addresses the specifics of these comments throughout this order where relevant. The statutory underpinnings for the resolution of these conflicts are discussed under this General Comments heading. The weather preparedness statutes were enacted after the preexisting statutes and are more specific in their application. Accordingly, under the Code Construction Act §311.025-31.026, the weather preparedness statutes prevail in any conflicts.

The first issue involving the interaction of preexisting law and the weather preparedness statutes relates to circumstances in which the commission has authority to issue an administrative penalty for a violation of a weather preparedness statute, rule, or order.

Under PURA §15.023(a), "(t)he commission may impose an administrative penalty against a person regulated under (PURA, Title II) who violates (PURA, Title II) or a rule or order adopted under (PURA, Title II)." Notably, the weather preparedness statutes are located in PURA, Title II. Under the Code Construction Act §311.016, "may" creates discretionary authority. Therefore, under preexisting law, the commission has general discretion to impose administrative penalties for violation of a weather preparedness statute, rule, or order.

Each of the weather preparedness statutes contains an identical provision that reads "(t)he commission shall impose an administrative penalty on an entity, including a municipally owned utility or an electric cooperative, that violates a (weather preparedness rule) and does not remedy that violation within a reasonable period of time." Under the Code Construction Act, "shall" imposes a duty. Accordingly, if an entity violates a weather preparedness rule, the commission is required to impose an administrative penalty.

In comments submitted on various provisions throughout the two proposed rules, TCPA, TEC, Joint ERCOT TDUs, and LCRA each interpret the language of the weather preparedness statutes to mean that the commission *cannot* impose an administrative penalty against an entity that violates a weather preparedness statute, rule, or order *unless* the entity fails to remedy the violation within a reasonable period of time.

Commission Response

The commission disagrees that it cannot impose an administrative penalty against an entity that violates a weather preparedness requirement unless the entity fails to remedy the violation within a reasonable period of time. As the commenters point out, each of the weather preparedness statutes indicate the commission *shall* impose a penalty if a violation is not remedied in a reasonable period of time. However, neither of the weather preparedness statutes impose or suggest any limitation on PURA §15.023(a), which provides the commission with discretionary authority to issue a penalty for a violation of PURA, Title II or a rule or order adopted under Title II.

The interpretation that the commission is prevented from issuing an administrative penalty without first giving an entity an opportunity to remedy the violation fails on a policy level as well, as such a limitation would create a significant compliance loophole. Under such an interpretation, an entity would be incentivized to delay implementing any costly weather preparedness measure until after it was identified by the Electric Reliability Council of Texas (ERCOT) or the commission, because the regulatory risk of noncompliance would be eliminated. If the violation is discovered, the entity would be assured a reasonable period of time to remedy the violation, regardless of the circumstances surrounding the violation. If it is not discovered, potentially costly upgrades could be avoided completely. Moreover, an entity could even fail to meet the same requirement multiple times, each time relying upon a built-in cure period to address any compliance issues.

The commission adopts amended §22.246(g)(5)(C) to clarify the commission's discretionary penalty authority under preexisting law.

The next interaction of potentially conflicting statutes involves potential exceptions to the commission's discretionary penalty authority under §15.023(a). The first exception originates from the aforementioned provision of the weather preparation statutes that requires the commission to impose a penalty if a weather preparation rule is violated and not remedied in a reasonable period of time. The second comes from PURA §15.024(c), which states that "(a) penalty may not be assessed under this section if the person against whom the penalty may be assessed remedies the violation before the 31st day after the date the person receives (a formal notice of violation). A person who claims to have remedied an alleged violation has the burden of proving to the commission that the alleged violation was remedied and was accidental or inadvertent." Under the Code Construction Act §311.016, "may not" imposes a prohibition. Therefore, the commission is prohibited from imposing a penalty for a violation of Title II or a rule or order adopted under Title II if the entity can demonstrate that the violation was accidental or inadvertent and was remedied before the 31st day after receiving notice under Subsection (b).

Commission Response

The commission modifies §22.246 to reflect two exceptions to the commission's discretionary penalty authority. First, consistent with the weather preparedness statutes, under adopted §22.246(g)(5)(C)(ii), the commission is required to issue an administrative penalty for a violation of a weather preparedness rule that was not remedied within a specified timeframe. Second, consistent with PURA §15.024(c), under adopted §22.246(g)(5)(C)(ii), the commission is prohibited from issuing an administrative penalty for a violation of a weather preparedness statute, rule, or order if the violation is remedied within a specified timeframe, and was accidental or inadvertent. In this instance, the alleged violator has the burden of proving that each of these conditions was met. Each of these exceptions to the commission's general discretionary authority is justified because under the Code Construction Act, the more specific provisions of PURA §15.024(c) and the weather preparedness statutes control over PURA §15.023(a). The commission addresses the specified timeframes below. The commission also modifies the rule to clarify that neither of the above exceptions apply to a violation that is not remediable.

The third potential conflict of laws relates to the appropriate remedy period for purposes of the exceptions to the commission's discretionary administrative authority. Under preexisting law, the general remedy period for any violation is 30 days after the receipt of a formal notice of violation. Under the weather preparedness statutes, the remedy period is a reasonable period of time.

TPPA contends that these are two distinct remedy periods and argued that the commission should clarify that the two periods are different. Conversely, Joint ERCOT TDUs argue that the reasonable remedy period takes precedence over the generic 30-day remedy period, because the reasonable remedy period is specific to weather preparedness violations. Joint ERCOT TDUs further argue that a reasonable remedy period is "a fact question, dependent on the particular facts and circumstances attendant to the situation. A reasonable period of time for remedying a violation of a rule established pursuant to the Weatherization Statutes may not, therefore, be established by rule, or without any consideration of the particular facts and circumstances giving rise to a violation."

Commission Response

The commission agrees with Joint ERCOT TDUs - while acknowledging that Joint ERCOT TDUs were making this argument in support of a different ultimate position - that there is only a single, reasonability-based remedy period for violations of weather preparation requirements. Weather preparedness violations pose a serious risk to reliability of the bulk electric system, and an entity that violates these rules must remedy those violations as expediently as reasonably possible. Applying a generic remedy period, as provided by preexisting law, or two separate remedy periods, as recommended by TPPA, would lead to contradictory results and would undermine the effectiveness of the commission's statutorily mandated regulatory objectives. If, for example, the reasonable remedy period for a violation is 20 days, if an entity fails to remedy that violation within 20 days, the commission is required by the weather preparedness statutes to impose an administrative penalty. Affording that entity a second remedy period after it has received a formal notice of violation from the executive director clearly conflicts with the plain language of the weather preparedness statutes.

Under the adopted §22.246(g)(5)(C), the remedy period for both exceptions to the commission's discretionary penalty authority is a "reasonable" period of time. The commission agrees with Joint ERCOT TDUs that the weather preparedness statutes establish a remedy period that is dependent upon the particulars of the violation and, potentially, the circumstances surrounding the violation.

The final potential conflict between preexisting law and the weather preparedness statutes is the process and timing surrounding the remedy periods. Under preexisting law, the remedy period begins after the entity has received a formal notice of violation from the executive director. Under the weather preparedness statutes, the remedy period, in many cases, will begin when ERCOT provides the entity with the results of a weather preparedness inspection. This is a significant distinction, because §22.246 provides specific notice and process requirements that are not applicable to a remedy period that takes place prior to the issuance of a formal notice of violation.

Commission Response

The process surrounding the application of the period for remedying violations is determined by the applicable substantive weather preparedness rules. However, because the commission has not yet adopted its final Phase II weather preparedness rules, adopted §22.246(g)(5)(D) establishes default procedural rules surrounding remedying weather preparedness violations that supplement the other notice of violation provisions of that section. These procedural provisions mirror the preexisting process for the generic remedy period under §22.246(g)(1). Specifically, under adopted §22.246(g)(5)(D) an entity that remedies a violation discovered during an ERCOT inspection by the deadline provided by ERCOT is deemed to have remedied that violation in a reasonable period of time. If ERCOT has not provided a deadline, the executive director will provide the entity with a written notice describing the violation and a deadline for remedying the violation. Finally, if the commission disagrees that the deadline provided by ERCOT or the executive director is reasonable, the commission will determine what the deadline should have been. The commission will use this updated deadline to determine the applicability of the exceptions to the commission's discretionary penalty authority and, if appropriate, as a factor in determining the magnitude of the administrative penalty assessed against the entity for the violation. This updated deadline does not, however, guarantee that the entity will be provided additional time to remedy the violation in the future. Accordingly, an entity should continue its remedial efforts even after it misses the deadline provided by ERCOT or the executive director.

§22.246(b)(5), Definition of violation

§22.246(b)(5) defines the term "Violation" as "(a)ny activity or conduct prohibited by PURA...commission rule, or commission order."

TCPA recommended adding a subparagraph to §22.246(b)(5) that would clarify that with regard to weather preparedness standards, a violation does not occur until after ERCOT has conducted an inspection, found a potential violation, and provided the entity with a reasonable opportunity to cure the potential violation. TCPA argued this is required by PURA §35.0021(c).

Commission Response

The commission declines to modify the definition of violation as requested by TCPA. A violation occurs when an entity fails to comply with PURA, a commission rule, or a commission order. Whether ERCOT identifies this violation in one of its inspections or the entity eventually remedies the violation has no bearing on whether a violation occurred.

The plain language of PURA §35.0021 requires ERCOT to provide an entity with a reasonable period of time to "remedy any *violation"* and "report to the commission any *violation"* related to weather emergency preparedness. (Emphasis added). At no point does it refer to "potential violations" as suggested by TCPA. Moreover, acknowledging and documenting each failure to comply as a violation is important for establishing whether an entity has a history of violations, an important consideration in determining appropriate penalty amounts in any future enforcement proceedings related to that issue under §25.246(c)(3)(C).

§22.246(c), Penalty amounts

Existing §22.246(c) outlines the maximum penalty amounts that can be assessed for violations of PURA or a rule or order adopted under PURA and provides a list of penalty factors that the commission must consider when determining what level of penalty to impose for a particular violation. Proposed §22.246(c) clarifies that for violations of PURA §35.0021 and §38.075, or a rule or order adopted under those provisions, the commission may impose a penalty of up to §1,000,000 per violation per day.

LCRA recommended the addition of a new paragraph in §22.246(c) clarifying that the commission would not assess an administrative penalty for an entity's first violation of a weather preparedness requirement if the risk posed by the violation is low or if the entity cures the violation in a reasonable period of time.

Commission Response

The commission declines to limit its ability to assess an administrative penalty for an entity's first violation of a weather preparedness rule or statute. Neither PURA §35.002 or §38.075 include any penalty exemptions for first time offenders. The commission will consider the facts and circumstances surrounding each violation in determining whether to assess an administrative penalty, including the history of previous violations and efforts made to correct the violation, as required by this subsection.

§22.246(c)(1), Separate violations

Under paragraph §22.246(c)(1), each day a violation continues is a separate violation for which an administrative penalty can be assessed.

TCPA requested that the commission insert language clarifying that an administrative penalty will not be assessed until after the entity has been provided a reasonable period of time to remedy a violation discovered in an inspection or to appeal the inspector's determination that a violation has occurred. TCPA also requested language that a violation would not be assessed if a generation resource is following the process to mothball or retire a resource.

Commission Response

The commission declines to add language to §22.246(c)(1) that a penalty will not be assessed until after the entity has been provided a reasonable amount of time to remedy any potential violation discovered in an inspection or to appeal the inspection. Remedy periods are discussed in the commission's response to general comments above. With regard to the ability of an entity to appeal the results of an ERCOT inspection before a penalty is issued, the commission, not ERCOT, retains authority to determine whether a violation has occurred, whether the violation was remedied in a reasonable amount of time, and whether the assessment of an administrative penalty is appropriate. The commission will not assess any administrative penalties without providing the entity an opportunity to request a hearing on any contested issues.

The commission also declines to specify that a violation will not be assessed if a generation resource is following the process to mothball or retire a resource as requested by TCPA. Whether a particular fact pattern constitutes a violation of the commission's weather preparedness rules or which scenarios might excuse such a violation is beyond the scope of this rulemaking.

§22.246(c)(2), Maximum penalties

Proposed paragraph §22.246(c)(2) identifies the maximum administrative penalty of $1,000,000 for violations of PURA §35.002 and §38.075 and maximum administrative penalty of $25,000 for all other violations of PURA and commission rules.

TPPA pointed out typographical errors in citations of PURA §35.002 and §38.075 in §22.246(c)(2).

Commission Response

The commission makes the recommended changes.

TEC and LCRA each recommended modifying §22.246(c)(2) to limit the imposition of penalties to "continuing violations." TEC's suggested language appears to only permit penalties for continuing violations, and the LCRA's proposed language only allows for a penalty of over $5,000 for a violation "that is a continuing violation that was not accidental or inadvertent and was not remedied within a reasonable period of time."

TCPA made general comments regarding §22.246(c)(2) requesting that the commission clarify what constitutes a "separate violation" and proper metrics for consideration of a violation of the weatherization rule to mitigate the risk of loss by a respondent facing a prospective violation.

Commission Response

TEC and LCRA misconstrue the meaning of the defined term "continuing violation." A continuing violation is not, as these parties suggest, merely an ongoing violation after parties have had an opportunity to remedy. A continuing violation is "any instance in which the person alleged to have committed a violation attests that the violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent." In other words, if an entity attempts to avail itself of the provisions under §22.246(g)(1)(B) by attesting that a violation has been remedied and was accidental, but that attestation was invalid, that violation becomes a continuing violation. Under §22.246(g)(1)(E), the executive director will institute further proceedings against the entity, rather than permit the entity an opportunity to remedy the violation.

The commission adds adopted §22.246(g)(2)(D)(vii), which requires the executive director to institute further proceedings if the executive director determines a violation is a continuing violation.

§22.246(c)(3), Penalty factors

§22.246(c)(3) identifies aggravating and mitigating factors that the commission must consider when assessing a penalty for an administrative violation.

TCPA and LCRA recommended additional mitigating and aggravating factors be added to §22.246(c)(3) to inform the commission's assessment of an administrative penalty. TCPA specifically recommended the addition of whether the violation was attributable to mechanical or electrical failures, whether the violation could have been reasonably anticipated and avoided, and whether the asset owner demonstrated good faith, including preventive or corrective actions.

LCRA recommended new penalty factors that account for "risk, severity, and repeat offenses" when assessing penalties for weatherization.

Commission Response

The commission declines to implement the specific recommendations of TCPA and general recommendations of LCRA regarding the addition of new penalty factors to §22.246(c)(3). Paragraph §22.246(c)(3) is intended to mirror penalty factors the commission is required to consider when establishing its penalty classification system under PURA §15.023(c). Further, the additional factors proposed by commenters are already encompassed by §22.246(c)(3)(A), (C), (E) and (F), which specify that the amount of an administrative penalty must be based on the seriousness of the violation, history of previous violations, efforts to correct the violation, and any other matter that justice may require.

§22.246(f)(2), Notice of report

Existing §22.246(f) allows the executive director to initiate an enforcement proceeding by providing the commission a report alleging a violation by a specific entity. Subparagraph §22.246(f)(2)(A) requires the executive director to provide notice

of this report to the entity alleged to have committed the violation by regular or certified mail.

TCPA, citing concerns related to increased remote work due to the pandemic, recommended that §22.246(f)(2)(A) require e-mail notice of the report from the executive director regarding the violation in addition to regular or certified mail.

Commission Response

PURA §15.024(b) requires that this notice be given by regular or certified mail and (b-1) specifies that notice is deemed to have been received on the fifth day after the commission sends written notice *by mail* addressed to the person's mailing address as maintained in commission records or, if sent by certified mail, on the date the written notice is received, or delivery is refused. Therefore, the commission cannot, by rule, materially alter the conditions upon which notice is deemed to have been received by imposing additional e-mail requirements. The executive director is not, however, prohibited from sending email notice in addition to notice by mail.

§22.246(g), Options for response

Subsection §22.246(g) provides a list of options for a respondent who has been issued a notice of violation or notice of continuing violation. The options consist of an opportunity to remedy the violation, pay the administrative penalty or disgorge excess revenue, or both, or request a hearing. The rule also identifies the consequences for failure to respond to a notice of violation or notice of continuing violation.

LCRA recommended the addition of a new paragraph under this subsection that would prohibit the commission from issuing an administrative penalty for violations of weather preparedness standards if a person self-reports the violation and certifies that the violation has been remedied. LCRA's proposed new paragraph would also require the self-report to submitted in writing, under oath, supported by necessary documentation, and delivered to the executive director by certified mail.

Commission Response

The commission declines to restrict its penalty authority in circumstances where an entity self-reports and corrects a violation as requested by LCRA. Such a restriction on the commission's penalty authority would create a compliance loophole that would allow an entity to strategically delay compliance without consequence. Under §22.246(c)(3), when establishing the appropriateness and magnitude of an administrative penalty, the commission will consider efforts to correct the violation and any other matter that justice may require, including the manner in which the respondent has cooperated with the commission during an investigation of the alleged violation.

TPPA and Joint ERCOT TDUs each commented that §22.246(g)(1) did not properly apply to weather preparedness violations. TPPA recommended that the commission clarify that the 31-day cure period provided by §22.246(g) was not the same as the reasonable period of time that an entity has to remedy a weather preparedness violation under the weather preparedness statutes. TPPA argued that if ERCOT did not give entities a 31-day period following an inspection, it could conflict with this procedural rule.

Joint ERCOT TDUs, on the other hand, argued that all of §22.246(g) should not apply to weather preparedness violations and instead proposed an entirely new section applicable to such violations. Joint ERCOT TDUs proposal mirrors §22.246(g) and imposes an extremely detailed regulatory structure for the commission's processing of weather preparedness violations, including timelines and specific standards for responses and mitigation plans. Joint TDUs' full proposal will not be fully detailed in this preamble.

Commission Response

The commission agrees with TPPA and Joint ERCOT TDUs that §22.246(g) does not fully align with the weather preparedness statutes with regards to the applicable remedy period. As discussed in the commission's response to General Comments above, this is primarily due to a conflict of laws between the weather preparedness statutes and preexisting law. As detailed above, the commission modifies §22.246(g)(1) to clarify that it does not apply to weather preparedness violations and adopts new §22.246(g)(5). This new paragraph clarifies the commission's penalty authority and adapts the procedural requirements of §22.246(g) to the requirements of the weather preparedness statutes. The commission declines to adopt TPPA's recommended approach for reasons discussed under General Comments. The commission declines to adopt Joint ERCOT TDU's approach, because it is unnecessarily detailed. The commission will further address the process surrounding weather preparedness violations in its Phase II weather preparedness rulemaking.

§22.246(g)(1)(C), Grace period

Under §22.246(g)(1)(C), if the executive director determines that an alleged violation was remedied within 30 days and the violation was accidental or inadvertent, no administrative penalty will be assessed.

LCRA recommended that §22.246(g)(1)(C) be amended to specify that no administrative penalty will be assessed for weather preparedness violations if the executive director determines that the violation was remedied within a reasonable period of time.

Commission Response

The commission declines to amend subparagraph §22.246(g)(1)(C) to specify that no administrative penalty will be assessed for weather preparedness violations if the executive director determines that the violation was remedied within a reasonable period of time. The commission addressed this issue of remediation in its response to general comments above.

§25.8, Classification system for violations of statutes, rules, and orders applicable to electric service providers.

§25.8(b), Classification system

Subsection 25.8(b) classifies violations of PURA and commission rules into C, B, and A class violations, in increasing order of severity and maximum assignable administrative penalty amount. The proposed rule added language to §25.8(b)(3)(A), which addresses class A violations, that a violation of PURA §35.0021, PURA §38.075. or a commission rule or commission order adopted under PURA §35.0021 or PURA §38.075, is a Class A violation and the administrative penalty will not exceed $1,000,000 per violation per day. The proposed rule further clarifies that other class A violations retain the prior maximum assignable penalty amount of $25,000 per violation per day.

TPPA, TEC, and LCRA each criticized the proposed rule's grouping of all weather preparedness violations as class A violations with a million-dollar penalty ceiling. TPPA argued that two tiers

of class A violations is confusing and that establishing separate tiers for weather preparedness violations would set expectations and "provide valuable instruction to the market before any violations occur."

Each of these commenters argued that non-material violations, such as failure to file a report, should not result in million-dollar penalties. TEC and LCRA suggested that paperwork violations should be classified as class C violations, and LCRA further specified that a weather-preparedness violation should only be a class A violation if it "creates economic harm in excess of $5,000 to a person or persons, property, or the environment, or creates an economic benefit to the violator in excess of $5,000; creates a hazard or potential hazard to the health or safety of the public; or causes a risk to the reliability of a transmission or distribution system or a portion thereof."

Commission Response

The commission declines to classify "paperwork violations" as class C violations or otherwise adopt any language that would limit the commission's ability to assign significant administrative penalties for any violation of its weather preparedness rules or orders. As has been repeatedly pointed out by commenters, the weather preparedness statutes create a *preparation* standard, not a *performance* standard, and couple this standard with a million-dollar penalty ceiling. Therefore, it is clear that the commission is to utilize the increased penalty authority *prior* to the occurrence of any actual weather-related performance failures - not after it is too late to prevent any human suffering, loss of life, or property damage caused by those failures. Furthermore, even violations such as "paperwork violations," could materially interfere with the commission's and ERCOT's compliance regimen, which may require the inspection of hundreds of facilities and the review and evaluation of remediation plans for any instances of noncompliance identified during these inspections. Seemingly minor violations, such as missing submission deadlines or errors in those submissions, could impede the timely completion and review of inspections or otherwise interfere with the commission's and ERCOT's ability to evaluate and ensure the weather-readiness of the grid.

The commission disagrees with TPPA that having two tiers of class A violations is confusing. The language of the rule articulates, with precision, the maximum penalty associated with each type of violation.

The commission also disagrees with TPPA's argument that more nuanced penalty classifications of weather-preparedness violations would provide meaningful guidance to market participants. Establishing penalty categories for certain types of violations only provides meaningful guidance to an entity that is evaluating *whether* to comply with a particular rule based on the severity of the penalty for each class of infraction. The commission expects all entities to fully comply with all applicable weather-preparedness rules to ensure the reliability of the grid. The specter of significant administrative penalties is specifically meant to deter any economic calculation that might distract an entity from directing its full efforts to achieving compliance with these standards.

TPPA argued that the commission should create a separate tiering system for weatherization-related violations. TPPA noted that the "chief author" of SB 3, Senator Charles Schwertner, produced an explanatory document that clarified that it was his intent that the commission create a penalty matrix, "to ensure that the $1 million penalty cap is focus on extreme violations and not simple violations like paperwork errors."

Commission Response

The commission also declines to create a separate penalty classification system for weather-preparedness violations as requested by TPPA. The commission is not persuaded by TPPA's argument that a summary document distributed by one of the bill's authors prior to a committee hearing on the bill constitutes definitive legislative intent for how the statute should be interpreted. Moreover, the Legislature explicitly required creation of penalty classification systems in sections 6, 20, and 31 of SB 3, each addressing other issues. Had the Legislature intended the creation of a penalty classification system for electric weather-preparedness violations, it would have included a similar requirement. Finally, under PURA §15.023(d), a classification system established under PURA §15.023(c) "shall provide that a penalty in an amount that exceeds §5,000 may be assessed only if the violation is included in the highest class of violations in the classification system." Categorically limiting any type of weather-preparedness violation to $5,000 per violation per day is inappropriate, given the extremely high priority that both the commission and the Legislature places on compliance in this area.

TEC argued that a violation should only be a class A violation if it was a "continuing violation" and there had been "notice and a reasonable opportunity to cure the violation." TCPA argued that §25.8(b)(3)(A) should incorporate text reflecting that separate violations mean a company's distinct action or inaction that directly results in a violation, rather than a resource-by-resource, unit-by-unit, or other duplicative violation that results in the "stacking of penalties where a single action or inaction results in multiple units or resources failing to abide by the commission rule or commission order."

Commission Response

The commission disagrees with TEC for the reasons discussed in its response to §22.246(c)(2). and TCPA for the reasons discussed in its response to §22.246(c)(1).

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

These rule amendments are adopted under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §15.023, which establishes that the penalty for a violation of a provision of PURA §35.0021 or PURA §38.075 may be in an amount not to exceed $1,000,000 for a violation and that each day a violation continues is a separate violation for purposes of imposing a penalty.

Cross reference to statutes: PURA §§14.001, 14.002, and 15.023, 35.0021, and 38.075.

§25.8. Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.

(a) Purpose. The purpose of this rule is to establish a classification system for violations of the Public Utility Regulatory Act (PURA) and related commission rules and orders, and to establish a range of penalties that may be assessed for each class of violations.

(b) Classification system.

(1) Class C violations.

(A) Penalties for Class C violations may not exceed $1,000 per violation per day.

(B) The following violations are Class C violations:

(i) failure to file a report or provide information required to be submitted to the commission under this chapter within the timeline required;

(ii) failure by an electric utility, retail electric provider, or aggregator to investigate a customer complaint and appropriately report the results within the timeline required;

(iii) failure to update information relating to a registration or certificate by the commission within the timeline required; and

(iv) a violation of the Electric no-call list.

(2) Class B violations.

(A) Penalties for Class B violations may not exceed $5,000 per violation per day.

(B) All violations not specifically enumerated as a Class C or Class A violation are Class B violations.

(3) Class A violations.

(A) Each separate violation of PURA §35.0021, PURA §38.075, or a commission rule or commission order adopted under PURA §35.0021 or PURA §38.075 is a Class A violation and the administrative penalty will not exceed $1,000,000 per violation per day. Penalties for all other Class A violations will not exceed $25,000 per violation per day.

(B) The following types of violations are Class A violations if they create economic harm in excess of $5,000 to a person or persons, property, or the environment, or create an economic benefit to the violator in excess of $5,000; create a hazard or potential hazard to the health or safety of the public; or cause a risk to the reliability of a transmission or distribution system or a portion thereof.

(i) A violation related to the wholesale electric market, including protocols and other requirements established by an independent organization;

(ii) A violation related to electric service quality standards or reliability standards established by the commission or an independent organization;

(iii) A violation related to the code of conduct between electric utilities and their competitive affiliates;

(iv) A violation related to prohibited discrimination in the provision of electric service;

(v) A violation related to improper disconnection of electric service;

(vi) A violation related to fraudulent, unfair, misleading, deceptive, or anticompetitive business practices;

(vii) Conducting business subject to the jurisdiction of the commission without proper commission authorization, registration, licensing, or certification;

(viii) A violation committed by ERCOT;

(ix) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that creates a hazard or potential hazard to the health or safety of the public;

(x) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that creates economic harm to a person or persons, property, or the environment in excess of $5,000, or creates an economic benefit to the violator in excess of $5,000; and

(xi) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that causes a risk to the reliability of a transmission or distribution system or a portion thereof.

(c) Application of enforcement provisions of other rules. To the extent that PURA or other rules in this chapter establish a range of administrative penalties that are inconsistent with the penalty ranges provided for in subsection (b) of this section, the other provisions control with respect to violations of those rules.

(d) Assessment of administrative penalties. In addition to the requirements of §22.246 of this title (relating to Administrative Penalties), a notice of violation recommending administrative penalties will indicate the class of violation.

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 February 25, 2022.

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Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

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SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

The Public Utility Commission of Texas (commission) adopts the repeal of 16 Texas Administrative Code (TAC) §25.53, relating to Electric Service Emergency Operations Plans, and also adopts its replacement, new 16 Texas Administrative Code (TAC) §25.53, relating to Electric Service Emergency Operations Plans. The commission adopts new §25.53 with changes to the proposed text as published in the December 17, 2021, issue of the *Texas Register* (46 TexReg 8414). The rule will be republished.

This rule implements standards for emergency operations plans for electric utilities, transmission and distribution utilities, power generation companies (PGC), municipally owned utilities (MOUs), electric cooperatives, retail electric providers (REPs), and the Electric Reliability Council of Texas (ERCOT) as required by Tex. Util. Code §186.007 as amended by Senate Bill 3 (SB 3) in the 87th Legislature Regular Session.

The commission received comments on the proposed rule from City of Houston, Sharyland Utilities LLC (Sharyland), Texas Public Power Association (TPPA), Texas Electric Cooperative's Inc. (TEC), AEP Texas Inc., Electric Transmission Texas, LLC, and Southwestern Electric Power Company (collectively, AEP), Guadalupe Valley Electric Cooperative Inc. (GVEC),

Texas-New Mexico Power Company (TNMP), Entergy Texas Inc. (Entergy), the Lower Colorado River Authority and Lower Colorado River Authority Transmission Services (collectively, LCRA), the Steering Committee of Cities Served by Oncor (OCSC), Southwestern Public Service Company (SPS), Texas Competitive Power Advocates (TCPA), Oncor Electric Delivery Company LLC (Oncor), Office of Public Utility Counsel (OPUC), Enbridge Inc. (Enbridge), El Paso Electric Company (EPEC), CenterPoint Energy Houston Electric LLC (CenterPoint), Alliance for Retail Markets (ARM), Texas Legal Services Center (TLSC), Octopus Energy (Octopus), and East Texas Electric Cooperative Inc. (ETEC).

The following entities testified at a public hearing on the proposed rulemaking held on January 11, 2022: TLSC on behalf of itself and the Durable Medical Equipment Task Force (DMETF), the Texas Council of Medical Disabilities (TCMD) on behalf of itself and DMETF, Texas Medical Equipment Providers Association (TexMEP), Disability Rights Texas (DRT), Angel Medical Supply (AMS), Arc of Dallas-Fort Worth, Medical Legal Partnership (MLP), and Texas Parent to Parent (TPP). The following individuals also testified at the January 11, 2022, public hearing on the proposed rulemaking: Laura Taylor, Adrian Trigg, Laura Lehman, Amy Litzinger, Linda Litzinger, Ellen Bowman, Greta James, and Valerie Doggett.

General Comments

Entergy emphasized that its EOP has been developed over time based on many factors including the "collective operating experience" of the company and its affiliates. As such, Entergy requested that the proposed rule reflect practical considerations of individual companies and avoid requiring the "creation of a parallel plan in a different format" that serves the same purpose, as such an endeavor would consume considerable resources and risk confusion.

Commission Response

The rule does not require entities to create new or multiple EOPs. Existing plans that contain, at a minimum, the information detailed in the rule will satisfy the rule's requirements, as will a collection of pre-existing documents, such as specific procedural manuals, that each contain portions the required information. The rule also does not require an entity to follow the outline of the rule when drafting its plan to be filed. Moreover, an entity must file an executive summary of its emergency operations plan that includes specific references to locate the mandatory content.

Enbridge argued that the proposed rule creates unnecessary administrative burdens, exposes utilities to unnecessary commercial harm with no proportionate benefit to grid reliability, and unintentionally limits a utility's discretion to manage safety programs. Enbridge contended that ERCOT or the commission is not best situated to unilaterally determine what is necessary for an EOP. Lastly, Enbridge noted that any change requested by either ERCOT or the commission requires a significant time investment to review, test, and implement and urged the commission to consider these factors in its rulemaking.

Commission Response

The commission disagrees with Enbridge's assessment of the proposed rule as unduly burdensome. Tex. Util. Code §186.007 explicitly requires the commission to analyze and evaluate emergency operations plans to assess the ability of the electric utility industry to withstand extreme events. Emergency operations plans must contain sufficient information for the commission to complete this determination. Moreover, this rule does not limit an entity's ability to tailor its emergency operations plan to its system. If an entity does not have plans that address one or more of the specific minimum requirements, then the entity must create that plan based on the entity's unique knowledge of its personnel, operations, system, and facilities. However, this rule does not require an entity to substantively alter the contents of its emergency operations plan, so long as that plan is complete. The commission more substantively addresses Enbridge's concerns in response to comments on subsection (d)(2).

ETEC highlighted that EOPs must be limited in scope to effectively assist utility personnel in responding to an emergency event. ETEC argued that the commission has authority under PURA §41.004(5)(A) "to require reports of electric cooperative operations only to the extent necessary to ensure the public safety" and requested the commission modify the rule as necessary to make clear that "no unintended jurisdictional expansion is created or implied."

Commission Response

The commission declines to modify the rule in response to the general comments of ETEC. The requirements of the adopted rule are within the commission's jurisdiction under Tex. Util. Code §186.007(a-1).

TCPA advised that an EOP is not a singular document, but a compendium of procedures implemented by various teams across an organization in response to certain emergency conditions. As a result, TCPA argued that the proposed rule requirements for a consolidated EOP would diminish the usefulness of emergency procedures that are located in a potentially voluminous consolidated EOP.

Commission Response

As previously noted, the rule does not require an entity to change existing emergency operations plans, except to the extent that those plans do not address the required criteria. The rule does not require a particular organization or format for the EOP. However the executive summary must identify how the EOP - in whatever form it takes - fulfills the minimum requirements of this rule.

ARM argued that the proposed rule significantly and unnecessarily adds to the requirements a REP must provide in its EOP and requested the commission revise the proposed rule so that the imposed requirements are not overly burdensome or risk disclosure of sensitive information.

Commission Response

The requirements of Tex. Util. Code §186.007 apply to retail electric providers. Therefore, the adopted rule applies to retail electric providers. The commission addresses the sensitivity of the information included in an EOP in response to comments on subsection (c).

City of Houston recommended that the proposed rule require an entity to notify affected critical infrastructure customers in advance of filing updated EOPs or annexes to provide those customers with an initial opportunity to provide feedback.

Commission Response

The commission declines to require entities to provide notice of changes to its EOP to a critical infrastructure customer prior to filing those changes with the commission as requested by the City of Houston. An entity may serve numerous critical infrastructure customers. Such a requirement could create significant delays

in implementing changes to EOPs, as well as result in the disclosure of sensitive information to countless other entities. Moreover, an entity's EOP is the repository of its own emergency procedures. With some limited exceptions, each entity is in the best position to determine when it needs input from third parties prior to implementing changes to its EOP.

EOP Public Hearing

On January 11, 2022, a public hearing was held relating to proposed §25.53. Commenters at the public hearing were individuals with disabilities or medically dependent on electricity due to the use of Durable Medical Equipment (DME), or their representatives, and other interested parties with comments that relate to residential critical load customers, emergency preparedness, and experiences from Winter Storm Uri.

Commission Response

The commission thanks the organizations and individuals who participated in the hearing held on January 11, 2022, and sincerely appreciates the personal stories shared by attendees. The commission endeavors to account for the collective concerns of the hearing participants and has taken those concerns into account where appropriate within the scope of the rules.

TLSC, DMETF, TCMD, TexMep DRT, AMS Arc of Dallas-Fort Worth, MLP, TPP, Ms. Taylor, Mr. Trigg, Ms. Lehman, Amy and Linda Litzinger, Ms. James, and Ms. Doggett, recommended that the proposed rule require providers of electricity to prioritize maintaining electric service for medically fragile individuals and those who are medically dependent on electricity when planning for load shed and power restoration during energy emergencies. DRT stated that the proposed rule does not specify the prioritization of residential critical customers in an EOP. TPP recommended that houses with a critical need, such as use of DME, receive uninterrupted power during an emergency.

Commission Response

The commission cannot require utilities to guarantee individuals an uninterrupted supply of power during an energy emergency, because the circumstances surrounding an energy emergency may make such a task impossible. Qualifying individuals can apply for critical status under §25.497, and under §25.52 customers with special in-house life-sustaining equipment are considered critical load. Under adopted subsection (e)(1)(B)(iii) of this rule, the entities that are responsible for implementing load shed must include a load shed annex that contains a procedure for maintaining an accurate registry of critical load customers. However, determining how utilities should prioritize among various critical load entities for load shed and power restoration purposes is beyond the scope of this rulemaking project. The commission anticipates addressing critical loads in a future rulemaking project, which may be informed by insights from analyzing the load shed annexes required by this rule.

TLSC and the Texas Council of Medical Disabilities (TCMD) on behalf of itself and the DMETF recommended the proposed rule include a disability annex as part of the required annexes under proposed subsection (e).

Commission Response

The commission declines to adopt the specific recommendations of TLSC, DMETF, and TCMD to include a separate disability annex. An annex is designed to address how an entity plans to respond in an emergency involving a specific type of hazard or threat. However, as previously discussed, adopted subsection (e)(1)(B)(iii) establishes a procedure for maintaining an accurate registry of critical load customers under the load shed annex. This annex also requires inclusion of processes for providing assistance to critical load customers in the event of an unplanned outage, for communicating with the critical load customers, for coordinating with government and service agencies as necessary during an emergency, and for training staff with respect to serving critical load customers.

Ms. Doggett, Ms. Lehman, MLP, and AMS recommended the commission take the extraordinary costs incurred by medically fragile individuals and individuals medically dependent on electricity associated with the winter storm into account in the proposed rulemaking. Ms. Doggett emphasized that the costs incurred when power is lost due to an emergency can quickly become unmanageable, such as purchasing a generator, in addition to pre-existing costs that include medication and therapy. Ms. Lehman and AMS commented on the expense and time commitment involved with dealing with Medicaid and Medicare for a backup generator or DME, which is often not covered. AMS stressed that backup DME can be crucial for individuals medically dependent on electricity during an emergency and is an unrecoverable, added expense for small medical suppliers and patients alike. MLP recommended the commission adopt a proactive, responsive approach to the proposed rule to assist all members of the community and to assist in mitigating historical inequities in power and housing.

Commission Response

Costs incurred by medically fragile individuals and those medically dependent upon electricity during a winter storm are beyond the scope of this rulemaking. However, the commission's analysis of EOPs is an important part of its effort to focus on maintaining service during emergencies so that these costs are not incurred in the first place.

TLSC, TCMD, DRT, and Ms. Doggett stressed the importance of wellness checks for disabled individuals and those medically dependent on electricity.

Commission Response

The commission declines to modify the language of this rule to add a requirement for entities subject to this rule to conduct wellness checks. Wellness checks are addressed in Tex. Gov. Code Chapter 418, and are beyond the scope of this rulemaking.

Arc of Dallas-Fort Worth and Ellen Bowman emphasized that water supply is just as crucial as electricity during an emergency event and recommended that utilities that support disabled individuals, such as water companies, also be designated as critical and receive an uninterrupted supply of power.

Commission Response

The issue of water supply is beyond the scope of a rulemaking on electric industry EOPs, except as it relates to water facilities as critical customers of electric service. The commission is working with water utilities to ensure that electric utilities are provided with information regarding which water facilities are critical so that this information can be considered for load shed planning. The commission may address this topic further through a guidance document or as a part of future rulemakings on critical load.

TLSC commented that the confidentiality and sharing of critical load customer information should be addressed in the proposed rule, specifically as it relates to allowance for dissemination of

residential critical customer information from an entity during an emergency.

Commission Response

TLSC's proposal relates to 16 TAC §25.497 and is therefore outside the scope of this rulemaking. The commission notes that the load shed annex under adopted subsection (e)(1)(C) requires entities to plan for the sharing of critical customer information and therefore addresses TLSC's concerns regarding the sharing of critical customer information to relevant institutions during an emergency.

Lastly, TLSC encouraged the commission to hold further meetings and workshops similar to the hearing on other rulemakings related to emergency preparedness.

Commission Response

The commission is engaged in a wide array of rulemakings and policy projects related to the winter storm and will continue to hold hearings and workshops as appropriate.

Proposed §25.53(a) - Applicability

Proposed subsection (a) makes §25.53 applicable to each electric utility, transmission and distribution utility, power generation company (PGC), municipally owned utility, electric cooperative, and retail electric provider (REP), and the Electric Reliability Council of Texas (ERCOT). Proposed subsection (a) also clarifies that the term "entity" as used in proposed §25.53 is used in reference to the entities subsection (a) lists.

TPPA recommended the commission revise subsection (a) to encourage but not require distribution-only MOUs to file EOPs with the commission. TPPA argued that, as proposed, the rule would "present a substantial regulatory burden on distribution-only entities" due to the amount of information required in a specific format. TPPA maintained that the proposed rule would decentralize emergency response and therefore create more confusion during an emergency as smaller MOUs may be forced to create utility-specific EOPs rather than utilize existing city-wide EOPs. Lastly, TPPA stated that distribution-only MOUs are served by transmission entities that are required to file an EOP, which would address the commission's grid reliability concerns as transmission utilities are "most responsible for emergency response" and therefore the entities that should bear "the regulatory and administrative burden" imposed by the proposed rule.

Commission Response

The commission declines to remove the requirement for distribution-only MOUs to file EOPs with the commission. Tex. Util. Code §186.007 requires MOUs, including distribution-only MOUs, as well as other types of entities listed under subsection (a) of the adopted rule to file EOPs with the commission. A distribution-only MOU is an essential part of the electric grid for the customers it serves. Therefore, the commission must have the ability to analyze a distribution-only MOU's EOP to make an adequate determination under Tex. Util. Code §186.007 regarding the ability of the electric grid to withstand extreme weather events.

Definition of "Entity"

TCPA, ARM, and OPUC recommended the last sentence of subsection (a) stating "The term 'entity' as used in this section refers to the above-listed entities" be deleted, and that the term "entity" be defined in subsection (b). ARM stated entities that share a parent company should be permitted to file a single EOP, with shared and unique sections specified.

Commission Response

The commission agrees with TCPA, ARM, and OPUC that a definition of "entity" should be added to subsection (b) and revises the subsection accordingly. The commission agrees with ARM's recommendation regarding duplicative requirements among commonly-owned entities, but finds that the issue is more appropriately addressed in subsection (c).

Proposed §25.53(b)(1) - "Annex"

Proposed subsection (b) lists the definitions exclusive to proposed §25.53 that are supplemental to the general definitions under §25.5 that are applicable to Chapter 25 of the Texas Administrative Code.

Proposed subsection (b)(1) defines the term "annex" for use within §25.53 as "a section of an emergency operations plan (EOP) that addresses how an entity plans to respond to the incidence of a specific hazard or threat."

CenterPoint suggested "the incidence of a specified hazard or threat" be replaced with the phrase "specified emergencies" for subsection (b)(1) defining "annex."

Commission Response

In response to CenterPoint's comment, the commission revises the definition of "annex" to refer to "a section of an emergency operations plan (EOP) that addresses how an entity plans to respond in an emergency involving a specified type of hazard or threat."

Proposed §25.53(b)(2) - "Drill"

Proposed subsection (b)(2) defines the term "drill" for use within §25.53 as "an operations-based exercise that is a coordinated, supervised activity employed to test an entity's EOP. A drill may be used to develop or test new policies or procedures or to practice and maintain current skills."

CenterPoint suggested "that is a coordinated, supervised activity employed" be deleted from subsection (b)(2) defining "drill."

Commission Response

The commission disagrees with CenterPoint's recommendation to delete the reference to coordination and supervision in the definition of "drill". Coordination and supervision are essential elements of a drill and distinguish a drill from other activities that support an entity's preparation for emergencies.

Proposed §25.53(b)(3) - "Emergency"

Proposed subsection (b)(3) defines the term "emergency" for use within §25.53 as "any incident resulting from an imminent hazard or threat that endangers life or property or presents credible risk to the continuity of electric service. The term includes an emergency declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity."

ARM, CenterPoint, AEP, EPEC, TCPA, Oncor, TNMP, Sharyland, TPPA, SPS, and Entergy generally opposed the proposed definition of "emergency" under proposed subsection (b)(3). TLSC supported the proposed definition of "emergency" in its testimony at the public hearing held on January 11, 2022, which is addressed under the heading for the same. ARM stated that the term "emergency" does not appear elsewhere in PURA or in

commission rules and stated that it is not clear what "presents credible risk to the continuity of electric service" means. ARM recommended that for administrative clarity, the commission adopt a similar definition for the term "emergency" as the term "emergency condition", as used in the ERCOT Nodal Protocols. ARM noted that governmental entities are more likely to declare a "disaster" such as for a hurricane, whereas ERCOT or other reliability coordinators are more likely to declare an "emergency" such as an energy emergency alert. ARM recommended clarifying the definition of "emergency" by indicating that not every "disaster" or "emergency" warrants usage of an entity's EOP and revising subsection (b)(3) accordingly. Specifically, ARM recommended the definition be modified to "better specify what may constitute endangerment to the continuity of electric service, with conforming changes to the definition of 'emergency operations plan'".

CenterPoint recommended revising the definition of "emergency" to include "existing or imminent hazards" and to give an entity reasonable discretion in classifying a hazard or threat as an emergency.

AEP and EPEC recommended limiting the proposed definition of "emergency" under (b)(3) "to situations that credibly risk continuity of electric service that also result in an emergency declaration by a local, state, or federal government, RTO, or ERCOT or other reliability coordinator." TCPA commented that the proposed definition of "emergency" under (b)(3) should be revised to include "existing or imminent hazards" and to give an entity reasonable discretion in classifying a hazard or threat as an emergency.

Oncor recommended a utility's EOP be triggered when there is a "system emergency" as defined under §25.5 (relating to Definitions) instead of "when there is a risk of service interruption to a single customer or small group of customers." Subsection 25.5(128) defines "system emergency" as 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." TNMP commented that the definition of "emergency" under (b)(3) improperly includes instances where the "credible risk" of service interruptions is small which are generally handled through a utility's standard service restoration procedures. TNMP argued that EOPs are generally in anticipation of or during significant events such as a hurricane and, like Oncor, recommended the proposed definition be consistent with the definition of "system emergency" under §25.58(128) and, consistent with historical practice, only encompass significant events rather than events that impact only a small number of customers.

Sharyland commented that the phrase "continuity of electric service" as used in (b)(3) was overly broad and any interruption of service, even when very limited or no customers experience outages, could therefore be classified as an "emergency." Sharyland emphasized that EOPs are typically utilized "in response to a credible, imminent threat to a significant portion of the system" which is consistent with the proposed rule and that the proposed rule should "focus on the response to major events that pose significant risks to the continuity of electric service on the grid." Accordingly, Sharyland recommended revising the definition of "emergency" to replace "to the continuity" with "of a significant interruption."

TPPA also commented that the proposed definition of "emergency" under (b)(3) is overly broad as it could feasibly encompass emergencies unrelated to the continuity of electric service and therefore unnecessarily increase the scope of EOPs beyond the intended focus on electric grid stability. Like Sharyland, TPPA expressed concern that the proposed definition "could be read to apply to incidental, limited, and brief interruptions of service that do not result from or cause emergency conditions." Accordingly, TPPA provided draft language striking "endangers life or property from the proposed definition of "emergency" and adding the term "sustained" prior to "continuity of electric service.

TPPA further recommended the term "emergency" be limited to "an emergency or disaster declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity." TPPA argued that government entities "will declare states of emergency or disaster as appropriate" and that the commission should not list other events outside of that scope. TPPA noted that the language in the current version of §25.53 includes, but is not limited to, that circumstance. SPS also commented that the definition of "emergency" under subsection (b)(3) was overly broad and that an "emergency" for the same reasons as TNMP with the additional qualifier that the term be confined to emergency declarations "by entities empowered to coordinate regional or state-wide responses to such event." Specifically, SPS expressed that the focus of the EOP and this rulemaking is to "address significant, material threats to reliability" and that the rule should not contemplate emergencies that do not involve a threat to grid reliability. SPS extended this rationale to its comments regarding subsection (g) and provided draft language for proposed subsection (b)(3) replacing "the term includes" with "that results in".

Entergy also requested that the commission replace the use of the term "incident" with the defined term "emergency" under subsection (b)(3), as defined by AEP, where applicable as the term "incident" is undefined.

Commission Response

The commission revises the definition of emergency to clarify that, for purposes of this rule, whether an emergency exists for a particular entity depends on how a situation would impact that entity. A key factor in an entity's preparation for emergencies is the process and standards by which it determines whether an emergency exists.

The commission moves the reference to continuity of electric service from the definition of "emergency" to the definitions of "hazard" and "threat" because those terms are intended to cover all types of emergencies. Additionally, in response to comments that the term "emergency" should not include all credible risks to the continuity of electric service, the commission revises the definition of emergency to limit it to a hazard or threat that is sufficiently imminent and severe that an entity should take prompt action to prepare for and reduce the impact of harm that may result from the hazard or event. Furthermore, although the definitions of hazard and threat are comprehensive, the rule requirements for information on specific types of emergencies to be included in an EOP are limited to those that could readily cause a significant disruption of electric service. Entities are encouraged to address additional types of emergencies not otherwise required in the EOP.

Additionally, the definition of emergency expressly refers to an emergency declared by local, state, or federal governments; ERCOT; or another reliability coordinator designated by the North American Electric Reliability Corporation (NERC). However, the defined term is limited to such a declared emergency that is applicable to the entity. An entity must exercise judgment to determine whether any such declaration or situation referred to by

another designation, such as a disaster, constitutes an emergency under its EOP.

Proposed §25.53(b)(4) - "Emergency Operations Plan"

Proposed subsection (b)(4) defines the term "emergency operations plan" for use within §25.53 as "the plan and attached annexes, maintained on a continuous basis by an entity, intended to protect life and property and ensure continuity of adequate electric service in response to an emergency."

Enbridge opposed the inclusion of "providing adequate electricity during an emergency" in the definition of "emergency operations plan" under proposed subsection (b)(4). Enbridge argued that EOPs are not "intended to establish performance standards" and as such are not within the scope of the proposed rule. Enbridge emphasized that EOPs are intended to address "potential threats to life or property," prioritize safety of personnel, and preserve or restore the generation resource. Enbridge commented that the proposed rule inappropriately requires a specific performance standard that would distract from the objectives of an EOP and provided draft language striking "and ensure continuity of adequate electric service" from the proposed definition.

TCPA agreed with the intent of the proposed definition of "emergency operations plan" under subsection (b)(4) but expressed that each entity has limited control over the electric grid and that it is impossible to "ensure" continuity of electric service during an emergency. Consistent with its recommendations for subsection (b)(3) defining "emergency" ARM suggested that for administrative clarity, the commission adopt a similar definition for the term "emergency operations plan" under proposed subsection (b)(4), as the term "emergency condition" as used in the ERCOT Nodal Protocols.

Commission Response

The commission deletes the definition of "emergency operations plan" under proposed subsection (b)(4), because it is unnecessary. The rule contains various provisions that define an emergency operations plan. The commission moves the requirement that the plan be maintained on a continuous basis to adopted subsection (c)(3).

Proposed §25.53(b)(5) - "Hazard"

Proposed subsection (b)(5) defines the term "hazard" for use within §25.53 as "a natural, technological, or human-caused condition that is potentially dangerous or harmful to life, information, operations, the environment, or property."

TCPA recommended proposed subsection (b)(5) be deleted but, if the commission declines to do so recommended striking "information, operations, the environment" from the proposed definition of "hazard" and after "property" add "or the continuity of electric service."

ARM recommended the definition of "hazard" under proposed subsection (b)(5) be aligned with the definition of "emergency" under proposed subsection (b)(3) as each definition includes "references to 'information,' 'operations,' and 'the environment,' but not the continuity of electric service." ARM noted that such terms are both expansive and restrictive as they may require EOPs to include information that is not relevant to system or grid reliability, yet also limit the scope of hazards contemplated by EOPs. ARM therefore recommended that the term "hazard" instead be left to its plain meaning and that proposed subsection (b)(5) should be deleted from the proposed rule.

Commission Response

The commission declines to delete the definition of "hazard". The ordinary meaning of hazard lacks sufficient precision for the rule. In addition, the definition of "hazard" under adopted subsection (b)(5) along with the definition of "threat" under adopted subsection (b)(6) and revised definition of "emergency" under adopted subsection (b)(3) are intended to comprehensively define situations that an EOP should address. The commission revises the definition of "hazard" to include a "condition that is potentially dangerous or harmful to the continuity of electric service."

Proposed §25.53(b)(6) - "Threat"

Proposed subsection (b)(6) defines the term "threat" for use within §25.53 as "the intention and capability of an individual or organization to harm life, information, operations, the environment, or property."

TCPA recommended proposed subsection (b)(6) be deleted but, if the commission declines to do so recommended striking "information, operations, the environment" from the proposed definition of "threat" and after "property" adding "or the continuity of electric service." Consistent with its comments regarding subsection (b)(5) defining "hazard", ARM further recommended proposed subsection (b)(6) defining "threat" be deleted and the term left to its plain meaning.

Commission Response

Consistent with the discussion of the definitions of "emergency" and "hazard", the commission declines to delete the definition of "threat." The commission revises the definition of "threat", adding "including harm to the continuity of electric service" to the end of the definition.

Proposed §25.53(c) - Filing requirements

As a prefatory note, due to an inconsistency in the numbering for subsection (c) between the proposed version of the rule filed on the commission's website and the version of the rule published in the Texas Register, the headings, responses and other references to "proposed" provisions of (c) are referring to the numbering used in the version of the rule filed on the commission's website.

Proposed subsection (c) details the filing requirements for EOPs by an entity under this section.

LCRA requested the commission clarify the procedure for entities to file unredacted EOPs and "the applicability of the commission's existing procedural rules for the filing of confidential or voluminous materials." LCRA also urged the commission to establish a secure method for required parties to file unredacted EOPs that is only accessible to relevant commission staff and meets the industry leading cybersecurity and encryption specifications. Until that is established, LCRA recommended that the commission allow required entities to file confidential information in their EOPs with Central Records under §22.71(d) (relating to Confidential material). LCRA also requested that the rule clarify that the portions redacted or withheld by the filing party of the EOPs are confidential and not subject to public disclosure.

Commission Response

The commission declines to make the changes recommended by LCRA because they are not relevant to the adopted rule, which only requires the submission of a redacted copy of an entity's EOP to the commission. Under adopted subsection (c)(3)(E), an entity must make its unredacted plan available to commission staff at a designated location upon request

and must file a complete plan with confidential portions removed for public inspection in accordance with Tex. Util. Code §186.007(f).

The commission's procedural rules regarding electronic filings and confidential filings are currently under review. As a practical matter, the commission's website is presently able to accept both public and confidential filings electronically.

In the alternative LCRA requested that the commission allow required entities to keep their unredacted EOPs available for inspection by appropriate commission staff at a designated location in Austin, as allowed in §22.144(h) (relating to requests for information and requests for admission of facts) for production of voluminous materials.

Commission Response

The commission agrees with LCRA's alternative suggestion and reverts back to the language of the repealed version of this rule requiring an entity to make its unredacted plan available to commission staff at a location designated by commission staff under adopted subsection (c)(3)(E).

City of Houston requested that the summary after-action reports required under this subsection include details on critical infrastructure that was partially served by the provider, why it was not fully served, and changes that will address the issue. City of Houston further commented that this portion could be included in a confidential version of the after-action report and this information should be directly communicated to the critical infrastructure owner after such an event.

Commission Response

The intent of the rule is to require an entity to develop, maintain, and update its EOP on a regular basis, not to create a permanent forum for an entity to receive feedback on any individual emergency response. Therefore, the commission removes the proposed requirement that an entity provide an updated EOP 30 days after an activation of its EOP. The adopted rule instead requires an entity to capture its lessons learned from activations of its EOP during the previous calendar year, then provide a revised plan reflecting material changes in how it will respond to an emergency. Accordingly, City of Houston's request regarding summary after-action reports is now moot. The commission notes that under adopted subsection (g), commission staff may require an entity to provide an after-action report following activation of an entity's EOP.

OCSC supported the full disclosure of unredacted EOPs and recommended the commission impose minimum requirements on any utility making a claim of confidentiality "to show specifically why each component of the filing is confidential" in the interest of providing as much useful information to customers, particularly regarding communications plans. In addition, OCSC commented that it is crucial for the industry to align with ERCOT on emergency communications. Additionally, OCSC urged the commission to utilize information and data from filed EOPs for future policymaking efforts to maximize the benefit of agency efforts for the industry and consumers.

Commission Response

The commission disagrees with OCSC's comments in favor of full disclosure of unredacted EOPs. An EOP is a written plan detailing an entity's processes and actions utilized for response to emergencies and for safeguarding health, property, and continuity of service in such events. It is not, as OCSC suggests, a "tool for customers." The inadvertent release of confidential information in an EOP could represent a threat to grid security and reliability. In consideration of other commenters' proposals and recommendations, the commission removes the requirement to file unredacted plans with the commission under adopted subsection (c)(1)(A) and instead permits entities to file a summary of its EOP and a complete EOP with confidential portions removed with the commission. The commission agrees with OCSC that the commission's review of EOPs may provide valuable insights that inform future policy initiatives.

Proposed §25.53(c)(1) - Filing deadline and annual filing

Proposed subsection (c)(1) requires an entity to file an EOP by April 1, 2022, and beginning in 2023, to annually file an EOP by February 15 of each year in the manner prescribed by the commission.

ARM, TCPA, GVEC TEC, CenterPoint, EPEC, AEP, SPS, Oncor, TNMP, ETEC, and Enbridge expressed concern with the deadlines proposed and requested more time to file EOPs. ARM expressed concern for the initial April 1 deadline and the February 15 annual filing deadline. Because both deadlines correspond with other reporting obligations and deadlines for entities covered in the rule, ARM stressed that the standing April and February deadlines would be impractical for filing entities. ARM commented that a June 1 deadline is a part of entities' compliance calendar "and naturally aligns with the start of the summer peak season." As such, ARM recommended moving the initial deadline to file an EOP June 1, 2022, or 120 days after the rule becomes effective, and moving the annual filing deadline to June 1. TCPA also recommended this change but specified the change should be made to whichever timeline is later to remain consistent with the start of peak load seasons. GVEC and CenterPoint also recommended extending the initial filing deadline to June 1, 2022. Enbridge recommended a 6-month compliance deadline from rule adoption. Similarly, EPEC recommended a 120-day compliance deadline from rule adoption, while AEP, Oncor, TNMP and SPS recommended a 90-day deadline from the same.

Commission Response

The commission extends the initial filing deadline to April 15, 2022 to provide entities with more time to comply with the rule in recognition of the commission considering the rule for final adoption at a later date than projected when the April 1, 2022 deadline was proposed.

Additionally, to avoid competing with other regulatory reporting deadlines set for February 15 each year, the commission agrees to move the annual emergency operations plan reporting deadline to March 15 by adopting subsection (c)(3). The commission declines to establish June 1 as the future-year annual reporting deadline as that does not provide the commission sufficient time to analyze plans and submit subsequent reports to the Legislature.

CenterPoint commented that proposed §25.53 exceeds the requirements of SB 3's amendments to Tex. Util. Code §186.007, which states that the commission shall require entities to file an updated plan if it finds that a plan does not contain sufficient information to determine if the entity can provide adequate electric services. CenterPoint notes that the commission "has not made any findings since Senate Bill 3's effective date that an applicable entity's currently filed EOP 'does not contain adequate information to determine whether the entity can provide adequate elec-

tric services,'". CenterPoint indicated that it will follow the rule as adopted, but requests additional time to compile a new EOP.

Commission Response

The commission disagrees with CenterPoint's contention that the commission must find an EOP inadequate before requiring the entity to file an updated EOP. If, indeed, an entity's currently filed EOP adequately meets the requirements of this rule, that entity is not required to compile a new EOP. As discussed under the General Comments heading, existing plans that contain the information required in the rule will satisfy the rule's requirements, as will a collection of pre-existing documents, such as specific procedural manuals, that each contain portions of the required information. The commission does not require an entity to redraft or reformat its emergency operations plans. Only emergency operations plans that do not contain adequate information must be updated for purposes of the rule.

As a separate matter, the commission extends the initial filing deadline to June 1, 2022 for MOUs in recognition of the fact that the version of §25.53 that is currently being repealed did not apply to MOUs, and these entities may have to generate a completely new EOP.

AEP, CenterPoint, and LCRA commented that because each entity is required to file an updated EOP when a significant change is made, the annual EOP requirement should be removed from the rule as "the costs of an annual EOP filing outweigh the benefits." Like other commentors, ETEC recommended that entities only file new EOPs when substantial changes have been made. ETEC suggested that the annual affidavit remain for attesting to proper and continued training and allowing entities the option to attest that the previously filed EOP is unchanged instead of the annual filing requirement.

TEC similarly proposed changing the rule language to remove the automatic annual filing requirement. TEC argued that EOPs should only be required to be filed annually if the entity "activated its EOP" and needs to include an after-action report.

TPPA interpreted an EOP as "the collation of an entity's emergency procedure documents into a single document, using a template that matches, on a 1:1 basis." Therefore, due to the initial EOP deadline, TPPA recommended modifying the rule language to require entities to submit their current, existing EOPs. This would allow commission staff, or a consultant, to review EOPs and provide entities with analysis and recommendations as necessary. TPPA stated that such a process would be effective, targeted and provide actionable steps without creating substantial regulatory burdens. For the longer term, TPPA recommended allowing flexibility for non-substantive changes to the form of the filing, if the filing clearly indicates where the information can be located.

Commission Response

The commission agrees with the comments from AEP, CenterPoint, TEC, LCRA and TPPA that the intent of the rule is to require an entity to develop an EOP with certain minimum requirements, maintain that EOP over time, and regularly revise the EOP to reflect material changes to how the entity would respond to a future emergency. The commission also agrees that filing an EOP can be burdensome, so the commission removes the requirement that an entity file an updated EOP when a significant change is made. Under adopted subsection (c)(3), the commission adopts requirements related to regular updates to an entity's EOP. Each year by March 15, an entity must either file a revised version of its EOP or provide an attestation that no material changes were made to the EOP in the previous calendar year. The adopted paragraph also requires an entity to update the information filed with its EOP if commission staff determines that the entity's EOP does not contain sufficient information to assess the entity's preparedness. Because the commission changes the requirement and circumstances under which an entity must provide a revised EOP, the commission deletes proposed subsection (c)(4)(D).

The commission agrees with TPPA regarding flexibility and form of the EOP document, as discussed in greater detail under the General Comments header above.

ARM requested that entities that share a parent company be permitted to file a single EOP. ARM also requested further specificity in the rule for which sections apply to commonly owned entities and which apply to particular entities to "minimize administrative burdens and increase the efficiency" for reporting entities.

Commission Response

The commission agrees with ARM's recommendation to permit joint filings of an EOP in certain circumstances. The commission revises the rule to allow for joint filing of an EOP and other documents required by the rule separate from the EOP, as well as the combining of annexes in certain circumstances. A jointly filed EOP must clearly identify which portions of the plan apply to individual entities and fulfill the requirements of the rule for each entity. Each subsidiary entity must either be subject to the parent EOP or have its own standalone plan.

The commission also amends subsection (c)(1) to explicitly indicate that each individual entity is responsible for its obligations under the adopted rule and further states that an entity filing a joint EOP or joint document separate from the EOP is also responsible for the contents of a joint filing in addition to the individual entity. Therefore, if a joint EOP or joint documents are deficient with regards to a specific individual entity, the filing entity and the specific individual entity are both responsible for the deficiencies. This requirement is intended to ensure joint EOPs and documents separate from the EOP are fully compliant with the rule and that the commission has recourse to address deficiencies in filings.

In conjunction with the amendment to subsection (c)(1) described above, the commission adds subsection (c)(1)(E) and (c)(1)(F) to permit joint filing of an EOP and documents separate from an EOP by an entity that has control over other entities. Such joint filings would satisfy the filing obligations required under subsection (c)(1). The commission refrains from specifically defining "control" as the term in this context is best left to its plain meaning to maximize flexibility for entities in filing and compiling required documents and for the commission in reviewing and requiring updates under the rule. The commission also adds subsection (c)(1)(G) which permits an entity that must file similar annexes under subsection (e) for different facility types to file a combined annex as part of its EOP. The commission also adds subsection (c)(3)(F) which mirrors the requirements of subsection (c)(1)(E), (c)(1)(F), and (c)(1)(G) for updated filings and combined annexes.

ETEC expressed concern over the reporting period in the after-action report because for "an event starting on December 31, for example, (to) be included in the February 15 filing" entities would not have enough time to assess a major event in such a short period. Thus, ETEC recommended changing the reporting period to address events that occurred during the twelve months

prior to October of the previous year. In the alternative, ETEC suggested moving the February 15 deadline to April 1 to cover events that occurred during the previous calendar year.

Commission Response

The commission declines to change the rule based on ETEC's comment. In ETEC's hypothetical, if an event begins on December 31, the entity will not have revised the plan as a result of that event prior to the start of the next calendar year. So, under adopted subsection (c)(3)(A), if an entity makes a material change to its plan in the previous calendar year, it must file with the commission an executive summary describing the changes made, updating any references to specific sections and page numbers that correspond with the rule's minimum requirements; file with the commission its complete, revised plan with confidential portions removed; and submit the revised, unredacted plan to ERCOT by March 15.

TEC noted that the commission has limited jurisdiction over retail electric distribution cooperatives that do not operate a transmission facility or generation resource. Therefore, commission staff's authority in the rule to review and require changes should exclude retail electric distribution cooperatives. Similarly the requirement for drills and other operational standards should be excluded. Alternatively, the rule should be modified to report-only requirements for such organizations.

Commission Response

The commission disagrees with TEC's analysis of the commission's jurisdiction. Although PURA §41.001 states that with regards to the regulation of electric cooperatives, the provisions of Chapter 41 control over any other provision of Tex. Util Code, Title II, the statutory authority for this rule comes from Tex. Util. Code §186.007, which is not in Tex. Util. Code, Title II. Tex. Util. Code §186.007 (a-1) explicitly applies to electric cooperatives.

Tex. Util. Code §186.007 requires the commission to evaluate the preparedness of the industry to respond to emergencies, and the information required under this section is required for this evaluation. For example, the commission requires each entity listed under adopted subsection (a) to conduct a drill as a means to self-evaluate its own level of preparedness, the results of which are reflected in material changes to the EOP filed with the commission.

SPS commented that the filed version of an EOP should be a summary version with the removal of confidential and security sensitive information.

In accordance with the concerns shared under heading(c)(1)(A), Oncor and TNMP provided draft language for subsection (c)(1). Oncor's proposed language required an entity to publicly file an EOP in its entirety with confidential portions redacted or removed within 90 days of rule adoption and otherwise make available a complete unredacted copy of the EOP available to the commission for inspection in Austin. TNMP provided similar proposed language but instead required a comprehensive summary to be filed publicly, rather than an EOP in its entirety with confidential portions redacted or removed.

ARM commented that requiring entities to file unredacted EOPs in their entirety to both the commission and ERCOT as required under proposed subsection (c)(1)(A) and (c)(1)(B) respectively is needlessly duplicative. Instead, ARM recommended requiring parties to file a complete unredacted EOP with ERCOT and a redacted public EOP with the commission to ensure preparedness and rule compliance without the burden of duplicative reporting requirements.

Commission Response

The commission agrees with many of the concerns expressed by commenters above and changes the rule to require an entity to submit to ERCOT its complete, unredacted plan; file with the commission an executive summary describing the changes made, updating any references to specific sections and page numbers that correspond with the rule's minimum requirements; and file with the commission its complete, revised plan with confidential portions removed.

Proposed §25.53(c)(1)(A) - Filing with the commission

AEP, CenterPoint, EPE, LCRA, Oncor, TNMP, SPS, TCPA, and Entergy opposed the inclusion of subsection (c)(1)(A) in the proposed rule due to confidentiality concerns related to the public filing of an unredacted EOP. SPS, TPPA and TNMP argued that the proposed rule conflicts with statutory language in Tex. Util. Code §186.007 which states "the plan shall be provided to the commission in a redacted form for public inspection with the confidential portions removed. An entity within the ERCOT power region shall provide the entity's plan to ERCOT in its entirety." CenterPoint, AEP, EPE, Oncor, Entergy, SPS, and CenterPoint each argued that, despite being filed confidentially, the information risked being disclosed under the Texas Public Information Act (TPIA).

Entergy and SPS each contended that requesting a TPIA exemption is costly, burdensome, and requires action on short notice. Entergy argued that a utility should not be forced to defend an exemption from disclosing EOP customers that may harm customers. SPS argued that these exemption requests involved highly technical matters which the Attorney General and the courts may not be able to fully appreciate.

EPE, Oncor, SPS, and TCPA argued that EOPs contain information that, if disclosed, could be used by those planning an attack on critical infrastructure. TCPA cautioned that "public transparency must be tempered with securing sensitive or critical information regarding a utility's electric system." Oncor and EPE argued that portions of an EOP are designated as Critical Energy/Electric Infrastructure Information by the Federal Energy Regulatory Commission, and that the proposed rule might conflict with federal law.

CenterPoint, LCRA, and TCPA each recommended the commission revise the rule to ensure that any redacted information that was required to be filed was protected, to the maximum extent possible, from disclosure under the TPIA. CenterPoint argued that the "cyber security annex" and "physical security incident annex" is covered by TPIA §552.101's confidential information exception to the public information disclosure requirement under TPIA §552.021. CenterPoint provided draft language for proposed subsection (c)(1)(A) to specify that an unredacted EOP in its entirety must be filed confidentially under commission rule §22.71(d) (relating to Filing of Pleadings, Documents, and Other Materials), and, since it contains information related to critical infrastructure under Tex. Gov't Code §421.001(2), is therefore exempt from public disclosure under the TPIA. Alternatively, LCRA requested that the commission modify proposed subsection (c)(1)(A) by adding "The redacted portions of the EOP are considered confidential information and are excepted from public disclosure." to the end of the provision. TCPA proposed that unredacted EOPs should be submitted to ERCOT rather than the commission and that these EOPs

should be designated as "protected information" under §25.362 (relating to ERCOT Governance) and ERCOT Nodal Protocols.

EPE, Oncor, TNMP, SPS, and AEP recommended that filing a comprehensive summary of the EOP be considered an acceptable substitute for filing full unredacted EOPs with the commission. SPS and EPE noted that this was consistent with existing §25.53(b), which allows a utility to submit either an entire EOP or a comprehensive summary. EPE also requested an explanation of the additional benefit gained by not allowing a comprehensive summary in lieu of a submission of a complete EOP. EPE further stated that if the commission requires the filing of entire EOPs, instead of comprehensive summaries, additional time would be needed to comply, as combining procedures into one comprehensive document will be time consuming.

TPPA, AEP, Oncor, and TCPA proposed that, as an alternative to requiring an unredacted copy to be filed with the commission, for portions of a plan that are designated as confidential, entities be required to provide the unredacted plan for inspection. TPPA recommended in-camera inspection by the commission. AEP recommended inspection by commission staff at the entity's main office. Oncor recommended "a location in Austin."

Commission Response

The commission agrees with commenter concerns regarding the importance of protecting the confidentiality of sensitive information contained in EOPs. The commission modifies the rule to require entities to file with the commission an executive summary that, among other things, describes the contents and policies contained in the EOP. Entities must also file a complete copy of its EOP with all confidential portions removed and make its unredacted EOP available in its entirety to commission staff on request at a location designated by commission staff. Additionally, an entity with operations within the ERCOT power region must submit its unredacted EOP in its entirety to ERCOT, and ERCOT must designate the unredacted EOP as Protected Information under the ERCOT Protocols.

Proposed §25.53(c)(1)(B) - Filing with ERCOT

Proposed subsection (c)(1)(B) requires an entity operating within the ERCOT power region to file an unredacted EOP in its entirety with ERCOT.

CenterPoint, LCRA and TNMP opposed the inclusion of proposed subsection (c)(1)(B) unless justification is provided for ERCOT to review other market participants' EOPs and to prevent conflict between commission and ERCOT rules. TNMP also claimed that proposed subsection (c)(1)(B) is duplicative because "ERCOT Nodal Operating Guide 3.7(6) already requires a Transmission Owner to submit to ERCOT by each February 15, its emergency operations plan to mitigate operating emergencies." CenterPoint offered revised language for proposed subsection (c)(1)(B) to reflect that filed unredacted EOPs with ERCOT are protected information in accordance with the ERCOT Nodal Protocols. CenterPoint provided draft language adding "and ERCOT shall designate and treat such unredacted EOPs as Protected Information under section 1.3 of the ERCOT Nodal Protocols" to the end of proposed subsection (c)(1)(B).

Commission Response

The commission disagrees with CenterPoint, TCPA, and TNMP's recommendation to delete proposed subsection (c)(1)(B). Tex. Util. Code §186.007(f) requires an entity within the ERCOT power region to provide its plan to ERCOT in its entirety. The commission agrees with CenterPoint's recommendation to add language regarding the confidentiality of plans filed with ERCOT and adopts subsection (c)(1)(C) accordingly.

Proposed §25.53(c)(1)(C) - After-action report

Proposed subsection (c)(1)(C) requires an entity, beginning in 2023, to include in its annual EOP, for each incident in the prior calendar year that required the entity to activate its EOP, a summary after-action report that includes lessons learned and an outline of changes the entity made to the EOP as a result of the incident.

TPPA, AEP, LCRA, Oncor, TNMP, Enbridge, and TCPA opposed the inclusion of subsection (c)(1)(C) and recommended the provision be deleted.

TPPA contended that requiring an entity to provide an outline of changes to its EOP after an emergency event is better covered by proposed subsection (c)(4)(C), requiring a summary of lessons learned, is best accomplished by briefing the commission directly, and a set of after-action reports could form a blueprint for a bad actor and otherwise provide no benefit to the commission.

Similar to TPPA, AEP and LCRA recommended deleting proposed subsection (c)(1)(C) and moving the proposed requirement to another section. LCRA specifically recommended moving proposed subsection (c)(1)(C) to proposed subsection (c)(4)(C).

Oncor and TNMP opposed the inclusion of subsection (c)(1)(C) in the proposed rule if the term "emergency" is interpreted to include more than "system emergencies" because the requirement would be administratively burdensome to implement. Otherwise, if the term "emergency" is not interpreted in that manner, then Oncor and TNMP do not oppose the rule requirement. Enbridge expressed concern for the "lessons learned" requirement of proposed subsection (c)(1)(C) as such information is "highly commercially sensitive" and would result in harm to the entity and would inhibit an entity's ability to earnestly analyze its own responsiveness to emergency events.

TCPA opposed the requirements under proposed subsection (c)(1)(C) and recommended it be deleted. Because there are several incidents every year in which an entity uses procedures from its EOP which do not result in material information to report and SB3 does not require information described in this provision, TCPA stated that the requirement to file updated EOPs "will adequately address the issue that the PFP is signaling in proposed subsection (c)(1)(C)." Further, TCPA explained that requiring entities to file after-action reports after every incident, along with the other requirements, would be burdensome. If the commission is to keep such requirements TCPA requested that the rule be changed to only require a summary report of each type of emergency including lessons learned and any resulting EOP changes instead of a report per incident.

Commission Response

In response to multiple commenters' suggestions, the commission deletes the after-action reporting requirement under subsection (c)(1)(C) and replaces it with adopted subsection (c)(3)(A) and (c)(3)(B). Under adopted subsection (c)(3)(A), if an entity has made a material change to its plan in the previous calendar year as the result of an activation, the entity must make a filing by March 15. This filing must include an executive summary that describes the changes made and updates any references to specific sections and page numbers that correspond with the rule's minimum requirements and the complete,

revised plan with confidential portions removed. The entity must also submit to ERCOT the revised, unredacted plan. If an entity did not revise its emergency operations plan in the previous calendar year as a result of an activation of its plan, the entity must file an attestation that the plan has not changed, updates to the list of emergency contacts, and the affidavit required under subsection (c)(4)(C). An entity is also required to provide an after-action report upon request, as detailed in adopted subsection (g).

ETEC, AEP, SPS, and ARM recommended changes to proposed subsection (c)(1)(C) if the commission does not adopt their proposals to delete the provision.

ETEC appreciated the need for the commission to have information from utilities such as after-action reports, mitigation plans, and affidavits regarding emergency events but was concerned that requiring entities to file these items with an EOP as proposed may clutter and reduce the effectiveness of the EOP. In ETEC's view, such reports do not serve the objective of an EOP to guide personnel during an emergency. Therefore, ETEC requested that proposed subsection (c)(1)(C) be amended to allow separate filings for EOPs and after-action reports distinct from EOP filings. ETEC remarked that an EOP's key purposes are "assignment of authority during an emergency, and clear organizational relationships" and therefore extraneous information should be excluded.

EPEC and ARM expressed concern that requiring an after-action report after every incident would be overly broad. EPEC proposed changing the after-action reporting requirement to only after significant incidents, such as after "emergencies" as defined in proposed subsection (b)(3). ARM recommended changing the report required under proposed subsection (c)(1)(C) to only require a general overview of the prior year's activity.

AEP and SPS suggested narrowing the circumstances requiring an after-action report. AEP explained that sometimes their EOP is activated in response to a weather event that is not unusual or extreme and such a case would not "necessarily raise novel issues warranting a review and report of the event." Because of this, AEP recommended that after-action reports should only apply to incidents when an entity activates its EOP in response to an official emergency declaration by local state, or federal government, ERCOT, or a reliability coordinator. SPS recommended changing the language of proposed subsection (c)(1)(C) from "incident" to "emergency" and also recommended amended language so EOP summaries may be filed in lieu of an entire unredacted EOP. SPS explained that rule language should be limited to emergency events as declared by appropriate governmental and regional coordinator authorities.

ARM recommended adding the phrase "if any" in the rule to clarify that an after-action report is only required if an incident occurred during the prior year.

Commission Response

The commission agrees with the concerns addressed by commenters and removes proposed subsection (c)(1)(C) from the rule. However, an entity will continue to be required to provide an after-action report on request, as detailed in adopted subsection (g).

Consistent with its general recommendations for the proposed rule, OPUC requested that costs incurred by an entity implementing its EOP in response to a prior incident be included as part of the reporting requirement under proposed subsection (c)(1)(C).

Commission Response

The commission declines to adopt OPUC's proposed rule language. The monetary cost of EOP implementation does not bear on the intention of the rule to ensure emergency preparedness of entities to protect life, property, and continuity of service.

Proposed §25.53(c)(3) - New entity EOPs

Proposed subsection (c)(3) requires a person seeking registration as a PGC or certification as a REP to file an EOP at the time of its application for registration or certification, and, if operating in the ERCOT power region, to file the EOP with ERCOT within 10 days of approval.

AEP observed that there is no subsection (c)(2) and recommended renumbering the paragraphs in subsection (c).

Commission Response

The proposed language filed on the commission's website contained a numbering error that was corrected for the version published in the Texas Register. For clarity, references to the proposal in this preamble use the numbering from the version of the proposed rule filed on the commission's website. The commission has corrected this numbering issue for the adopted rule.

CenterPoint provided language for proposed subsection (c)(1)(C), relisted in CenterPoint's redline as subsection (c)(2). CenterPoint's proposed language would require an entity to file a summary after-action report and an affidavit affirming that the entity's currently filed EOP includes all material updates and changes annually on June 1, among other changes.

Commission Response

As noted under heading (c)(1), the commission changes the annual reporting deadline to March 15 in order to address commenters' concerns while still allowing the commission sufficient time to analyze the plans and prepare its report to the Legislature. The commission declines to reorganize subsection (c)(1)(C) into new subsection (c)(2) as recommended by CenterPoint.

CenterPoint recommended adding the phrase "after June 1, 2022" to clarify that this requirement only applied to persons who seek certification or registration after June 1, 2022. Because such persons would not be considered entities on June 1, 2022, CenterPoint explained that these persons cannot be required to file EOPs by June 1, 2022.

Commission Response

The commission disagrees with CenterPoint. The intention of the rule is to ensure all entities create and maintain an EOP. Accordingly, adopted subsection (c)(2) explicitly the requires that to register as a PGC or certify as a REP, an applicant must submit to ERCOT its unredacted EOP and file with the commission an executive summary and complete copy of the plan with the confidential portions removed.

Proposed §25.53(c)(4) - Updated filings

Proposed subsection (c)(4) requires an entity to file an updated EOP with the commission within 30 days under the circumstances detailed in proposed subsection (c)(4)(A) through (c)(4)(D), which will be discussed in more detail under the corresponding headers below.

CenterPoint, LCRA, TEC, TPPA, TNMP and SPS opposed the requirement to refile EOPs under proposed subsection (c)(4). CenterPoint requested that an entity only be required to update its EOP within 30 days after the entity makes a significant change to its currently filed EOP. LCRA agreed that it should take a significant change to an EOP to require an entity to refile it with the commission, including, as an alternative to providing after action reports as a part of an EOP, when a significant change has been made to an EOP in response to an after-action report. TEC recommended removing the re-filing requirement altogether or alternatively excluding cooperatives from the refiling requirements.

Commission Response

The commission makes several changes to adopted subsection (c)(3) to address the concerns raised by comments to proposed subsection (c)(4) concerning when an entity must refile its EOP. First, the commission retains the requirement that an entity must update its EOP if commission staff determines that the entity's EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency as stated in adopted (c)(3)(F). Next, the commission removes the remaining proposed updated and annual filing requirements from the rule, as discussed below, in favor of requiring a single annual filing under adopted (c)(3). An entity must file a complete EOP for this annual filing if it made a change to its EOP in the previous calendar year that would materially affect the way the entity would respond to an emergency. Such an entity must file with the commission an executive summary and a complete, revised copy of the plan with the confidential portions removed, and submit to ERCOT an unredacted revised EOP in its entirety. An entity that has not made a significant change to its EOP in the previous calendar year must attest to the same and file an updated affidavit and contact information.

To maintain consistency with the initial filing requirements under adopted subsection (c)(1) the commission adds several corresponding provisions for updated filings under (c)(3) including adopted subsection (c)(3)(D) regarding the confidentiality of unredacted revised plans submitted to ERCOT and (c)(3)(E) regarding the requirement to allow commission staff to review a revised copy of an entity's EOP in its entirety at a location designated by commission staff.

The commission declines to revise the rule to except electric cooperatives from the filing requirements under this section for reasons described under the General Comments heading.

Proposed §25.53(c)(4)(A) - Insufficient information

Proposed subsection (c)(4)(A) requires an entity to file an updated EOP if commission staff determines the entity's EOP does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.

Enbridge recommended the deletion of proposed subsection (c)(4)(A) because it provides the commission open-ended discretion "to enforce a performance standard during an emergency, which is not within the scope of this Project."

Commission Response

The commission disagrees with Enbridge that requiring an entity to update an EOP that does not contain sufficient information provides the commission open-ended discretion to "enforce a performance standard" during an emergency. Complete information is required for the commission to assess the ability of the electric grid to withstand extreme weather events in the upcoming year as required by statute. Adopted (c)(4)(A) does not require an entity to file an updated EOP based upon an assessment of its performance under the EOP or the particulars of its contents; only whether it provides information addressing the required topics.

AEP, Enbridge, TCPA, and SPS expressed concern over delegating to commission staff the sole discretion of requiring an entity update its EOP under proposed subsection (c)(4)(A). TPPA and CenterPoint expressed concern that the requirements under proposed subsection (c)(4) do not align with the statutory text of Tex. Util. Code §186.007(b) which grants the authority to require entities to file updated EOPs with the commission and not its staff.

TCPA opposed the inclusion of subsection (c)(4)(A) in the proposed rule, stating that "required updates to EOPs should track statutory requirements requiring a commission order" to comply with Tex. Util. Code §186.007(b). CenterPoint asserted that commission staff "may advise an entity to make an update to its EOP," but if the entity disagrees, commission staff's only recourse would be to initiate a show-cause hearing or file a show-cause motion, so the commission can adjudicate. CenterPoint asserted commission staff does not have the "unilateral authority to force an entity to change its EOP," due to the entity's due process rights. Accordingly, CenterPoint recommended changing the language of proposed subsection (c)(4)(A) to include the phrase "within the time period specified in a commission order" and to reflect that any determination is to be made by the commission and not commission staff. Similarly, AEP recommended adding the qualifier "reasonably" to the rule to allow the option to have the commission make a final determination if parties cannot reach an agreement.

TPPA stated that it appreciated the need to informally communicate and coordinate with commission staff but expressed concern that the communications covered under proposed subsection (c)(4) could "result in simultaneous, conflicting instructions from multiple staffers" and due process concerns. TPPA recommended amending proposed subsection (c)(4) to strike the term "staff" from the provision and add a requirement to provide notice and hearing to an entity for a commission determination requiring an entity to update its EOP. TPPA stressed that developing an EOP is a significant endeavor made more demanding for MOUs due to their direct connection to local government.

Commission Response

The commission does not share TCPA's, CenterPoint's, TPPA's and AEP's concerns regarding allowing commission staff to request updated EOPs. An entity will not be required to change its operations via these provisions, merely update its documentation if it is incomplete. Moreover, there are no due process issues to consider. The commission does not operate by order alone nor does the statute require an order in this case. This is but one of many instances, such as responding to an informal complaint, where an entity is required to follow direction from commission staff to comply with a rule, and just like in those other instances, the entity cannot be issued a penalty or other punitive measure for noncompliance without an opportunity for a hearing in front of the commission.

TPPA's suggestion that the only way to avoid "simultaneous, conflicting instructions from multiple staffers" is to put the question before the commissioners ignores the fact that the organization of the commission is transparent and readily accessible on the commission's website. In the unlikely event that an entity believes that it is receiving conflicting or unreasonable requests

to file an updated EOP from commission staff, it can seek clarity by contacting the executive director's office or another member of the commission's leadership team.

SPS and TNMP recommended modifying proposed subsection (c)(4)(A) to allow entities to file a comprehensive detailed summary of its updated EOP instead of filing an updated EOP. TNMP also recommended making a complete unredacted copy of the EOP available to the commission for inspection.

Commission Response

The commission declines to make the changes suggested by SPS and TNMP. An entity is not permitted to submit a comprehensive EOP summary if required by commission staff to update its EOP. Under Tex. Util. Code §186.007(f), a redacted EOP must be submitted to the commission with the confidential information removed. Moreover, the commission declines to allow an entity to file an updated summary of its EOP, because the summary may not adequately or accurately capture the needed information. To analyze EOPs and assess the ability of the electric utility industry to provide adequate service during an emergency, the commission requires a complete picture of an entity's plans to respond to and during an emergency. This requirement is not unduly burdensome as it only requires an entity to update the information, not necessarily submit an entire plan. However, entities within the ERCOT power region must submit this updated information in unredacted form to ERCOT.

TEC proposed changing the review and feedback process in this provision to exclude electric cooperatives that do not operate a transmission facility or generation resource. However, TEC explained that updates due to material changes would still be required.

Commission Response

The commission declines to change the rule as suggested by TEC for the reasons discussed under the General Comments heading.

Proposed §25.53(c)(4)(B) - Commission staff feedback

Proposed subsection (c)(4)(B) requires an entity to file an updated EOP in response to feedback provided from commission staff.

TNMP, CenterPoint, TEC, Oncor, AEP, and SPS opposed the inclusion of proposed subsection (c)(4)(B) in the proposed rule as any update required is already addressed by proposed subsection (c)(4)(A). TNMP recommended subsection (c)(4)(B) be revised to permit filing of a comprehensive detailed summary of its EOP in lieu of a completed unredacted copy but permit the unredacted copy to be available to the commission for inspection.

CenterPoint recommended deletion of proposed subsection (c)(4)(B) because it is vague, ambiguous, and duplicative of requirements already included in proposed subsection (c)(4)(C). Further, CenterPoint commented that commission staff "does not have the unilateral authority to force an entity to change its EOP" as an entity has due process rights.

TEC repeated its recommended edits for proposed subsection (c)(4)(A) for proposed subsection (c)(4)(B). SPS recommended the deletion of this provision as it is subsumed by their edited proposed subsection (c)(4)(A). Further, SPS commented that proposed subsection (c)(4)(B) is concerning as it provides no review process for the affected entities. Enbridge expressed concern over the inclusion of subsection (c)(4)(B) in the proposed rule because it is overly broad and does not provide space for an entity's knowledge regarding their own asset, personnel, and safety programs. Consistent with its opposition to subsection (c)(4)(B), TCPA opposed the inclusion of subsection (c)(4)(B) in the proposed rule, stating that "required updates to EOPs should track statutory requirements requiring a commission order" in order to comply with Tex. Util. Code §186.007(b).

Commission Response

The commission agrees with commenters that proposed subsection (c)(4)(B) is largely duplicative of proposed subsection (c)(4)(A) and deletes the requirement in the adopted rule.

Proposed §25.53(c)(4)(C) - Significant changes

Proposed subsection (c)(4)(C) requires an entity file an updated EOP if the entity makes a significant change to its EOP no later than 30 days after the change takes effect. A significant change to an EOP includes a change that has a material impact on how the entity would respond to an emergency.

Oncor, CenterPoint, and SPS recommended modifications of proposed subsection (c)(4)(C). Oncor recommended modifying the rule so entities have the option to file "a comprehensive detailed summary of its updated EOP and make a complete unredacted copy of the updated EOP available to the commission for inspection" instead of filing a complete EOP. CenterPoint recommended that the confidentiality language it recommended apply to subsection (c)(1) also apply to updated filings.

SPS opposed the requirement under proposed subsection (c)(4)(C) to refile an EOP when significant changes are made to the plan. SPS supported the commission's goal to increase transparency, however expressed concern that the requirement to file, or refile, updated plans when significant changes are made would be needlessly burdensome to entities as well as the commission and would increase the risk of exposure of confidential information. Further, SPS commented that this requirement would "distract from the core objectives of this process to address significant, material threats to service reliability." SPS commented that the requirement to re-file EOPs with all its required annexes to be an "unduly onerous requirement" for a change to one portion of the EOP. Instead, SPS recommended requiring entities to file a comprehensive summary of their EOP in an initial filing 90 days after rule publication and an update to the summary within 30 days of a significant change to the EOP. Further, SPS also recommended requiring an executive outline detailing the changes to the EOP with the EOP summary.

Commission Response

The commission agrees with SPS that this requirement is burdensome and removes the requirement accordingly.

LCRA asked the commission to clarify whether a change in the list of employees is considered a "significant change," as there could be "employee turnover, job changes, (or) title changes... (that) could make this requirement extremely burdensome."

Consistent with its recommendations for proposed subsection (c), SPS recommended adding the word "summary" after each occurrence of the term "EOP." Similarly, TNMP suggested modifying proposed subsection (c)(4)(C) to provide for the filing of a comprehensive EOP summary.

Commission Response

The concerns of LCRA, SPS, and TNMP are moot as this requirement has been removed from the rule.

Proposed §25.53(c)(4)(D) - Updated EOP filings with ERCOT

Proposed subsection (c)(4)(D) requires an entity with operations within the ERCOT power region to submit its updated EOP under proposed subsection (c)(4)(A), (c)(4)(B), and (c)(4)(C) to ERCOT within 30 days of filing the updated EOP with the commission.

TNMP opposed proposed subsection (c)(4)(D) and recommended its deletion because Nodal Operating Guide 3.7(6) requires entities to provide the same information to ERCOT. LCRA suggested deletion of proposed subsection (c)(4)(D) as LCRA believes current ERCOT Protocols "should continue to govern submissions of EOPs to ERCOT." Currently, as LCRA pointed out, the ERCOT Nodal Operating Guide requires Transmission Operators to submit EOPs to ERCOT, as required by NERC, since ERCOT is considered the Balancing Authority and Reliability Coordinator for the ERCOT region. LCRA requested clarification as to why ERCOT would need to review other types of entities' EOPs.

Commission Response

The commission disagrees with LCRA's and TNMP's assessment that ERCOT Nodal Operating Guide §3.7(6) satisfies the requirements of Tex. Util. Code §186.007 and declines to make the requested change to the rule. Nodal Operating Guide §3.7(6) only applies to Transmission Operators operating in the ERCOT power region. Tex. Util. Code §186.007 and this rule apply to entities other than Transmission Operators operating in the ERCOT power region.

Commission Response

Tex. Util. Code §186.007(f) requires an entity within the ERCOT power region to provide its EOP to ERCOT in its entirety. As such, the commission disagrees with LCRA's assessment and declines to change the rule.

CenterPoint recommended updated EOP filings required under proposed (c)(4)(D) be subject to Protected Information requirements.

Commission Response

The commission agrees that any submission to ERCOT of an updated EOP is subject to protected information requirements. The requirement to submit to ERCOT unredacted plans is codified in adopted (c)(3)(A)(iii). The requirement that updated EOPs are subject to Protected Information requirements is codified as adopted (c)(3)(D).

Proposed §25.53(c)(5) - ERCOT EOP

Proposed subsection (c)(5) requires ERCOT to maintain a current EOP in its entirety, consistent with the requirements of proposed subsection (c) and available for review by the commission or the commission's designee, notwithstanding the other requirements of proposed subsection (c).

TNMP requested deletion of proposed subsection (c)(5) as it is redundant. Specifically, TNMP indicated that Nodal Operating Guide 3.7(6) already requires similar information to be provided to ERCOT.

Commission Response

Adopted subsection (c)(5) is intended to require ERCOT to develop and maintain its own EOP consistent with the requirements of this rule. The commission amends the rule for clarity consistent with Oncor's recommendation discussed below under this heading.

TPPA recommended that proposed subsection (c)(5) be amended to require ERCOT to securely provide its unredacted EOP filed with the commission to market participants because ERCOT has access to the unredacted EOPs of market participants under proposed subsection (c)(4)(D). TPPA also suggested that a redacted version of ERCOT's EOP be published on its Market Information System or filed with the commission for public inspection.

Commission Response

The commission declines to change the rule according to TPPA's recommendations. Simply because an entity submitted its EOP to ERCOT does not entitle that entity or make it useful for that entity to receive a copy of ERCOT's EOP. ERCOT's procedures governing its interactions with market participants are enumerated in great length through the Nodal Protocols and the various Market Guides. All market participants have access to these documents and are bound by agreement with ERCOT to be familiar with the contents thereof.

Oncor recommended replacing "a current EOP" with "its own current EOP" in proposed subsection (c)(5) to more clearly indicate that ERCOT must create and maintain an EOP for itself.

Commission Response

The commission agrees with Oncor's recommendation and amends the rule accordingly.

Proposed §25.53(d) - Required EOP Information

Proposed subsection (d) requires an entity to include in its EOP common operational functions for all emergencies and annexes specific to certain types of emergencies listed under subsection (e). An entity that claims a provision of subsection (d) does not apply to it must include in its EOP filing to the commission the reasons for which the specific provision does not apply.

EPE, TCPA, ARM, LCRA, Oncor, and GVEC opposed the requirement of proposed subsection (d) to require an entity to consolidate its EOP in a single document. Consistent with its recommendations for proposed subsections (e) and (f), EPEC recommended the commission not require a consolidated EOP under proposed subsection (d) and instead permit a summary to be filed for the EOP and any required annexes.

Commission Response

As noted previously, the rule does not require an entity to adhere to a specific format for its EOP. The entire set of plans designed to prepare for an entity's response to an emergency must be filed with the commission with the confidential portions removed. An executive summary of the plan is also required. As such, the commission declines to change the rule based on the recommendations of EPE, TCPA, ARM, LCRA, Oncor, and GVEC. An entity is required to file a document which contains the minimum required information in whatever format best suits the entity.

Consistent with its recommendations for the definition of "emergency" under proposed subsection (b)(3), TCPA further recommended that an EOP's scope be limited to "reasonably foreseeable" emergencies under proposed subsection (d). ARM also recommended changing the language "every type of emergency" in proposed subsection (d) to "every reasonably foreseeable type of emergency" while Enbridge suggested the same language be replaced with "most common emergencies," so as to

differentiate between "emergency preparedness and the specific annexes." Oncor and TNMP stated the phrase "common operational functions that can be used for every type of emergency" does not appear in the existing version of §25.53 and is thus unclear in how it is used in proposed subsection (d). Oncor and TNMP emphasized that in order for an EOP to be effective, it must be designed to address "system emergencies" as defined in §25.5(128), not "every type of emergency" which may involve only "common operational functions" and not activation of the EOP.

Commission Response

The rule is designed to ensure that entities have considered and adequately prepared for emergency response. This preparation necessarily requires the development of operational functions that come into play regardless of emergency type and of procedures that are specific to particular types of emergencies. The commission clarifies the language of (d) accordingly.

The commission declines to adopt the other recommendations made by commenters, as this clarification should substantively address the underlying concerns. Furthermore, the commission's changes to the definition of "emergency" under adopted subsection (b)(3) partially address TCPA, ARM, and Enbridge's recommendations. In response to Oncor and TNMP's comments, the commission acknowledges the difference between "system emergency" as defined under §25.5(128) and the adopted rule's definition of "emergency" under subsection (b)(3). However, the adopted rule extends the definition of emergency to include hazards and threats. Oncor and TNMP's concerns are also addressed under heading (b)(3) defining "emergency" and the commission's revision of the same.

AEP requested the commission clarify the word "outline" in subsection (d) due to the ambiguity in what is meant for an entity to "outline" its responses to the types of emergencies the annexes are required to address under proposed subsection (e). Specifically, AEP noted that proposed subsection (c)(1)(A) requires a utility to file an "unredacted EOP in its entirety" and requested the commission determine whether the term "outline" is consistent with or differs from that requirement.

Commission Response

The commission has amended subsection (c)(1)(A) to permit a summary of the EOP and a complete revised copy of the plan with the confidential portions removed to be filed with the commission in lieu of a full, unredacted version. This revision addresses AEP's request for clarification of the same in relation to what is meant by the term "outline" in subsection (d). The commission declines to define the term "outline" as entities are best situated to determine the practices and procedures relevant to its industry, locale, and customers when returning to normal operations after disruptions caused by an incident. The intent of the rule is not to prescribe to each entity the manner in which it responds to an emergency but ensure that entities have considered and adequately prepared for emergency response via implementation of standard minimum plan content.

LCRA urged the commission to avoid overly prescribing EOP informational requirements in proposed subsection (d). Specifically, LCRA expressed concern that the proposed subsection may undermine the efficiency and effectiveness of an "integrated, enterprise-wide" approach to address emergency planning needs unique to the utility implanting the EOP.

Commission Response

The commission disagrees with LCRA's comments on subsection (d). The commission agrees that efficiency and effectiveness are important, however, emergency preparedness is equally important. The commission believes that the current language strikes a balance.

TPPA recommended that the requirements of subsection (d)(1), (d)(2), and (d)(4) regarding an approval and implementation section, record of distribution, and affidavit requirement, respectively, be a reporting requirement separate from the EOP itself. Otherwise, a cyclical timing issue in finalizing and distributing the EOP will result. GVEC made the same recommendation as TPPA in more general terms and also referenced the annexes required under subsection (e). GVEC elaborated that these additional requirements are not essential to a functioning EOP.

Commission Response

The commission agrees with TPPA and GVEC that the record of distribution required under proposed subsection (d)(2), list of emergency contacts under proposed subsection (d)(3), and affidavit required under proposed subsection (d)(4) should be filed separately from the EOP. Furthermore, the commission moves the requirements of (d)(2), (d)(3), and (d)(4) into adopted subsection (c)(4) as adopted subsection (c)(4)(A), (c)(4)(B), and (c)(4)(C), respectively, and amends the requirements to permit these documents to be filed separate from the EOP. The commission declines to adopt TPPA and GVEC's recommendation that the approval and implementation section under (d)(1) should be filed separately from the EOP as it contains information necessary for an entity's emergency planning such as the EOP's scope and applicability. The commission substantively addresses its rationale for the inclusion of adopted subsection (d)(1) under headings (d)(1)(B), (d)(1)(C), and (d)(1)(D).

CenterPoint asserted the best practice for updated EOPs would be to track each iteration of the document through version number or a similar system, such as a control number, rather than providing updated versions as considered in the proposed rule.

Commission Response

The commission agrees with CenterPoint that tracking EOP updates with a version number or some other system is more efficient than requiring the submission of each individual updated draft. The adopted rule does not require the submission of an updated draft after each significant change made to an entity's EOP.

Proposed §25.53(d)(1)(B) - Responsible Individuals

Proposed subsection (d)(1)(B) requires an approval and implementation section included in the EOP to list individuals responsible for maintaining, implementing, and revising the EOP.

SPS opposed the requirement of proposed subsection (d)(1)(B) and recommended it be deleted from the proposed rule. SPS stated the provision would be unduly burdensome to apply in practice due to employee turnover necessitating frequent changes to the EOP. ARM alternatively recommended that proposed subsection (d)(1)(B) permit identification of groups or teams responsible for EOP implementation activities which would alleviate the administrative burden of implementing the proposed subparagraph. TCPA argued that proposed subsection (d)(1)(B) is improper in specifying individuals to be identified in maintenance, implementation, and editing the EOP when instead specifying groups, teams, or other sustainable reference will reduce unnecessary and wasteful efforts in keeping the EOP updated.

Commission Response

The commission declines to modify the rule based on the comments filed on this subparagraph. The identification of specific individuals who are accountable for modifying and implementing EOPs is important to assess the emergency preparedness of an entity. However, the commission agrees with commenters that the identification of individuals by name would be burdensome. The commission clarifies that an entity can comply with (d)(1)(B) by listing the titles or specific designations of individuals responsible for maintaining and implementing the EOP and those who can change the EOP, so long as the title or designation is specific enough to identify the specific holder of that title or designation at any time. The commission agrees that efficiency and effectiveness are important, however, emergency preparedness is equally important. The commission believes that the current language strikes a balance.

TLSC requested proposed subsection (d)(1)(B) be amended to specifically identify employees responsible for emergency planning concerning customers medically dependent on electricity.

Commission Response

The commission declines to modify the rule to require entities to specifically identify employees responsible for emergency planning concerning customers medically dependent upon electricity. The rule requires the identification of all individuals responsible for maintaining and implementing an entity's EOP. To the extent that this includes emergency planning for customers medically dependent on electricity these individuals must also be identified.

Proposed §25.53(d)(1)(C) - Revision control summary

Proposed subsection (d)(1)(C) requires an approval and implementation section included in the EOP to maintain a revision control summary that outlines changes made to an EOP and records the dates that changes are made.

ARM and TCPA opposed the inclusion of proposed subsection (d)(1)(C) because it is "unduly burdensome" and recommended it be deleted from the proposed rule. TCPA alternatively recommended revising proposed subsection (d)(1)(C) to require tracking only of "material" changes to the EOP.

Commission Response

The commission disagrees with ARM and TCPA that the requirement of proposed subsection (d)(1)(C) to provide a revision control summary is "unduly burdensome." The commission agrees with TCPA that "material" changes should be tracked in a revision control summary but declines to adopt language only requiring the tracking of "material" changes. It is conceivable that there are organizational, clerical, or formatting changes to an EOP that may later be revealed to be material in drills or implementation of the EOP. Furthermore, dates of revision and the substance of EOP changes are known to the entity and needed by the commission to ensure revision integrity.

CenterPoint recommended revising subsection (d)(1)(C) to only track changes to EOPs that are changed from the initial EOP filing required by proposed subsection (c)(1).

Commission Response

The commission agrees with CenterPoint's recommendation and amends subsection (d)(1)(C) accordingly.

Proposed §25.53(d)(1)(D) - EOP date of adoption

Proposed subsection (d)(1)(D) requires an approval and implementation section included in the EOP to contain a dated statement indicating when the current EOP was adopted by the entity.

ARM recommended proposed subsection (d)(1)(D) be deleted as it is unnecessary because, in ARM's view, any newly issued EOP clearly supersedes a previous EOP. ARM asserted that since proposed subsection (d)(1)(E) already requires a dated statement of adoption indicating the EOP on file is the most recent and adopted EOP, subsection (d)(1)(E) should suffice for tracking changes to an EOP by the commission. CenterPoint provided draft language for proposed subsection (d)(1)(D) which consists of striking the word "dated" from the provision.

Commission Response

The commission disagrees with ARM and CenterPoint that the requirement of proposed subsection (d)(1)(D) to provide a dated statement that the current EOP supersedes previous EOPs is "unnecessary." In the interest of clarity, each EOP summary, full version with confidential portions removed, or unredacted full version must contain a dated statement that the current EOP supersedes previous EOPs.

Proposed §25.53(d)(1)(E) - Date of Approval

Proposed subsection (d)(1)(E) requires an approval and implementation section included in the EOP to provide the date the EOP was most recently approved by the entity.

CenterPoint recommended a clerical change adding the word "states" to the beginning of proposed subsection (d)(1)(E).

Commission Response

The commission agrees with CenterPoint's recommended change for subsection (d)(1)(D) and implements its recommended language.

Proposed §25.53(d)(2), §25.53(d)(2)(A), and §25.53(d)(2)(B) - Record of Distribution

Proposed subsection (d)(2) requires an EOP to include a record of distribution that, under proposed subsection (d)(2)(A) and (d)(2)(B), must include names and titles of persons in the entity's organization receiving the EOP, and a record of dates when the EOP is issued to the listed persons.

ARM, AEP, LCRA, and TEC opposed the requirements of subsection (d)(2), as proposed, as administratively burdensome due to employee turnover and volume concerns.

LCRA requested the commission revise proposed subsection (d)(2) to permit an entity to "provide a record of employees with access to the EOP and the corresponding date when access was granted" provided the entity stores its EOP securely. AEP similarly recommended the list requirement be replaced with a description affirming the existence of distribution procedures to ensure relevant employees receive the EOP. LCRA emphasized that the provision "should not be interpreted to require 'distribution' by email or other similar means, if that is not how the entity maintains and controls access to its EOP." LCRA also recommended the commission address whether updating the list of employees with access to the EOP in accordance with proposed subsection (d)(2) constitutes a "significant change" requiring re-filing of the EOP with the commission under proposed subsection (c)(4)(C). LCRA commented that an update to the employee list should not be considered a "significant change" under proposed subsection (c)(4)(C), citing similar administra-

tive burden concerns as SPS and ARM in their comments under subsection (d)(1)(B) regarding employee turnover.

Commission Response

The commission declines to change the rule to permit an entity to only provide a description of its distribution process, as recommended by AEP. The commission finds identification of specific individuals relevant to its analysis of the overall state of the industry's preparedness by demonstrating each entity's broad and relevant awareness of EOP procedures and accountability to those procedures. The high turnover rates cited by commenters only increases the value of the commission knowing that an entity is tracking who has access to the EOP and when.

In response to LCRA's comments, the commission declines to clarify what qualifies as "distribution" for the purposes of this paragraph. The entity should choose the most appropriate and efficient administrative process that ensures its relevant employees have access to its EOP and document the process accordingly.

As discussed under heading (c)(4), the commission has moved the record of distribution requirement of proposed subsection (d)(2) into adopted subsection (c)(4) for annual filings separate from an EOP, specifically as in adopted subsection (c)(4)(A). Therefore, LCRA's request for clarification does not need to be addressed further.

ARM, Enbridge, and SPS recommended proposed subsection (d)(2) be deleted. AEP also expressed concerns over preserving employee confidentiality for the proposed list. CenterPoint and Enbridge emphasized that each entity is unique in its business structure and operational models and that what should be considered important is that "the entity can confirm applicable personnel within its unique model have been trained."

CenterPoint provided draft language for proposed subsection (d)(2)(A) which would require entities to report persons who have access to the EOP or include a statement that the EOP was distributed, or made accessible, to all persons in the entity's organization. CenterPoint also recommended language for subsection (d)(2)(B) which amended the subparagraph to include dates of distribution or accessibility to the EOP.

ARM and AEP commented that the affidavit under subsection (d)(4) satisfies the intended purpose of subsection (d)(2), as subsection (d)(4) requires a generalized affirmation from the entity's highest-ranking representative that relevant employees have been trained in accordance with and reviewed the entity's EOP. As an alternative, if the commission declines to delete proposed subsection (d)(2), ARM recommended proposed subsection (d)(2) be amended to be less prescriptive. ARM specifically requested that the commission "at a minimum delete the requirement to list individuals receiving the EOP" as it would unnecessarily increase the volume, complexity, and cost of compliance in developing and implementing an EOP and that a table may not be an ideal format due to the same.

TEC recommended that the list required under proposed subsection (d)(2) be limited to only management personnel who receive the EOP. TEC explained that this change would effectuate the same purpose of ensuring the EOP is distributed to the relevant individuals while making reporting the EOP to the commission easier to manage for entities.

Commission Response

The commission disagrees with ARM, Enbridge, AEP, TEC, SPS, and CenterPoint, as the list of personnel contemplated under subsection (d)(2) is necessary for the commission to audit whether personnel responsible for certain EOP procedures have in fact received the required training relevant to such responsibilities. An entity that decides to limit the list of responsible people must nonetheless provide the list to the commission and ERCOT. However, to make compliance with this requirement less onerous for entities and better align the rule with its intended purposes, the commission modifies the rule to require the titles and names of persons in the entity's organization that have been provided and trained on the EOP. The commission further modifies the rule to require dates of distribution or accessibility, and training, as appropriate. An entity should interpret this requirement in a manner that best aligns with its EOP training and distribution practices, and provides the commission with a comprehensive and detailed accounting of the distribution of its EOP to relevant personnel.

Proposed §25.53(d)(3)

Proposed subsection (d)(3) requires an EOP to include a list of emergency contacts for the entity, including identification of single points of contact during an emergency.

LCRA asserted that the term "emergency contacts" and the request for "single points of contact during an emergency" in proposed subsection (d)(3) is unclear due to the plural and singular usages of the term "contact." LCRA further expressed that it is also unclear whether the emergency contacts should be inclusive or separate from the single points of contact. Accordingly, LCRA requested that the commission revise proposed subsection (d)(3) to be unambiguous and clarify the intention of requesting such information. LCRA requested clarification on whether submission to the commission for a representative, whose information is already on file with the commission, is different than the requested emergency contact in the proposed paragraph.

CenterPoint requested subsection (d)(3) be deleted from the proposed rule and recommended the provision regarding submission of emergency contact information be moved to proposed subsection (g). Specifically, CenterPoint argued that including a list of emergency contacts in an EOP has no clear benefit for the reasons discussed in subsection (d)(2) such as personnel turnover and business structure.

Commission Response

The intent of proposed subsection (d)(3), adopted as subsection (c)(4)(B), is to ensure each entity to which this rule applies provides and maintains an accurate list of representatives the commission can contact during an emergency. The commission requires a list of emergency contacts, which includes specifically identified individuals who can immediately address urgent requests and questions from the commission during an emergency. Whether the entity identifies one or more individuals to serve this function is left to the entity to decide; however, the commission recommends an entity have at least one primary and one back-up contact identified. The commission modifies the rule accordingly.

The commission declines to allow an entity to rely solely on the contact information on file with the commission in its Market Directories because there has been a consistent pattern of entities failing to keep contact information current without a required annual update. Therefore, the adopted rule requires an updated emergency contact list with an entity's initial filing and with each annual update, as a supplement to the contact information con-

tained in the commission's Market Directories. The commission clarifies that for purposes of this requirement an entity must include all emergency contacts that are relevant to the entity's EOP planning including representatives, if applicable. If an entity has multiple emergency contacts the entity should highlight and place at the top of the list, the entity's main emergency contact.

The commission agrees with CenterPoint that the emergency contact list should not be included in an entity's EOP and relocates the requirement to subsection (c)(4)(B), which contains documents that must be filed with an entity's EOP.

Entergy and SPS expressed concern that if the emergency contact information is available publicly, citizens may contact specific individuals while the emergency contact is working to address the emergency and that it risks listed emergency contacts becoming a potential target of a cyberattack. Entergy supported the intention of the proposed rule but requested that it be revised to provide the required emergency contact information in a redacted form for public filing and the unredacted form provided confidentially.

Commission Response

The commission agrees with Entergy and SPS that the list of emergency contacts can be filed confidentially.

TLSC proposed that subsection (d)(3) include a general hotline activated during disaster or emergency situations, providing a single point of contact during emergencies for individuals who are medically dependent on electricity.

Commission Response

The commission declines to adopt TLSC's recommendation to amend proposed subsection (d)(3) to require all entities to implement a general hotline activated during an emergency, because it is beyond the scope of this rulemaking to impose such a specific requirement. However, adopted subsection (d)(2) does lay out requirements that entities include a communications plan, which for most entities includes a plan for communicating with the public during an emergency. Nothing in the rule precludes an entity from voluntarily implementing a hotline to be activated during an emergency.

Proposed §25.53(d)(4) - Affidavit

Proposed subsection (d)(4) requires an EOP to include an affidavit from the entity's highest-ranking representative, official, or officer with binding authority over the entity to affirm a number of features of the EOP which are discussed in greater detail under the subparagraphs below.

CenterPoint, TCPA, and ARM opposed the inclusion of subsection (d)(4) in the proposed rule. Consistent with its recommendations for subsection (c)(2) and subsection (c)(2)(B), CenterPoint asserted that the affidavit required by proposed subsection (d)(4) should not be included in the EOP but instead be an annual filing separate from the EOP. For the same reason, CenterPoint recommended deleting proposed subsection (d)(4) in its entirety. ETEC claimed the affidavit required to be included in the EOP under proposed subsection (d)(4) is only required by the commission for verification or compliance purposes. ETEC elaborated that the affidavit is not a document that provides guidance or assistance during an emergency and therefore should not be included in the EOP. However, ETEC stated it is not opposed to submitting the same affidavit as detailed under subsection (d)(4) provided it is separate from being filed with the EOP.

Commission Response

The commission agrees with CenterPoint, TCPA, ARM, and ETEC that the affidavit requirement should be separate from the EOP. The commission's revision to proposed subsection (c)(1)(A) permits an entity to file with the commission a summary of the EOP, and the commission modifies the EOP to be included as a part of that summary. These changes substantively address CenterPoint, TCPA, ARM, and ETEC's concerns.

ARM and TCPA requested that proposed subsection (d)(4) retain the current rules requirement for an affidavit from an "owner, partner, officer, manager, or other official with responsibility for the entity's operations." ARM asserted the rule could create a compliance bottleneck that "might span multiple REP operations as well as generation operations for affiliated power generation companies that would all have to go through the same individual." ARM believed the entity should be given discretion to determine the person with the best knowledge of the entity's operations and, under proposed subsection (d)(4), would attest to those processes in the submitted affidavit included in the EOP. ARM referred to §25.71(d) (relating to General Procedures, Requirements and Penalties), §25.88(e)(2) (relating to Retail Market Performance Measure Reporting), and §25.91(d) (relating to Generating Capacity Reports), as containing language similar to its recommendations. Similarly, CenterPoint and TCPA requested an officer having binding authority over the entity should be able to make the affirmation under proposed subsection (d)(4), and not just the "highest-ranking" officer.

Commission Response

The commission disagrees with ARM, TCPA, and CenterPoint as the attestation required under the rule mirrors the attestation required under §25.55(c) and 25.55(f) for weather emergency preparedness reports. For consistency and to impress upon entities the necessity of emergency planning, the commission retains the requirement in the proposed rule for the attestation to be signed by the highest-ranking officer.

Proposed §25.53(d)(4)(A) - Relevant Operating Personnel

Proposed subsection (d)(4)(A) requires an affidavit to attest that the EOP has been reviewed and approved by appropriate executives.

Oncor recommended that proposed subsection (d)(4)(A) be amended to permit compartmentalization of training to personnel on portions of the EOP that are applicable to their work responsibilities and provided draft language consistent with this recommendation:

Commission Response

The commission agrees with Oncor's request to permit compartmentalization of training to personnel on portions of the EOP that are applicable to their work responsibilities and adopts Oncor's recommended language in adopted subsection (c)(4)(C)(i). The commission's intent for this provision is to require relevant personnel be trained on the specific portions of an entity's EOP and required annexes to the extent applicable to their work functions.

LCRA recommended that proposed subsection (d)(4)(A) be deleted from the rule due to the subjectivity involved. Specifically, LCRA stated "it is impossible to affirm via affidavit an employee's personal and individual commitment" that "cannot be objectively verified by an entity's highest-ranking official." LCRA recommended proposed subsection (d)(4)(A) be modified to delete the phrasing "and such personnel are committed to

following the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an emergency."

Commission Response

The commission modifies this provision to require the affidavit to include an attestation that relevant operating personnel are "instructed" to follow applicable portions of the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an event.

Consistent with its recommendations for proposed subsection (d)(4), TCPA recommended the training requirement under proposed subsection (d)(4)(A) be more generalized.

Commission Response

The commission agrees with TCPA's recommendation and adopts its proposed language for relocated adopted subsection (c)(4)(C)(i).

Proposed §25.53(d)(4)(C) - Required Drills

Proposed subsection (d)(4)(C) requires an affidavit to attest that required drills have been conducted.

ETEC requested the commission clarify proposed subsection (d)(4)(C) which states "required drills have been conducted," in contrast to proposed subsection (f), which states that if the EOP was activated for an incident in the last 12 months, a drill is not required to be performed for that 12-month period. Accordingly, the two provisions could cause confusion, assuming that more than one drill is required per year.

Commission Response

The commission acknowledges the potential discrepancy identified by ETEC and adds a cross-reference to subsection (f) to adopted subsection (c)(4)(C)(iii).

Proposed §25.53(d)(4)(D) - Distribution to Local Jurisdictions

Proposed subsection (d)(4)(D) requires an affidavit to attest that the EOP or appropriate summary has been distributed to local jurisdictions as needed.

Sharyland, GVEC, and TEC opposed proposed subsection (d)(4)(D) unless the commission provided further clarification on the term "local jurisdictions." LCRA, TCPA, and CenterPoint recommended subsection (d)(4)(D) be deleted in its entirety. Sharyland requested clarification on the meaning of the term "local jurisdictions" as used in proposed subsection (d)(4)(D). Specifically, Sharyland requested the commission clarify the jurisdictions to which the utilities may be expected to distribute their EOPs or summaries. Similarly, GVEC and TEC argued that the term "local jurisdictions" in proposed subsection (d)(4)(D) is overly broad as it suggests "entities must have a plan for communicating with every conceivable local and state entity and official." GVEC argued that the term "local jurisdictions" is ambiguous and overly burdensome as entities are already required to have a public communications plan under proposed subsection (d)(5). GVEC recommended that the commission delete or narrow the scope of proposed subsection (d)(4)(D) in order to reduce the undue administrative burden and costs it would otherwise impose on entities as well as mitigate security risks involved with disclosure to local jurisdictions. TEC argued that the local jurisdiction distribution requirement under proposed subsection (d)(4)(D) undermines emergency operations at a time when resources may be strained. TEC recommended that the commission either "identify specific and limited governmental entities that should be included in a communication plan" or qualify proposed subsection (d)(4)(D) with "as appropriate in the circumstances for the entity."

CenterPoint asserted that "there is no legal mandate for entities to distribute their EOPs to local jurisdictions" and entities may not need or want to do so. CenterPoint further commented that the "as needed" qualification in the proposed subparagraph is ambiguous and should be clarified by the commission. Specifically, CenterPoint stated it is unclear what process would be used to determine the "need" of a local jurisdiction for an entity's EOP or who would be qualified to identify local jurisdictions that "need" the EOP using such a process.

Commission Response

The commission disagrees with Sharyland, GVEC, TEC, LCRA, TCPA, and CenterPoint and declines to delete the requirement for entities to coordinate with local jurisdictions in subsection (d)(4)(D). The rule does not require that an entity distribute its EOP to local jurisdictions. However, the entity must affirm that any local jurisdictions that need a copy of an entity's EOP have, in fact, received it. Emergency planning and an entity's obligations as a utility necessarily involve coordination with local jurisdictions served or impacted by the utility service the entity provides. As such, an entity must be aware of, and responsible for, identifying such local jurisdictions and distributing its EOP "as needed." The commission notes this requirement is adopted as subsection (c)(4)(C)(iv) in the final rule.

LCRA and TCPA argued that distribution of the EOP to "local jurisdictions" under proposed subsection (d)(4)(D) jeopardizes the sensitive nature of the information provided in the EOP. TCPA argued there were "few, if any, scenarios that would warrant distribution of an EOP or any of its component procedures to a local jurisdiction" due to confidentiality concerns. LCRA also commented that the term "local jurisdictions" was ambiguous as used in the proposed subparagraph.

Commission Response

LCRA and TCPA's confidentiality concerns are substantially addressed by the commission's amendment to proposed subsection (c)(1) permitting entities to submit an EOP summary and full, revised EOP with confidential portions removed to the commission and a full, unredacted EOP to ERCOT. Consistent with those changes and as discussed under heading (c)(1) the commission amends the proposed requirement to permit distribution of the EOP summary filed with the commission to local jurisdictions in lieu of a full, unredacted copy of an entity's EOP.

Proposed §25.53(d)(4)(E) - Business Continuity Plan

Proposed subsection (d)(4)(E) requires an affidavit to attest that the entity maintains a business continuity plan that addresses a return to normal operations after an emergency.

TPPA requested clarification on what is included in the "business continuity plan" cited under proposed subsection (d)(4)(E).

Commission Response

The commission declines to define the form and content of a business continuity plan required under adopted subsection (c)(4)(C)(v), as an entity is best situated to determine the practices and procedures relevant to its industry, locale, and customers when returning to normal operations after disruptions caused by an incident.

Proposed §25.53(d)(4)(F) - National Incident Management System Training

Proposed subsection (d)(4)(F) requires an affidavit to attest that the entity's emergency management personnel who interact with government officials at all levels have received specific Federal Emergency Management Agency (FEMA) and National Incident Management System (NIMS) training.

CenterPoint, TCPA, and ARM recommended that proposed subsection (d)(4)(F) be deleted. ARM recommended moving the requirement for an entity to list emergency management personnel who have received NIMS training into proposed subsection (d)(4)(A) if proposed subsection (d)(4)(F) is deleted. Alternatively, ARM recommended proposed subsection (d)(4)(F) require only one employee within an entity be required to have received the specified NIMS training. Consistent with its recommendations for proposed subsection (d)(4)(A), TCPA similarly recommended proposed subsection (d)(4)(F) be deleted and the training requirement be more generalized and moved to (d)(4)(A). ARM and TCPA argued that proposed subsection (d)(4)(A) is unnecessarily burdensome due to the time requirements to complete the training and that some or all of the listed training may not available. ARM and TCPA further stated that the training requirement of proposed subsection (d)(4)(F) may create a communications bottleneck during an emergency if entities are restricted to communicating through personnel with the required training. Specifically, TCPA commented that an entity may have multiple teams of personnel who act as points of contact for government officials and that the specific training included in the proposed subparagraph are impractically lengthy and may be unavailable.

Commission Response

The commission declines to delete the proposed requirement as CenterPoint, ARM, and TCPA recommend. The commission also disagrees with ARM and TCPA that requiring NIMS training for specific personnel is unnecessarily burdensome. NIMS is a widely adopted national emergency management program among governmental entities, and the proposed amendment appropriately limits the requirement to emergency management personnel who are designated to interact with local, state, and federal emergency officials during emergency events. This provision strikes an appropriate balance between ensuring emergency preparedness and over-prescribing requirements for the same. This requirement is adopted as subsection (c)(4)(C)(vi).

The commission declines to adopt ARM's recommendation to limit required NIMS training to only one employee within an entity. It is conceivable that an entity may be organizationally structured so that one employee is the only "emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events," however the intention of the rule is to ensure that all such personnel have received NIMS training to maximize emergency response. Artificially limiting the training requirement to a single employee at an entity is contrary to the intent of the rule.

The commission declines to make the training requirement more generalized and move it from proposed subsection (d)(4)(F) into proposed subsection (d)(4)(A) as TCPA recommends. The commission instead moves the requirements of subsection (d)(2), (d)(3), and (d)(4) to adopted subsection (c)(4) and changes the requirements to permit these documents to be filed separate from the EOP.

TPPA recommended that the NIMS training citations in proposed subsection (d)(4)(F) be updated to the title of the course instead of the specific course number, otherwise proposed subsection (d)(4)(F) risks quickly becoming outdated. Similarly, Sharyland recommended revising updating the training citations in proposed subsection (d)(4)(F).

Commission Response

The commission agrees with Sharyland's recommendation for subsection (d)(4)(F) and amends adopted subsection (c)(4)(C)(vi) accordingly. Specifically, the commission identifies that emergency management personnel should have received the latest NIMS training, specifically IS-100, ISs-200, IS-700, and IS-800.

TPPA further recommended that the commission clarify that non-emergency management personnel would not be covered by proposed subsection (d)(4)(F) and thus required to receive the specified NIMS training. Oncor interpreted the requirement of proposed subsection (d)(4)(F) as not to apply to "personnel designated to interact with ERCOT" as ERCOT is not a "political subdivision" and such personnel are required to take training programs from NERC, ERCOT, and Oncor itself. Therefore, Oncor argued that such personnel should be exempted from the requirements of the proposed subparagraph. Oncor provided draft language consistent with its recommendation by adding the sentence "the entity's personnel who are designated to interact with ERCOT during emergency events are not subject to the requirements of this paragraph."

Commission Response

An employee that qualifies as emergency management personnel designated to interact with government officials must receive NIMS training. The commission agrees with TPPA that this requirement does not apply to non-emergency personnel, such as Mayors as per TPPA's example, that may also interact with government officials. The commission disagrees with Oncor that subsection (d)(4)(F) should explicitly exempt "personnel designated to interact with ERCOT." An entity may require certain personnel to only interact with ERCOT and other personnel to only interact with local, state, and federal emergency management officials. An entity is free to adopt such an organizational structure provided it complies with the requirements of this rule.

Proposed §25.53(d)(5) - Communication Plan

As discussed under heading (c)(1), the commission proposed subsection (d)(5) is adopted as subsection (d)(2).

Proposed subsection (d)(5) requires entities with transmission or distribution service operations, entities with generation operations, Retail Electric Providers (REPs), and ERCOT to develop a communications plan as detailed in subsection (d)(5)(A) through (d)(5)(D), respectively.

OPUC requested each subparagraph under proposed subsection (d)(5) include OPUC as a party to receive communications from an entity during an emergency as OPUC serves as a public information platform during emergencies. OPUC stated that including it would assist in the commission's intended goal for the "widest possible dissemination" of information.

Commission Response

Adopted subsection (d)(2)(A) through (d)(2)(D) already include a requirement that entities describe the process for communicating with state government entities in their communication plans; however, the commission acknowledges OPUC's valuable role

as an information platform during emergencies and agrees to require entities to specifically describe procedures for communicating with OPUC during emergencies.

Consistent with its general comments regarding notice of updates to an EOP or individual annexes, City of Houston requested that all entities, prior to changing or updating the communications plan under proposed subsection (d)(5), coordinate and collaborate with local municipalities and critical infrastructure owners on the communication plan.

Commission Response

The commission declines to adopt the City of Houston's recommendation for proposed subsection (d)(5) requiring an entity to coordinate with local governments and critical infrastructure owners for input or refinement of its communication plan prior to filing with the commission. As noted in the commission's response under the General Comments heading, communications between an entity and its stakeholders require different forms, formats, and timelines. To create a single requirement for all entities would unnecessarily hamper an entity from using the most effective method of communicating with its stakeholders. Proposed subsection (c)(1) of this section requires entities to file EOPs annually and proposed subsection (c)(4) requires an entity to file an updated EOP if commission staff determines that the entity's EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency. The commission maintains that these requirements provide the appropriate standard to determine whether an entity can effectively communicate during an emergency. The commission encourages an entity to take other reasonable measures, including communicating with its stakeholders for input and refinement of its communication plan but does not require it.

TPPA contended that a communication plan should be focused on "specific methods and forms of emergency communications" rather than processes on filing complaints. Additionally, TPPA responded that all entities are entitled to retain flexibility in communications given the nature of emergency events. TPPA expressed that proposed subsection (d)(5) may violate an entity's First Amendment rights, as, in TPPA's view, "a state agency requiring revisions to a communications plan, on pain of penalties if the plan is deemed inadequate, presents very serious First Amendment concerns" and argued that the commission should not regulate an entities' communications with the public or media.

Commission Response

The commission declines to remove the provision in subsection (c)(4) that would allow commission staff to seek revisions to an entity's communication plan as proposed by TPPA. The commission disagrees with TPPA's contention that allowing commission staff to request an updated EOP poses a threat to an entity's First Amendment rights if the requirement is applied to its communication plan. Requiring providers of a critical service, such as electricity, to maintain a plan for communicating with the public during a potentially life-threatening emergency is not a violation of the First Amendment, nor is allowing a state agency that is charged with ensuring the reliability of that service to complete a review of the adequacy of that plan.

Ensuring members of the public have access to critical information regarding their electric service during an emergency - which often carries with it the additional hazards of dangerous weather conditions, supply shortages, and unavailability of other critical services such as water or gas - is a compelling government interest. Further, the requirements of this rule are narrowly tailored by only requiring activation of these plans during an emergency, which is defined, in part, as a situation in which "the known, potential consequences of a hazard or threat are sufficiently imminent and severe that an entity should take prompt action to prepare for and reduce the impact of harm that may result from the hazard or threat" and by only requiring that an entity update its plan if it does not contain sufficient information for the commission to assess its adequacy.

TEC recommended clarifying that communications procedures in proposed subparagraphs §25.53(d)(5)(A) and (C) are for communicating and handling customer complaints during an emergency. SPS, AEP, and TNMP recommended adding the phrase "during an emergency" to modify "procedures."

Commission Response

The commission agrees with TEC, SPS, AEP, and TNMP's comments relating to the need to clarify the term "during an emergency" in relation to the communications plan required under adopted subsection (d)(2). Specifically, the commission revises adopted subsection (d)(2)(A) and (d)(2)(C) as recommended by TEC to clarify that the procedures to include in an entity's communication plan are intended for communicating and handling customer complaints during an emergency. Further, the commission modifies adopted subsection (d)(2)(B) in accordance with the recommendations of TEC, SPS, and AEP by adding the phrase "during an emergency" to clarify that the procedures to include in an EOP communication plan are intended for communication during an emergency.

Consistent with its comments regarding proposed subsection (d)(4)(D) relating to the term "local jurisdictions," TEC commented that "local and state governmental entities, officials, and emergency operations centers" in proposed subsection (d)(5)(A), (d)(5)(B), and (d)(5)(D) is overbroad and may challenge emergency operations. TEC recommended the commission "identify specific and limited governmental entities" to include in the proposed subparagraphs relating to the communications plan or else qualify the phrase as it appears in each subparagraph with "as appropriate in the circumstances for the entity."

Commission Response

The commission modifies adopted subsection (d)(2)(A), and (d)(2)(B), as requested by TEC, to add the phrase "as appropriate in the circumstances for the entity" to qualify the requirement that an entity describe the procedures for communicating with local and state governmental entities, officials, and emergency operation centers. The commission declines to modify adopted subsection (d)(2)(D) as requested by TEC due to the widespread audience ERCOT must reach. It is the commission's intent that an entity's communication plan addresses how the entity will communicate with appropriate local and state governmental entities, officials, and emergency operation centers during an emergency.

Proposed §25.53(d)(5)(A) - Communications Plan (Transmission and Distribution)

ETEC commented that the term "Reliability Coordinator" as it appears in proposed subsection (d)(5)(A) and (d)(5)(B) is undefined and therefore unclear. ETEC requested the commission add, or incorporate by reference a definition for the term "Reliability Coordinator" for clarity.

Commission Response

The term reliability coordinator is an industry term that is not ambiguous in context. However, to provide additional clarity, the commission modifies subsection (d)(2)(A) to specify that an entity with transmission or distribution service operations must include in its communication plan procedures for communicating with the reliability coordinator "for its power region."

LCRA requested the commission clarify that the "procedures for handling complaints" under proposed subsection (d)(5)(A), "specifically refers to complaints from the utility's end-use retail customers." LCRA noted that without such language, an entity may receive unrelated complaints regarding utility rates, service boundary disputes, and others, which are not relevant to an entity's EOP. GVEC requested the commission amend proposed subsection (d)(5)(A) for general clarification regarding communications plans. Like LCRA, GVEC specifically requested language identifying the "type of complaint" referred to and recommended as an example "complaints related to the emergency event" as proposed language.

Commission Response

The commission acknowledges LCRA's request to revise proposed subsection (d)(2)(A) to qualify that the procedures for complaints during emergencies be limited to retail end-use customers. Likewise, the commission acknowledges GVEC's request to provide more detail and specificity concerning the communications plan and to specify that complaints should be related to the emergency event. The commission maintains that the response to the comments of TEC under heading (d)(5) revising adopted subsection (d)(2)(A), and (C) as recommended by TEC to clarify that the procedures to include in an EOP are for communicating and handling customer complaints during an emergency, substantially address the concerns of LCRA and GVEC.

Proposed §25.53(d)(5)(B) - Communications Plan (Generation)

TPPA recommended proposed subsection (d)(5)(B) be deleted as it would require a generation entity to disclose its communications with fuel suppliers, which TPPA asserts is competitively sensitive information.

TCPA commented that the communications plan for generation entities under proposed subsection (d)(5)(B) does not need to require communication with the various groups listed as a result of every emergency due to potential ERCOT directives such as an ERCOT Operating Condition Notice (OCN). TCPA elaborated that an OCN precedes declaration of an actual emergency and "do(es) not warrant a communication step." Requiring communications in similar events would be inefficient. ETEC commented that generation entities are neither open to the public nor do they typically communicate directly with the public, and instead are dispatched by the applicable reliability coordinator directly. As such, generation entities routinely ensure the applicable reliability coordinator and connected transmission and distribution providers receive updated communications. For these reasons, ETEC commented that the requirement of proposed subsection (d)(5)(B) is overly burdensome and requested that it be revised to "clarify and limit the outlets with whom entities with generation operations must communicate."

Communication Plan

The commission declines to adopt TPPA's proposal to delete proposed subsection (d)(5)(B). The commission notes that having a plan in place for engaging in communication between an entity with generation operations and its fuel suppliers is vitally important to ensure a sufficient supply of fuel during emergency conditions and therefore declines to remove the requirement from an entity's communication plan. However, the contents of the plan need not identify specific fuel suppliers.

In response to the comments of TCPA and ETEC, the commission refers to its response to TEC above. The commission modifies adopted subsection (d)(2)(B) to add the phrase "as appropriate in the circumstances for the entity" to qualify the requirement that an entity describe the procedures for communicating with local and state governmental entities, officials, and emergency operation centers. It is the commission's intent that an entity's communication plan addresses how the entity will communicate with appropriate local and state governmental entities, officials, and emergency operation centers during an emergency.

Proposed §25.53(d)(5)(C) - Communications Plan (REP)

Proposed §25.53(d)(5)(C) requires a REP to include as a part of its communication plan procedures for communicating with the public and handling complaints during an emergency.

ARM argued that complaint handling is an important REP function, but that "complaint handling would (not) be impacted by most emergencies" and the purpose of the requirements to address complaint handling during an emergency is unclear. ARM noted that §25.485 (relating to customer access and complaint handling) requires REPs to investigate and respond to complaints within 21 days as opposed to emergencies which are generally "acute events." ARM recommended deleting the provision.

Commission Response

The commission declines to remove the requirement that a REP's EOP describe procedures for handling complaints during an emergency as requested by ARM. ARM is correct that §25.485 gives a REP 21 days to respond to complaints, but it also requires that REPs provide reasonable access to service representatives and have a toll free line that affords customers a prompt answer during normal business hours. Depending on the severity of the emergency, customer complaints may rise dramatically during the emergency and there must be procedures in place for the REP to collect and respond to the increased number of complaints in a timely manner. A REP's communication plan should include the procedures that allow the REP to adapt to differing levels of complaints during an emergency. If, however, as ARM suggests, a REP believes that its standard complaint processing procedures can withstand the increased level of complaints associated with emergencies, it may submit its standard complaint handling procedures as its emergency procedure.

TLSC recommended that proposed subsection (d)(5)(C) specify procedures for communicating with customers medically dependent on electricity during an emergency.

Commission Response

The commission agrees with the concern raised by TLSC and acknowledges that medically dependent customers may need targeted communication during and prior to imminent emergencies to allow these customers to plan to evacuate or have a backup supply of electricity available. However, the commission declines to make the recommended change. Adopted subsection (d)(2)(A) and (d)(2)(C) require entities with transmission and distribution service operations and REPs respectively to describe the procedures for communicating with customers. This

requirement encompasses all customers, including the segment of customers that are medically dependent on electricity.

Octopus supported the intent of proposed subsection (d)(5)(C) in ensuring REPs have procedures in place to communicate with customers during an emergency. However, to ensure a REP can effectively do so, Octopus recommended the commission add a requirement that a REP verify that it has a current phone number or email address for each of its customers in case emergency communications are necessary as well as specify the medium of such emergency communications.

Commission Response

The commission declines to make the changes to adopted subsection (d)(2)(C) as requested by Octopus. The commission already requires a REP's communication plan to address the procedures to communicate with customers during an emergency. Further, adopted subsection (c)(3)(A) requires an entity to file an updated EOP if the entity has made a significant change to its EOP. Otherwise, under adopted subsection (c)(3)(B), an entity may provide a summary of minor changes, an attestation that the changes are not significant, and the affidavit required under adopted subsection (c)(4)(C).

Proposed §25.53(d)(6) - Emergency Response Supplies

Proposed subsection (d)(6) requires an EOP to include a plan to maintain pre-identified supplies for emergency response.

TLSC requested inclusion of language in proposed subsection (d)(6) requiring an entity to "maintain pre-identified supplies for emergency response to customers medically dependent on electricity."

Commission Response

The commission declines to revise subsection (d)(6) as requested by TLSC. The intent of proposed subsection (d)(6), adopted as (d)(3), is to ensure that an entity responding to an emergency has sufficient supplies to support its response efforts in ensuring continuity of electric service. However, the commission does not specify which supplies are required to be pre-identified, so an entity may include a plan for maintaining pre-identified supplies for emergency response to customers medically dependent upon electricity, as appropriate or if required by another provision of law.

Proposed §25.53(d)(7) - Emergency Response Staffing

Proposed subsection (d)(7) requires an EOP to include a plan that addresses staffing during an emergency response.

Octopus recommended that emergency staffing plans required under proposed subsection (d)(7) require an entity to identify resources outside of the ERCOT service area, if any, as access to such resources could be crucial in their emergency response efforts.

Commission Response

The commission declines to revise proposed subsection (d)(7) as requested by Octopus. An entity's plan for staffing must necessarily consider mutual aid assistance or other forms of staffing if the entity's staff is insufficient to adequately respond to an emergency. This includes securing staff needed from areas unaffected by the emergency. The commission further notes that the scope of this rule is not limited to entities operating in the ERCOT power region but to all entities operating in the State of Texas, regardless of power region.

Proposed §25.53(e) and §25.53(e)(1) - Annexes Required in EOP

Proposed subsection (e) and proposed subsection (e)(1) list the annexes that must be included in the EOP for transmission and distribution facilities owned by an electric cooperative, an electric utility, a municipally owned utility, or a transmission and distribution utility.

ARM generally opposed the requirement to file separate annexes in subsection (e) as operationally unnecessary, administratively burdensome, and risking competitively sensitive information. ARM stated that while a REP should be prepared for different types of emergencies, separate annexes should only be required if a REP's existing EOP does not include procedures for the emergencies listed within (e). Similarly, consistent with ARM's comments for subsection (d), EPEC recommended not requiring the annexes be consolidated into the EOP as subsection (e) requires because it will be time-consuming to combine them and that annexes are distributed on an as-needed basis among business units or personnel within a utility. Additionally, in EPEC's view, a comprehensive summary should be sufficient for the needs of the commission and a combined EOP is not helpful for utilities when undertaking EOP procedures.

Commission Response

The commission disagrees with ARM's assessment of subsection (e) of the proposed rule as operationally unnecessary, administratively burdensome, and risking competitively sensitive information. The proposed rule does not require an entity to create a new or separate set of procedures for responding to different types of emergencies, unless an entity's existing EOP does not fulfill the rule's minimum requirements, nor does the rule mandate a particular format or organizational structure for the EOP. EOP summaries and confidentiality are substantively addressed by the commission under headings (c), (c)(1), and (c)(1)(A).

TLSC expressed concern that the proposed rule did not adequately address the needs of vulnerable members of the public, such as individuals with disabilities or those medically dependent on electricity. TLSC generally requested the commission clearly make the safety of critical care and chronic condition customers a priority in this rulemaking and emphasized that Texans who rely on DME may lack physical and financial resources to provide their own back-up power necessary for continued use of their essential equipment.

TLSC maintained that the critical load customer registry is crucial for emergency planning for power outages and could be used to be more inclusive of vulnerable individuals and emphasize public awareness during a load shed event. TLSC argued that local utility providers should use the critical load customer registry to identify vulnerable populations within their jurisdiction and incorporate the risks and needs of those individuals in EOPs. TLSC emphasized that "residential customers integrated into the community living in single family homes and apartments who are medically dependent on electricity should be treated separately from other critical load customers" such as hospitals or natural gas production facilities.

TLSC opposed commercial entities having priority over residential customers, particularly residential customers under critical care or suffering from chronic conditions. TLSC proposed that each annex listed under subsection (e) be required to include procedures detailing the exchange of protected customer infor-

mation, identifying customers medically dependent on electricity, how power dependent needs will be identified and planned for, how wellness checks will be conducted, identifying supplies and equipment available for emergency response, and generally be inclusive of the needs of vulnerable populations.

Commission Response

The commission substantively addresses the comments, concerns, and recommendations from the January 11, 2022 public hearing that overlap with TLSC's proposals under the heading EOP Public Hearing.

Regarding TLSC's comments that are not substantively discussed under that heading or elsewhere in this preamble, the commission responds as follows. In response to TLSC's proposal for residential customers medically dependent on electricity to be treated separately from critical load customers, the critical load rule already accounts for such a distinction under §25.497(2) and (3).

The commission disagrees with TLSC that commercial entities have priority over residential customers under current commission rules. The commission, as required by statute, provides discretion to utilities in determining how to prioritize between different types of critical load during energy emergencies. Each type of critical load is deemed to be critical based on its importance to public welfare, and the commission has not categorically prioritized any one type of critical load over another. However, PURA §38.076 requires the commission to adopt rules to "allocate load shedding" and "categorize types of critical load." The commission will implement this statutory requirement in a future rulemaking project. The treatment of different types of critical loads is an ongoing area of focus of the commission but is beyond the scope of this rulemaking.

GVEC contended that some of the items required by subsections (d), such as affidavits, and (e), such as distribution logs, pre-event plans, and after-action reports, are substantially different from and additional to essential EOP information. GVEC proposed that such additional materials be separated into a different document in order to preserve the functionality of an EOP for its intended use.

Commission Response

The commission agrees with GVEC's recommendation as addressed in the commission's responses under heading (c). The commission has also substantively responded to GVEC's concerns in other headings. Specifically, under heading (c)(1), the commission moves the requirements of subsection (d)(2), (d)(3), and (d)(4) into subsection (c) and permits these documents to be filed separate from the EOP. Further, the commission removes the requirement for an entity to file an after-action report after each activation of its EOP by deleting proposed subsection (c)(1)(C). Additionally, under headings (e)(1)(A)(iii) and (e)(1)(B)(iii), and (e)(2)(A)(iv) and (e)(2)(B)(iii), the commission removes the requirements for pre- and post-event meetings and merges the hot and cold weather annex requirements into a single annex for both transmission and generation entities under proposed subsection (e)(1) and (e)(2), respectively. Lastly, as discussed under heading (c), (c)(1), and (c)(1)(A), the commission amends adopted subsection (c)(1)(A) by permitting a summary of the EOP and complete copy of the EOP with confidential portions removed to be filed with the commission in lieu of a full unredacted EOP.

Consistent with its comments for subsection (d), LCRA generally opposed rigid requirements for the contents of an EOP, specifically with regard to the annexes that must be included under (e), as organizational needs may vary by entity.

Commission Response

The commission disagrees with LCRA's assessment that the proposed rule's requirements for annexes under subsection (e) are rigid. The proposed rule does not require an entity to make changes to its existing EOP, unless the plan does not satisfy the rule's minimum requirements, nor does the rule prescribe a specific organization or format for an entity's EOP. Further, Tex. Util. Code §186.007 requires the commission to analyze EOPs to determine the ability of the electric utility industry to withstand extreme events. Subsection (e) details the annexes that at a minimum should be addressed in an entity's EOP, as those related hazards and threats have the potential to affect the continuity of electric service. The commission agrees that organizational needs vary by entity, as do potential hazards and threats. Therefore, the proposed rule allows an entity to include additional annexes, if necessary, or to provide an explanation of why any required provision in this section is inapplicable.

TPPA proposed the inclusion of a provision within subsection (e) permitting the submission of a single annex for vertically integrated utilities that operate transmission and distribution lines as well as generation resources, such as MOUs, provided the filing entity clearly indicates that the annex covers both. TPPA further opined that due to anticipated time constraints between the new rule and the proposed filing date of EOPs, proposed §25.53(e) should be significantly diminished in scope or removed as a requirement. TPPA emphasized that the rulemaking effort should focus on requiring EOPs so that the commission can submit its statutorily required weather emergency preparedness report to the Legislature required under Tex. Util. Code §186.007. TPPA insisted that many of the annexes listed under proposed 25.53(e) "do not relate to weather emergency or weatherization preparedness" and concluded that the primary EOP under proposed §25.53(d), in conjunction with §25.55, is sufficient in providing information from utilities.

Commission Response

The commission agrees with TPPA that a single annex with proper notation may be submitted for entities that operate both transmission and distribution lines and generation resources and modifies the rule accordingly.

The commission declines to adopt TPPA's recommendation to diminish the scope of or remove subsection (e). The commission disagrees that this rule should focus exclusively on weather emergency preparedness. While the report required under Tex. Util. Code §186.007 focuses on weather emergency preparedness, §186.007(a-1) - (4) directs the commission to make recommendations on improving emergency operations plans in order to ensure the continuity of electric service.

Oncor recommended adding subsection (e)(5) to include the requirement of PURA §39.918(g) that mandates a transmission and distribution utility to provide in its EOP "a detailed plan for the use of (facilities that provide temporary emergency electric energy)" as described under PURA §§39.918(b)(1) - (2) . Oncor provided draft language regarding the same.

Commission Response

The commission agrees with Oncor that the proposed rule should include language to reflect the requirement under PURA

§39.918(g) for a transmission and distribution utility to include in its EOP a detailed plan for the use of facilities that provide temporary emergency electric energy. The commission adopts subsection (e)(1)(H) accordingly.

Proposed §25.53(e)(1)(A) and (e)(1)(B) - Cold Weather and Hot Weather Emergency Annexes (Transmission and Distribution)

Proposed subsection (e)(1)(A) and (e)(1)(B) list the requirements for cold weather and hot weather emergency annexes, respectively, that must be included within an EOP for transmission and distribution facilities owned by an electric cooperative, an electric utility, or a municipally owned utility.

ETEC opposed the inclusion of a mitigation plan under (e)(1)(A)(i), (e)(1)(B)(i), (e)(2)(A)(i), and (e)(2)(B)(i) as inconsistent with subsection (d)'s requirement that "an entity's EOP ... outline the entity's response to the types of emergencies specified." ETEC recommended that the requirement under (e)(1)(A)(i) and (e)(1)(B)(i) for an EOP to include a mitigation plan be removed, because mitigation considerations occur prior to the scope of an emergency response plan. ETEC also argued that federal agencies such as FEMA require mitigation plans to be separate from the EOP and used as reference. Alternatively, ETEC recommends modifying the language for the proposed clauses (e)(1)(A)(i) and (e)(1)(B)(i) to specify that operational plans are intended to restore power caused by a cold or hot weather emergency.

If the commission rejects ETEC's alternative recommendation regarding proposed (e)(1)(A)(i) and (e)(1)(B)(i), ETEC further recommended specifically excluding non-TSPs from meeting the requirements of §25.55 through the addition of "if applicable" to the proposed rule clauses to remove any ambiguity.

Consistent with its comments for proposed subsection (e)(1)(A)(ii) and proposed subsection (e)(1)(B), Oncor recommended that the separate cold weather and hot weather annexes under proposed subsection (e)(1)(A) and (e)(1)(B) be combined into a single "Emergency Restoration" annex as such operational plans are essentially the same. Oncor provided draft language consistent with its recommendation.

Commission Response

The commission agrees with ETEC that mitigation plans should remain separate from an entity's EOP. The commission also agrees with Oncor's recommendation to combine the required cold weather and hot weather annexes into a single requirement. Subsection (e)(1) is revised accordingly.

Proposed §25.53(e)(1)(A)(i) and (e)(1)(B)(i) - Separate and Distinct Operational Plans

Proposed clauses (e)(1)(A)(i) and (e)(1)(B)(i) require cold weather and hot weather annexes to contain operational plans that are separate and distinct from the operational plans developed under §25.55(relating to Weather Emergency Preparedness).

LCRA, TPPA, Sharyland, and TEC commented on the ambiguity of the term "separate and distinct" in proposed clauses (e)(1)(A)(i) and (e)(1(B)(i) as the term relates to weather emergency preparedness plans required under §25.55.

LCRA and TPPA requested the commission clarify the term "separate and distinct," as it relates to §25.55 as it appears in proposed clauses (e)(1)(A)(i) and (e)(1)(B)(i) regarding cold and hot weather annexes, respectively. LCRA argued the term is unclear as to whether it is administrative or substantive in nature. LCRA contended that, if interpreted as a procedural requirement administratively, a §25.55 plan may not be used to satisfy proposed §25.53, alternatively, if interpreted as a substantive requirement, a utility may either not reference or must be entirely dissimilar to plans created under §25.55. LCRA proposed draft language for the rule merging the cold and hot weather annex and deleting the requirement that such an annex be "separate and distinct" from the report required under §25.55.

TPPA requested the commission elaborate on "whether the reference to 'separate and distinct' is meant to mean separate and distinct operational plans or separate and distinct weather emergencies." TPPA maintained that if separate and distinct operational plans is the intended meaning, that would require utilities to prepare two different response procedures which is detrimental to emergency response. If separate and distinct weather emergencies is the intended meaning, TPPA argued it is therefore not clear "what kinds of cold weather emergencies entities should plan for, but not weatherize for." Sharyland recommended that "separate and distinct" be deleted from clauses (e)(1)(A)(i) and (e)(1)(B)(i).

Sharyland, like LCRA, requested the commission make clear whether the operational plans developed under proposed §25.53 must be "separate and distinct" from operational plans developed under §25.55 or future rules relating to §25.55. In Sharyland's view, operational plans developed under §25.55 and future rules relating to it should be a "major component of hot and cold weather emergency preparedness standards" under (e)(1)(A) and (e)(1)(B), respectively. Therefore, absent any difference, the phrase "separate and distinct" should be deleted from the proposed clauses. Alternatively, if the commission does not adopt Sharyland's recommendation to delete "separate and distinct" from clauses (e)(1)(A)(i) and (e)(1)(B)(i), Sharyland requests clarification as to why the weather emergency preparedness provisions of §25.55 should not be part of the hot and cold weather annexes of the EOP. TEC recommended that "separate and distinct" be deleted from clauses (e)(1)(A)(i) and (e)(1)(B)(i) as the term is unclear what operational plans intended to mitigate the hazards of cold weather would be separate and distinct from those required under section §25.55. Additionally, TEC argued that the removal of the language would provide utilities with the flexibility to include operational plans that are appropriate for its EOP.

Commission Response

The commission acknowledges LCRA, TPPA, Sharyland, and TEC's concerns regarding the ambiguity of the requirement under subsection (e)(1) that the hot and cold weather annexes be "separate and distinct from the weather preparation standards required under §25.55." The commission revises the rule to clarify that all entities are required to address weather emergencies in their EOPs in a manner that is not simply duplicative of the weather preparedness standards prescribed under §25.55. Specifically, the commission clarifies the intent of §25.53 is for an entity to adequately plan its actions immediately prior to and during an emergency. In contrast, §25.55 is intended to ensure long-term mitigation planning for entities to, among other things, weatherize facilities and assets during blue sky conditions. Therefore, a hot and cold weather annex submitted under §25.53 may necessarily include information from the required reports under §25.55, but unless the §25.55 report adequately addresses the immediacy requirement implicit in §25.53, it is insufficient for purposes of a hot and cold weather annex.

Proposed §25.53(e)(1)(A)(iii) and (e)(1)(B)(iii) - Pre- and Post-Weather Emergency Meetings (Transmission and Distribution)

Proposed clauses (e)(1)(A)(iii) and (e)(1)(B)(iii) both require pre- and post-weather emergency meetings for transmission and distribution facilities to review lessons learned from cold weather and hot weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

Sharyland, ETEC, TPPA, and TEC generally opposed, in whole or in part, the requirements of proposed clauses (e)(1)(A)(iii) and (e)(1)(B)(iii) for entities to hold pre- and post- cold or hot weather emergency meetings. Sharyland recommended proposed clauses (e)(1)(A)(iii) and (e)(1)(B)(iii) be revised with a condition that the meetings required under each clause be limited to when a significant interruption to electric service is expected or has already occurred. Sharyland elaborated, stating that there may be weather emergencies that either are not expected to or do not cause significant interruptions to the continuity of electric service and that requiring a meeting in such situations would be neither necessary nor productive. ETEC specifically opposed requiring a post-emergency meeting under proposed clauses (e)(1)(A)(iii) and (e)(1)(B)(iii) as "proposed new rule section (c)(1)(C) already contains a general requirement for an after-action report" and such a meeting would occur as a part of preparing the after-action report. ETEC proposed deleting "and post-" to proposed clauses (e)(1)(A)(iii) and (e)(1)(B)(iii) to clarify that separate, additional meetings are not required.

TPPA cautioned that pre-event meetings are not always feasible and recommended modifying proposed clauses (e)(1)(A)(iii) and (e)(1)(B)(iii) accordingly. TPPA also commented that it is unclear the meetings required under (e)(1)(B)(iii), (e)(2)(A)(iv) and (e)(2)(B)(iii) "as required by an entity's EOP, would be considered the activation of an EOP, which would itself generate additional reporting requirements." TEC recommended the meeting requirements under (e)(1)(A)(iii) and (e)(1)(B)(iii) be changed to a reporting requirement describing a utilities' "procedures to review lessons learned from past weather emergency incidents." TEC argued that such a change would better effectuate the intent of the rule "without improperly dictating to electric cooperatives the number of meetings or manner in which a review is conducted."

Commission Response

The commission declines to adopt the specific recommendations of Sharyland, ETEC, TPPA, and TEC for clauses (e)(1)(A)(iii) and (e)(1)(B)(iii) as the commission has substantively addressed these concerns under this heading and under heading (e)(2)(A)(iv) and (e)(2)(B)(iii). Specifically, the commission removes the requirements for pre- and post-event meetings and merges the hot and cold weather annex requirements into a single annex for both transmission and generation entities under proposed subsection (e)(1) and (e)(2), respectively. This change corresponds with a revision of the merged cold and hot weather annexes to include in the required checklist for transmission facility personnel, lessons learned from past responses to a cold or hot weather emergency.

Proposed §25.53(e)(1)(C) - Load Shed Annex

Proposed subsection (e)(1)(C) lists the requirements for a load shed annex that must be included within an EOP.

TPPA opposed the inclusion of a load shed annex in the EOP and recommended deleting (e)(1)(C) from the proposed rule and claimed the Legislature recently affirmed that the commission "must provide discretion for entities to prioritize power delivery and power restoration of critical customers." Alternatively, if the commission rejects TPPA's proposal to remove the load shed annex from (e)(1)(C), TPPA recommended removing language permitting commission staff to request amendments under proposed subsection (c)(4), as conflicting with the statutory language of SB 3, as discussed in that section.

Commission Response

The commission declines to remove the load shed annex requirement from the proposed rule, as requested by TPPA. It is imperative for all transmission and distribution utilities to have a procedure for load shed as part of the required annexes included in its EOP. The commission disagrees with TPPA that this conflicts with the language in SB 3 requiring the commission to provide discretion to entities to prioritize power delivery and power restoration among various critical customers. This rule does not direct how critical loads should be prioritized. The commission also disagrees that allowing commission staff to verify that the requirements of this subparagraph are met and requesting an amendment if they are not diminishes entities' discretion with regards to load shed priorities.

OPUC recommended the commission add subsection (e)(1)(C)(iv) which would additionally require "a procedure or plan for communicating with the public regarding impending load shed whenever possible during an emergency." OPUC expressed understanding that public communication may not be possible in every situation but requested that an effective communication plan be in place where possible in order to "warn and provide the public with valuable information regarding impending load shed events."

Commission Response

The commission agrees with the importance of providing valuable information to customers and the public before and during emergencies, including load shed events. However, the commission declines to adopt OPUC's recommendation to add a requirement in the rule for an electric cooperative, an electric utility, a municipally owned utility, or a transmission and distribution utility to include in its load shed annex "a procedure or plan for communicating with the public regarding impending load shed whenever possible during an emergency," because it is redundant. Adopted subsection (d)(2)(A) of the rule requires an entity with transmission or distribution service operations to have procedures for communicating with the public, customers, and others during an emergency.

Proposed §25.53(e)(1)(C)(i) - Procedures for Load Shed

Proposed subsection (e)(1)(C)(i) requires a load shed annex to contain procedures for controlled shedding of load for planned or forced interruptions of service.

Oncor and TNMP opposed the inclusion of the phrase "whether caused by planned or forced interruption of service" within (e)(1)(C) and recommended striking the language as, in their view, controlled load shedding is historically neither a 'planned interruption' or a 'forced interruption' and instead is a routine event. Oncor and TNMP explained that forced interruptions of service are generally not emergencies that initiate the EOP, as opposed to load shedding. Oncor specifically argued that the proposed rule is also inconsistent with the definition of "forced interruptions" under §25.52 (relating to Reliability and Continuity of Service), which defines forced outages as "(i)nterruptions,

exclusive of major events, that result from conditions directly associated with a component requiring that it be taken out of service immediately, either automatically or manually, or an interruption caused by improper operation of equipment or human error." TNMP stated it did not oppose describing its load shed procedures under the (e)(1)(C)(i). Oncor and TNMP provided identical draft language for (e)(1)(C)(i) which deletes the reference to planned or forced interruption of service.

Commission Response

The commission modifies this provision by removing the phrase "whether caused by planned or forced interruption of service," as requested by Oncor and TNMP. The commission emphasizes, however, that a load shed annex must include procedures for the controlled shedding of load, regardless of cause, during an emergency.

Proposed §25.53(e)(1)(C)(iii) - Procedures for Load Shed

Proposed subsection (e)(1)(C)(iii) requires a load shed annex to contain a registry of critical load customers that must be updated at least annually, and contain procedures for maintaining an accurate registry, providing assistance to and communicating with critical load customers, and training staff with respect to serving critical load customers.

CenterPoint, Oncor, AEP, ETEC, and TPPA, opposed the requirement of (e)(1)(C)(iii) requiring a load shed annex to include a registry of critical load customers. Specifically, CenterPoint argued a critical customer registry would contain highly sensitive proprietary customer information and therefore should not be filed publicly or be a part of the EOP. CenterPoint also opposed the inclusion of a process for assisting critical customers in the event of an outage as vague and that an electric utility is not obliged to provide "assistance" to critical customers during an unplanned outage. Similarly, consistent with its confidentiality concerns with the requirement of proposed subsection (c)(1)(A) concerning full unredacted public disclosure of an EOP, AEP opposed filing an unredacted version of the registry of critical load customers with the commission for the same reasons.

ETEC also opposed filing an unredacted version of the registry of critical load customers with the commission as part of the load shed annex as contrary to the existing rule and therefore recommended removal of (e)(1)(C)(iii). ETEC argued that the proposed rule risked "unintended disclosure of sensitive and protected information (including medical information)" and does not provide much value in reviewing an entity's EOP. ETEC recommended that the EOP should "continue to include the location of the registry and the methods used to maintain its accuracy" to ensure a list of critical customers is available to the entity's operating personnel.

Consistent with its comments raising First Amendment concerns with commission staff review of communications plans under proposed subsection (d)(5), TPPA raised the same First Amendment concerns specifically regarding proposed subsection (e)(1)(C)(iii). In TPPA's view, the proposed rule is beyond the scope of SB 3 in requiring a registry of critical load customers and creates a "fundamental customer privacy issue that may prove counterproductive to critical load registration efforts." Specifically, TPPA claimed that customers may be more reluctant to seek critical status if their information will be shared with a state agency. TPPA further argued that the requirement to update the load shed annex every time a customer is added or removed would be administratively burdensome. Lastly, TPPA maintained that the requirement would be misleading to critical load customers, as critical load status does not guarantee that load shed will not occur.

Oncor and TNMP also opposed the requirement of (e)(1)(C)(iii) and recommended it be removed from the rule. Oncor elaborated that only a small portion of critical load customers are totally exempted from load shed for health and welfare reasons and that the current rule conflicts with its business model and billing system and thus would be misleading to use and therefore not useful. Further, Oncor and TNMP argued that (e)(1)(C)(iii) is ambiguous and that the rule must clarify which "critical load customers" should be on the registry required under (e)(1)(C)(iii). Specifically, Oncor and TNMP requested clarification on whether the term "critical load customers" is inclusive of the all the customers identified in §25.52(c)(1) - (2) (relating to Reliability and Continuity of Service) and §25.497 (relating to Critical Load Customers) as well as Texas Water Code (TWC) §13.1396 (relating to Coordination of Emergency Operations) or whether the term is inclusive only of customers considered "critical loads" as defined in §§25.5(21) (relating to Definitions) and §25.52(c)(1).

Additionally, Oncor opposed the inclusion of the phrase "directly served, if maintained by an electric utility, an electric cooperative, or a municipally owned utility" as it appears to modify "critical load customers" and is thus unclear. Oncor stated it is "not responsible for and has no knowledge of critical load customers that may be served behind a wholesale distribution point of delivery." Oncor emphasized that such communication informs wholesale customers of a load shed event, and it is "incumbent on electric providers... to communicate with their retail customers." Oncor recognized that the current version of §25.53 includes a similar provision, but expressed that the term is undefined and maintained that "the primary assistance utilities provide to critical load customers is the restoration of their electric service." TNMP expressed concern that including the list of critical customer names within the load shed plan could be confusing to critical customers. Specifically, inclusion on the critical customer list does not ensure exemption from load shed except for customers that are determined to be critical to public health, community welfare, or supporting the integrity of the electric system, and thus prioritized. TNMP further recommended that the critical load customer registry should be included in a separate, dedicated annex to avoid procedural confusion.

Commission Response

CenterPoint, ARM, ETEC, and TPPA's concerns regarding confidentiality are substantively addressed by the commission's revision to proposed subsection (c)(1)(A) permitting a summary of the EOP and full redacted EOP to be filed with the commission, as addressed under headings (c), (c)(1), and (c)(1)(A). Further, the commission agrees with TNMP, Oncor, and TPPA's recommendations and revises the language of adopted subsection (e)(1)(C)(iii) to clarify that an entity must only submit a procedure for maintain an accurate registry of critical load customers. The commission further modifies the requirement to clarify that this registry must include critical load customers as defined under 16 TAC §25.5(22), §25.52(c)(1) - (2) and §25.497 and TWC §13.1396. The commission also adds language that this procedure must include the entity's process for coordinating with government and service agencies as necessary during an emergency.

Proposed §25.53(e)(1)(E) - Wildfire annex

Proposed subsection (e)(1)(E) requires an electric cooperative, an electric utility, a municipally owned utility, or a transmission and distribution utility to include in its EOP a wildfire annex for its transmission and distribution facilities.

Consistent with its recommendations for subsection (e)(1)(A)(i) and (e)(1)(B)(i) requiring a cold and hot weather emergency response annex to be included in the EOP, ETEC recommended limiting clauses (e)(1)(A)(i) and (e)(1)(B)(i) to wildfire annexes only and deleting the reference to a mitigation plan for hazards associated with wildfires.

Commission Response

The commission agrees with ETEC's recommendation for proposed (e)(1)(E). Consistent with the commission's response to ETEC's recommendations for proposed subsection (e)(1)(A)(i) and (e)(1)(B)(i), the commission agrees that mitigation plans are separate from an EOP. The commission accepts ETEC's proposed revision to (e)(1)(E).

TPPA recommended the requirement for a wildfire emergency annex under (e)(1)(E) be limited to "transmission and distribution entities serving counties predominantly of 'Medium to High Risk' or 'High Risk,' as described by Texas A&M Forest Service's Texas Wildfire Risk Explorer or an alternative source" in order to more effectively allocate a utility's resources.

Commission Response

The commission declines to adopt TPPA's recommendation to qualify the requirement for a wildfire emergency annex under proposed (e)(1)(E). Texas A&M Forest Services' Texas Wildfire Risk Explorer identifies most counties as at least "Medium to High Risk." Even if the commission accepted the recommendation to limit (e)(1)(E) to "counties predominantly of 'Medium to High Risk' or 'High Risk,'" the challenge becomes defining "predominantly." Further, the commission agrees that organizational needs vary by entity, as do potential hazards and threats. Accordingly, adopted subsection (d) provides that if an entity deems that a certain provision does not apply to an entity, including the requirement for a wildfire emergency annex, the entity is able to include an explanation in its EOP.

Proposed §25.53(e)(1)(G) and (e)(1)(H) - Cybersecurity Annex and Physical Security Annex (Transmission and Distribution)

Proposed subsection (e)(1)(G) and (e)(1)(H) requires an electric cooperative, an electric utility, a municipally owned utility, or a transmission and distribution utility to include in its EOP for its transmission and distribution facilities, a cybersecurity and a physical security annex.

CenterPoint, Oncor, Sharyland, AEP, and TNMP opposed the inclusion of (e)(1)(G) and (e)(1)(H) in the proposed rule and recommended the subparagraphs be deleted. CenterPoint stressed that "the information... contained in these annexes is too sensitive to be filed in unredacted form, even under seal." CenterPoint expressed willingness to provide commission staff access to such annexes upon request but argued that such annexes should not be filed. Oncor argued that cybersecurity and physical security are addressed by other means via implementation of SB 64, SB 936, §25.367 (relating to Cybersecurity Monitor), and NERC Reliability Standards. Sharyland further cited Department of Energy reporting requirements as a pre-existing reporting obligation. AEP generally expressed its opposition citing that the proposed provisions are unnecessary "due to regulation and monitoring by multiple other existing means and the sensitivity of the subject matter."

TNMP emphasized the redundancy of filing cybersecurity and physical security annexes due to pre-existing NERC requirements and further argued that the sensitive nature of the system and operational data should preclude public filing in order to preserve grid security. TNMP alternatively recommended that if the commission preserves the requirements of (e)(1)(G) and (e)(1)(H), that the commission permit utilities to file a "summary description" of each. SPS opposed the inclusion of proposed subsection (e)(2)(G) - (H) in addition to (e)(1)(G) - (H), citing confidentiality and disclosure concerns. Unlike TNMP, SPS opposed providing a summary of the annexes citing compliance with NERC requirements and separate fulfilment of disclosure with the commission under §25.367. SPS concluded that the EOP is operationally based and therefore should not include sensitive information. TCPA emphasized that the cybersecurity annex under proposed subsection (e)(1)(G) should be "carefully scoped to avoid heightened risks associated with public disclosure" and recommended removal of the requirement for "any additional annexes as needed or appropriate to the entity's particular circumstances" as duplicative. For proposed subsection (e)(1)(H) specifically, ETEC argued that it is unclear "what type of physical threat the commission is envisioning." Specifically, ETEC commented that a physical security threat like sabotage is normally affects a single site and would not require activation of the EOP. ETEC continued that the EOP is intended for larger-scale events and, absent further clarification by the commission, recommended deletion of subsection (e)(1)(H). However, ETEC supported the inclusion of subsection (e)(2)(H) for generation assets and highlighted the importance of physical security for such facilities.

Commission Response

The commission understands the sensitivity of cyber and physical security annexes and agrees with the disclosure, confidentiality, and general concerns of CenterPoint, Oncor, Sharyland, AEP, TNMP, SPS, TCPA, and ETEC. As discussed under heading (c), the commission revises the rule to require an entity to file a summary of the EOP with citations identifying where the entity's plan addresses the rule's minimum requirements, including cyber and physical security annexes, and a complete copy of the plan with the confidential portions removed. The commission further agrees with CenterPoint's recommendation that a copy of such annexes be made available to the commission for review upon request. The rule does not require an entity to develop emergency procedures that might conflict with existing NERC regulatory standards but does provide the commission the opportunity to review and analyze those plans as part of preparing its report to the Legislature.

Proposed §25.53(e)(2) - Required Annexes (Generation)

Proposed subsection (e)(2) is the header section for the list of annexes an electric cooperative, an electric utility, a municipally owned utility, or a PGC must include in its EOP for its generation resources.

AEP, Oncor, CenterPoint, and TNMP commented that the annexes required under proposed subsection (e)(2) for generation entities are redundant due to pre-existing reporting obligations under PURA §39.918(g). AEP argued that failing to exclude emergency generation facilities authorized under PURA §39.918 from ordinary "generation resources", would require TDUs to provide numerous, superfluous, and redundant annexes as emergency power restoration facilities are authorized to be used only in cases when widespread outages are already occurring.

AEP further contended that the proposed rule does not address the statutory requirement of PURA §39.918(g) which "requires a TDU that leases and operates facilities under PURA §39.918(b)(1) or that procures, owns, and operates facilities under PURA §39.918(b)(2) to include in the utility's EOP a detailed plan on the utility's use of those facilities." Oncor and TNMP also expressed redundancy concerns, arguing that emergency power generation resources under PURA §39.918 should not be considered "generation resources" for subsection (e)(2) and instead recommended the facilities be explicitly excluded. Oncor and TNMP argued that a restoration plan exclusive to emergency power generation resources would govern any operational plans and requirements for such facilities and therefore there is no need to develop separate plans and annexes for purposes of (e)(2)(A) through (I) as such matters have already been addressed.

Accordingly, AEP, Oncor, CenterPoint, and TNMP provided draft language specifically excluding generation resources authorized under PURA §39.918 from the annex requirements of proposed subsection (e)(2). TNMP also provided draft language for subsection (e)(2) and proposed new subsection (e)(6) to provide for PURA §39.918(g) which requires a TDU that leases, operates, or owns facilities under §39.918(b) to include "a detailed plan for the use of those facilities" in its emergency operations plan.

Commission Response

The commission agrees with AEP, Oncor, TNMP, and CenterPoint that the proposed rule should include language to reflect the requirement under PURA §39.918(g) for a transmission and distribution utility to include in its EOP a detailed plan for the use of facilities that provide temporary emergency electric energy. The commission also agrees that the requirement should not result in a transmission and distribution utility filing superfluous or redundant plans. The commission revises the rule as recommended by AEP and TNMP.

Proposed §25.53(e)(2)(A) and (e)(2)(B) - Cold Weather and Hot Weather Emergency Annexes (Generation)

Proposed subsection (e)(2)(A) and (e)(2)(B) require entities to file cold and hot weather annexes that include operational plans that are "separate and distinct" from the weather preparations required under §25.55.

TCPA and TEC argued that the requirement that these operational plans be "separate and distinct" is ambiguous and should be removed. TEC argued the phrase is confusing as it is unclear how such plans would be "separate and distinct" from plans required under §25.55 (relating to Weather Emergency Preparedness). TCPA argued that subsection (e)(2)(A) and (e)(2)(B) significantly overlap with the planning requirements of §25.55 and recommended that preparations made under §25.55 should be able to fulfill the requirements of (e)(2)(A) and (e)(2)(B).

Commission Response

Consistent with the commission's response to similar concerns raised under clauses (e)(1)(A)(i) and (e)(1)(B)(i), the commission agrees with the assessments of TCPA and TEC regarding the ambiguity of the requirements in the proposed rule that the hot and cold weather annexes be "separate and distinct from the weather preparation standards required under §25.55." The commission revises the rule to remove these requirements to provide entities with necessary discretion and to avoid unintentionally creating dual standards.

Proposed §25.53(e)(2)(A)(iv) and (e)(2)(B(iv) - Cold Weather and Hot Weather Pre- and Post- Emergency Meetings (Generation)

Proposed clauses (e)(2)(A)(iv) and (e)(2)(B)(iv) both require pre- and post-weather emergency meetings for generation resources to review lessons learned from cold weather and hot weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

TCPA endorsed the general objective of clauses (e)(2)(A)(iv) and (e)(2)(B)(iv) but commented that the imposed requirements are overly-prescriptive as meetings may be inefficient means of communication. Instead, TCPA recommended revising (e)(2)(A)(iv) and (e)(2)(B)(iv) to generally require that generators have a plan for communicating lessons learned with relevant personnel and to ensure adequate supplies and staffing for emergencies. Consistent with its recommendations for (e)(1)(A)(iii) and (e)(1)(B)(iii), TPPA recommended modifying this provision to only require pre-event meetings when feasible.

Commission Response

The commission declines to adopt the specific recommendations of TCPA and TPPA for proposed clauses (e)(2)(A)(iv) and (e)(2)(B)(iii) and instead deletes both clauses. This change corresponds with a revision and consolidation of (e)(2)(A) and (e)(2)(B) to include, in the required checklist for generation resource personnel, lessons learned from past responses to a cold or hot weather emergency. The commission maintains these changes substantially address the concerns of commenters.

Proposed §25.53(e)(2)(G) and (e)(2)(H) - Cybersecurity Annex and Physical Security Annex (Generation)

Proposed subsection (e)(2)(G) and (H) require an electric cooperative, an electric utility, a municipally owned utility, or a PGC to include in its EOP for its generation resources a cybersecurity and physical security annex.

Consistent with its recommendations for clauses (e)(1)(G) and (e)(1)(H), AEP and SPS opposed the inclusion of (e)(2)(G) and (e)(2)(H) and recommended the provisions be removed from the proposed rule due to pre-existing regulation and monitoring as well as confidentiality concerns.

Enbridge opposed the inclusion of proposed subsection (e)(2)(G) and (e)(2)(H) and recommended the provisions be removed. Like SPS, Enbridge cited that "disclosure of the (cybersecurity and physical security) policies and protections outside of an entity's secure network represents an inherent threat to the life, property, and systems required to operate generation resources safely and reliably." As an alternative, Enbridge recommended the commission change the requirement that entities "confirm their policies are aligned to leading industry standards and guidelines" such as from the National Institute of Standards and Technology, the Department of Homeland Security, and the International Organization of Standardization. Enbridge provided draft language consistent with its recommendation for each subparagraph to only confirm the existence of a cybersecurity and physical security annex without disclosing either, an assurance that both annexes are incorporated into the entity's broader EOP, and that relevant staff are trained annually on each.

Commission Response

The commission acknowledges the sensitivity of cyber and physical security annexes and agrees with the disclosure and confi-

dentiality concerns of SPS, AEP, and Enbridge. As discussed under heading (c), the commission revises the rule to require an entity to file a summary of the EOP with citations identifying where the entity's plan addresses the rule's minimum requirements, including cyber and physical security annexes and a complete, redacted version of the plan with the confidential portions removed. The rule does not require an entity to develop emergency procedures that might conflict with existing NERC regulatory standards but does provide the commission the opportunity to review and analyze those plans as part of preparing its report to the Legislature.

Proposed §25.53(e)(4) - Required ERCOT Annexes

Proposed subsection (e)(4) requires ERCOT to include a pandemic annex, weather emergency annex, hurricane annex, a cybersecurity annex, a physical security annex, and any additional annexes as needed or appropriate under proposed subsection (e)(4)(A) through (e)(4)(F), respectively.

TPPA recommended that any annex required of an entity's EOP under the proposed rule also be required of ERCOT's EOP, including the requirement of pre- (where feasible) and post-weather emergency meetings and a wildfire annex.

Commission Response

The commission disagrees with TPPA that every EOP requirement should apply equally to ERCOT. ERCOT plays a unique role in the management of the grid and it is unclear why ERCOT should be required to file each of the annexes required of other entities. For example, ERCOT does not serve load and, therefore, does not need a load shed annex.

Proposed §25.53(f) - Drills

Proposed subsection (f) requires an entity to conduct annual drills to test and subsequently assess its EOP's effectiveness if the EOP has not been activated in response to an incident within the last twelve months. Entities must notify commission staff of the planned annual drill at least 30 days prior of at least one drill each year, in the form and manner prescribed by the commission and appropriate TDEM District Coordinators. Additionally, subsection (f) requires an entity that operates in a hurricane evacuation zone to test its hurricane annex annually.

CenterPoint, Oncor, and TNMP commented that the language in subsection (f) regarding the 12-month drill requirement is ambiguous in its applicability. CenterPoint and Oncor provided draft language for proposed subsection (f) specifying that the requirement is "per calendar year."

Commission Response

The commission agrees with CenterPoint, Oncor, and TNMP that the annual drill requirement under proposed subsection (f) should be unambiguous and adopts Oncor and TNMP's draft language regarding the same as it best effectuates the intent of the rule to ensure an EOP is either utilized or drilled at least once each calendar year.

City of Houston recommended that drills required under subsection (f) should be coordinated with drills by applicable local governments or agencies affected by or noted in the EOP and annex prior to the execution of the drill to ensure coordination and communication between such organizations.

Commission Response

An entity is not prohibited from coordinating drills with other local entities, but the commission declines to adopt City of Houston's recommendation to require them to do so. The commission agrees that coordination with local entities is important and addresses this topic in adopted subsection (d)(2), as discussed under heading (d)(5), which requires an EOP to include a communications plan for communicating with, among other organizations, local governments, and in proposed subsection (f) which requires entities to coordinate with appropriate TDEM District Coordinators following annual drills or implementation of an EOP.

TPPA commented the drills required under proposed subsection (f) are outside of the scope of Tex. Util. Code §186.007 which, in TPPA's view, is intended to "improve EOP filings with the commission to ensure transparency and a common working understanding among all parties involved in an emergency." TPPA recommended the commission modify the proposed rule to more closely reflect the relevant statutory provisions and delete proposed subsection (f). Alternatively, TPPA recommended that proposed subsection (f) exempt MOUs as it conflicts with the commission's limited jurisdiction over MOUs under PURA §40.004. As a further alternative, TPPA requested the commission clarify what exercises constitute a "drill" as the term is ambiguous. TEC similarly recommended that an electric cooperative that does not operate a transmission facility or generation resource be exempt from the requirements of subsection (f) and instead require electric cooperatives to submit a summary of its drilling plans.

Commission Response

The commission disagrees with TPPA and TEC's requests to limit the application of proposed subsection (f) to certain entities. Tex. Util. Code §186.007 requires the commission to evaluate the preparedness of the industry to respond to emergencies. The commission requires all affected entities listed under adopted subsection (a) to conduct a drill as a means to self-evaluate its own level of preparedness, the results of which are reflected in material changes to the EOP filed with the commission.

In response to TPPA's request for clarification on what constitutes a drill, the commission does not prescribe specific requirements for drills, beyond requiring them to be operations-based. An entity should use its best judgment in determining what type of exercise appropriately tests its operational preparedness.

EPEC commented that, in order to comply with subsection (f), a utility may need to increase the number and types of drills, which would require time to develop and implement. As such, EPEC recommended the April 1, 2022 date of compliance under proposed subsection (c)(1) be extended.

Commission Response

The commission disagrees with EPEC's request for an extended compliance period past the April 15, 2022, initial filing deadline. The commission requires sufficient time to thoroughly review and evaluate existing EOPs. Moreover, the commission notes that an entity is not required to conduct a drill by April 15, 2022. An entity is required to conduct a drill annually and attest that it has completed all required drills. If the required annual drill is completed after April 15, 2022, its completion can be attested to in subsequent annual filings.

OPUC endorsed requiring annual drills to assess the effectiveness of utilities' EOPs. However, OPUC argued that 12 months is a significant length of time to allow an un-tested EOP to remain in place and recommended that if a utility files a new EOP or updates a pre-existing EOP, the utility must conduct a drill within

three months of filing. OPUC provided draft language consistent with its recommendation.

Commission Response

The commission disagrees with OPUC on the need for a new or updated EOP to conduct a drill on a shortened timeline. The requirement to conduct a drill on an EOP within the calendar year is sufficient and requiring more frequent drilling could unintentionally overburden an entity that is making a diligent effort to keep its EOP up to date.

SPS recommended that the term "emergency" replace the use of the word "incident" in subsection (f) for consistency with the rule as a whole and provided draft language for the same.

Commission Response

The commission agrees with SPS that replacing the term "incident" with the defined term "emergency" better clarifies the intention of this language in subsection (f) and makes the change.

Proposed §25.53(g) - Reporting Requirements

Proposed subsection (g) requires entities upon activation of the State Operations Center by TDEM and subsequent request by commission staff, to provide updates on the status of operations, outages, and restoration efforts until all incident-related outages are restored or unless otherwise notified by commission staff. Additionally, subsection (g) permits commission staff to request, at their discretion, an after action or lessons learned report to be filed by an affected entity by a certain date.

CenterPoint, ETEC, and SPS all recommended similar changes to proposed subsection (g). CenterPoint recommended changing the heading of subsection (g) from "Reporting Requirements" to "Emergency contacts and status updates during an emergency" to more accurately describe the contents of the subsection and to minimize confusion with other reporting requirements required under proposed §25.53. Additionally, consistent with their recommendations for the deletion of subsection (d)(3), CenterPoint and SPS recommended moving the emergency contact requirement of subsection (d)(3) to subsection (g). SPS further specified that the dissemination of such information from a utility to the commission be done through an electronic internet portal or other secure mechanism.

Commission Response

The commission disagrees with CenterPoint on changing the heading for subsection (g) as the current title adequately encompasses the purpose of the subsection. The commission also declines to move the emergency contact requirement of proposed subsection (d)(3) into subsection (g) per CenterPoint and SPS's recommendation as that requirement has been moved to subsection (c)(4) as a filing separate from the EOP.

CenterPoint and ETEC recommended deletion of the last sentence of subsection (g) which allows commission staff to request an after action or lessons learned report from an affected entity by a certain date. CenterPoint stated that the sentence is unnecessary given the requirement in proposed subsection (c)(1)(C) for utilities to file annual reports and based on PURA §§14.201-14.207, which permit commission staff to request these reports on a more frequent basis.

ETEC also asserted that the last sentence of proposed subsection (g) regarding entity reporting requirements, which requires entities to file an after-action report be filed by an entity if directed to do so by the commission staff, was "redundant" as after-action reports are required for all events under proposed subsection (c)(1)(C). As such, ETEC also suggested deleting this reporting requirement from proposed subsection (c)(1)(C).

Commission Response

The commission also disagrees with CenterPoint and ETEC on removing the last sentence of subsection (g), which requires after-action and lessons learned reports from entities to be submitted with the commission after an emergency. The commission maintains that to effectuate the intent of the proposed rulemaking, commission staff must be able to require an entity to file documents relevant to emergency preparedness. It is foreseeable that emergency status updates, after action reports, or lessons learned reports may not be filed by entities as required under proposed subsection (c) or elsewhere in the proposed rule. Therefore, it is necessary for commission staff to retain discretionary authority to request updates or reports from entities as such documents are necessary for comprehensive emergency preparedness. The commission has also made the after-action reporting requirement less onerous by permitting a summary and redacted version of the EOP to be filed with the commission as discussed under headings (c), (c)(1), and (c)(1)(A) as well as deleting the separate after-action reporting requirement under heading (c)(1)(C) relating to the same.

SPS recommended, consistent with its recommendations and concerns regarding utility discretion in planning and for subsection (c)(4) and comments on supplemental reporting for proposed subsection (d)(1) through (d)(4), if its recommendations for subsection (b)(3) defining the term "Emergency" are not accepted by the commission, that events for which after action or lessons learned reporting is required be limited to instances where an emergency has been declared by "a local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity." SPS maintained that such a change ensures reporting is "appropriately scoped to target events that present a credible risk to the continuity of service" and are only classified as an emergency "if the circumstances are of sufficient magnitude that emergency conditions are declared by entities empowered to coordinate regional or state-wide responses to such event." SPS provided draft language consistent with its recommendation.

Commission Response

The commission agrees with SPS regarding to what constitutes an emergency, however, declines to adopt SPS' specific language for subsection (g) as SPS' concerns are substantially addressed by the commission's amendments to other rule provisions. Specifically, the revisions to the definition of "emergency" under adopted subsection (b)(3), the movement of the emergency contacts requirement to adopted (c)(4)(B) as a filing separate from the EOP, and that documents under subsection (c)(4) may be filed confidentially. Therefore, SPS' recommendations for subsection (g) are unnecessary.

Consistent with its comments regarding procedural rights and recommendations regarding subsection (c)(4)(A) and (c)(4)(B), TCPA highlighted its due process concerns with the last sentence of the subsection permitting permission staff to request action or lessons learned reports and file them with the commission by a specific date. TCPA argued that this sentence should be revised to specify that the commission, not commission staff, may require such reporting. TCPA noted that this recommendation is only for the reporting requirement in subsection (g), "as it would be inefficient and potentially infeasible to produce a

commission order for the in-event updates contemplated in the first part of subsection (g)." TCPA stated that, if its proposal is adopted by the commission, commission orders generally provide deadlines for response, and as such the date specification in the last sentence of (g) should be deleted. Similarly, TPPA argued that requests for after action or lessons learned reports are proper only from the commission, not its staff. TPPA further commented that any additional reporting requirements such as those contemplated by subsection (f) should be considered extraneous to the EOP itself for purposes of filing the EOP.

Commission Response

The commission disagrees with TCPA and TPPA that proposed subsection (g) poses a threat to the constitutional due process rights of entities and that commission staff do not have the authority to request EOP updates under subsection (g) or changes as stated elsewhere in the rule. The commission has substantively addressed these concerns under the General Comment heading and headings (c)(4) and (d)(5).

Oncor and TNMP recommended that subsection (g) be revised to clarify that once "service has been restored to all customers capable of receiving service," updates from the utility to the commission are no longer required. Oncor and TNMP elaborated that providing continuous updates on restoration activities for customers unable to receive electric service, potentially for weeks or months, is unlikely to benefit those customers or the commission. Oncor and TNMP provided identical draft language consistent with their recommendations.

Commission Response

The commission agrees with Oncor and TNMP that the language in proposed subsection (g) should be revised to clarify that updates should only be issued until service is restored to customers capable of receiving service. The commission modifies the adopted rule accordingly.

TEC noted that the current version of the reporting requirements that appears in proposed subsection (g) applies only to "affected" entities during an activation of the State Operations Center (SOC) by TDEM. TEC suggested the term "affected" remain in the proposed rule to avoid situations where a utility may be required to report to commission staff when it or its customers are entirely unaffected by an emergency event, such as a utility located in the Panhandle being forced to report during a hurricane in the Gulf of Mexico.

Commission Response

The commission agrees with TEC's recommendation and adds language to subsection (g) clarifying the applicability to affected entities.

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

16 TAC §25.53

Statutory Authority

The rule is repealed under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction, and §14.002, which provides the commission with the authority to make, adopt, and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statute: PURA §14.001 and 14.002.

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 February 28, 2022.

TRD-202200709
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 20, 2022
Proposal publication date: December 17, 2021
For further information, please call: (512) 936-7244

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16 TAC §25.53

Statutory Authority

The new rule is adopted under the following provisions of PURA §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction, and §14.002, which provides the commission with the authority to make, adopt, and enforce rules reasonably required in the exercise of its powers and jurisdiction. The rule is also adopted under Tex. Util. Code §186.007, which requires the commission to: analyze the EOPs developed by electric utilities, power generation companies, municipally owned utilities, electric cooperatives that operate generation facilities in this state, and retail electric providers; prepare a weather emergency preparedness report; and require entities to submit updated EOPs if the EOP on file does not contain adequate information to determine whether the entity can provide adequate electric services.

Cross reference to statutes: PURA §14.002 and Tex. Util. Code §186.007.

§25.53. Electric Service Emergency Operations Plans.

(a) Application. This section applies to an electric utility, transmission and distribution utility, power generation company (PGC), municipally owned utility, electric cooperative, and retail electric provider (REP), and to the Electric Reliability Council of Texas (ERCOT).

(b) Definitions.

(1) Annex -- a section of an emergency operations plan that addresses how an entity plans to respond in an emergency involving a specified type of hazard or threat.

(2) Drill -- an operations-based exercise that is a coordinated, supervised activity employed to test an entity's EOP or a portion of an entity's EOP. A drill may be used to develop or test new policies or procedures or to practice and maintain current skills.

(3) Emergency -- a situation in which the known, potential consequences of a hazard or threat are sufficiently imminent and severe that an entity should take prompt action to prepare for and reduce the impact of harm that may result from the hazard or threat. The term

includes an emergency declared by local, state, or federal government, or ERCOT or another reliability coordinator designated by the North American Electric Reliability Corporation and that is applicable to the entity.

(4) Entity -- an electric utility, transmission and distribution utility, PGC, municipally owned utility, electric cooperative, REP, or ERCOT.

(5) Hazard -- a natural, technological, or human-caused condition that is potentially dangerous or harmful to life, information, operations, the environment, or property, including a condition that is potentially harmful to the continuity of electric service.

(6) Threat -- the intention and capability of an individual or organization to harm life, information, operations, the environment, or property, including harm to the continuity of electric service.

(c) Filing requirements.

(1) An entity must file an emergency operations plan (EOP) and executive summary under this section by April 15, 2022. Notwithstanding the foregoing, a municipally owned utility must provide its EOP and executive summary in the manner prescribed by the commission in this paragraph no later than June 1, 2022. Each individual entity is responsible for compliance with the requirements of this section. An entity filing a joint EOP or other joint document under this section on behalf of one or more entities over which it has control is jointly responsible for each entity's compliance with the requirements of this section.

(A) An entity must file with the commission:

(i) an executive summary that:

(I) describes the contents and policies contained in the EOP;

(II) includes a reference to specific sections and page numbers of the entity's EOP that correspond with the requirements of this rule;

(III) includes the record of distribution required under paragraph (4)(A) of this subsection; and

(IV) contains the affidavit required under paragraph (4)(C) of this subsection; and

(ii) a complete copy of the EOP with all confidential portions removed.

(B) For an entity with operations within the ERCOT power region, the entity must submit its unredacted EOP in its entirety to ERCOT.

(C) ERCOT must designate an unredacted EOP submitted by an entity as Protected Information under the ERCOT Protocols.

(D) An entity must make its unredacted EOP available in its entirety to commission staff on request at a location designated by commission staff.

(E) An entity may file a joint EOP on behalf of itself and one or more other entities over which it has control provided that:

(i) the executive summary required under subparagraph (A)(i) of this paragraph identifies which sections of the joint EOP apply to each entity; and

(ii) the joint EOP satisfies the requirements of this section for each entity as if each entity had filed a separate EOP.

(F) An entity filing a joint EOP under subparagraph (E) of this paragraph may also jointly file one or more of the documents required under paragraph (4) of this subsection provided that each joint document satisfies the requirements for each entity to which the document applies.

(G) An entity that is required to file similar annexes for different facility types under subsection (e) of this section, such as a pandemic annex for both generation facilities and transmission and distribution facilities, may file a single combined annex addressing the requirement for multiple facility types. The combined annex must conspicuously identify the facilities to which it applies.

(2) A person seeking registration as a PGC or certification as a REP must meet the filing requirements under paragraph (1)(A) of this subsection at the time it applies for registration or certification with the commission and must submit the EOP to ERCOT if it will operate in the ERCOT power region, no later than ten days after the commission approves the person's registration or certification.

(3) An entity must continuously maintain its EOP. Beginning in 2023, an entity must annually update information included in its EOP no later than March 15 under the following circumstances:

(A) An entity that in the previous calendar year made a change to its EOP that materially affects how the entity would respond to an emergency must:

(i) file with the commission an executive summary that:

(I) describes the changes to the contents or policies contained in the EOP;

(II) includes an updated reference to specific sections and page numbers of the entity's EOP that correspond with the requirements of this rule;

(III) includes the record of distribution required under paragraph (4)(A) of this subsection; and

(IV) contains the affidavit required under paragraph (4)(C) of this subsection;

(ii) file with the commission a complete, revised copy of the EOP with all confidential portions removed; and

(iii) submit to ERCOT its revised unredacted EOP in its entirety if the entity operates within the ERCOT power region.

(B) An entity that in the previous calendar year did not make a change to its EOP that materially affects how the entity would respond to an emergency must file with the commission:

(i) a pleading that documents any changes to the list of emergency contacts as provided under paragraph (4)(B) of this subsection;

(ii) an attestation from the entity's highest-ranking representative, official, or officer with binding authority over the entity stating the entity did not make a change to its EOP that materially affects how the entity would respond to an emergency; and

(iii) the affidavit described under paragraph (4)(C) of this subsection.

(C) An entity must update its EOP or other documents required under this section if commission staff determines that the entity's EOP or other documents do not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency. If directed by commission staff, the entity must file its revised EOP or other documentation, or a portion thereof, with the commission and, for entities with operations in the ERCOT power region, with ERCOT.

(D) ERCOT must designate any revised unredacted EOP submitted by an entity as Protected Information under the ERCOT Protocols.

(E) An entity must make a revised unredacted EOP available in its entirety to commission staff on request at a location designated by commission staff.

(F) The requirements for joint and combined filings under paragraph (1) of this subsection apply to revised joint and revised combined filings under this paragraph.

(4) In accordance with the deadlines prescribed by paragraphs (1) and (3) of this subsection, an entity must file with the commission the following documents:

(A) A record of distribution that contains the following information in table format:

(i) titles and names of persons in the entity's organization receiving access to and training on the EOP; and

(ii) dates of access to or training on the EOP, as appropriate;

(B) A list of primary and, if possible, backup emergency contacts for the entity, including identification of specific individuals who can immediately address urgent requests and questions from the commission during an emergency; and

(C) An affidavit from the entity's highest-ranking representative, official, or officer with binding authority over the entity affirming the following:

(i) relevant operating personnel are familiar with and have received training on the applicable contents and execution of the EOP, and such personnel are instructed to follow the applicable portions of the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an emergency;

(ii) the EOP has been reviewed and approved by the appropriate executives;

(iii) drills have been conducted to the extent required by subsection (f) of this section;

(iv) the EOP or an appropriate summary has been distributed to local jurisdictions as needed;

(v) the entity maintains a business continuity plan that addresses returning to normal operations after disruptions caused by an incident; and

(vi) the entity's emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received the latest IS-100, IS-200, IS-700, and IS-800 National Incident Management System training.

(5) Notwithstanding the other requirements of this subsection, ERCOT must maintain its own current EOP in its entirety, consistent with the requirements of this section and available for review by commission staff.

(d) Information to be included in the emergency operations plan. An entity's EOP must address both common operational functions that are relevant across emergency types and annexes that outline the entity's response to specific types of emergencies, including those listed in subsection (e) of this section. An EOP may consist of one or multiple documents. Each entity's EOP must include the information identified below, as applicable. If a provision in this section does not apply to an entity, the entity must include in its EOP an explanation of why the provision does not apply.

(1) An approval and implementation section that:

(A) introduces the EOP and outlines its applicability;

(B) lists the individuals responsible for maintaining and implementing the EOP, and those who can change the EOP;

(C) provides a revision control summary that lists the dates of each change made to the EOP since the initial EOP filing pursuant to subsection (c)(1) of this section;

(D) provides a dated statement that the current EOP supersedes previous EOPs; and

(E) states the date the EOP was most recently approved by the entity.

(2) A communication plan.

(A) An entity with transmission or distribution service operations must describe the procedures during an emergency for handling complaints and for communicating with the public; the media; customers; the commission; the Office of Public Utility Counsel (OPUC); local and state governmental entities, officials, and emergency operations centers, as appropriate in the circumstances for the entity; the reliability coordinator for its power region; and critical load customers directly served by the entity.

(B) An entity with generation operations must describe the procedures during an emergency for communicating with the media; the commission; OPUC; fuel suppliers; local and state governmental entities, officials, and emergency operations centers, as appropriate in the circumstances for the entity; and the applicable reliability coordinator.

(C) A REP must describe the procedures for communicating during an emergency with the public, media, customers, the commission, and OPUC, and the procedures for handling complaints during an emergency.

(D) ERCOT must describe the procedures for communicating, in advance of and during an emergency, with the public, the media, the commission, OPUC, governmental entities and officials, the state emergency operations center, and market participants.

(3) A plan to maintain pre-identified supplies for emergency response.

(4) A plan that addresses staffing during emergency response.

(5) A plan that addresses how an entity identifies weather-related hazards, including tornadoes, hurricanes, extreme cold weather, extreme hot weather, drought, and flooding, and the process the entity follows to activate the EOP.

(6) Each relevant annex, as detailed in subsection (e) of this section, and other annexes applicable to an entity.

(e) Annexes to be included in the emergency operations plan.

(1) An electric utility, a transmission and distribution utility, a municipally owned utility, and an electric cooperative a must include in its EOP for its transmission and distribution facilities the following annexes:

(A) A weather emergency annex that includes:

(i) operational plans for responding to a cold or hot weather emergency, distinct from the weather preparations required un-

der §25.55 of this title (relating to Weather Emergency Preparedness); and

(ii) a checklist for transmission or distribution facility personnel to use during cold or hot weather emergency response that includes lessons learned from past weather emergencies to ensure necessary supplies and personnel are available through the weather emergency;

(B) A load shed annex that must include:

(i) procedures for controlled shedding of load;

(ii) priorities for restoring shed load to service; and

(iii) a procedure for maintaining an accurate registry of critical load customers, as defined under 16 TAC §25.5(22) of this title (relating to Definitions), §25.52(c)(1) and (2) of this title (relating to Reliability and Continuity of Service) and §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers), and TWC §13.1396 (relating to Coordination of Emergency Operations), directly served, if maintained by the entity. The registry must be updated as necessary but, at a minimum, annually. The procedure must include the processes for providing assistance to critical load customers in the event of an unplanned outage, for communicating with critical load customers during an emergency, coordinating with government and service agencies as necessary during an emergency, and for training staff with respect to serving critical load customers;

(C) A pandemic and epidemic annex;

(D) A wildfire annex;

(E) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by the Texas Division of Emergency Management (TDEM);

(F) A cyber security annex;

(G) A physical security incident annex;

(H) A transmission and distribution utility that leases or operates facilities under PURA §39.918(b)(1) or procures, owns, and operates facilities under PURA §39.918(b)(2) must include an annex that details its plan for the use of those facilities; and

(I) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(2) An electric cooperative, an electric utility, or a municipally owned utility that operate a generation resource in Texas; and a PGC must include the following annexes for its generation resources other than generation resources authorized under PURA §39.918:

(A) A weather emergency annex that includes:

(i) operational plans for responding to a cold or hot weather emergency, distinct from the weather preparations required under §25.55 of this title;

(ii) verification of the adequacy and operability of fuel switching equipment, if installed; and

(iii) a checklist for generation resource personnel to use during a cold or hot weather emergency response that includes lessons learned from past weather emergencies to ensure necessary supplies and personnel are available through the weather emergency;

(B) A water shortage annex that addresses supply shortages of water used in the generation of electricity;

(C) A restoration of service annex that identifies plans intended to restore to service a generation resource that failed to start or that tripped offline due to a hazard or threat;

(D) A pandemic and epidemic annex;

(E) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(F) A cyber security annex;

(G) A physical security incident annex; and

(H) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(3) A REP must include in its EOP the following annexes:

(A) A pandemic and epidemic annex;

(B) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(C) A cyber security annex;

(D) A physical security incident annex; and

(E) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(4) ERCOT must include the following annexes:

(A) A pandemic and epidemic annex;

(B) A weather emergency annex that addresses ERCOT's plans to ensure continuous market and grid management operations during weather emergencies, such as tornadoes, wildfires, extreme cold weather, extreme hot weather, and flooding;

(C) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(D) A cyber security annex;

(E) A physical security incident annex; and

(F) Any additional annexes as needed or appropriate to ERCOT's particular circumstances.

(f) Drills. An entity must conduct or participate in at least one drill each calendar year to test its EOP. Following an annual drill the entity must assess the effectiveness of its emergency response and revise its EOP as needed. If the entity operates in a hurricane evacuation zone as defined by TDEM, at least one of the annual drills must include a test of its hurricane annex. An entity conducting an annual drill must, at least 30 days prior to the date of at least one drill each calendar year, notify commission staff, using the method and form prescribed by commission staff on the commission's website, and the appropriate TDEM District Coordinators, by email or other written form, of the date, time, and location of the drill. An entity that has activated its EOP in response to an emergency is not required, under this subsection, to conduct or participate in a drill in the calendar year in which the EOP was activated.

(g) Reporting requirements. Upon request by commission staff during an activation of the State Operations Center by TDEM, an affected entity must provide updates on the status of operations, outages, and restoration efforts. Updates must continue until all incident-related outages of customers able to take service are restored or unless otherwise notified by commission staff. After an emergency, commission staff may require an affected entity to provide an after

action or lessons learned report and file it with the commission by a date specified by commission staff.

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 February 28, 2022.

TRD-202200710
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 20, 2022
Proposal publication date: December 17, 2021
For further information, please call: (512) 936-7244

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER C. DISPOSITION OF COMPLAINTS

22 TAC §107.204

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §107.204, concerning the issuance of remedial plans to resolve the investigation of a complaint. The adopted amendment establishes when multiple remedial plans may be issued to a licensee and when a remedial plan may be removed from the Board's public website. The rule is adopted in accordance with Senate Bill 1534 of the 87th Texas Legislature, Regular Session (2021), and Chapter 263, Texas Occupations Code. The rule is adopted without changes to the text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8878) and will not be republished.

The Board received one comment regarding adoption of the amendment. The Texas Academy of General Dentistry provided a written comment in support of adoption of the rule as proposed, and provided that the rule is consistent with Senate Bill 1534. The Board agrees with this comment and no changes to the proposed rule were made as a result of the comment.

This rule 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.

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 February 18, 2022.

TRD-202200610
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: March 10, 2022
Proposal publication date: December 24, 2021
For further information, please call: (512) 305-8910

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.10

The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §213.10, relating to Notice and Service, without changes to the proposed text published in the January 7, 2022, issue of the *Texas Register* (47 TexReg 11) and will not be republished.

Reasoned Justification. The Texas Nurse Portal (Portal), which was launched by the Board on June 15, 2020, is a paperless, confidential, and secure system that allows individuals to apply for nurse licensure by examination and endorsement and renew their licenses. The use of the Portal has moved the Board toward a paperless work flow in the Board's offices and allows the Board to communicate with applicants and licensees directly through the Portal. This online communication is often more efficient and reliable than more traditional methods, such as certified, registered, or first class mail.

The adopted amendments add the Portal as a new avenue to provide notice to applicants and licensees in circumstances where state law does not specifically require notice to be sent via first class, registered, or certified mail. In those cases, Board notice will continue to be given as specified in existing subsections (a) - (e) of the rule. Notices sent via the Portal may include mandatory notices required by the Nursing Practice Act and the Nurse Licensure Compact for multistate privilege licensure, as well as courtesy notices and routine communication provided by the Board. Further, the Board has already adopted rules incorporating the use of the Portal into its communication with applicants and licensees as it relates to the change of an applicant or licensee's name and/or address (46 TexReg 555). The adopted amendments are consistent with the Board's uniform transition to a more efficient online licensure system.

How the Section Will Function. Adopted §213.10(f) provides that, notwithstanding (a) - (e) of the section, notice required by a rule adopted by the Interstate Commission of Nurse Licensure Compact Administrators will be considered effective and service will be considered complete when made electronically through the Texas Nurse Portal accessible through the Board's website. Additionally, adopted §213.10(g) provides that, notwithstanding (a) - (e) of the section, notice not specifically required by state law to be provided through first class, certified, or registered mail, return receipt requested, may be made electronically through the Texas Nurse Portal accessible through the Board's website and will be considered effective and complete when made through this method. Subsections (a) - (e) contain provisions relate to notice provided via registered or certified mail and will not apply to notice provided under the adopted amendments.

Public Comment. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151. Section 301.151 addresses the Board's 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 February 23, 2022.

TRD-202200660
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: March 15, 2022
Proposal publication date: January 7, 2022
For further information, please call: (512) 305-6822

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.5

The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §217.5, relating to Temporary License and Endorsement, without changes to the proposed text published in the January 7, 2022, issue of the *Texas Register* (47 TexReg 12) and will not be republished.

Reasoned Justification. The amendments are being adopted under the authority of the Occupations Code §301.151 and House Bill (HB) 139, effective September 1, 2021. HB 139, enacted during the 87th Regular Legislative Session, requires a state agency that issues a license that has a residency requirement for license eligibility to adopt rules regarding the documentation necessary for a military spouse applicant to establish residency, including by providing to the agency a copy of the permanent change of station order for the military service member to whom the spouse is married.

Current Board Rule 217.5(h) includes in its eligibility requirements for a military spouse applicant proof of residency in Texas. However, proof of residency in Texas is not necessary for the issuance of *single state* licensure for these applicants. A military spouse applicant wishing to obtain a multistate license under the Nurse Licensure Compact must declare Texas as his/her home state on the application and submit proof of residency required under the Occupations Code Chapter 304 and related compact rules. However, a military spouse applicant is not required to obtain a multistate license to practice nursing in the State of Texas; a military spouse applicant may practice nursing in Texas by obtaining a single state license, which does not require proof of residency. In an effort to conform to the requirements of HB 139, remove any unnecessary impediments to single state licensure in Texas for military spouse applicants, and clarify the applicability of the existing rule, the adopted amendments eliminate the language in subsection (h)(1)(B) relating to proof of residency.

How the Section Will Function. Section 217.5(h) relates to out-of-state licensure of military spouse applicants. The adopted amendments eliminate the need for a military spouse applicant to submit proof of residency in Texas in order to obtain single state licensure and practice in Texas.

Public Comment. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and HB 139, which amends the Occupations Code §55.004.

Section 301.151 addresses the Board's rulemaking authority. Section 55.004 addresses residency requirements for license eligibility for military spouse applicants.

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 February 23, 2022.

TRD-202200659
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: March 15, 2022
Proposal publication date: January 7, 2022
For further information, please call: (512) 305-6822

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.4

The Texas State Board of Pharmacy adopts amendments to §283.4, concerning Internship Requirements. These amendments are adopted without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8880). The rule will not be republished.

The amendments specify that a person may not have previously failed the NAPLEX or Texas Pharmacy Jurisprudence Examination to be designated an extended-intern as a resident in a residency program accredited by the American Society of Health-System Pharmacists and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on February 23, 2022.

TRD-202200656
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: March 15, 2022
Proposal publication date: December 24, 2021
For further information, please call: (512) 305-8097

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.29

The Texas State Board of Pharmacy adopts amendments to §291.29, concerning Professional Responsibility of Pharmacists. These amendments are adopted without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8883). The rule will not be republished.

The amendments establish the determination of a valid prescription issued as a result of teledentistry dental services, in accordance with House Bill 2056, or telemedicine medical services.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on February 23, 2022.

TRD-202200657
Timothy L. Tucker, Pharm.D.
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Texas State Board of Pharmacy
Effective date: March 15, 2022
Proposal publication date: December 24, 2021
For further information, please call: (512) 305-8097

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34, concerning Records. These amendments are adopted without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8885). The rule will not be republished.

The amendments establish extend the time period for a pharmacist to dispense prescription drug orders for Schedule II controlled substances issued by a practitioner in another state to the end of the thirtieth day after the date the prescription is issued to be consistent with federal law and correct a citation reference.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on February 23, 2022.

TRD-202200658
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: March 15, 2022
Proposal publication date: December 24, 2021
For further information, please call: (512) 305-8097

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 350. EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to Texas Administrative Code (TAC) Title 26, Part 1, Chapter 350, §§350.103, 350.201, 350.203, 350.207, 350.209, 350.215, 350.217, 350.218, 350.233, 350.309, 350.310, 350.313, 350.315, 350.403, 350.409, 350.415, 350.417, 350.501, 350.505, 350.507, 350.617, 350.706, 350.708, 350.811, 350.817, 350.823, 350.1004, 350.1007, 350.1009, 350.1104, 350.1105, 350.1205, 350.1207, 350.1211, 350.1413, 350.1419, 350.1425, 350.1431, and 350.1435.

The amendments to §§350.103, 350.203, 350.209, 350.215, 350.217, 350.218, 350.233, 350.310, 350.313, 350.315, 350.823, 350.1009, 350.1104, 350.1413, and 350.1419 are adopted with changes to the proposed text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8175). These rules will be republished.

The amendments to §§350.201, 350.207, 350.309, 350.403, 350.409, 350.415, 350.417, 350.501, 350.505, 350.507, 350.617, 350.706, 350.708, 350.811, 350.817, 350.1004, 350.1007, 350.1105, 350.1205, 350.1207, 350.1211, 350.1425, 350.1431, and 350.1435 are adopted without changes to the proposed text as published in the December 3, 2021, issue of

the *Texas Register* (46 TexReg 8175). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to increase administrative efficiencies and improve processes for Early Childhood Intervention (ECI) contractors, add requirements related to criminal background checks of ECI service providers, and strengthen transition services for children and families enrolled in ECI.

The proposed changes also contain non-substantive changes that will improve clarity, update references based on the administrative transfer of ECI rules to 26 TAC Chapter 350, and align abbreviations with HHSC rule conventions.

COMMENTS

The 31-day comment period ended January 3, 2022.

During this period, HHSC received comments regarding the proposed rules from five commenters, including three ECI program directors, a parent, and an outreach specialist with Texas School for the Deaf. A summary of comments relating to the rules and HHSC's responses follow.

Comment: The three ECI program directors requested amending §350.313 to allow early intervention specialist (EIS) applicants to submit 40 clock hours of continuing education to substitute for three hours of semester course credit related to early intervention missing from their transcript, up to the maximum 15 hours required.

Response: While HHSC agrees that allowing some continuing education to substitute for semester course credit will assist contractors in hiring qualified applicants, the agency believes reviewing up to 200 clock hours for a potential EIS candidate would create a significant burden on the ECI state office and potentially reduce the quality of pre-service preparation. Therefore, the requested change was not made in full, but a change was made to further assist ECI contractors in hiring qualified applicants. The change allows EIS applicants to submit 40 clock hours of continuing education for missing up to three hours of semester course credit relevant to early childhood intervention.

Comment: One program director requested amending §350.313 to allow conditional employment for an EIS to be hired and finish their 40 clock hours within 30 days of hiring, rather than the hours being completed prior to employment.

Response: HHSC agrees and revises the rule as suggested.

Comment: One program director requested amending §350.313 to allow former EISes to submit clock hours of continuing education to reinstate their credential rather than having them re-start the EIS credentialing process if they have been inactive for more than two years.

Response: HHSC agrees with the substance of the comment but believes the time period an EIS was inactive should not be open-ended. HHSC amended the rule to increase the time an EIS may move from inactive to active status without having to re-start the credentialing process from 24 months to 48 months.

Comment: A commenter asked to replace "hearing impaired" and "auditory impairment" with "deaf and hard of hearing" throughout Chapter 350 to align with the Person First Respectful Language Initiative.

Response: HHSC agrees and amended the language in §350.823, §350.1009, and §350.1413. There are other instances where the phrase can be replaced in rules that were not open for public comment. HHSC will address this in a future rule project to ensure the public has the opportunity to comment on the proposed changes.

Comment: A commenter supported all amendments in Chapter 350.

Response: No changes are necessary in response to this comment.

Minor editorial changes were made to §§350.103, 350.203, 350.209, 350.215, 350.217, 350.218, 350.233, 350.310, 350.315, and 350.1104 to correct formatting, punctuation, and to increase clarity.

SUBCHAPTER A. GENERAL RULES

26 TAC §350.103

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

§350.103. Definitions.

The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Assessment--As defined in 34 CFR §303.321(a)(2)(ii), the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility for early childhood intervention (ECI) services to assess the child's individual strengths and needs and determine the appropriate services to meet those needs.

(2) Child--An infant or toddler, from birth through 35 months, as defined in 34 CFR §303.21.

(3) Child Find--As described in 34 CFR §§303.115, 303.302, and 303.303, activities and strategies designed to locate and identify, as early as possible, infants and toddlers with developmental delay.

(4) Complaint--A formal written allegation submitted to the Texas Health and Human Services Commission (HHSC) stating that a requirement of the Individuals with Disabilities Education Act (IDEA) or an applicable federal or state regulation has been violated.

(5) Comprehensive Needs Assessment--Conducted by an interdisciplinary team as defined in paragraph (25) of this section as a part of the Individualized Family Services Plan (IFSP) development process, the process for identifying a child's unique strengths and needs, and the family's resources, concerns, and priorities in order to develop an IFSP. The comprehensive assessment process gathers information across developmental domains regarding the child's abilities to participate in the everyday routines and activities of the family.

(6) Condition with a High Probability of Resulting in Developmental Delay--A medical diagnosis known and widely accepted within the medical community to result in a developmental delay over the natural course of the diagnosis.

(7) Consent--As defined in 34 CFR §303.7 and meeting all requirements in 34 CFR §303.420.

(8) Contractor--A local private or public agency with proper legal status and governed by a board of directors or govern-

ing authority that accepts funds from HHSC to administer an early childhood intervention program.

(9) Co-visits--When two or more service providers deliver different services to the child during the same period of time. Co-visits are provided when a child will receive greater benefit from services being provided at the same time, rather than individually.

(10) Days--Calendar days, except for local education agency (LEA) services which are defined as "school days."

(11) Developmental Delay--As defined in Texas Human Resources Code §73.001(3) and determined to be significant in compliance with the criteria and procedures in Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment).

(12) Developmental Screenings--General screenings provided by the early childhood intervention program to assess the child's need for further evaluation.

(13) Early Childhood Intervention Program--In addition to the definition of early intervention service program as defined in 34 CFR §303.11, a program operated by the contractor with the express purpose of implementing a system to provide early childhood intervention services to children with developmental delays and their families.

(14) Early Childhood Intervention Services--Individualized early childhood intervention services determined by the IFSP team to be necessary to support the family's ability to enhance their child's development. Early childhood intervention services are further defined in 34 CFR §303.13 and §303.16 and §350.1105 of this chapter (relating to Capacity to Provide Early Childhood Intervention Services).

(15) ECI Professional--An individual employed by or under the direction of an HHSC Early Childhood Intervention Program contractor who meets the requirements of qualified personnel as defined in 34 CFR §303.13(c) and §303.31, and who is knowledgeable in child development and developmentally appropriate behavior, possesses the requisite education and experience, and demonstrates competence to provide ECI services.

(16) EIS--Early Intervention Specialist. A credentialed professional who meets specific educational requirements established by HHSC ECI in §350.313(a) of this chapter (relating to Early Intervention Specialist (EIS)) and has specialized knowledge in early childhood cognitive, physical, communication, social-emotional, and adaptive development.

(17) Evaluation--The procedures used by qualified personnel to determine a child's initial and continuing eligibility for early childhood intervention services that comply with the requirements described in 34 CFR §303.21 and §303.321.

(18) FERPA--Family Educational Rights and Privacy Act of 1974, 20 USC §1232g, as amended, and implementing regulations at 34 CFR Part 99. Federal law that outlines privacy protection for parents and children enrolled in the ECI program. FERPA includes rights to confidentiality and restrictions on disclosure of personally identifiable information, and the right to inspect records.

(19) Group Services--Early childhood intervention services provided at the same time to no more than four children and their parent or parents or routine caregivers per service provider to meet the developmental needs of the individual infant or toddler.

(20) HHSC--Texas Health and Human Services Commission. The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act, Part C. HHSC has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. HHSC has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(21) HHSC ECI--The Texas Health and Human Services Commission Early Childhood Intervention Services. The state program responsible for maintaining and implementing the statewide early childhood intervention system required under the Individuals with Disabilities Education Act, Part C, as amended in 2004.

(22) IFSP--Individualized Family Service Plan as defined in 34 CFR §303.20. A written plan of care for providing early childhood intervention services and other medical, health, and social services to an eligible child and the child's family when necessary to enhance the child's development.

(23) IFSP Services--The individualized early childhood intervention services listed in the IFSP that have been determined by the IFSP team to be necessary to enhance an eligible child's development.

(24) IFSP Team--An interdisciplinary team that meets the requirements in 34 CFR §303.24(b) and works collaboratively to develop, review, modify, and approve the IFSP. It includes the parent; the service coordinator; all ECI professionals providing services to the child, as planned on the IFSP; certified Teachers of the Deaf and Hard of Hearing, as appropriate; and certified Teachers of Students with Visual Impairments, as appropriate.

(25) Interdisciplinary Team--In addition to the definition of multidisciplinary team as defined in 34 CFR §303.24, a team that consists of at least two ECI professionals from different disciplines and the child's parent. One of the ECI professionals must be a Licensed Practitioner of the Healing Arts (LPHA). The team may include representatives of the LEA. Professionals on the team share a common perspective regarding infant and toddler development and developmental delay and work collaboratively to conduct evaluation, assessment, IFSP development, and to provide intervention.

(26) LEA--Local educational agency as defined in 34 CFR §303.23.

(27) LPHA--Licensed Practitioner of the Healing Arts. A licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselor, licensed clinical social worker, licensed psychologist, licensed dietitian, licensed audiologist, licensed physician assistant, licensed marriage and family therapist, licensed intern in speech language pathology, licensed behavior analyst, or advanced practice registered nurse who is an employee or a subcontractor of an ECI contractor. LPHA responsibilities are further described in §350.312 of this chapter (relating to Licensed Practitioner of the Healing Arts (LPHA)).

(28) Medicaid--The medical assistance entitlement program administered by HHSC.

(29) Native Language--As defined in 34 CFR §303.25.

(A) When used with respect to an individual who is limited English proficient (as that term is defined in section 602(18) of the Individuals with Disabilities Education Act), native language means:

(i) the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child; and

(ii) for evaluations and assessments conducted pursuant to 34 CFR §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(B) When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, "native language" means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(30) Natural Environments--As defined in 34 CFR §303.26, settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, includes the daily activities of the child and family or caregiver, and must be consistent with the provisions of 34 CFR §303.126.

(31) Parent--As defined in 20 USC §1401 and 34 CFR §303.27.

(32) Personally Identifiable Information--As defined in 34 CFR §99.3 and 34 CFR §303.29.

(33) Pre-Enrollment--All family-related activities from the time the referral is received up until the time the parent signs the initial IFSP.

(34) Primary Referral Sources--As defined in 34 CFR §303.303(c).

(35) Public Agency--HHSC and any other state agency or political subdivision of the state that is responsible for providing early childhood intervention services to eligible children under the Individuals with Disabilities Education Act, Part C.

(36) Qualifying Medical Diagnosis--A diagnosed medical condition that has a high probability of developmental delay as determined by HHSC, as described in §350.811 of this chapter (relating to Eligibility Determination Based on Medically Diagnosed Condition That Has a High Probability of Resulting in Developmental Delay).

(37) Referral Date--The date the child's name and sufficient information to contact the family was obtained by the contractor.

(38) Routine Caregiver--An adult who:

(A) has written authorization from the parent to participate in early childhood intervention services with the child, even in the absence of the parent;

(B) participates in the child's daily routines;

(C) knows the child's likes, dislikes, strengths, and needs; and

(D) may be the child's relative, childcare provider, or other person who regularly cares for the child.

(39) Service Coordinator--The contractor's employee or subcontractor who:

(A) meets all applicable requirements in Subchapter C of this chapter (relating to Staff Qualifications);

(B) is assigned to be the single contact point for the family;

(C) is responsible for providing case management services as described in §350.405 of this chapter (relating to Case Management Services); and

(D) is from the profession most relevant to the child's or family's needs or is otherwise qualified to carry out all applicable responsibilities.

(40) Surrogate Parent--A person assigned to act as a surrogate for the parent in compliance with the Individuals with Disabilities Education Act, Part C and this chapter.

(41) Telehealth services--Healthcare services, other than telemedicine medical services, delivered by a health professional licensed, certified, or otherwise entitled to practice in Texas and acting within the scope of the health professional's license, certification, or entitlement to a patient who is located at a different physical location than the health professional using telecommunications or information technology.

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 February 25, 2022.

TRD-202200675
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: March 17, 2022
Proposal publication date: December 3, 2021
For further information, please call: (512) 438-5429

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SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

26 TAC §§350.201, 350.203, 350.207, 350.209, 350.215, 350.217, 350.218, 350.233

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

§350.203. Responsibilities.

(a) The contractor shall be responsible for:

(1) establishing or adopting procedural safeguards that meet the requirements of the federal and state regulations listed in §350.101 of this chapter (relating to Purpose) and that also meet additional requirements of this subchapter;

(2) implementing the procedural safeguards; and

(3) providing oral and written explanation to the parent regarding procedural safeguards during the pre-enrollment process and at other times when parental consent is required.

(b) The contractor must make reasonable effort to provide appropriate interpreter or translation services in the child's native language as defined in 34 CFR §303.25 or other communication assistance necessary for a parent or child with limited English proficiency or communication impairments to participate in early childhood intervention services. Interpreter, translation, and communication assistance services are provided at no cost to the family.

(c) The contractor must provide the family with the Early Childhood Intervention Parent Handbook. The contractor must document that the following were explained:

(1) the family's rights;

(2) the early childhood intervention process; and

(3) early childhood intervention services.

§350.209. Parent Rights in the Individualized Family Service Plan (IFSP) Process.

The contractor must explain the contents of the IFSP to the parents and obtain informed written consent from a parent before providing any early childhood intervention services. The parent has the right to:

(1) be present and participate in the development of the IFSP;

(2) have decisions about early childhood intervention services made based on the individualized needs of the child and family;

(3) receive a full explanation of the IFSP, including the identified strengths and needs of the child and family, priorities of the family, the developmental goals for the child and the recommended services to meet those goals, and any identified service coordination and case management goals;

(4) consent to some, but not all, early childhood intervention services;

(5) receive all IFSP services for which the parent gives consent;

(6) request an administrative hearing or file a complaint with the Texas Health and Human Services Commission if the parent does not agree with the other IFSP team members;

(7) indicate disagreement in writing in the parent's native language with a part of the IFSP, even though the parent consents to early childhood intervention services;

(8) have the IFSP written in the parent's native language, as defined in §350.103 of this chapter (relating to Definitions), or mode of communication; and

(9) receive a copy of the IFSP.

§350.215. Early Childhood Intervention (ECI) Procedures for Filing Complaints.

(a) An individual or organization may file a complaint with the Texas Health and Human Services Commission (HHSC) alleging that a requirement of the Individuals with Disabilities Education Act, Part C or applicable federal and state regulations has been violated. The complaint must be in writing, be signed, and include the nature of the violation and a statement of the facts on which the complaint is based.

(b) A complaint may be filed directly with HHSC without having been filed with the contractor or local program.

(c) The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because the alleged violation continues for that child or other children.

(d) Procedures for receipt of a complaint are as follows.

(1) All complaints received by HHSC concerning early childhood intervention services shall be forwarded to the HHSC Director of ECI who will log and assign all complaints, monitor the resolution of those complaints, and maintain a copy of all complaints for a seven-year period.

(2) A complaint should be clearly distinguished from a request for an administrative hearing under 40 TAC Chapter 101, Subchapter E, Division 3 (relating to Division for Early Childhood Intervention Services) and from a request for a hearing under §350.227 of this chapter (relating to Opportunity for a Hearing) concerning the requirements of the Federal Education Rights and Privacy Act.

§350.217. Procedures for Investigation and Resolution of Complaints.

(a) After receipt of the complaint, the Texas Health and Human Services Commission (HHSC) Director of Early Childhood Intervention (ECI) will assign a staff person to conduct an individual investigation, on-site if necessary, to make a recommendation to the HHSC Director of ECI for resolution of the complaint. The child's and family's confidentiality is protected during the complaint resolution process.

(1) The complainant will have the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(2) All relevant information will be reviewed and an independent determination made as to whether a violation of the requirements of the Individuals with Disabilities Education Act occurred.

(b) The HHSC Director of ECI will resolve the complaint within 60 days of the receipt date.

(c) An extension of the time limit under subsection (b) of this section shall be granted only if exceptional circumstances exist with respect to a particular complaint.

(d) Complainants shall be informed in writing of the final decision of the HHSC Director of ECI. The HHSC Director of ECI's written decision to the complainant will address each allegation in the complaint and contain:

(1) findings of fact and conclusions; and

(2) reasons for the final decision.

(e) To ensure effective implementation of the HHSC Director of ECI's final decision and to achieve compliance with any corrective actions, the HHSC Director of ECI will assign a staff person to provide technical assistance and appropriate follow-up to the parties involved in the complaint as necessary.

(f) In resolving a complaint in which there is a finding of failure to provide appropriate services, the HHSC Director of ECI will remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and appropriate future provision of services for all infants and toddlers with disabilities and their families.

(g) When a complaint is filed, the HHSC Director of ECI will offer mediation services as an alternative to proceeding with the complaint investigation. Mediation may be used when both parties agree to it. A parent's right to a due process hearing or complaint investigation will not be denied or delayed because the parent chose to participate in mediation. The complaint investigation will continue and be resolved within 60 days even if mediation is used as the resolution process.

(h) If a written complaint is received that is also the subject of a request for an administrative hearing under 40 TAC Chapter 101, Subchapter E, Division 3 (relating to Division for Early Childhood Intervention Services) or a request for a hearing under §350.227 of this chapter (relating to Opportunity for a Hearing) concerning the requirements of the Federal Education Rights and Privacy Act, or contains multiple issues, of which one or more are part of those hearings, the part of the complaint that is being addressed in those hearings is set aside until the conclusion of the hearings. However, any issue in the complaint that is not a part of such action must be resolved within the 60-day timeline using the complaint procedures.

§350.218. Mediation.

(a) At any time, a party or all parties to a dispute involving a matter with respect to the provision of appropriate early childhood intervention services or a potential or actual violation of the Individuals with Disabilities Education Act, Part C or other applicable federal or Texas statutes or regulations or rules may request mediation of that dispute by sending the request in writing to the Texas Health and Human Services Commission (HHSC) Director of Early Childhood Intervention (ECI). A request for mediation must:

(1) be in writing and signed by the requesting party;

(2) state the dispute to be mediated with some detail showing it is a matter with respect to the provision of appropriate early childhood intervention services to a particular child or children, or that it is a matter with respect to a potential or actual violation of the Individuals with Disabilities Education Act, Part C or other applicable federal or Texas statutes or regulations or rules;

(3) name the opposing party or parties and, if they have agreed to mediation, contain their signatures;

(4) give contact information for all parties to the extent known by the requestor; and

(5) show that the request for mediation has also been sent to all other parties or that attempts have been made to do so, if possible.

(b) If the request for mediation is also a complaint pursuant to §350.215 of this subchapter (relating to Early Childhood Intervention Procedures for Filing Complaints), it will be handled both as a complaint and as a request for mediation under subsection (c) of this section. If the request for mediation is also a request for a due process hearing, it will be handled both as a request for a due process hearing and a request for mediation under subsection (c) of this section. If the request for mediation does not clearly designate itself as a complaint or request for a due process hearing, or if it does not comply with the filing requirements for those procedures, it will be handled only as a request for mediation under this section.

(c) If the parties to a request for a due process hearing as described in 40 TAC §101.1107 (relating to Administrative Hearings Concerning Individual Child Rights) agree to mediate the dispute in accordance with 40 TAC §101.947 (relating to Mediation Procedures), those procedures shall apply, but the mediation shall also comply with the requirements of federal regulation 34 CFR §303.431.

(d) If the parties to a complaint filed with HHSC under §350.215 of this subchapter agree to mediate the dispute in accordance with §350.217 of this subchapter (relating to Procedures for Investigation and Resolution of Complaints), the procedures in this section apply except for those in subsections (b) and (c) of this section.

(e) If not all parties have agreed to mediation, HHSC will make reasonable efforts to contact the other parties and give them the opportunity to agree to or to decline mediation. If neither HHSC nor the requesting party is able to obtain agreement to mediate by all parties within a reasonable time, HHSC may notify the requesting party and treat the original request for mediation as having been declined by the other party or parties.

(f) The parties may agree to mediate some or all of the disputes described in the request for mediation, and they may amend the disputes to be mediated by agreeing in writing.

(g) If HHSC is not a party to the dispute being mediated, HHSC will not be a party to any mediation resolution agreement and will not sign it, but HHSC may assist in the enforcement of it if requested.

§350.233. Release of Personally Identifiable Information.

(a) Unless authorized to do so under 34 CFR §99.31 or the Uninterrupted Scholars Act (Public Law 112-278), parental consent must be obtained before personally identifiable information is:

(1) disclosed to anyone other than officials or employees of Early Childhood Intervention (ECI) participating agencies collecting or using the information; or

(2) used for any purpose other than meeting a requirement under this chapter.

(b) A contractor may request that the parent provide a release to share information with others for legitimate purposes. However, when such a release is sought:

(1) the parent must be informed of their right to refuse to sign the release;

(2) the release form must list the agencies and providers to whom information may be given and specify the type of information that might be given to each;

(3) the parent must be given the opportunity to limit the information provided under the release and to limit the agencies, providers, and persons with whom information may be shared. The release form must provide ample space for the parent to express in writing such limitations;

(4) the release must be revocable at any time;

(5) the consent to release information form must have a time limit:

(A) not to exceed seven years after the child exits services or other applicable record retention period, as described in §350.237 of this subchapter (relating to Record Retention Period) for billing records; or

(B) not to exceed one year for all other consents to release information; and

(6) if the parent refuses to consent to the release of all or some personally identifiable information, the program will not release the information.

(c) The contractor may disclose personally identifiable information without prior written parental consent if the disclosure meets one or more of the following conditions:

(1) the disclosure is to another Texas Health and Human Services Commission (HHSC) ECI contractor during a transfer of services;

(2) the disclosure is restricted to limited personal identification, as defined in §350.1203 of this chapter (relating to Definitions), being sent to the Local Education Agency (LEA) for child find purposes, unless the parent opted-out of the notification in accordance with §350.1213 of this chapter (relating to LEA Notification Opt Out);

(3) the disclosure is to the Texas Department of Family and Protective Services for the purpose of reporting or cooperating in the investigation of suspected child abuse or neglect;

(4) the disclosure is in response to a court order or subpoena;

(5) the disclosure is to a federal or state oversight entity, including:

(A) United States Department of Health and Human Services, or its designee;

(B) Comptroller General of the United States, or its designee;

(C) Office of the State Auditor of Texas, or its designee;

(D) Office of the Texas Comptroller of Public Accounts, or its designee;

(E) Medicaid Fraud Control Unit of the Texas Attorney General's Office, or its designee;

(F) HHSC, including:

(i) Office of Inspector General;

(ii) Managed Care Organization Program personnel from HHSC, or designee;

(iii) any other state or federal entity identified by HHSC, or any other entity engaged by HHSC; and

(iv) any independent verification and validation contractor, audit firm, or quality assurance contractor acting on behalf of HHSC;

(G) state or federal law enforcement agency; or

(H) State of Texas Legislature general or special investigating committee or its designee; or

(6) the disclosure meets the requirements of the Uninterrupted Scholars Act, which provides that:

(A) the disclosure is to a caseworker or other representative of a State or local child welfare agency or tribal organization authorized to access the child's case plan;

(B) the child is in foster care and the child welfare agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student; and

(C) the disclosure must pertain to addressing the educational needs of the child.

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 February 25, 2022.

TRD-202200677
Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-5429

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SUBCHAPTER C. STAFF QUALIFICATIONS

26 TAC §§350.309, 350.310, 350.313, 350.315

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

§350.310. Criminal Background Checks.

(a) The contractor must complete a fingerprint-based criminal background check on every new hire, volunteer, or other person who will be working under the auspices of the contractor before the person has direct contact with children or families, including employees who have had a fingerprint-based check as a requirement of their professional licensure.

(b) The contractor must complete a fingerprint-based criminal background check renewal on any employee, or any other person who will be working under the auspices of the contractor who has direct contact with children or families, at least every 24 months, unless the contractor uses Federal Bureau of Investigations (FBI) Rap Back and gets alerts of any new arrests and convictions. Employees who are covered by the FBI Rap Back service must complete fingerprint-based criminal background checks at least every five years. Employees deemed "unfingerprintable" by the Texas Department of Public Safety or other fingerprinting entity must have a name-based background check completed every 24 months. If at any time a contractor has reason to suspect an employee has been convicted of a crime specified in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?), the contractor must complete a fingerprint-based criminal background check renewal on the employee in question.

(c) The contractor must ensure that all therapists providing Medicaid services for Early Childhood Intervention children are correctly enrolled with the Texas Medicaid Program. This requirement includes disclosing all criminal convictions and arrests as required by 1 TAC §371.1005 (relating to Disclosure Requirements). The Texas Health and Human Services Commission (HHSC) Office of Inspector General may recommend denial of an enrollment or re-enrollment based on criminal history, in accordance with 1 TAC §371.1011 (relating to Recommendation Criteria).

(d) HHSC Child Care Licensing maintains three charts of criminal history requirements for people who regularly enter licensed child care facilities.

(1) The three charts are published on the HHSC website:

(A) Licensed or Certified Child Care Operations: Criminal History Requirements;

(B) Foster or Adoptive Placements: Criminal History Requirements; and

(C) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements.

(2) The contractor must review each employee's criminal background check to ensure that staff members who regularly enter regulated child care facilities or foster homes to provide early childhood intervention services do not have criminal convictions that would result in an absolute bar to entering them in compliance with §745.661 of this title.

(e) If a criminal background check reveals criminal convictions that are not on the HHSC Child Care Licensing charts of criminal history requirements or would result in the individual being eligible for a HHSC Child Care Licensing risk assessment, the program director may conduct a risk assessment. The risk assessment process must include, at a minimum, consideration of:

(1) the number of convictions;

(2) the nature and seriousness of the crime;

(3) the age of the individual at the time the crime was committed;

(4) the relationship of the crime to the individual's fitness or capacity to serve in the role of an early childhood intervention professional;

(5) the amount of time that has elapsed since the person's last conviction; and

(6) any relevant information the individual provides or otherwise demonstrates.

§350.313. Early Intervention Specialist (EIS).

(a) The contractor must comply with the Texas Health and Human Services Commission (HHSC) Early Childhood Intervention (ECI) requirements related to minimum qualifications for an EIS.

(1) An EIS must meet one of the following criteria:

(A) be registered as an EIS before September 1, 2011;

(B) hold a bachelor's or graduate degree from an accredited university with a bachelor or graduate degree specialization in:

(i) early childhood development;

(ii) early care and early childhood;

(iii) early childhood special education; or

(iv) human development and family studies;

(C) hold a bachelor's or graduate degree from an accredited university in a field related to early childhood intervention. For each of the following fields, transcripts of degree coursework must reflect successful completion of at least nine semester course credit hours relevant to early childhood intervention and three semester course credit hours that focus on early childhood development or early childhood special education. Related fields include:

(i) psychology;

(ii) social work;

(iii) counseling;

(iv) special education (without early childhood emphasis); and

(v) sociology;

(D) hold a bachelor's or graduate degree from an accredited university in a field unrelated to early childhood intervention. For fields unrelated to early childhood intervention, transcripts of degree coursework must reflect successful completion of at least 15 semester course credit hours relevant to early childhood intervention and three semester course credit hours that focus on early childhood development or early childhood special education; or

(E) hold a bachelor's or graduate degree from an accredited university with three years of experience within the last ten years working for an Individuals with Disabilities Education Act, Part C program in the United States or a United States territory providing special instruction, as defined in 34 CFR §303.13(b)(14), or specialized skills training, as defined in §350.501(a)(4) of this chapter, to infants and toddlers with developmental delays or disabilities and their families.

(2) If an EIS has not completed three of the required hours of semester course credit relevant to early childhood intervention provided in paragraph (1)(C) and (D) of this subsection, the EIS must complete forty clock hours of continuing education that is relevant to early childhood intervention within three years prior to employment as an EIS. If the contractor hires an EIS who does not have the necessary hours, the EIS must complete these hours no more than 30 days after the EIS's hire date.

(3) If an EIS has not completed the required three hours of semester course credit in early childhood development or early childhood special education provided in paragraph (1)(C) and (D) of this subsection, the EIS must complete forty clock hours of continuing education in early childhood development or early childhood special education within three years prior to employment as an EIS. If the contractor hires an EIS who does not have the necessary hours, the EIS must complete these hours no more than 30 days after the EIS's hire date.

(4) Coursework or previous training in early childhood development or early childhood special education is required to ensure that an EIS understands the development of infants and toddlers because the provision of specialized skills training for which an EIS is solely responsible depends on significant knowledge of typical child development. Therefore, the content of the three hours of coursework described in paragraph (1)(C) and (D) of this subsection, and the forty clock hours of continuing education described in paragraph (2) of this subsection must relate to the growth, development, and education of the young child and may include courses or training in:

(A) child growth and development;

(B) child psychology;

(C) children with special needs; or

(D) typical language development.

(b) The contractor must comply with HHSC ECI requirements related to continuing education for an EIS. An EIS must complete:

(1) a minimum of 20 contact hours of approved continuing education every two years; and

(2) an additional three contact hours of continuing education in ethics every two years.

(c) The contractor must comply with HHSC ECI requirements related to supervision of an EIS.

(1) The contractor must provide an EIS supervision as defined in §350.309(e) of this chapter (relating to Minimum Requirements for All Direct Service Staff) as required by HHSC ECI.

(2) An EIS supervisor must:

(A) have two years of experience providing ECI services, or 2 years of experience supervising staff who provide other early childhood intervention services to children and families; and

(B) be an active EIS or hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, human development, or related field; or

(ii) an unrelated field and have at least 18 hours of semester course credit in child development.

(d) Requirements for EIS active status and EIS inactive status are as follows.

(1) Only an EIS with active status is allowed to provide early childhood intervention services to children and families. An EIS on inactive status may not perform activities requiring the EIS active status.

(2) An EIS goes on inactive status when:

(A) the EIS fails to submit the required documentation by the designated deadline.

(i) Orientation to ECI training must be completed within 30 days, from the EIS's start date.

(ii) If an EIS is required to submit the clock hours described in subsection (a)(2) or (a)(3) of this section, the clock hours must be completed no more than 30 days after the EIS's hire date.

(iii) If an EIS is transferring from another program, the Orientation to ECI training must be completed within 30 days from the EIS's start date unless the EIS has documentation he or she has completed the current Orientation module.

(iv) All credentialing activities (Final Individualized Professional Development Plan) must be completed within one year from the EIS's start date.

(v) If, due to exceptional circumstances, an EIS is unable to submit documentation of completion of credentialing activities by the designated due date, the EIS's supervisor must contact the HHSC ECI EIS credentialing specialist as soon as he or she is aware the due date will not be met. The credentialing specialist and his or her supervisor will work with the EIS's supervisor and the EIS to determine an appropriate course of action.

(B) the EIS fails to submit documentation of required continuing education and ethics training by the designated deadline. An EIS may return to active status from inactive status by submitting the required documentation in accordance with subsection (b) of this section.

(C) the EIS is no longer employed by a contractor. An EIS may return to active status from inactive status by:

(i) submitting 10 contact hours of continuing education for each year of inactive status; and

(ii) submitting documentation of three contact hours of ethics training within the last two years.

(3) An EIS who has been on inactive status for longer than 48 months from his or her first missed continuing education submission date must complete all credentialing activities, including the current Orientation to ECI and EIS Individualized Personnel Development Plan.

(4) EIS active status is considered reinstated after the information is entered into the EIS Registry and is approved by HHSC ECI.

(e) The contractor must comply with HHSC ECI requirements related to ethics for an EIS. An EIS who violates any of the standards of conduct in §350.314 of this subchapter (relating to EIS Code of Ethics) is subject to the contractor's disciplinary procedures. Additionally, the contractor must complete an EIS Code of Ethics Incident Report in the EIS Registry.

(f) Contractors must contact the HHSC ECI state office when hiring a new EIS to verify if an EIS Code of Ethics Incident Report has been recorded in the EIS Registry.

§350.315. Service Coordinator.

(a) Early Childhood Intervention (ECI) case management may only be provided by an employee or subcontractor of an ECI contractor. The contractor must comply with the Texas Health and Human Services Commission (HHSC) ECI requirements related to minimum qualifications for service coordinators.

(1) A service coordinator must meet one of the following criteria:

(A) be a licensed professional in a discipline relevant to early childhood intervention;

(B) be an Early Intervention Specialist (EIS) or meet the qualifications for an EIS as defined in §350.313 of this subchapter;

(C) be a Registered Nurse (with a diploma, an associate's, bachelor's or advanced degree) licensed by the Texas Board of Nursing; or

(D) hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, or human development or a related field; or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

(2) Before performing case management activities, a service coordinator must complete HHSC ECI required case management training that includes, at a minimum, content which results in:

(A) knowledge and understanding of the needs of infants and toddlers with disabilities and their families;

(B) knowledge of the Individuals with Disabilities Education Act, Part C;

(C) understanding of the scope of early childhood intervention services available under the early childhood intervention program and the medical assistance program; and

(D) understanding of other state and community resources and supports necessary to coordinate care.

(3) A service coordinator must complete all assigned activities on the service coordinator's Individualized Professional Development Plan within one year from the service coordinator's start date.

(4) A service coordinator must effectively communicate in the family's native language or use an interpreter or translator.

(b) A service coordinator who was employed as service coordinator by a contractor before March 1, 2012 and does not meet the requirements of subsection (a)(1) of this section may continue to serve as a service coordinator at the contractor's discretion.

(c) The contractor must comply with HHSC ECI requirements related to continuing education for service coordinators. A service coordinator must complete:

(1) three contact hours of training in ethics every two years;

(2) an additional three contact hours of training specifically relevant to case management every year; and

(3) if the service coordinator does not hold a current license or credential that requires continuing professional education, an additional seven contact hours of approved continuing education every year.

(d) The contractor must comply with HHSC ECI requirements related to supervision of service coordinators.

(1) A contractor's supervision of service coordinators must meet the requirements outlined in §350.309(e) of this subchapter (relating to Minimum Requirements for All Direct Service Staff).

(2) A contractor's ECI program staff member who meets the following criteria is qualified to supervise a service coordinator:

(A) has completed all service coordinator training as required in subsection (a)(2) and (a)(3) of this section;

(B) has two years of experience providing case management in an ECI program or another applicable community-based organization; and

(C) is an active EIS or holds a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, human development or a related field; or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

(e) Requirements for service coordinator active status and inactive status are as follows.

(1) A service coordinator is on inactive status when the service coordinator fails to complete required training activities by the designated deadlines in subsections (a) and (c) of this section. Service coordinator active status is reinstated after the required training activities are completed and approved by the service coordinator's supervisor.

(2) A service coordinator is on inactive status when the service coordinator is no longer employed by a contractor.

(A) A service coordinator returns to active status when the service coordinator:

(i) is employed by an ECI program within 24 months or less from the last day of employment;

(ii) submits 10 clock hours of continuing education for every year of inactive status; and

(iii) submits documentation of three clock hours of ethics training completed within the last two years and not used to meet previous training requirements.

(B) A service coordinator who has been on inactive status for longer than 24 months must complete the training requirements outlined in subsections (a)(2) and (a)(3) of this section.

(f) The contractor must comply with HHSC ECI requirements related to ethics of service coordinators. Service coordinators must meet the established rules of conduct and ethics training required by their license or credential. A service coordinator who does not hold a license or credential must meet the rules of conduct and ethics established in §350.314 of this subchapter (relating to EIS Code of Ethics).

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

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SUBCHAPTER D. CASE MANAGEMENT FOR INFANTS AND TODDLERS WITH DEVELOPMENTAL DISABILITIES

26 TAC §§350.403, 350.409, 350.415, 350.417

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

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SUBCHAPTER E. SPECIALIZED REHABILITATIVE SERVICES

26 TAC §§350.501, 350.505, 350.507

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

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SUBCHAPTER F. PUBLIC OUTREACH

26 TAC §350.617

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 ser-

vices by the health and human services agencies, and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

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SUBCHAPTER G. REFERRAL, PREENROLLMENT, AND DEVELOPMENTAL SCREENING

26 TAC §350.706, §350.708

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

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SUBCHAPTER H. ELIGIBILITY, EVALUATION, AND ASSESSMENT

26 TAC §§350.811, 350.817, 350.823

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

§350.823. Continuing Eligibility Criteria.

(a) The contractor must determine the child's eligibility for continued early childhood intervention services at least annually if the child is younger than 21 months of age at the previous eligibility determination. A child who is determined eligible at 21 months of age or older remains eligible for Early Childhood Intervention (ECI) until the child's third birthday or until the child has reached developmental proficiency, whichever happens first.

(b) The contractor must comply with all requirements in 34 CFR §303.321(a)(3), including ensuring that informed clinical opinion may be used as an independent basis to establish a child's continued eligibility.

(1) Continuing eligibility is based on one of the following:

(A) a qualifying medical diagnosis confirmed by a review of the child's medical records with:

(i) interdisciplinary team documentation of the continued need for early childhood intervention services; and

(ii) documentation in the child's record of any change in medical diagnosis;

(B) a visual impairment or deafness or hard of hearing as defined by the Texas Education Agency in 19 TAC §89.1040 (relating to Eligibility Criteria) with:

(i) interdisciplinary team documentation of the continued need for early childhood intervention services; and

(ii) documentation in the child's record of any change in hearing or vision status; or

(C) a developmental delay determined by the administration of the standardized tool designated by the Texas Health and Human Services Commission (HHSC) ECI, with the child demonstrating a documented delay of at least 15 percent in one or more areas of development, including the use of adjusted age as specified in §350.819 of this subchapter (relating to Age Adjustment for Children Born Prematurely), as applicable.

(2) Continuing eligibility for a child whose initial eligibility was based on a qualitative determination of developmental delay must be determined after six months.

(A) Eligibility is re-determined through an evaluation using the standardized tool designated by HHSC ECI.

(B) The child must demonstrate a documented delay of at least 15 percent in one or more areas of development. If applicable, use adjusted age as specified in §350.819 of this subchapter.

(c) If the parent fails to consent or fails to cooperate in re-determination of eligibility, the child becomes ineligible. The contractor must send prior written notice of ineligibility and consequent discontinuation of all ECI services to the family at least 14 days before the contractor discharges the child from the program, unless the parent:

(1) immediately consents to and cooperates in all necessary evaluations and assessments; and

(2) consents to all or part of a new Individualized Family Service Plan.

(d) The family has the right to oppose the actions described in subsection (c) of this section using their procedural safeguards including the rights to use local and state complaint processes, request mediation, or request an administrative hearing in accordance with 40

TAC §101.1107 (relating to Administrative Hearings Concerning Individual Child Rights).

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SUBCHAPTER J. INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

26 TAC §§350.1004, 350.1007, 350.1009

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

§350.1009. Participants in Initial and Annual Individualized Family Service Plan (IFSP) Meetings.

(a) The initial IFSP meeting and each annual meeting to evaluate the IFSP must be conducted by the IFSP team as defined in 34 CFR §303.343(a).

(b) The initial IFSP meeting and the annual meeting to evaluate the IFSP must be conducted by an interdisciplinary team that includes, at a minimum, the parent and at least two professionals from different disciplines or professions.

(1) At least one professional must be an Early Childhood Intervention (ECI) service coordinator.

(2) At least one professional must be a Licensed Practitioner of the Healing Arts (LPHA).

(3) At least one ECI professional must have been involved in conducting the evaluation. This may be the service coordinator, the LPHA, or a third professional.

(4) If the LPHA attending the IFSP meeting did not conduct the evaluation, the contractor must ensure that the most recent observations and conclusions of the LPHA who conducted the evaluation were communicated to the LPHA attending the initial IFSP meeting and incorporated into the IFSP.

(5) Other team members may participate by other means acceptable to the team.

(c) With parental consent, the contractor must also invite to the initial IFSP meeting and annual meetings to evaluate the IFSP:

(1) Early Head Start and Migrant Head Start staff members, if the family is jointly served; and

(2) representatives from other agencies serving or providing case management to the child or family, including Medicaid managed care programs.

(d) If a child:

(1) is documented to be deaf or hard of hearing as described in §350.813(a) of this chapter (relating to Determination of Hearing and Auditory Status), the IFSP team for an initial IFSP meeting and annual IFSP evaluation meetings must include a certified teacher of the deaf and hard of hearing; or

(2) has a documented visual impairment as described in §350.815(a) of this chapter (relating to Determination of Vision Status), the IFSP team for an initial IFSP meeting and annual IFSP evaluation meetings must include a certified teacher of the visually impaired.

(e) Unless there is documentation that the Local Education Agency has waived notice, the contractor must:

(1) provide the certified teacher required in subsection (d) of this section at least a 10-day written notice before the initial IFSP meeting, any annual meetings to evaluate the IFSP or any review and evaluation that affects the child's deaf and hard of hearing or vision services; and

(2) keep documentation of the notice in the child's ECI record.

(f) The IFSP team cannot plan deaf and hard of hearing or vision services or make any changes that affect those services if the certified teacher required in subsection (d) of this section is not in attendance.

(g) The IFSP team must route the IFSP to the certified teacher required in subsection (d) of this section for review and signature when changes to the IFSP do not affect the child's deaf and hard of hearing or vision services.

(h) The certified teacher of the deaf and hard of hearing and the certified teacher of the visually impaired required in subsection (d) of this section may submit a request within five days of the IFSP meeting to have another IFSP meeting if the teacher disagrees with any portion of the IFSP.

(i) The certified teacher required in subsection (d) of this section is not required to attend an IFSP review when changes do not affect the child's deaf and hard of hearing or vision services, but the contractor must obtain the teacher's input.

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SUBCHAPTER K. SERVICE DELIVERY

26 TAC §350.1104, §350.1105

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

§350.1104. Early Childhood Intervention Services Delivery.

(a) Early childhood intervention services needed by the child must be initiated in a timely manner and delivered as planned in the Individualized Family Service Plan (IFSP). Only qualified staff members, as described in Subchapter C of this chapter (relating to Staff Qualifications), are authorized to provide early childhood intervention services.

(b) The contractor must ensure that early childhood intervention services are appropriate, as determined by the IFSP team, and based on scientifically based research, to the extent practicable. In addition to the requirements in 34 CFR §303.13, early childhood intervention services, with the exception cited in subsection (c) of this section, must be provided:

(1) according to a plan and with a frequency that is individualized to the parent and child to effectively address the goals established in the IFSP;

(2) only to children who are located in the state of Texas at the time of service delivery;

(3) in the presence of the parent or other routine caregiver, with an emphasis on enhancing the family's capacity to meet the developmental needs of the child; and

(4) in the child's natural environment, as defined in 34 CFR §303.26, unless the criteria listed in 34 CFR §303.126 are met and documented in the case record and may be provided via telehealth with the written consent of the parent. If the parent declines to consent to telehealth for some or all services, those services must be provided in person.

(c) Family education and training, as defined in §350.1105(5) of this subchapter (relating to Capacity to Provide Early Childhood Intervention Services):

(1) must be provided:

(A) according to a plan and with a frequency that is individualized to the parent and child to effectively address the goals established in the IFSP; and

(B) with a parent or other routine caregiver, with an emphasis on enhancing the family's capacity to meet the developmental needs of the child; and

(2) may be provided:

(A) when a child who resides in Texas is not located in the state at the time of service; and

(B) in a setting other than a child's natural environment.

(d) Early Intervention services must:

(1) address the development of the whole child within the framework of the family;

(2) enhance the parent's competence to maximize the child's participation and functional abilities within daily routines and activities; and

(3) be provided in the context of natural learning activities in order to assist caregivers to implement strategies that will increase child learning opportunities and participation in daily life.

(e) The contractor must provide a service coordinator and an interdisciplinary team for the child and family throughout the child's enrollment.

(f) The contractor must make reasonable efforts to provide flexible hours in programming in order to allow the parent or routine caregiver to participate.

(g) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) when planning and delivering early childhood intervention services.

(h) Services must be monitored by the interdisciplinary team at least once every six months to determine:

(1) what progress is being made toward achieving goals;

(2) if services are reducing the child's functional limitations, promoting age appropriate growth and development, and are responsive to the family's identified goals for the child; and

(3) whether modifications to the plan are needed.

(i) Monitoring occurs as part of the IFSP review process and must be documented in the case record.

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SUBCHAPTER L. TRANSITION

26 TAC §§350.1205, 350.1207, 350.1211

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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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

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SUBCHAPTER N. FAMILY COST SHARE SYSTEM

26 TAC §§350.1413, 350.1419, 350.1425, 350.1431, 350.1435

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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

§350.1413. Individualized Family Service Plan (IFSP) Services Subject to Out-of-Pocket Payment from the Family.

(a) IFSP services subject to out-of-pocket payment from the family are:

(1) assistive technology;

(2) behavioral intervention;

(3) occupational therapy services;

(4) physical therapy services;

(5) speech-language pathology services;

(6) nutrition services;

(7) counseling services;

(8) nursing services;

(9) psychological services;

(10) health services;

(11) social work services;

(12) transportation;

(13) specialized skills training;

(14) family education and training; and

(15) any IFSP services to children with visual impairments or who are deaf or hard of hearing that are not required by an individualized education program (IEP) pursuant to Texas Education Code §29.003(b)(1).

(b) The family pays out-of-pocket up to their maximum charge. The family's maximum charge is determined based on their placement on the Texas Health and Human Services Commission (HHSC) Early Childhood Intervention (ECI) Sliding Fee Scale, as described in §350.1431 of this subchapter (relating to HHSC ECI Sliding Fee Scale).

§350.1419. Private Insurance

(a) The contractor must obtain written parental consent to bill and to release personally identifiable information to private insurance.

(b) The contractor must obtain written parental consent when initially seeking to use their private insurance and each time there is an increase (in frequency, length, duration, or intensity) in the provision of services in the IFSP that requires the contractor to obtain written parental consent.

(c) If private insurance denies payment of the claim, the contractor must bill the family up to their maximum charge, based on their placement on the sliding fee scale.

(d) The contractor must adjust the amount billed to the family if the contractor or parent successfully disputes a denied claim.

(e) The contractor must not deny or delay a child's services if:

(1) the family does not have private insurance; or

(2) the parent does not give consent to bill or to release personally identifiable information to their private insurance. If the parent does not give consent, the contractor bills the family up to their maximum charge, based on their placement on the sliding fee scale.

(f) A family with private insurance will not be charged disproportionately more than a family without private insurance.

(g) If a child is covered by private insurance only, once the contractor has verified that the private insurance plan will not pay for certain Early Childhood Intervention (ECI) services for a child, the contractor is not required to continue to bill the private insurance plan for those services for that child. The contractor must continue to bill for any services that the private insurance company does cover. The contractor must verify coverage for ECI services with the private insurance plan at least annually.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.983

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 27, 2022, adopted new §57.983, concern-

ing Spotted Seatrout - Special Provisions, without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8984). The rule will not be republished. The new rule establishes temporary bag, length, and possession limits for spotted seatrout in middle and lower coast bay systems to reflect the department's continuing concern over the impact of Winter Storm Uri in February 2021 on spotted seatrout populations. The rule is intended to increase spawning potential in order to accelerate the fishery's recovery.

During the week of February 14th, 2021, Texas experienced extreme winter weather that caused the die-off of an estimated 3.8 million fish coastwide, with at least 61 species affected. Among recreational game fish, spotted seatrout comprised the majority of the mortalities, particularly on the lower coast. In response, the department adopted an emergency rule effective April 1, 2021, (46 TexReg 2527) to protect spotted seatrout in the Upper and Lower Laguna Madre from over-harvest. The emergency rule expired September 27, 2021; however, department monitoring and sampling efforts confirmed that the spotted seatrout populations in the areas affected by the emergency rule were impacted significantly by the freeze and showed declines from historical averages. The data also confirmed that other areas of the lower coast and mid-coast bays that were not subject to the provisions of the emergency rule were also negatively impacted by the freeze event. Spring gill net sampling indicated that four bay systems experienced catch rates much lower than the ten-year average: Lower Laguna Madre, Upper Laguna Madre, San Antonio, and Matagorda. Spring gill net sampling indicated that catch rates were approximately 34% and 44% below the ten-year mean in San Antonio and Matagorda bays, respectively. Aransas Bay also experienced declines in catch rates of 10 - 12%. Corpus Christi Bay experienced a modest increase in catch rates. While other environmental variables also impact seatrout catch rates, such as lowered salinities due to high spring rainfall, the extent of the declines seen after the freeze mortality indicate that the freeze likely had a large impact on the abundance of spotted seatrout in several of the bay systems. The new rule imposes bag, possession, and length limits identical to those imposed by the emergency rule (minimum length limit of 17 inches, maximum length limit of 23 inches, possession limit of three fish) over a larger geographical area and specifies a date certain of August 31, 2023, for those limits to expire, at which time the harvest regulations would revert to the previous limits coastwide. The rule includes all bays from Matagorda Bay to the Lower Laguna Madre, which is intended to speed recovery of trout populations in the four bay systems most severely impacted, including adjacent bays that were less affected by the freeze but genetically connected to the vulnerable populations. Corpus Christi Bay is also included to prevent negative impacts resulting from increases in fishing pressure resulting from angler effort being shifted from surrounding systems, as well as to reduce angler confusion and aid in law enforcement of the new rule. Historical data indicate that gill net catch rates returned to pre-freeze levels within 2-3 years following other major freeze events in the 1980's; accordingly, the rule will remain in effect until August 31, 2023.

The department received 637 comments opposing adoption of the rule as proposed. Of those 637 comments, 519 expressed a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three-hundred eighteen commenters opposed adoption specifically because of the proposed 17 to 23-inch slot limit. The majority of those commenters (189) expressed a desire for the slot to include smaller-sized fish. Some commenters offered justification for their opposition to the 17 to 23-inch slot, asserting, variously, that the slot limit as proposed would target breeding females (75), that the catch-and-release mortality of smaller fish would be higher (67), or that the proposed slot limit would make it very difficult to catch any fish at all (9). The department disagrees with the comments and responds that protecting fish under 17 inches will accelerate recovery of the fishery. The majority of the spawning stock is fish between 12 and 17 inches in length, and fish from 15 to 16 inches in length comprise the majority of landings (the current minimum length limit is 15 inches). By protecting smaller fish, the department's intent is to protect the majority of the stock. The department believes that with this protection, recruitment will increase during the next two years. While spotted seatrout are sexually dimorphic (larger females than males), the 17 to 23-inch size slot still protects the majority of fish (male and female). Studies on catch-and-release mortality do not indicate any significant correlations between fish size and decreased survival post-release, indicating that release mortality can be expected to be similar regardless of size class. Finally, while the majority of fish caught are smaller than the new slot limit would allow to be retained, the department notes that 39% of the catch consists of fish that are legal to retain under the new slot limit, which the department believes will provide an incentive for angling effort. No changes were made as a result of the comments.

Sixty commenters opposed adoption and stated that the current slot limit should be maintained. The department disagrees and responds that the slot limit as proposed was selected to accelerate recovery of the fishery; it will protect the majority of the fishery's spawning stock biomass (including the size classes most heavily targeted), which will lead to increased recruitment and faster population recovery. No changes were made as a result of the comments.

Fifty-six commenters opposed adoption and stated a preference for a narrower range between the minimum and maximum size limits of the slot limit. The department disagrees and responds, as noted previously, that the slot limit was selected to accelerate recovery of the fishery (via harvest restrictions) while balancing the public's desire to harvest spotted seatrout. The department is charged with both sustainable fishery management and providing for public enjoyment of the resource where possible. The slot limit was selected to protect the majority of the fishery's spawning stock biomass and protect size classes most heavily targeted, while still offering an opportunity to harvest spotted seatrout. No changes were made as a result of these comments.

Thirteen commenters opposed adoption that stated the slot should include larger fish. The department disagrees and reiterates that the slot limit was selected to accelerate recovery of the fishery via protection of spawning stock biomass and heavily targeted size classes. The department's intent is to increase the numbers of spawners and recruitment by protecting more fish from harvest for the next two spawning seasons. No changes were made as a result of the comments.

Eighty-eight commenters specifically opposed adoption of the proposed three-fish bag limit. The department disagrees with the comments and responds that the rule as adopted represents an acceptable balance between the public's desire to harvest spotted seatrout and the department's statutory duty to ensure the sustainability of spotted seatrout populations. The purpose of the bag limit reduction is to accelerate the fishery's recovery. The rule will reduce harvest of spawning-capable fish for two

full spawning seasons, allowing for increased recruitment. No changes were made as a result of the comments.

Sixty-eight commenters opposed adoption and stated that the data used to inform the proposal, specifically the spring gill net catch rates, are wrong or untrustworthy. Commenters cited anecdotal observations and personal fishing experiences as evidence of abundance, attributed low catch rates to low salinities, or otherwise expressed general distrust of department data. The department disagrees with the comments and responds that the data used to guide the department's management decisions are fishery-independent data collected according to acknowledged and scientifically validated protocols. Gill net catch data are invaluable, as they provide a relative measure of spotted seatrout abundance. These data are analyzed by the department in addition to other data, such as environmental factors and angler behavior, and management decisions are formulated accordingly. Numerous peer-reviewed studies, management decisions, and reports have been based on these same data. Personal fishing experiences are not consistent with scientific method or rigor and are in no way equivalent to or substitutes for the spatial or temporal extent of the spring gill nets surveys conducted by the department, nor are they controlled by a sampling design. Additionally, the department disagrees that freshwater inflow is the only factor affecting the distribution of spotted seatrout, and, in any case, the inflow data are not in conflict with the management goal. No changes were made as a result of the comments.

Sixty-four commenters opposed adoption and stated that the proposed rule does not go far enough and that more restrictive harvest measures are necessary. The department disagrees with the comments and responds that the rule as adopted is believed to be an acceptable balance between the department's desire to protect the fishery and the public's desire to harvest spotted seatrout. The department is charged with both sustainable fishery management and providing for the public enjoyment of the resource. The new harvest rule will protect more spawning-capable fish from harvest for the next two full spawning seasons, which is expected to increase recruitment. No changes were made as a result of the comments.

Sixty-four commenters opposed adoption and stated that additional limitations should be imposed on guides and commercial anglers. The department disagrees with the comments and responds that the rules as adopted apply equally to all anglers whether they are on a guided fishing trip or not. The department also notes that guides are prohibited from personally retaining fish caught during a guided trip. A small subset of the comments stated that the department should limit commercial anglers. The department responds that if the commenters are referring to fishing guides, the previous department response is applicable; otherwise, the department responds that there is no commercial fishery for spotted seatrout. No changes were made as a result of the comments.

Sixty-one commenters opposed adoption and stated that despite the inclusion of a date certain for expiration of the rule's effectiveness the department will make the rule permanent. The department disagrees with the comments and responds that the two-year window is a good-faith calculation, based on recovery rates observed from prior freeze events and a thorough evaluation of the freeze impact on catch rates and spotted seatrout abundance, as to how long the temporary harvest restrictions should remain in place in order to recover the fishery to the extent that the temporary rule is no longer necessary. The department will continue to monitor the resource and determine what management actions, if any, are necessary. No changes were made as a result of the comments.

Forty-nine commenters opposed adoption and stated that regulations are not needed to recover from a freeze event. The department disagrees and responds that the department has a statutory duty to protect and conserve fisheries resources. Given the magnitude of spotted seatrout mortality during the fish kill assessment and reduced catch rates from spring gill net sampling conducted after the freeze, a temporary reduction in harvest will accelerate the fishery's recovery. No changes were made as a result of the comments.

Thirty-six commenters opposed adoption and stated the rule would make angling for seatrout not worth the time, expense, or effort. The department disagrees with the comment and responds that the three-fish bag limit and 17 to 23-inch slot limit for spotted seatrout is necessary to ensure the sustainability of the fishery and provides a balance between an accelerated recovery and allowing for fishing opportunity and harvest. The department also responds that there are many other species of fish which are legal to harvest in addition to spotted seatrout. No changes were made as a result of the comments.

Fifty-one commenters opposed adoption and stated either that the geographical boundary of the rule's applicability should be different or that the rule should apply to the entire Texas coast. The department disagrees with the comments and responds that the rule as proposed specifically targets the areas most impacted by the freeze. The upper boundary at Farm to Market Road 457 in Matagorda County was chosen because it separates the ecosystems that were more impacted by the freeze event and therefore in need of more conservative management (Matagorda Bay southward) from those that the department considers to be able to sustain more liberal harvest pressure (Galveston Bay northward) and because it is convenient for purposes of compliance and enforcement. The bays included in the rule showed signs of seatrout population decline that were not seen in the bays of the upper coast. No changes were made as a result of the comments.

Thirty-four commenters opposed adoption and stated either that the sale of croaker should be prohibited or that croaker should be designated as a game fish. The department disagrees with the comments and responds that although croaker (and other species like pinfish and pigfish) is effective bait, department data indicate that more seatrout are caught on live shrimp than any other bait. Department data indicate that, on average, guided trips using live croaker catch trout more than other baits, but private fishing trips using live croaker catch trout at the same rate as other baits. Additionally, department data do not indicate that croaker populations have been adversely affected by their use as bait; therefore, classifying croaker as a game fish would not provide any benefit, either to the species or any user group. No changes were made as a result of the comments.

Thirty-three commenters opposed adoption and stated that the negative economic impacts from the reduced harvest are too large to justify the rule, or that the department did not properly consider the economic impact. The department disagrees and responds that, as explained in the preamble of the proposed rule, the rule regulates recreational angling by individual licensees and there are no direct negative economic impacts to any person required to comply with the rule. No changes were made as a result of the comments.

Twenty-nine commenters opposed adoption and stated that the department should create a tag that allows retention of oversize fish. The department disagrees with the comments and responds that the intent of the rule is to recover the fishery as quickly as possible while still allowing for reasonable angling opportunity and that allowing the retention of oversize fish would frustrate the point of the rule, which is to protect as many spawning-age fish as possible. No changes were made as a result of the comments.

Twenty-two commenters opposed adoption and stated that the rule's "sunset" provision should be modified or eliminated. The department disagrees with the comments and responds that the sunset provision is designed to clearly signal the department's intent that the rule be temporary. No changes were made as a result of these comments.

Sixteen commenters opposed adoption and stated that improving the habitat quality for seatrout, whether by restoration or environmental regulation, is more important for recovery of the fishery than reduction of harvest. The department disagrees and responds that although there are a variety of long-term factors affecting all coastal resources, in this case the sudden, significant negative impacts to seatrout populations caused by the severe freeze event necessitate a swift reaction to stabilize and restore spawning biomass, which simply cannot be achieved in the short-term via habitat improvement or environmental regulation. The department also notes that various factors beyond the control of the department at the current time (budgetary constraints, jurisdictional conflicts, regulatory authority) prevent the department from engaging in the suggested activities at the scale necessary to reverse long-term trends. No changes were made as a result of these comments.

Sixteen commenters opposed adoption and stated that predation on seatrout by other marine animals contributes to population declines and should be addressed. The department disagrees with the comments and responds that predation occurs in any natural system and there is no data to suggest that it is a major factor affecting spotted seatrout populations. No changes were made as a result of the comments.

Ten commenters opposed adoption and stated concern that the rule would shift fishing pressure to trout populations on the upper coast. The department disagrees with the comments and responds that while it is certainly possible that anglers may choose to fish in waters where the bag limit for seatrout is higher, it is highly unlikely that such a shift would occur at a magnitude that would result in a measurable effect on northern seatrout populations. The department also notes that no significant shifts in pressure were observed during the period of effectiveness of the emergency rule and that it will continue to monitor fishing pressure along the northern coast to determine if additional changes are warranted. No changes were made as a result of the comments.

Ten commenters opposed adoption and stated that better or different data analyses are needed to justify the rule change. The department disagrees with the comments and responds that changes in relative abundance were evaluated in the context of environmental conditions and interannual variability. No changes were made as a result of the comments.

Nine commenters opposed adoption and stated that extending the applicability of the rule to the Gulf of Mexico is unnecessary. The department disagrees with the comments and responds that the seatrout in the Gulf of Mexico and those in the bays are the same population. No changes were made as a result of these comments.

Eight commenters opposed adoption and stated that fishing tournaments should be regulated to protect seatrout populations. The department disagrees with the comments and responds that tournament participants are licensed recreational anglers who must comply with size and bag limits that have been established on the basis of harvest and population data for sustainability; thus, the presence or absence of tournaments is immaterial. No changes were made as a result of these comments.

Six commenters opposed adoption and stated that better enforcement is needed on current seatrout regulations to protect the population. The department disagrees with the comments and responds that based on creel surveys, compliance with current spotted seatrout bag and size limits is high. Additionally, there is no evidence to suggest that unlawful take is a factor in current population status. No changes were made as a result of these comments.

Three commenters opposed adoption and stated that there should be more restrictive harvest regulations for non-resident anglers. The department disagrees with the comments and responds that there is no evidence to suggest that harvest impacts of non-resident anglers are a contributory factor in current population trends. The department also notes that differential harvest regulations for resident and non-resident licensees would be difficult to enforce. Finally, the department notes that non-resident anglers pay higher license fees than residents, which helps to fund resource conservation. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that department gill net surveys should be discontinued because they kill large numbers of seatrout. The department disagrees with the comment and responds that survey mortality from gill nets is an infinitesimally small portion of the total population and that data collection is a necessary tool for fishery management. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that treble hooks should be banned and/or unspecified gear restrictions be implemented. The department disagrees with the comments and responds that the literature suggests that hooking location and angler skill level are significant predictors of post-release survival, but that gear type does not appear to be related to unintentional release mortality. No changes were made as a result of the comments.

One commenter opposed adoption and stated that public hearings are unnecessary. The department disagrees and responds that public hearings are a method used by the department to ensure that the regulated community is informed about possible department management actions and the reasons for them, in addition to offering a valuable opportunity for the department to listen to the concerns of the regulated community. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will ensure that only the wealthy will fish. The department disagrees with the comment and responds that fisheries management decisions are driven solely by biological factors. No changes were made as a result of the comment.

One commenter opposed adoption and stated that limiting the number of boats is a more effective way to protect the spotted seatrout fishery. The department disagrees with the comment

and responds that there is no effective, efficient, or economically viable way to differentiate boats being used to catch seatrout from boats used for all other purposes. No changes were made as a result of the comment.

The department received 1,052 comments supporting adoption of the proposed rule.

The new rule is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. BROADBAND DEVELOPMENT SUBCHAPTER A. BROADBAND POLE REPLACEMENT PROGRAM

34 TAC §§16.1 - 16.17

The Comptroller of Public Accounts adopts new §16.1, concerning definitions, §16.2, concerning grant funds distribution methods, §16.3, concerning notice and applications, §16.4, concerning eligible applicants, §16.5, concerning authorized officials, §16.6, concerning federal funding, §16.7, concerning preferences, §16.8, concerning reimbursement awards, §16.9, concerning payment, §16.10, concerning requirements, §16.11, concerning reports, §16.12, concerning noncompliance, §16.13, concerning grant reduction or termination, §16.14, concerning records retention, §16.15, concerning request for records and audit, §16.16, concerning conflict with laws, rules, regulations, or guidance, and §16.17, concerning references, with changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9229). The rules will be republished. The new sections will be located in new Chapter 16 (Broadband Development), Subchapter A (Broadband Pole Replacement Program).

The new sections comply with House Bill 1505, §1 and §4, 87th Legislature, 2021, R.S., which establish the broadband pole replacement fund and the Texas broadband pole replacement program, and require the comptroller to prescribe rules for the program.

Section 16.1 provides definitions.

Section 16.2 describes methods that the Broadband Development Office (office) may use to distribute grant funds.

Section 16.3 sets forth notice and application requirements.

Section 16.4 provides grant eligibility requirements.

Section 16.5 sets forth requirements for designating an applicant's authorized official.

Section 16.6 authorizes the office to establish eligibility and program requirements and preferences, and make award decisions, based upon any criteria required by federal law, regulation, or guidance applicable to the type of funding used to make a reimbursement award, if federal funding is used to make the reimbursement award.

Section 16.7 provides preferences that the office may use to make reimbursement award decisions.

Section 16.8 describes reimbursement award requirements.

Section 16.9 sets forth the time period within which a reimbursement award must be paid to a grantee after a notice of a reimbursement award is issued.

Section 16.10 sets forth requirements for the administration and use of a reimbursement award.

Section 16.11 provides requirements for the submission of reports and documentation by a grantee.

Section 16.12 describes the process for addressing a grantee's noncompliance with any term or condition of a reimbursement award or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, and the remedies that could result from such noncompliance.

Section 16.13 sets forth requirements for reducing or terminating a reimbursement award.

Section 16.14 provides records retention requirements.

Section 16.15 describes requirements for providing records, documentation, or other information required by the office and authorizes the office, upon reasonable notice, to audit the activities of a grantee as necessary to ensure that grant funds are used for the intended purpose of the reimbursement award and that the grantee has complied with the terms, conditions, and requirements of the reimbursement award.

Section 16.16 requires that a state or federal law, rule, regulation, or guidance applicable to the type of funding used to make a reimbursement award prevails over this subchapter to the extent necessary to avoid a conflict between the relevant law, rule, regulation, or guidance and this subchapter.

Section 16.17 identifies the legislation that enacted the statutory provisions that apply to these rules so that it is clear which provisions apply because the legislature recently enacted two sets of statutory provisions that have the same numbers and are included in subchapters that have the same title ("Subchapter R").

The comptroller received the following comments regarding adoption of the new sections:

Lumen and Texas Cable Association (TCA) recommend adding a petition/challenge process for broadband providers. Lumen suggests adding a provision to §16.8(b) that would allow a broadband provider to petition the office "to show that it is providing broadband service in an area where an application for a grant has been made" to "ensure that the limited funds in the pole replacement fund are used for truly unserved areas." TCA suggests that "{u}nserved areas should be designated based on the most reliable broadband deployment data, with a Challenge process for existing providers." In addition, TCA contends that "proposed awards should be published, and existing broadband providers should be afforded a reasonable opportunity to demonstrate that: (1) the provider already offers Internet service capable of achieving a download speed of 25 megabits per second or faster; and an upload speed of 3 megabits per second or faster in the area to be supported by the award, or (2) that the area is the subject of a federal or state grant to deploy broadband service, the conditions of which limit the availability of a grant to unserved areas."

The comptroller declines to revise the language in §16.8(b) in response to the comments described in the preceding paragraph. Under §403.503(f), Government Code, a pole must be located in an unserved area based on Federal Communication Commission data at the time of the request or must be located in an area that is the subject of a federal or state grant to deploy broadband service, the conditions of which limit the availability of a grant to unserved areas. This statute does not provide for alternate methods of determining an unserved area. Additionally, §403.503(h), Government Code, requires a reimbursement award to be issued not later than the 60th day after an application is received. Administratively, providing for a petition/challenge process is not feasible.

Lumen suggests changing "may" to "shall" in §16.3(a) and (b) to require the office "to publish a notice of funding opportunity in specific locations," and suggests requiring the notice to "have specific requirements, so that the public and all interested parties can easily access the same information about each funding opportunity; thereby placing all providers on level footing."

In response to the comments described in the preceding paragraph, the comptroller changes "may" to "shall" in §16.3(a) to require the office to publish a notice of funding availability (NOFA) because the comptroller recognizes the importance of issuing a NOFA to ensure that interested parties have information about each funding opportunity. However, the comptroller declines to revise the language in §16.3(b) in response to the comment described in the preceding paragraph because §16.3(b) provides potential options of information that may or may not need to be included in a NOFA.

SA Digital Connects supports the focus of §16.2, concerning grant funds distribution method, on the "deployment of broadband services to the greatest unserved areas, recognizing that unserved areas exist in both unincorporated and urban geographic locations." It also supports all recommendations presented in §16.7, concerning preferences, with particular emphasis on paragraphs (2) - (5) and (7) - (14).

No changes are necessary in response to the comments described in the preceding paragraph. The proposed rules will permit the office to focus on deploying broadband to the greatest number of unserved areas in an expeditious, equitable, and efficient manner within the scope of state and federal law.

AT&T Texas and TCA recommend removing the preference in §16.7(5) regarding the "involvement of broadband networks owned, operated by, or affiliated with local governments, non-profits, or cooperatives." AT&T Texas contends that, while the other preferences listed in §16.7 "seem reasonable, . . . favor should not be given to a certain subset of broadband providers, particularly not government-owned networks, which have historically been unsuccessful and ultimately create an additional burden on local taxpayers." TCA contends that, although the federal guidance encourages states to give preference to these entities, it is optional but not required, and is "of questionable value to the success of the Program."

The comptroller declines to remove the language in §16.7(5) in response to the comments described in the preceding paragraph. The involvement of these entities is encouraged by the U.S. Department of the Treasury, which will need to approve Texas's grant plans before the state will receive funding. Treasury's Guidance for the Coronavirus Capital Projects Fund (CCPF) states that Treasury "encourages Recipients to prioritize Projects that involve broadband networks owned, operated by or affiliated with local governments, non-profits, and co-operatives - providers with less pressure to generate profits and with a commitment to serving entire communities." To the degree that the federal guidance does not materially detract from the performance of the program or the underlying state statute, the office believes it is in the state's best interest to incorporate them into the program.

Texas Rural Broadband Coalition, Powell Law Group, LLP, Texas Conservative Coalition Research Institute (TCCRI), Connect The Future Texas (CTF Texas), Charter Communications (Charter), TCA, and Allan B. Ritter, Chairman of the Board, Ritter Lumber Company, recommend removing the requirements in §16.3(b)(2), concerning minimum and maximum caps on applicants, and the requirements in §16.3(b)(3), concerning geographic distributions, because they will: serve no purpose; slow down the distribution of program funds; impede the program from effectively promoting broadband development projects; create deployment barriers in unserved areas; inadvertently disadvantage eligible communities; and run counter to the program goals. TCA contends that the per applicant maximum caps in §16.3(b)(2) are not required by the federal guidance; will limit service to later-in-time or otherwise less competent applicants; and will limit the ability of applicants who are best positioned to provide service to obtain grant funding if they have reached their maximum cap. TCA also contends that the geographic location requirements in §16.3(b)(3) are already provided for in the program's state statutory eligibility requirements.

In response to TCA's comments described in the preceding paragraph, the comptroller changes "applicant" to "application" in §16.3(b)(2) regarding minimum and maximum caps in order to make this provision consistent with the intent of this section - to allow a NOFA to include a limit per application, not per applicant. In addition, the comptroller declines to revise the language in §16.3(b)(3) relating to the geographic distribution of funds. This provision is necessary to ensure that Texans from across the state will have the opportunity to benefit from this program. Many individuals and communities from around the state lack affordable, reliable, high-quality broadband internet that is necessary for full participation in school, healthcare, employment, social services, government programs and civic life. The needs

of Texans are widespread and are not limited to a single region or area. The office expects that geographic location may be one of a number of criteria used to ensure that funds are deployed in an expeditious, equitable, and efficient manner within the scope of state and federal law.

Connected Nation Texas (CN Texas) contends that "{t}hough it is important to assess the number of households or businesses that would either become served or receive affordable service with the award of public dollars, it is important to note that poles may need to be replaced several miles before a network reaches those target locations"; "{t}herefore, it may be difficult to quantify the direct effect of pole replacement in such situations."

No changes are necessary in response to the comment described in the preceding paragraph.

TCA and CN Texas address middle-mile projects. TCA recommends removing the language in §16.7(8) regarding "middle-mile projects that have commitments in place to support new or improved last-mile service" because the Texas Legislature "has chosen to create a program more narrowly focused on last-mile connections only" and because this "category is not pertinent {to} the broadband pole replacement fund." CN Texas recommends "that the program provide flexibility in supporting the extension of middle-mile infrastructure to unserved areas as well." It states that "{w}hile the pole replacement program is intended to support new last-mile service delivery, it is often the case that middle-mile infrastructure needs to be extended in order to make last-mile service delivery possible." CN Texas also states that while state law requires poles qualifying for reimbursement to be located in unserved areas, "there are likely scenarios in which there is a need to replace a pole in an area that is technically served but is essential in order to deliver service to an unserved area."

In response to TCA's comment described in the preceding paragraph, the comptroller removes proposed §16.7(8) regarding middle-mile projects and renumbers the remaining paragraphs accordingly. Section 403.503(d), Government Code, expressly limits reimbursement to poles in unserved areas by stating that "{a} pole owner or a provider of qualifying broadband service who pays or incurs the costs of removing and replacing an existing pole in an unserved area for the purpose of accommodating the attachment of an eligible broadband facility may apply to the comptroller for a reimbursement award . . . ." Regarding CN Texas's comment, the office will maintain flexible policies to deploying broadband to the greatest number of unserved areas in an expeditious, equitable, and efficient manner within the scope of state and federal law.

CTF Texas, Charter, TCCRI, and TCA recommend allocating program funds on a rolling basis, rather than in scheduled distributions or tranches, to minimize delays and distribute funds to eligible areas as efficiently as possible. TCA contends that nothing in the federal guidance requires the funds to be disbursed in tranches for less than the amount available in the pole replacement fund. TCA also recommends paying eligible applicants as their applications are reviewed, or, alternatively, paying reimbursements at regular intervals.

No changes are necessary in response to the comments described in the preceding paragraph. The proposed rules allow flexibility in grant application and approval, and are broad enough to include the methods described in this comment.

CTF Texas, Charter, and TCCRI recommend that the office take advantage of the flexibility provided by the federal guidance "to prioritize the Fund's pole replacement goals" and to "focus on those criteria that are consistent with a pole replacement fund and that will speed broadband deployment."

No changes are necessary in response to the comments described in the preceding paragraph. The office seeks to deploy the program in an expeditious, equitable, and efficient manner within the scope of state and federal law.

Texas Electrical Cooperatives, Inc. (TEC) recommends removing §16.3(b)(9), which allows a NOFA to include "pricing data related to the broadband service to be enabled through pole replacement." TEC contends that pricing data is not appropriate for inclusion in a NOFA because the office "will not set or regulate the rate or pricing of broadband service"; "{t}he ultimate pricing of broadband service is determined by the entity providing service"; and "it is unclear . . . how this information would be gathered by the Office for inclusion in the NOFA or how it would be used by applicants."

In response to the comment described in the preceding paragraph, the comptroller removes proposed §16.3(b)(9) regarding pricing data and renumbers the remaining paragraph accordingly.

TEC recommends removing the portion of §16.3(e) that allows the office to require applicants to submit preliminary information prior to submitting a complete application. Although TEC agrees that "it would be useful for applicants to know whether they are eligible prior to engaging in a lengthy application process," it contends that "it is unclear how knowledge of other potential applicants would inform the decision of a broadband provider to proceed with an application." TEC states that "{p}rojects should stand on their own merit and providers should not be deterred or dissuaded by the potential for others to also apply for pole replacement awards." It also states that this change would encourage more applicants to participate in the grant program.

The comptroller declines to revise the language in §16.3(e) in response to the comment described in the preceding paragraph. This provision will assist the office to expediently discharge its statutory duty to administer the program by providing the office with the ability to estimate future administrative and funding needs, and to assist applicants in the application process.

TCA recommends requiring "eligible applicants to offer (or to enable through the pole replacement project) retail broadband service capable of conforming to CCPF speed requirements and other technical capabilities" because, although state law makes projects eligible for reimbursement under the program if they provide service at 25/3 Mbps, the "federal guidance contains technical requirements for broadband networks supported by CCPF that are considerably more demanding and require faster upload and download speeds."

The comptroller declines to revise the language in the proposed rules in response to the comment described in the preceding paragraph. Sections 403.503(a)(3) and (4), Government Code, specify that 25/3 Mbps is the determining threshold. The comptroller does not have the authority to promulgate rules with requirements that conflict with state statute. The proposed rules will allow the agency to approve funding based on the requirements of CCPF, the federal funding source, without violating the state statute.

TCA suggests requiring "that applicants receiving broadband support from another source, such as a federal or municipal grant program, to demonstrate (through accounting records) that the funds from the other program were used for other

expenses, and that reimbursement from the Texas Broadband Pole Replacement Fund will not result in double recovery."

In response to the comment described in the preceding paragraph, the comptroller adds §16.10(d), which states: "Grant funds shall not be used for costs that will be reimbursed by any other federal or state funding source. The office may require an applicant/grantee to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the pole replacement program."

TCA recommends that the comptroller "look to applicants' demonstrated commitments to hiring workers or workers from historically disadvantaged communities." TCA states that "{p}hrasing the requirement as one to 'prioritize' workers from these communities might be misinterpreted as requiring applicants to adopt explicit hiring quotas, which are neither required by federal guidance for the CCPF nor necessary to demonstrate such a commitment."

The comptroller declines to revise the language in the proposed rules in response to the comment described in the preceding paragraph. Although CCPF guidance states that applicants should prioritize these workforce related issues, the office recognizes that the program will be utilized across the state, and workforce issues may not be consistent. The proposed rules are intended to ensure that the program is able to be utilized as widely as possible.

TCA recommends "limit{ing} eligibility to reimbursement from the Fund as needed for the Program to comply with federal funding conditions, and then pay out eligible claims for reimbursement to the greatest extent possible." TCA states that, "{t}o the extent prioritization of otherwise-eligible applications is necessary at all, it should be limited to some period after the Fund has already been substantially depleted, e.g, in the final quarter before the funds have been awarded."

The comptroller declines to revise the language in the proposed rules in response to the comment described in the preceding paragraph. The proposed rules allow a range of reimbursement methods that are broad enough to include the method suggested.

TCA recommends adding several priorities to §16.7. Specifically, it recommends: prioritizing "applicants who are paying a larger share of the total network deployment costs with private funds relative to any support from broadband grants or other public sources" to "best leverage the Fund's resources to reach a greater number of unserved homes and small businesses"; prioritizing reimbursement to applicants who will not own the pole being replaced because they will obtain no benefit from the pole replacement expense, so that the fund can more effectively remove barriers to broadband deployment; and "{p}rioritizing applicants with a proven track record, who can demonstrate their technical and managerial qualification through the successful competition of past deployment projects and provision of service to existing broadband customers" to "help ensure the successful completion of deployment projects supported by the Fund."

The comptroller declines to revise the language in the proposed rules in response to the comments described in the preceding paragraph. The proposed rules allow a range of prioritization that is broad enough to include the suggested priorities.

TCA recommends removing §16.7(13) regarding "community involvement in the pole replacement planning process" from the list of possible preferences because "this criterion is not applicable to the types of expenses supported by the Fund."

The comptroller declines to remove the language in §16.7(13) in response to the comment described in the preceding paragraph. Community involvement is encouraged by the U.S. Department of the Treasury, which will need to approve Texas's grant plans before the state will receive funding. CCPF guidance states that "{w}hen determining the communities to be served by Broadband Infrastructure Projects, Recipients may choose to consider any available data including but not limited to . . . interviews with community members and business owners, {and} reports from community organizations . . . ." To the degree that such federal guidance does not materially detract from the performance of the program or the underlying state statute, the office believes it is in the state's best interest to incorporate them into the program.

TCA suggests adding a provision to §16.15, regarding request for records and audit, that would state that "{i}f the office engages a private contractor to act as the designee for the purposes of this section, no contract for those purposes may include remuneration based on an amount deemed noncompliant under this section."

The comptroller declines to revise the language in the proposed rules in response to the comment described in the preceding paragraph. If the office choses to enter into a contract for any services, it will adhere to all applicable procurement and contracting requirements.

TCA recommends making certain additional simplifying and clarifying edits to the rules.

The comptroller declines to make changes to the rules in response to the comment described in the preceding paragraph. After making the changes described in this preamble, no additional changes are necessary.

The comments submitted by TCA, as described above, are supported by CTF Texas and Charter.

The new sections are adopted under Government Code, §403.503(c), as added by 87th Legislature, 2021, R.S., Chapter 659 (House Bill 1505), §1 and §4, which require the comptroller to prescribe rules for the Texas broadband pole replacement program.

The new sections implement Government Code, Subchapter R, as added by 87th Legislature, 2021, R.S., Chapter 659 (House Bill 1505), §1, concerning infrastructure and broadband funding.

§16.1. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person that has submitted an application for a reimbursement award under this subchapter.

(2) CCPF--The Coronavirus Capital Projects Fund (42 U.S.C. §804), established by §604 of the Social Security Act, as added by §9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2.

(3) Eligible broadband facility--Has the meaning assigned by Government Code, §403.503(a)(1).

(4) Eligible pole replacement cost--Has the meaning assigned by Government Code, §403.503(a)(2).

(5) Grantee--An applicant that receives a reimbursement award under this subchapter.

(6) Grant funds--Monies in the pole replacement fund.

(7) NOFA--Notice of Funding Availability.

(8) Office--The Broadband Development Office established within the comptroller's office under Government Code, Chapter 490I.

(9) Pole--Has the meaning assigned by Government Code, §403.503(a)(5).

(10) Pole owner--Has the meaning assigned by Government Code, §403.503(a)(6).

(11) Pole replacement fund--Has the meaning assigned by Government Code, §403.501(1).

(12) Pole replacement program--Has the meaning assigned by Government Code, §403.501(2).

(13) Qualifying broadband service--Has the meaning assigned by Government Code, §403.503(a)(3).

(14) Unserved area--Has the meaning assigned by Government Code, §403.503(a)(4).

§16.2. Grant Funds Distribution Method.

To ensure that grant funds are used to maximize the deployment of broadband services to the greatest number of unserved areas, the office may:

(1) distribute the funds by geographic location; and

(2) issue a NOFA for less than the amount available in the pole replacement fund.

§16.3. Notice and Applications.

(a) The office shall, as necessary, publish a NOFA in the *Texas Register* or the *Electronic Business Daily,* and on the comptroller's website.

(b) The notice may include:

(1) the total amount of grant funds available for reimbursement awards;

(2) the minimum and maximum amount of grant funds available for each application;

(3) limitations on the geographic distribution of grant funds;

(4) eligibility requirements;

(5) application requirements;

(6) reimbursement award and evaluation criteria;

(7) the date by which applications must be submitted to the office;

(8) the anticipated date of reimbursement awards; and

(9) any other information necessary for awarding the reimbursement as determined by the office.

(c) All applications for a reimbursement award submitted under this subchapter must comply with the requirements of Government Code, §403.503(g), and any requirements contained in a NOFA published by the office.

(d) Applicants must apply for a reimbursement award using the procedures, forms, and certifications prescribed by the office.

(e) The office may require applicants to submit preliminary information to the office prior to submitting a completed application for a reimbursement award to enable the office to determine each applicant's eligibility to apply for a reimbursement award and to compile aggregate information that applicants may use in determining whether to complete the application process.

(f) During the review of an application, an applicant may be instructed to submit to the office additional information necessary to complete the review. Such requests for information do not serve as notice that the office intends to fund an application.

§16.4. Eligible Applicants.

An applicant is eligible to apply to the office for a reimbursement award under this subchapter if the applicant:

(1) is a pole owner or a provider of qualifying broadband service; and

(2) pays or incurs eligible pole replacement costs of removing and replacing an existing pole in an unserved area for the purpose of accommodating the attachment of an eligible broadband facility.

§16.5. Authorized Officials.

(a) Each applicant/grantee must designate an authorized official to act on its behalf and the applicant/grantee must provide the office with:

(1) the authorized official's name, title, mailing address, telephone number, and email address; and

(2) the applicant's/grantee's physical address.

(b) An applicant/grantee shall notify the office as soon as practicable of any change in the information provided by it under subsection (a) of this section.

§16.6. Federal Funding.

If CCPF or any other federal funding is used to make a reimbursement award, the office may establish eligibility and program requirements and preferences, and make award decisions, based upon any criteria required by federal law, regulation, or guidance applicable to the type of funding used to make the reimbursement award.

§16.7. Preferences.

The office may give preference to applications and make awards decisions based upon the following factors:

(1) cost effectiveness and overall impact;

(2) geographic location;

(3) the latest state or federal broadband data;

(4) the number of households or businesses that will be served due to the reimbursement being requested;

(5) involvement of broadband networks owned, operated by, or affiliated with local governments, non-profits, or cooperatives;

(6) completion of the pole replacement and payment of all costs of the pole replacement;

(7) investments in fiber-optic infrastructure;

(8) affordability of broadband services in a target area;

(9) participation in federal programs that provide low-income consumers with subsidies for broadband internet access services;

(10) documentation of existing broadband internet service performance;

(11) download speeds and upload speeds, including user speed tests resulting from completion of the pole replacement;

(12) community involvement in the pole replacement planning process, including feedback from community members, community organizations, and business owners;

(13) business practices and workforce information, including the following:

(A) the applicant's workforce meets high safety and training standards;

(B) the applicant prioritizes the hiring of local workers or workers from historically disadvantaged communities;

(C) the applicant ensures that its contractors and subcontractors meet high labor standards; and

(D) the applicant has no recent violations of federal and state labor and employment laws; and

(14) any additional factors listed in a NOFA published by the office.

§16.8. Reimbursement Awards.

(a) The office must provide a notice of a reimbursement award or a notice of denial to an applicant, in writing, not later than 60 calendar days after the date that the office receives a completed application from the applicant. An application will not be considered complete for purposes of this section unless an applicant has provided all the information necessary for the office to review the application, including any additional information requested by the office to complete the review.

(b) All grant funding decisions made by the office are final and are not subject to appeal.

(c) The approval of a reimbursement award shall not obligate the office to make any additional, supplemental, or other reimbursement award.

§16.9. Payment.

A reimbursement award must be paid to a grantee not later than 30 calendar days after the date the office issues a notice of a reimbursement award under §16.8(a) of this subchapter.

§16.10. Requirements.

(a) The administration and use of a reimbursement award are subject to:

(1) the terms and conditions of the reimbursement award;

(2) the requirements of Government Code, Chapter 403, Subchapter R; and

(3) any other state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award.

(b) Grant funds may be used only for the purpose of supporting the pole replacement program, including the costs of program administration and operation.

(c) A grantee is the entity legally and financially responsible for compliance with state and federal laws, rules, regulations, and guidance applicable to the reimbursement award.

(d) Grant funds shall not be used for costs that will be reimbursed by any other federal or state funding source. The office may require an applicant/grantee to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the pole replacement program.

§16.11. Reports.

(a) A grantee shall submit reports and documentation as may be required by the office to substantiate that grant funds awarded were used for the intended purpose of the reimbursement award and that the grantee has complied with the terms, conditions, and requirements set forth in §16.10 of this subchapter.

(b) A grantee must submit reports and documentation to the office in the office-prescribed format no later than the office-designated deadlines for their submission.

§16.12. Noncompliance.

(a) If the office has reason to believe that a grantee has violated any term or condition of a reimbursement award or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, the office shall provide written notice of the allegations to the grantee and provide the grantee with an opportunity to respond to the allegations.

(b) If the office finds on substantial evidence that a grantee has materially violated the requirements of Government Code, §403.503, with respect to reimbursements or portions of reimbursements, the office may direct the grantee to refund the reimbursement or a portion of the reimbursement with interest at the applicable federal funds rate as specified by Business and Commerce Code, §4A.506(b).

(c) If the office finds that a grantee has failed to comply with any term or condition of a reimbursement award, or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, other than the requirements described in subsection (b) of this section, the office may:

(1) direct the grantee to refund the reimbursement award or a portion of the reimbursement award;

(2) withhold reimbursement award amounts to a grantee under this subchapter pending correction of the deficiency;

(3) disallow all or part of the cost of the activity or action that is not in compliance;

(4) terminate the reimbursement award in whole or in part;

(5) prohibit the grantee from being eligible for future reimbursement awards under the pole replacement program; or

(6) exercise any other legal remedies available at law.

§16.13. Grant Reduction or Termination.

(a) If a grantee seeks to terminate any approved reimbursement award, it must notify the office immediately.

(b) The office may reduce or terminate any reimbursement award when circumstances require reduction or termination, including when:

(1) a grantee is found to be noncompliant under §16.12(c) of this subchapter;

(2) the grantee and the office agree to the reduction or termination of a reimbursement award;

(3) grant funds are no longer available to the office; or

(4) conditions exist that make it unlikely that objectives of the reimbursement award will be accomplished.

(c) If a reimbursement award is reduced or terminated by the office, the office shall notify the grantee in writing.

§16.14. Records Retention.

(a) A grantee must maintain all financial records, supporting documents, and all other records pertinent to the reimbursement award for at least four years following the submission of a final report.

(b) If any litigation, claim, or audit is started, or any open records request is received, before the expiration of the four-year records retention period, a grantee must retain the records related to the

litigation, claim, audit, or open records request until the completion of the litigation, claim, audit, or open records request and resolution of all issues which arise from it or until the end of the regular four-year records retention period, whichever is later.

(c) A grantee may retain records in an electronic format.

§16.15. Request for Records and Audit.

(a) A grantee shall, upon written request from the office or its designee, provide any records, documentation, or other information required by the office to verify that the grantee has complied with the terms, conditions, and requirements set forth in §16.10 of this subchapter. The office or its designee may make such a written request at any time before the end of the four-year records retention period set forth in §16.14 of this subchapter. If the office or its designee requests records, documentation, or other information from the grantee in writing, the grantee must submit the requested information within 30 calendar days.

(b) The office or its designee may, before the end of the four-year records retention period set forth in §16.14 of this subchapter, audit a grantee to ensure that grant funds are used for the intended purpose of the reimbursement award and that the grantee has complied with the terms, conditions, and requirements set forth in §16.10 of this subchapter.

§16.16. Conflict with Laws, Rules, Regulations, or Guidance.

If a state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award conflicts with this subchapter, the state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award prevails over this subchapter to the extent necessary to avoid the conflict.

§16.17. References.

All references in this subchapter to statutory provisions in Government Code, Chapter 403, Subchapter R, refer to the provisions added by 87th Legislature, 2021, R.S., Chapter 659 (House Bill 1505), §1.

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 February 25, 2022.

TRD-202200676
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: March 17, 2022
Proposal publication date: December 31, 2021
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 455. MINIMUM STANDARDS FOR WILDLAND FIRE PROTECTION CERTIFICATION

37 TAC §455.3

The Texas Commission on Fire Protection (commission) adopts amendments to 37 Texas Administrative Code Chapter 455, Minimum Standards For Wildland Fire Protection Certification, concerning §455.3, Minimum Standards for Basic Wildland Fire Protection Certification. The amended section is adopted without changes to the text as published in the December 10, 2021, issue of the *Texas Register* (46 TexReg 8340). The rule will not be republished.

The amended section to rule §455.3 is adopted to approve a request from the Texas A&M Forest Service to add an online hybrid course for Wildland Fire Protection Certification.

The intent is to allow individuals seeking basic wildland fire protection certification to take several courses online in lieu of having to attend an in-person course.

No comments were received from the public regarding the adoption of the amendments.

The amended section is adopted under Texas Government Code, §419.008 which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification.

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 February 22, 2022.

TRD-202200621
Michael Wisko
Executive Director
Texas Commission on Fire Protection
Effective date: March 14, 2022
Proposal publication date: December 10, 2021
For further information, please call: (512) 936-3812

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES

DIVISION 3. EARLY CHILDHOOD INTERVENTION ADVISORY COMMITTEE

40 TAC §§101.501, 101.503, 101.505, 101.507, 101.509, 101.511, 101.513, 101.515

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§101.501, 101.503, 101.505, 101.507,

101.509, 101.511, 101.513, 101.515 in Texas Administrative Code (TAC) Title 40, Part 2, Chapter 101, Subchapter C, Division 3, concerning the Early Childhood Intervention Advisory Committee.

The repeal of §§101.501, 101.503, 101.505, 101.507, 101.509, 101.511, 101.513, 101.515 is adopted without changes to the proposed text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8227). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to move the ECI advisory committee requirements from 40 TAC Chapter 101 to 1 TAC Chapter 351, Subchapter B, Division 1 and format the advisory committee rule so it aligns with other HHSC advisory committee rules.

The repeal of 40 TAC Chapter 101, Subchapter C, Division 3, will remove rules related to ECI from the chapter related to the Department of Assistive and Rehabilitative Services, which was abolished September 1, 2016, and relocate them to 1 TAC Chapter 351, where other HHSC advisory committee rules are located. The new rule was published elsewhere in the December 3, 2021, issue of the *Texas Register.*

COMMENTS

The 31-day comment period ended January 3, 2022.

During this period, HHSC did not receive any comments regarding the proposed repeal.

STATUTORY AUTHORITY

The repeal 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 Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

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 February 25, 2022.

TRD-202200673
Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Effective date: March 17, 2022
Proposal publication date: December 3, 2021
For further information, please call: (512) 438-5429


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

Texas Appraiser Licensing and Certification Board

Title 22, Part 8

The Texas Appraiser Licensing and Certification Board (TALCB) files this notice of intention to review 22 TAC Chapter 153, Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act. This review is undertaken pursuant to Government Code, §2001.039.

During the review process, TALCB may determine whether a specific rule requires amendments to refine TALCB's legal and policy considerations; whether the rules reflect current TALCB procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Any proposed amendments or repeal of a rule or chapter 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 before final adoption or repeal. Final consideration of this rules review is expected at the TALCB meeting in August 2022.

Any questions or comments pertaining to this notice of intention to review should be directed to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov within 30 days of publication.

TRD-202200708
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Filed: February 28, 2022

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Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 279, Contracting to Provide Emergency Response Services

Subchapter A, Introduction

Subchapter B, Contracting Requirements

Subchapter C, Staff Requirements

Subchapter D, Service Delivery

Subchapter E, Claim Payments and Documentation

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist.

Comments on the review of Chapter 279, Contracting to Provide Emergency Response Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=26&pt=1&ch=279

TRD-202200700
Mahan Farman-Farmaian
RCO Director
Texas Health and Human Services Commission
Filed: February 25, 2022

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Adopted Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 229, Accountability System for Educator Preparation Programs, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 229 in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9423).

Relating to the review of 19 TAC Chapter 229, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following is a summary of the public comment received on the proposal and the response.

Comment: One individual commented in support of the proposed rule review, stating that the reasons for adopting the rules in Chapter 229, Accountability System for Educator Preparation Programs, continue to exist.

Response: The SBEC agrees.

This concludes the review of 19 TAC Chapter 229.

TRD-202200748
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: March 1, 2022

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The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 247, Educators' Code of Ethics, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 247 in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9423).

Relating to the review of 19 TAC Chapter 247, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following is a summary of the public comments received on the proposal and the responses.

Comment: One individual commented in support of the rule review of Chapter 247, stating that the reason for adopting Chapter 247, the Educators' Code of Ethics, continue to exist.

Response: The SBEC agrees.

Comment: One individual commented that 19 TAC §247.1(b) should be amended to include people involved in the school environment beyond just "members of the profession." The commenter suggested that the rule language should read "all employees of a school district will treat each other with dignity and respect at all time while at the school, or in the general public." The commenter stated that this language would clarify that certified educators should treat everyone in the school community with respect and dignity, including support staff, parents, and community members.

Response: The SBEC disagrees. This comment is outside the narrow scope of the narrow question raised by the statutorily required rule review of Chapter 247: which is to determine whether the rules in the chapter should continue to exist. The SBEC will consider the comment in future rulemaking on 19 TAC Chapter 247. It is important to note that, beyond the vague policy position in 19 TAC §247.1(b), there are the more focused and enforceable provisions in 19 TAC §247.2 that set out the specific ethical obligations of an educator has to professional colleagues, parents, students, and members of the public at large.

This concludes the review of 19 TAC Chapter 247.

TRD-202200749
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: March 1, 2022

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The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 250, Administration, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 250 in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9423).

Relating to the review of 19 TAC Chapter 250, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. No public comments were received on the proposal.

This concludes the review of 19 TAC Chapter 250.

TRD-202200750
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: March 1, 2022

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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

Texas Water Code and Texas Health and Safety Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Karen Reeves;* Cause No. D-1-GN-21-000384 in the 459th Judicial District Court, Travis County, Texas.

Background: Karen Reeves ("Defendant") owns and operates two public water systems, Pleasant Ridge Addition and Timer Creek Addition (collectively the "Systems"), in Cooke County, Texas. The Systems distribute drinking water to customers on a year-round basis. The Texas Commission on Environmental Quality ("TCEQ") has issued multiple orders for violations at the Systems. After issuing the administrative orders, the TCEQ continued documenting operational and reporting violations at the Systems. Defendant has agreed to sell the Systems to a utility company with sufficient resources to operate and maintain them pending the Public Utility Commission's approval.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award to the State of $18,516.92 in outstanding administrative penalties and fees, $15,000 in civil penalties, and $5,000 in attorney's fees. The Defendant will make an initial payment of $18,516.67 followed by 48 consecutive monthly payments to satisfy this judgment.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment, and written comments on the same, should be directed to Logan Harrell, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Logan.Harrell@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202200666
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 24, 2022

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Texas Water Code and Texas Health and Safety Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Health and Safety Code and the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Motiva Enterprises LLC;* Cause No. D-1-GN-21-006415, in the 98th Judicial District Court, Travis County, Texas.

Background: Defendant Motiva Enterprises LLC owns and operates a petroleum refinery, also known as the Port Arthur Refinery ("Refinery"), located at and about 2555 Savannah Avenue, Port Arthur, Jefferson County, Texas. The State filed a civil enforcement suit on behalf of the Texas Commission on Environmental Quality ("TCEQ"), under the Texas Clean Air Act, the Federal Clean Air Act, the Texas Water Code and related regulations, against Defendant for unauthorized emission of air contaminants at the Refinery in violation of Title V Permits, New Source Review Air Permits, and TCEQ rules. Specifically, unauthorized emissions events occurred on January 6, February 28, March 17, April 26, May 20, and December 20 of 2020; and January 1, March 18, April 21, May 20, and August 28 of 2021.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award to the State of $271,500 in civil penalties and $12,000 in attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Shea Pearson, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email: Shea.Pearson@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202200672
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 25, 2022

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Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. JT Horn and Horn Marketing, Inc.;* Cause No. D-1-GN-21-007214 in the 250th Judicial District Court, Travis County, Texas.

Background: JT Horn owns six properties that previously contained petroleum underground storage tank ("UST") systems. Horn Marketing, Inc. operated the UST systems. JT Horn and Horn Marketing, Inc. ("Defendants") failed to timely remove the UST systems permanently from service after they were no longer in-use. After documenting these violations, the Texas Commission on Environmental Quality ("TCEQ") referred the case for civil enforcement. At this time, the defendants have properly closed three properties, and are currently performing additional remediation activities at the remaining three properties. After negotiation, the parties have agreed to resolve this dispute through the proposed settlement.

Proposed Settlement: The parties propose an Agreed Final Judgment ("Judgment") that provides for an award to the State of $35,000 in civil penalties, and $10,000 in attorney's fees. The defendants will make 36 consecutive monthly payments of $1,250 to satisfy this Judgment. The Judgment also contains a permanent injunction requiring the defendants to continue properly closing the three remaining properties pursuant to the TCEQ's rules and regulatory guidance.

For a complete description of the proposed settlement, the Judgment should be reviewed in its entirety. Requests for copies of the proposed Judgment, and written comments on the same, should be directed to Logan Harrell, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Logan.Harrell@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202200667
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 24, 2022

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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, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/07/22 - 03/13/22 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 03/07/22 - 03/13/22 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009[3] for the period of 03/01/22 - 03/31/22 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 03/01/22 - 03/31/22 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-202200744
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 1, 2022

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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 **April 11, 2022.** 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 **April 11, 2022.** 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: City of Callisburg; DOCKET NUMBER: 2021-1031-PWS-E; IDENTIFIER: RN101242576; LOCATION: Callisburg, Cooke 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 §290.46(f)(2) and (3)(A)(i)(II), (ii)(II), (iii), (B)(iii) and (v), (D)(ii), and (E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $1,627; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Denton; DOCKET NUMBER: 2021-0748-MWD-E; IDENTIFIER: RN102095445; LOCATION: Denton, Denton County; TYPE OF FACILITY: water reclamation plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010027003, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of sewage into or adjacent to any water in the state; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010027003, Monitoring and Reporting Requirements Numbers 7a and 7.b.i, by failing to report an unauthorized discharge to the Regional Office within 24 hours of becoming aware of the noncompliance, and in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; PENALTY: $11,812; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Point; DOCKET NUMBER: 2021-0650-PWS-E; IDENTIFIER: RN101391407; LOCATION: Point, Rains County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(6)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a Class B or higher surface water license; 30 TAC §290.46(e)(6)(C), by failing to ensure that the facility has at least one Class C or higher surface water operator on duty when it is in operation or that the facility is provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the facility is not staffed; 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 a cross-connection or other potential contamination hazard exists; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's three ground storage tanks and one elevated storage tank annually; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; 30 TAC §290.110(e)(2) and (6) and §290.111(h)(2)(B) and (9), by failing to submit a Surface Water Monthly Operating Report with the required turbidity and disinfectant residual data to the executive director (ED) by the tenth day of the month following the end of the reporting period for January and February 2021; and 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2020 - December 31, 2020, monitoring period; PENALTY: $18,721; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: City of Throckmorton; DOCKET NUMBER: 2020-1549-PWS-E; IDENTIFIER: RN101410553; LOCATION: Throckmorton, Throckmorton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(3), by failing to maintain the facility's storage tank in strict accordance with current American Water Works Association standards with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch; 30 TAC §290.46(f)(2) and (3)(A)(i)(II), and (vii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.46(s)(2)(A)(ii), by failing to properly calibrate the pH meters daily and checked with at least one buffer each time a series of samples is run; 30 TAC §290.46(s)(2)(B)(i) and (ii), by failing to restandardize the benchtop and on-line turbidimeter's secondary standards each time a series of samples is tested, and if necessary, recalibrate with primary standards; 30 TAC §290.46(s)(2)(B)(iv), by failing to check the calibration of the three on-line turbidimeters at the facility at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit; 30 TAC §290.46(s)(2)(C)(ii), by failing to verify the accuracy of the continuous disinfectant residual analyzer at least once every seven days using chlorine solutions of known concentrations or by comparing the results from the on-line analyzer with the result of approved benchtop method; 30 TAC §290.46(z), by failing to develop a nitrification action plan for a system distributing chloraminated water; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the ED within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) and haloacetic acids for Stage 2 Disinfection Byproducts at Site 1 during the third quarter of 2020; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for TTHM based on the locational running annual average; PENALTY: $8,024; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,420; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Winnsboro; DOCKET NUMBER: 2021-1052-PWS-E; IDENTIFIER: RN101388106; LOCATION: Winnsboro, Wood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(d)(2)(A), (h), and (i)(2), by failing to collect one lead and copper sample from the facility's one entry point no later than 180 days after the end of the January 1, 2020 - December 31, 2020, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2020 - December 31, 2020, monitoring period during which the lead action level was exceeded; and 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2020 - December 31, 2020, monitoring period during which the lead action level was exceeded; PENALTY: $2,975; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Hi-Crush Permian Sand LLC; DOCKET NUMBER: 2021-1150-PWS-E; IDENTIFIER: RN110742178; LOCATION: Kermit, Winkler County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(3)(A), by failing to operate the facility under the direct supervision of a water works operator

who holds a Class D or higher license; PENALTY: $1,316; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: Holcim (US) Incorporated; DOCKET NUMBER: 2021-1222-AIR-E; IDENTIFIER: RN100219286; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: cement manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2) and (3), 113.690, 116.115(c), and 122.143(4), 40 Code of Federal Regulations §63.1343(b), New Source Review Permit Numbers 8996 and PSDTX454M4, Special Conditions Number 4, Federal Operating Permit Number O1046, General Terms and Conditions and Special Terms and Conditions Numbers 1.E. and 11, and Texas Health and Safety Code, §382.085(b), by failing to comply with the total hydrocarbons emissions limit or alternative organic hazardous air pollutants emissions limit; PENALTY: $18,000; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: KBR INVESTMENT INCORPORATED dba Super Stop 22; DOCKET NUMBER: 2021-1225-PST-E; IDENTIFIER: RN102361938; LOCATION: Orange, Newton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Lingleville Independent School District; DOCKET NUMBER: 2021-1107-PWS-E; IDENTIFIER: RN101219855; LOCATION: Lingleville, Erath County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the executive director (ED) for optimal corrosion control treatment within six months after the end of the January 1, 2018 - December 31, 2020, monitoring period during which the lead action level was exceeded; and 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2018 - December 31, 2020, monitoring period during which the lead action level was exceeded; PENALTY: $970; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Quadvest, L.P.; DOCKET NUMBER: 2021-1115-PWS-E; IDENTIFIER: RN107146904; LOCATION: Plum Grove, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(3)(Q), by failing to ensure that all openings to the atmosphere are covered with a 16-mesh or finer corrosion-resistant screening material or an acceptable equivalent; 30 TAC §290.46(f)(2) and (3)(B)(v), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202200740

Gitanjali Yadav

Acting Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: March 1, 2022

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Cancellation of Public Meeting on Big City Crushed Concrete, L.L.C.: Proposed Permit No. 166788L001

Thank you for your recent interest regarding the above-referenced application. This letter is your notice that the public meeting previously scheduled for March 8, 2022, has been cancelled. The public meeting will not be rescheduled.

If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

The Texas Commission on Environmental Quality appreciates your interest in matters pending before the agency.

TRD-202200753

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 2, 2022

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Enforcement Orders

An agreed order was adopted regarding City of Round Rock, Docket No. 2020-1340-EAQ-E on March 1, 2022, assessing $7,500 in administrative penalties with $1,500 deferred. 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 Maurice Jackson, Docket No. 2020-1389-MSW-E on March 1, 2022, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 RED EWALD LLC, Docket No. 2021-0069-AIR-E on March 1, 2022, assessing $5,700 in administrative penalties with $1,140 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, 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 Douglas A. Bateman dba Bateman Water Works, Docket No. 2021-0108-PWS-E on March 1, 2022, assessing $3,127 in administrative penalties with $625 deferred. 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 Aqua Utilities, Inc., Docket No. 2021-0181-PWS-E on March 1, 2022, assessing $70 in administrative penalties with $14 deferred. 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 Louisiana-Pacific Corporation, Docket No. 2021-0221-AIR-E on March 1, 2022, assessing $4,500 in administrative penalties with $900 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 J&K RENNER INC. dba Gateway 39, Docket No. 2021-0263-PST-E on March 1, 2022, assessing $6,975 in administrative penalties with $1,395 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, 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 AMRIT777 INC dba Sam Corner Food Mart, Docket No. 2021-0318-PST-E on March 1, 2022, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Terrany Binford, 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 Ragsdale Enterprises, LLC dba Southbound RV Park and Cabins, Docket No. 2021-0396-PWS-E on March 1, 2022, assessing $475 in administrative penalties with $95 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Matthews, 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 Schlumberger Technology Corporation, Docket No. 2021-0506-IWD-E on March 1, 2022, assessing $4,312 in administrative penalties with $862 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, 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 CIK PETROLEUM CORP., Docket No. 2021-0520-PST-E on March 1, 2022, assessing $4,999 in administrative penalties with $999 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Smith, 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 MarkWest Energy East Texas Gas Company, L.L.C., Docket No. 2021-0526-AIR-E on March 1, 2022, assessing $4,876 in administrative penalties with $975 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 BELTLINE MART LLC, Docket No. 2021-0541-PST-E on March 1, 2022, assessing $4,400 in administrative penalties with $880 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 Lone Star NGL Fractionators LLC, Docket No. 2021-0591-AIR-E on March 1, 2022, assessing $1,626 in administrative penalties with $325 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2021-0606-AIR-E on March 1, 2022, assessing $250 in administrative penalties with $50 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Entergy Texas, Inc., Docket No. 2021-0608-AIR-E on March 1, 2022, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Midcoast G & P (East Texas) L.P., Docket No. 2021-0609-AIR-E on March 1, 2022, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALCO Prestige Investments, LLC dba Corner Stop, Docket No. 2021-0674-PST-E on March 1, 2022, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 BAY PLACE PROPERTY OWNERS ASSOCIATION, INC. Docket No. 2021-0731-PWS-E on March 1, 2022, assessing $2,300 in administrative penalties with $460 deferred. Information concerning any aspect of this order may be obtained by contacting America Ruiz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ray French Land Company LTD, Docket No. 2021-1419-WQ-E on March 1, 2022, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was adopted regarding S & W Construction Partners LP, Docket No. 2021-1432-WQ-E on March 1, 2022, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Hawkeye Custom Homes, LLC, Docket No. 2021-1479-WQ-E on March 1, 2022, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Randy Teal, Docket No. 2021-1492-WQ-E on March 1, 2022, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202200755

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2022

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Notice of District Petition

Notice issued February 28, 2022

TCEQ Internal Control No. D-11302021-042; Highland Lakes Midlothian I, LLC, a Texas limited liability company, (Petitioner) filed an amended petition for creation of FM 875 Municipal Utility District of Ellis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The amended petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is only one lienholder, Community National Bank & Trust of Texas, on the property to be included in the proposed District, and information provided indicates that the aforementioned entity has consented to the petition; (3) the proposed District will contain approximately 283.231 acres located within Ellis County, Texas; and (4) the land within the proposed District is partially within the extraterritorial jurisdiction of the City of Midlothian, Texas (City), and no portion of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas.

In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the petitioner submitted a petition to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to proceed to the TCEQ for inclusion of their Property into the District. The amended petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is created. According to the amended petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $37,395,000 ($24,800,000 for water, wastewater, and drainage plus $12,595,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202200735
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 28, 2022

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Notice of District Petition

Notice issued February 28, 2022

TCEQ Internal Control No. D-12302021-047; HODGES PARTNERSHIP, LP, a Texas limited partnership (Petitioner) filed a petition for creation of Rockwall County Municipal Utility District No. 10 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property; (3) the proposed District will contain approximately 179.05 acres located within Rockwall County, Texas; and (4) the proposed District is within the corporate boundaries of the City of McLendon-Chisholm, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town, or village in Texas. By Resolution No. 2021-10, resolved and adopted October 13, 2021, the City of McLendon-Chisholm, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the purposes of and the general nature of the work of the proposed District will be (A) the purchase, construction, acquisition, repair, improvement, and extension inside or outside of the proposed District's boundaries of land, easements, works, improvements, facil-

ities, plants, equipment, and appliances (including financing of same) necessary to: (1) provide a water supply for municipal uses, domestic uses, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic, industrial, or communal wastes whether in fluid, solid, or composite state; and (3) to gather, conduct, divert, and control local storm water or other local harmful excesses of water in the proposed District; (B) the payment of District organization expenses, operational expenses during construction, and interest during construction; (C) the design, acquisition construction financing, operation, and maintenance of a road or any improvement in aid thereof; and (D) the provision of such other facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $8,754,427 (note that application material estimates a total of $8,688,454, which includes $3,346,618 for utilities plus $5,341,836 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202200737
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 28, 2022

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Notice of Hearing on Blanchard Refining Company LLC: SOAH Docket No. 582-22-1837; TCEQ Docket No. 2021-1443-AIR; Proposed Permit No. 98954

APPLICATION.

Blanchard Refining Company LLC, P.O. Box 401, Texas City, Texas 77592-0401, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 98954, which would authorize modification to a Texas City Refinery located at 2401 5th Avenue South, Texas City, Galveston County, Texas 77590. This application was submitted to the TCEQ on October 11, 2011. The existing facility will emit the following contaminants: carbon monoxide, hydrogen sulfide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, hazardous air pollutants, and sulfur dioxide. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice:

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-94.903611%2C29.377222&level=12. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision to issue the permit because it meets all rules and regulations. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at Texas City Moore Memorial Public Library, 1701 9th Avenue North, Texas City, Galveston County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk St., Ste. H, Houston, Texas.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published in English and Spanish on June 3, 2021. On February 2, 2022, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - April 11, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 587 8426

Password: BRG582

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 587 8426

Password: 361050

Visit the SOAH website for registration at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/agency/decisions/cc/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. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at www.tceq.texas.gov

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Further information may also be obtained from Blanchard Refining Company LLC at the address stated above or by calling Mr. John Atchison, HES Professional at (409) 943-7326.

Issued: March 1, 2022

TRD-202200752
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 2, 2022

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, or commission) staff is providing an opportunity for written public comment on the listed Agreed 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 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 **April 11, 2022.** 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 11, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: 7-Eleven, Inc. dba Stripes 5145, Stripes 9579, and 7-Eleven Store 40529; DOCKET NUMBER: 2020-0459-PST-E; TCEQ ID NUMBERS: RN102346707 (Facility 1); RN102350881 (Facility 2); RN101876043 (Facility 3); LOCATIONS: 840 Farm-to-Market 802, Brownsville, Cameron County (Facility 1); 1601 Central Boulevard, Brownsville, Cameron County (Facility 2); 2100 Veterans Boulevard, Del Rio, Val Verde County (Facility 3); TYPE OF FACILITY: three underground storage tank (UST) systems and convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (d)(3), by failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition (Facility 1); 30 TAC §334.7(d)(1)(A) and (d)(3), by failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition (Facility 2); 30 TAC §334.72, by failing to report suspected releases to the TCEQ within 24 hours of discovery (Facility 2); 30 TAC §334.7(d)(1)(A) and (d)(3), by failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition (Facility 3); 30 TAC §334.72, by failing to report suspected releases to the TCEQ within 24 hours of discovery (Facility 3); and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days (Facility 3); PENALTY: $12,659; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue,

Harlingen, Texas 78550-5247, (956) 425-6010; Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010; Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: 7-ELEVEN, INC. dba 7-Eleven Store 40515, 40516, and 40518; DOCKET NUMBER: 2020-0721-PST-E; TCEQ ID NUMBERS: RN101742831 (Facility 1); RN101753457 (Facility 2); RN102277068 (Facility 3); LOCATIONS: 2109 Sidney Baker Street, Kerrville, Kerr County (Facility 1); 3305 Memorial Boulevard, Kerrville, Kerr County (Facility 2); 2204 South State Highway 16, Fredericksburg, Gillespie County (Facility 3); TYPE OF FACILITY: three underground storage tank (UST) systems and convenience stores with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(C)(i), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95 percent capacity (Facility 1); 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C (Facility 1); 30 TAC §334.10(b)(2), by failing to assure that all UST record keeping requirements are met (Facility 1); TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(C)(i), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95 percent capacity (Facility 2); 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C (Facility 2); 30 TAC §334.10(b)(2), by failing to assure that all UST record keeping requirements are met (Facility 2); TWC, §26.3475(d) and 30 TAC §334.42(a) and §334.49(a)(2) and (a)(4), by failing to design, install, and operate the corrosion protection system in a manner that will prevent releases of regulated substances from the metal components of the UST system due to structural failure or corrosion (Facility 2); TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(C)(i), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95 percent capacity (Facility 3); 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C (Facility 3); 30 TAC §334.10(b)(2), by failing to assure that all UST record keeping requirements are met (Facility 3); and TWC, §26.3475(d) and 30 TAC §334.42(a) and §334.49(a)(2) and (a)(4), by failing to design, install, and operate the corrosion protection system in a manner that will prevent releases of regulated substances from the metal components of the UST system due to structural failure or corrosion (Facility 3); PENALTY: $15,750; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202200741
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 1, 2022

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 11, 2022.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 11, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Lisa Villarreal; DOCKET NUMBER: 2020-0170-PST-E; TCEQ ID NUMBER: RN102130598; LOCATION: 1218 North Garfield Street, San Angelo, Tom Green County; TYPE OF FACILITY: former gasoline service station with an out-of-service underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $3,937; STAFF ATTORNEY: Megan Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: Steven Levy; DOCKET NUMBER: 2020-0656-PST-E; TCEQ ID NUMBER: RN102991767; LOCATION: 554 State Highway 22, Whitney, Hill County; TYPE OF FACILITY: out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator for the facility; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1) and §334.54(b)(3), by failing to provide corrosion protection for the UST system; PENALTY: $9,168; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-3400; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Gypsy River LLC, Jeromy Foy dba Gypsy River LLC and Tiffany Klinefelter dba Gypsy River LLC; DOCKET NUMBER: 2019-0510-PWS-E; TCEQ ID NUMBER: RN102319399; LOCATION: 8690 River Road, New Braunfels, Comal County; TYPE OF

FACILITY: transient, non-community public water system; RULES VIOLATED: 30 TAC §290.42(c)(1) and §290.111(a)(2), by failing to provide a minimum treatment consisting of coagulation with direct filtration for groundwater under the influence of surface water (GUI); 30 TAC §290.122(b)(2)(B) and (f), by failing to issue public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to provide minimum treatment; and 30 TAC §290.110(e)(2) and (e)(6) and §290.111(h), by failing to submit Surface Water Monthly Operating Reports for the systems that use GUI; PENALTY: $4,047; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-3400; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202200742
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: March 1, 2022

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Ashton Holdings Inc.: SOAH Docket No. 582-22-1647; TCEQ Docket No. 2020-0218-WQ-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference at:

10:00 a.m. - March 24, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 545 8121

Password: TCEQ324

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 161 545 8121

Password: 8287406

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 21, 2021, concerning assessing administrative penalties against and requiring certain actions of Ashton Holdings Inc., for violations in Tarrant County, Texas, of: Texas Water Code §26.121(a)(1), 40 C.F.R. §122.26(c), and 30 Texas Administrative Code §281.25(a)(4).

The hearing will allow Ashton Holdings Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Ashton Holdings Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Ashton Holdings Inc. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Ashton Holdings Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code chs. 7 and 26, 40 C.F.R. §122, and 30 Texas Administrative Code chs. 70 and 281; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 23, 2022

TRD-202200711
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 28, 2022

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Inland Recycling La Grange LC: SOAH Docket No. 582-22-1649; TCEQ Docket No. 2020-0750-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference at:

10:00 a.m. - March 24, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 545 8121

Password: TCEQ324

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 161 545 8121

Password: 8287406

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed November 19, 2021 concerning assessing administrative penalties against and requiring certain actions of Inland Recycling La Grange LC, for violations in Fayette County, Texas, of: Texas Health & Safety Code §382.0518(a) and §382.085(b); Texas Water Code §26.121; 30 Texas Administrative Code §§116.110(a), 281.25(a)(4), 324.6, 324.15, 327.3(b), 327.5, 335.4, 335.6(h), 335.9(a)(1), 335.24, 335.62, and 350.2(b); 40 Code of Federal Regulations (C.F.R.) §§122.26(c), 262.11(a), and 279.22(c)(1) and (d); and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05EJ17, Part III, Section A.

The hearing will allow Inland Recycling La Grange LC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Inland Recycling La Grange LC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Inland Recycling La Grange LC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Inland Recycling La Grange LC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code chs. 7 and 26, Texas Health & Safety Code chs. 361, 371, and 382, and 30 Texas Administrative Code chs. 70, 116, 281, 324, 327, 335, and 350; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 23, 2022

TRD-202200712
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 28, 2022

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of SILVER CREEK MATERIALS, INC.: SOAH Docket No. 582-22-1648; TCEQ Docket No. 2019-1736-AIR-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference at:

10:00 a.m. - March 24, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 545 8121

Password: TCEQ324

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 161 545 8121

Password: 8287406

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition mailed November 15, 2021 concerning assessing administrative penalties against and requiring certain actions of SILVER CREEK MATERIALS, INC., for violations in Tarrant County, Texas, of: Texas Health & Safety Code §382.085(a) and (b) and 30 Texas Administrative Code §101.4.

The hearing will allow SILVER CREEK MATERIALS, INC., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford SILVER CREEK MATERIALS, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a

discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of SILVER CREEK MATERIALS, INC. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's First Amended Report and Petition, attached hereto and incorporated herein for all purposes.** SILVER CREEK MATERIALS, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code ch. 7, Texas Health & Safety Code ch. 382, and 30 Texas Administrative Code chs. 70 and 101; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 23, 2022

TRD-202200713
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 28, 2022

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Thind General Stores LLC dba On The Road 110: SOAH Docket No. 582-22-1569: TCEQ Docket No. 2020-1501-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference at:

10:00 a.m. - March 24, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 545 8121

Password: TCEQ324

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252 or (646) 828-7666

Meeting ID: 161 545 8121

Password: 8287406

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 8, 2021, concerning assessing administrative penalties against and requiring certain actions of Thind General Stores LLC dba On The Road 110, for violations in Angelina County, Texas, of: Texas Water Code §26.3475(a) and (c)(1), 30 Texas Administrative Code §§334.50(b)(1)(B), (b)(2)(A)(i)(III), and (b)(2)(A)(iii); 334.48(c); 334.10(b)(2); and 334.606.

The hearing will allow Thind General Stores LLC dba On The Road 110, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Thind General Stores LLC dba On The Road 110, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Thind General Stores LLC dba On The Road 110 to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Thind General Stores LLC dba On The Road 110, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Merculief II, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed

with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 23, 2022

TRD-202200714
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 28, 2022

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Notice of Public Meeting: New Permit No. WQ0015918001

APPLICATION AND PRELIMINARY DECISION. Walton Texas, LP, 8800 N. Gainey Center Drive, Suite 345, Scottsdale, Arizona 85258, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015918001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 420,000 gallons per day.

The facility will be located approximately 2,100 feet northeast of the intersection of State Highway 80 and State Highway 142, in Caldwell County, Texas 78655. The treated effluent will be discharged to Hemphill Creek, thence to Morrison Creek, thence to the Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water uses are limited aquatic life use for both Hemphill Creek and Morrison Creek. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.839166%2C29.850277&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, April 11, 2022 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 185-102-123. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (415) 930-5321 and enter access code 908-489-958. Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040. General information about the TCEQ can be found at our web site at https://www.tceq.texas.gov.*

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Martindale City Hall, 409 Main Street, Martindale, Texas. Further information may also be obtained from Walton Texas, LP at the address stated above or by calling Mr. David L. Peter, Vice President, Walton Global Holdings, at (813) 596-8485.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300

or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: February 25, 2022

TRD-202200671
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 25, 2022

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Revised Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Renewal and Notice of Pretreatment Program Substantial Modification

Notice Issued February 28, 2022

APPLICATION NO. WQ0010984001; Trinity River Authority of Texas, P.O. Box 240, Arlington, Texas 76004, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010984001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 24,000,000 gallons per day with provisions for sewage sludge surface disposal at this facility. TCEQ received this application on June 4, 2021.

The facility and sludge disposal site are located at 1430 Malloy Bridge Circle, Ferris, in Dallas County, Texas 75125. The treated effluent is discharged to Tenmile Creek, thence to Upper Trinity River in Segment No. 0805 of the Trinity River Basin. The unclassified receiving water use is high aquatic life use for Tenmile Creek. The designated uses for Segment No. 0805 are primary contact recreation and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.634166%2C32.564166&level=12

The applicant has also applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. Approval of the request for modification to the pretreatment program will allow the applicant to revise the Trinity River Authority of Texas' pretreatment program to incorporate all required Streamlining Rule provisions. The request for approval complies with both federal and State requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication. The TCEQ Executive Director has completed the technical review of the application, pretreatment program substantial modification, and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The Executive Director has also made a preliminary decision that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, pretreatment program substantial modification, and draft permit are available for viewing and copying at Lancaster Veterans Memorial Library, Periodicals Area, 1600 Veterans Memorial Parkway, Lancaster, Texas.

You may submit public comments or request a public meeting about this application or on the application for substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application or the application for substantial modification of the pretreatment program. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application, or the application for substantial modification of the pretreatment program, 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 will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.

There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to he group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.

The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

If you submit public comments, a request for a contested case hearing or a 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 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 public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www14.tceq.texas.gov/epic/eComment/ within 30 days from the date of newspaper publication of this notice.

For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

Public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/, 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. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses.

For more information about this permit application, the application for substantial modification of the pretreatment program, or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al 1-800-687-4040.

Further information may also be obtained from Trinity River Authority of Texas at the address stated above or by calling Ms. Patricia M. Cleveland, Executive Manager of the Northern Region, at (817) 493-5100.

TRD-202200717
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 28, 2022

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Texas Facilities Commission

Request for Proposals #303-3-20725

The Texas Facilities Commission (TFC), on behalf of the Texas Animal Health Commission (TAHC) announces the issuance of Request for Proposals (RFP) 303-3-20725. TFC seeks a five (5) or ten (10) year lease of approximately 5,206 SF that consists of 2,786 SF office, 1,500 SF Warehouse, & 920 SF of Paved Fenced Yard space within zip codes 76567, 78947, 77836, 78948, 77853, 77879, 78942, 78946, 78932, 77835, or 77833 in Burleson, Fayette, Lee, Milam, or Washington County, Texas.

The deadline for questions is March 17, 2022, and the deadline for proposals is April 12, 2022, at 3:00 p.m. The award date is June 16, 2022. 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 an 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 Heather Goll at heather.goll@tfc.texas.gov. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/esbddetails/view/303-3-20725.

TRD-202200702
Rico Gamino
Procurement Director
Texas Facilities Commission
Filed: February 25, 2022

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Texas Health and Human Services Commission

Public Notice: State Plan on Aging for Federal Fiscal Years 2023 - 2025

The Texas Health and Human Services Commission announces a 14-day public comment period effective from March 11, 2022, through March 25, 2022, for the proposed State Plan on Aging for Federal Fiscal Years 2023 - 2025.

Copy of Proposed Texas State Plan on Aging. The Texas Health and Human Services Commission will post the proposed State Plan on Aging on the Texas Health and Human Services Commission, Area Agencies on Aging website at: https://www.hhs.texas.gov/news.

Written Comments. Written comments and questions may be submitted by email or U.S. mail to:

Email

Texas_State_Plan_on_Aging@hhsc.state.tx.us

U.S. Mail

Texas Health and Human Services Commission

Attention: AES Program Policy

909 West 45th Street

Mail Code: 2115

Austin, Texas 78751

TRD-202200739
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 28, 2022

♦ ♦ ♦

Texas Higher Education Coordinating Board

Notice of Public Hearing: State of Texas College Student Loan Bonds

NOTICE IS HEREBY GIVEN of a public hearing to be held by the Texas Higher Education Coordinating Board (the "Issuer") on March 23, 2022, at 10:00 a.m., at the offices of the Issuer, 1200 East Anderson Lane, Room 1.170/Board Room, Austin, Texas 78752, with respect to the issuance by the Issuer of one or more series of State of Texas College Student Loan Bonds (the "Bonds") in an aggregate amount of not more than $150,000,000, the proceeds of which will be used by the Issuer to originate student loans to student borrowers at eligible institutions of higher education in the State of Texas under Chapter 52, Texas Education Code (the "Loan Program"). Descriptions of the Loan Program and the Bonds have been and will be kept on file at the office of the Issuer at the address set forth above. The Bonds will be general obligations of the State of Texas.

All interested persons are invited to attend such public hearing to express their views with respect to the Loan Program and the proposed issuance of the Bonds. Questions or requests for additional information may be directed to Ken Martin, Assistant Commissioner - Financial

Services/Chief Financial Officer, 1200 East Anderson Lane, Austin, Texas 78752.

Persons who plan to attend are encouraged, in advance of the public hearing, to inform the Issuer either in writing or by telephone at (512) 427-6173. Any interested persons unable to attend the hearing may submit their views in writing to the Issuer prior to the date scheduled for the hearing.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public hearing prerequisite to the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

TRD-202200745
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: March 1, 2022

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for LELA Insurance Company, a domestic fire and/or casualty company. The home office is in Plano, Texas.

Application for Rx Life Insurance Company, a foreign life, accident and/or health company, to change its name to Fortitude U.S. Reinsurance Company. The home office is in Phoenix, Arizona.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202200746
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: March 1, 2022

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2381 "JUMBO BUCKS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2381 is "JUMBO BUCKS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2381 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2381.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, JUMBO SYMBOL, $2.00, $5.00, $10.00, $20.00, $30.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2381 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
JUMBO SYMBOL	WINX5
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$

$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2381), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2381-0000001-001.

H. Pack - A Pack of the "JUMBO BUCKS" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "JUMBO BUCKS" Scratch Ticket Game No. 2381.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "JUMBO BUCKS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-three (23) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the SERIAL NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "JUMBO" Play Symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-three (23) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-three (23) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-three (23) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-three (23) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the

artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 02 and $2).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching SERIAL NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "JUMBO"(WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "JUMBO BUCKS" Scratch Ticket Game prize of $2.00, $5.00, $10.00, $20.00, $30.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JUMBO BUCKS" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JUMBO BUCKS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "JUMBO BUCKS" Scratch Ticket Game, the Texas Lottery shall deliver to an

adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "JUMBO BUCKS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2381. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2381 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	936,000	9.62
$5.00	576,000	15.63
$10.00	144,000	62.50
$20.00	72,000	125.00
$30.00	72,000	125.00
$50.00	18,000	1,500.00
$100	8,625	1,043.48
$1,000	15	600,000.00
$30,000	5	1,800,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.93. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2381 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2381, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202200756
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 2, 2022

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Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

The Rivers Program at Texas Parks and Wildlife Department has applied for a sand and gravel General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86 to remove or disturb up to 88 cubic yards of sedimentary material within Alamito Creek in Presidio County. The purpose is to improve and begin to restore stream habitat in Alamito Creek. The location is approximately 2.5 miles upstream of Highway 169. Notice is being published and mailed pursuant to Title 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on March 25, 2022. Due to COVID-19 transmission concerns with travelling and person-to-person gatherings, the public comment hearing will be conducted through remote participation. Potential attendees should contact Tom Heger at (512) 389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202200715
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: February 28, 2022

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Approval of the Provision of Non-Emergency 311 Service

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval to provide non-emergency 311 services.

Docket Style and Number: Application of Southwestern Bell Telephone Company dba AT&T Texas for Administrative Approval to Provide Non-Emergency 311 Service for the City of Eagle Pass, Docket Number 53284.

The Application: On February 25, 2022, Southwestern Bell Telephone Company dba AT&T Texas filed an application with the commission under 16 Texas Administrative Code §26.127, for approval to provide non-emergency 311 service for the City of Eagle Pass.

Non-emergency 311 service is available to local governmental entities to provide to their residents an easy-to-remember number to call for access to non-emergency services. By implementing 311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement 311 service will determine the types of non-emergency calls their 311-call center will handle.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is April 11, 2022. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 53284.

TRD-202200743
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2022

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TEXAS

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 47 (2022) is cited as follows: 47 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 "47 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 47 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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