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IN THIS ISSUE

GOVERNOR

Appointments	6701
Proclamation 41-3933	6701

ATTORNEY GENERAL

Opinions	6703
----------------	------

TEXAS ETHICS COMMISSION

Ethics Advisory Opinion.....	6705
------------------------------	------

PROPOSED RULES

TEXAS ETHICS COMMISSION

RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.37	6707
--------------------	------

LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1	6708
-------------------	------

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

1 TAC §372.354.....	6708
1 TAC §372.1507.....	6710

PUBLIC UTILITY COMMISSION OF TEXAS

SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

16 TAC §24.49.....	6711
16 TAC §24.239.....	6713

SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

16 TAC §25.30.....	6718
16 TAC §§25.105, 25.107, 25.109.....	6719
16 TAC §§25.105, 25.107, 25.109.....	6719
16 TAC §25.485, §25.495.....	6731

TEXAS DEPARTMENT OF LICENSING AND REGULATION

PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §§60.220 - 60.222	6733
--------------------------------	------

DRIVER EDUCATION AND SAFETY

16 TAC §84.100, §84.101	6736
16 TAC §84.102.....	6737

VEHICLE STORAGE FACILITIES

16 TAC §85.450.....	6738
---------------------	------

16 TAC §85.451, §85.453.....	6738
------------------------------	------

VEHICLE TOWING AND BOOTING

16 TAC §86.450.....	6740
16 TAC §86.451, §86.453.....	6740

USED AUTOMOTIVE PARTS RECYCLERS

16 TAC §87.44.....	6742
16 TAC §87.45, §87.47.....	6742

ORTHOTISTS AND PROSTHETISTS

16 TAC §114.29.....	6742
---------------------	------

MASSAGE THERAPY

16 TAC §117.55.....	6745
16 TAC §117.82.....	6746

TEXAS HIGHER EDUCATION COORDINATING BOARD

RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

19 TAC §4.10.....	6746
19 TAC §4.54.....	6748

TEXAS EDUCATION AGENCY

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

19 TAC §113.10.....	6750
19 TAC §§113.11 - 113.16.....	6751
19 TAC §113.17.....	6766
19 TAC §§113.18 - 113.20.....	6767
19 TAC §§113.31, 113.41 - 113.44.....	6778

DEPARTMENT OF STATE HEALTH SERVICES

END STAGE RENAL DISEASE FACILITIES

25 TAC §117.41, §117.45	6799
25 TAC §117.91.....	6807

HEALTH AND HUMAN SERVICES COMMISSION

BEHAVIORAL HEALTH PROGRAMS

26 TAC §§307.155, 307.157, 307.159, 307.163, 307.165, 307.167, 307.169, 307.175.....	6810
26 TAC §307.157, §307.159.....	6813

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

OPERATIONAL RULES

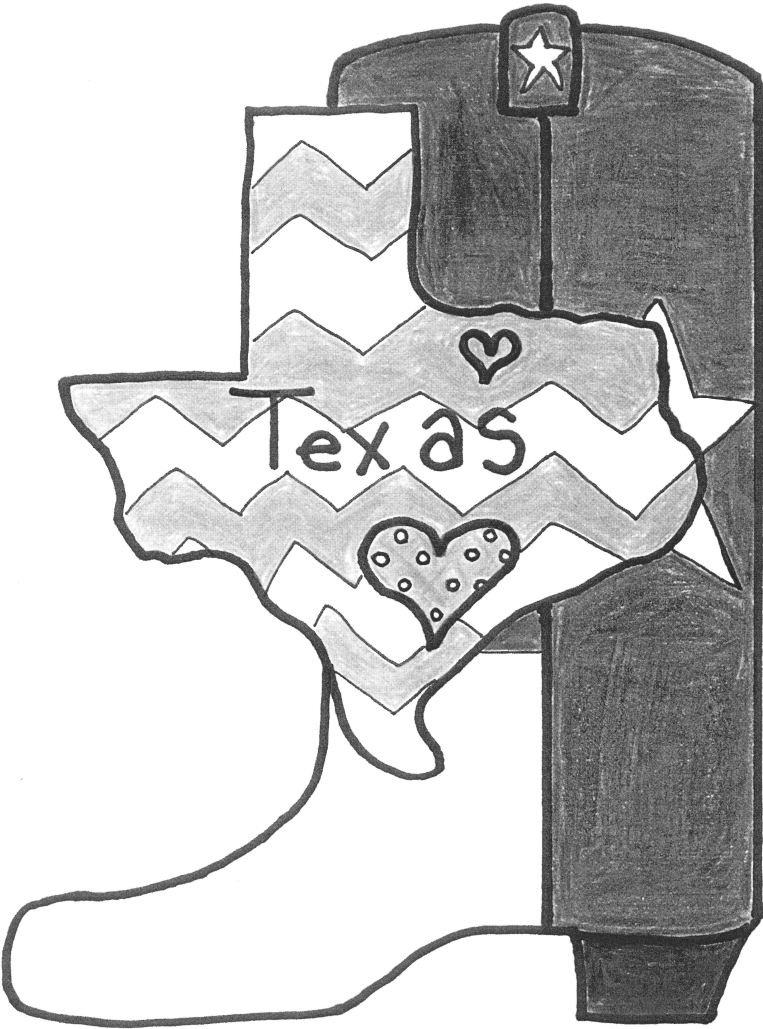
31 TAC §675.20, §675.21.....	6814
------------------------------	------

TEXAS COMMISSION ON FIRE PROTECTION

FIRE SERVICE INSTRUCTORS

37 TAC §425.1	6818	16 TAC §45.117	6873
ADOPTED RULES		TEXAS EDUCATION AGENCY	
TEXAS ETHICS COMMISSION		FOUNDATION SCHOOL PROGRAM	
ADVISORY OPINIONS		19 TAC §105.1001	6874
1 TAC §8.11	6821	TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION	
GENERAL RULES CONCERNING REPORTS		19 TAC §127.761, §127.764	6874
1 TAC §18.31	6821	STUDENT ATTENDANCE	
REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES		19 TAC §129.1025	6875
1 TAC §20.62, §20.65	6822	TEXAS BOARD OF NURSING	
1 TAC §§20.217, 20.219 - 20.221	6822	PRACTICE AND PROCEDURE	
1 TAC §20.275, §20.279	6823	22 TAC §213.28	6882
1 TAC §§20.301, 20.303, 20.313, 20.329, 20.331, 20.333	6823	HEALTH AND HUMAN SERVICES COMMISSION	
1 TAC §§20.401, 20.405, 20.431, 20.433 - 20.435	6823	LIDDA SERVICE COORDINATION	
1 TAC §20.553, §20.555	6823	26 TAC §331.17	6883
RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES		TEXAS DEPARTMENT OF INSURANCE	
1 TAC §§22.1, 22.6, 22.7	6823	CORPORATE AND FINANCIAL REGULATION	
REGULATION OF LOBBYISTS		28 TAC §7.215	6885
1 TAC §34.41, §34.43	6824	COMPTROLLER OF PUBLIC ACCOUNTS	
TEXAS HEALTH AND HUMAN SERVICES COMMISSION		TAX ADMINISTRATION	
COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES		34 TAC §3.101	6887
1 TAC §351.807	6825	TEXAS JUVENILE JUSTICE DEPARTMENT	
TEXAS DEPARTMENT OF AGRICULTURE		RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES	
COTTON PEST CONTROL		37 TAC §380.9504	6887
4 TAC §20.20, §20.22	6825	RULE REVIEW	
PUBLIC UTILITY COMMISSION OF TEXAS		Proposed Rule Reviews	
SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS		Public Utility Commission of Texas	6889
16 TAC §25.55	6866	TABLES AND GRAPHICS	
16 TAC §25.55	6866	6891
TEXAS ALCOHOLIC BEVERAGE COMMISSION		IN ADDITION	
LICENSING		Office of the Attorney General	
16 TAC §33.73	6872	Texas Water Code Settlement Notice	6893
16 TAC §33.78	6872	Office of Consumer Credit Commissioner	
16 TAC §33.94	6873	Notice of Rate Ceilings	6893
AUDITING		Texas Commission on Environmental Quality	
16 TAC §41.48	6873	Agreed Orders	6893
MARKETING PRACTICES		Enforcement Orders	6895
		Enforcement Orders	6896

Notice of District Petition	6897	Correction of Error.....	6903
Notice of District Petition	6897	Public Hearings for Home Health Supplies in Pharmacy.....	6903
Notice of District Petition	6898	Department of State Health Services	
Notice of District Petition	6898	Order Placing Methoxetamine into Schedule I and Maintaining Serdexmethylphenidate in Schedule IV.....	6903
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions	6899	Texas Department of Insurance	
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions	6900	Company Licensing	6911
Notice of Public Meeting for TPDES Permit for Industrial Wastewater Amendment: Permit No. WQ0005283000.....	6900	Office of Public Utility Counsel	
Notice of Water Quality Application	6901	Notice of Annual Public Hearing.....	6911
Notice of Water Quality Application	6902	Sam Houston State University	
Notice of Water Rights Application.....	6902	Notice of Intent to Seek Consulting Services	6912
Texas Health and Human Services Commission		Texas Department of Transportation	
		Correction of Error.....	6912



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 September 28, 2022

Appointed to the Private Sector Advisory Council for a term to expire at the pleasure of the Governor, Terrance J. "Terry" Hlavinka of East Bernard, Texas.

Appointed to the Private Sector Advisory Council for a term to expire at the pleasure of the Governor, Emily G. Kidd, M.D. of New Braunfels, Texas.

Appointed to the Private Sector Advisory Council for a term to expire at the pleasure of the Governor, Al A. Philippus of Shavano Park, Texas.

Appointed to the Private Sector Advisory Council for a term to expire at the pleasure of the Governor, Jonathan J. Racecek of Plano, Texas.

Appointed to the Private Sector Advisory Council for a term to expire at the pleasure of the Governor, Dean W. Teffer, Ph.D. of Austin, Texas.

Appointed to the Private Sector Advisory Council for a term to expire at the pleasure of the Governor, Chloe Nunley Wilson of Sabinal, Texas.

Appointed to the Private Sector Advisory Council for a term to expire at the pleasure of the Governor, An Yu of Houston, Texas.

Appointments for October 3, 2022

Appointed to the Texas Energy Reliability Council for a term to expire at the pleasure of the Governor, Pablo A. Vegas of Austin, Texas.

Greg Abbott, Governor

TRD-202203984



Proclamation 41-3933

TO ALL WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Anderson, Armstrong, Bailey, Bastrop, Baylor, Brazoria, Brazos, Brewster, Burlison, Cochran, Collin, Cooke, Crane, Crockett, Dallas, Delta, DeWitt, Donley, Ector, Edwards, Ellis, Fannin, Fayette, Fort Bend, Freestone, Galveston, Goliad, Hockley, Hopkins, Hunt, Irion, Jackson, Johnson, Karnes, Kaufman, Knox, La Salle, Lamb, Lavaca, Lee, Limestone, Live Oak, Loving, Madison, Matagorda, McMullen, Midland, Milam, Montague, Navarro, Oldham, Parker, Pecos, Presidio, Rains, Randall,

Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, San Jacinto, Stonewall, Sutton, Tarrant, Terrell, Trinity, Upton, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wichita, Wilbarger, Wilson, Winkler, and Zavala counties.

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Andrews, Aransas, Atascosa, Austin, Bandera, Bee, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Caldwell, Calhoun, Callahan, Cameron, Castro, Childress, Coke, Coleman, Collingsworth, Colorado, Comal, Comanche, Concho, Coryell, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Eastland, Erath, Falls, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Gonzales, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Hays, Henderson, Hidalgo, Hill, Hood, Howard, Hutchinson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Lamar, Lampasas, Leon, Llano, Lubbock, Lynn, Martin, Mason, Maverick, McCulloch, McLennan, Medina, Menard, Mills, Mitchell, Montgomery, Moore, Motley, Nolan, Ochiltree, Palo Pinto, Parmer, Polk, Reagan, Real, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Swisher, Taylor, Terry, Tom Green, Travis, Uvalde, Willacy, Williamson, Yoakum, and Zapata counties.

Pursuant to Section 418.017 of the Texas Government 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 Texas Government 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.

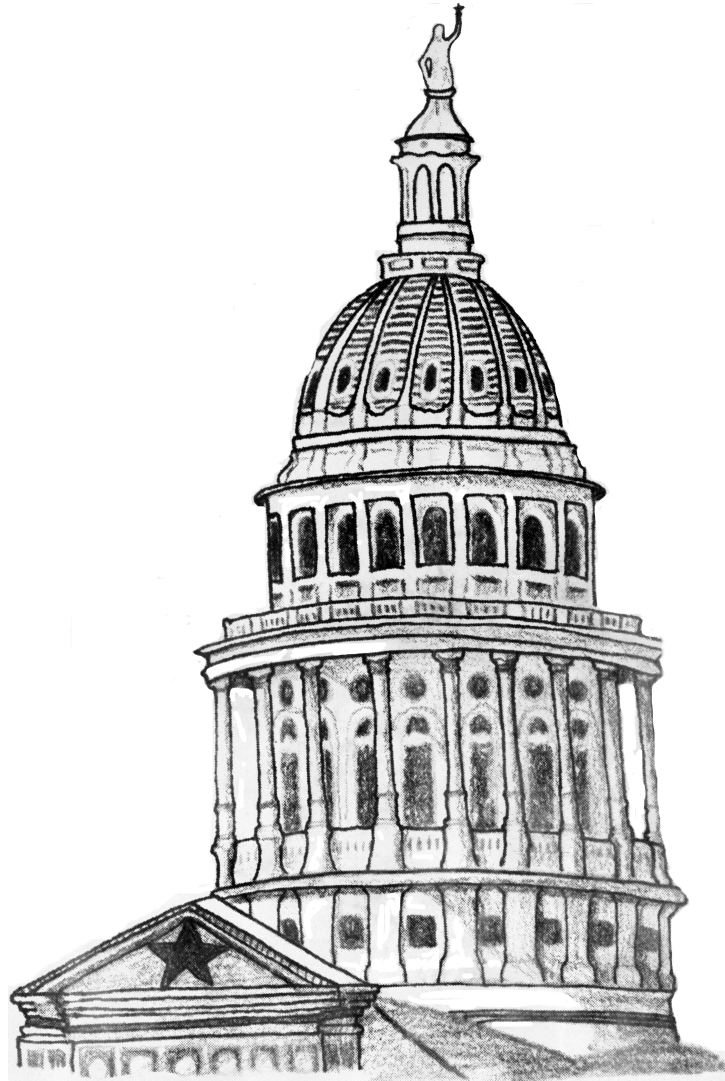
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

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 29th day of September, 2022.

Greg Abbott, Governor

TRD-202203934





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-0418

The Honorable Tom Selleck

Brazoria County Criminal District Attorney

111 East Locust, Suite 408A

Angleton, Texas 77515

Re: Whether a city council member may also serve as a member of the city's reserve police force (RQ-0453-KP)

SUMMARY

The common-law doctrine of incompatibility bars a councilmember of the City of Freeport from simultaneously serving as a member of the City's police reserve force.

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

TRD-202203981

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: October 4, 2022





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 Opinion

EAO 576: Whether candidates for party precinct chair are subject to the campaign treasurer and campaign finance filing requirements of Title 15 of the Texas Election Code. (AOR-667.)

Summary

No. Title 15 of the Texas Election Code requires candidates for public office and certain candidates for state and county party offices to designate campaign treasurers and file campaign finance reports. It does not require candidates for precinct offices of political parties to designate campaign treasurers or file campaign finance reports.

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.

TRD-202203939

Jim Tinley
General Counsel
Texas Ethics Commission
Filed: September 30, 2022



EAO 577: Whether an employee of a university system participates in a procurement or contract negotiation for the purposes of Section 572.069 of the Government Code when the employee informally recommends an attorney to provide outside legal services to the university system decision makers, but has no involvement in the formal selection process or negotiating the terms of the contract. (AOR-665.)

Summary

An employee of a university system does not "participate" in a procurement or contract negotiation by informally recommending a lawyer for outside legal services and would not be prohibited from accepting employment from the lawyer's law firm before the second anniversary of the date the employee's outside counsel contract was signed.

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.

TRD-202203940

Jim Tinley
General Counsel
Texas Ethics Commission
Filed: September 30, 2022



EAO 578: Whether a government employee's direct communications with a potential contracting partner over the terms of a prospective deal constitutes participating in a procurement or contract negotiation under Section 572.069 of the Government Code.

Whether Section 572.069 of the Government Code prohibits a former employee of a state agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during his state service. (AOR-668.)

Summary

Direct communications with a potential contracting partner over the terms of a prospective deal constitutes participating in a procurement or contract negotiation.

Affiliates are different persons for purposes of Chapter 572 of the Government Code. Therefore, Section 572.069 of the Government Code does not prohibit a former employee of a state agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during his 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.

TRD-202203941

Jim Tinley
General Counsel
Texas Ethics Commission
Filed: September 30, 2022



EAO 579: Whether any of the State's revolving door provisions prohibit a former state employee from accepting certain employment. (AOR-670.)

Summary

The requestor may accept the position. First, he is not a member of his agency's governing body nor is he the agency's executive head, so Section 572.054(a) does not apply. Second, as long as the position does not require him to work on any "particular matter" in which he participated as a state employee, Section 572.054(b) does not prohibit him from accepting the position. Finally, because he did not participate in any procurement or contract negotiation involving the potential employer during his state service, Section 572.069 does not prohibit him from accepting the position.

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.

TRD-202203942
Jim Tinley
General Counsel
Texas Ethics Commission
Filed: September 30, 2022



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.37

The Texas Ethics Commission (the Commission) proposes a new Texas Ethics Commission rule in Chapter 22. Specifically, the Commission proposes new §22.37, regarding Virtual Currency Contributions.

The Commission seeks to address and clarify the reporting requirements of political contributions made with virtual currency, such as Bitcoin. The proposal largely mirrors the way the Federal Election Commission and several other states treat virtual currency contributions.

The proposed new rule would require filers to report virtual currency as in-kind contributions.

The new rule would also direct filers to report the value of any accepted virtual currency as the fair market value at the time of receipt. This requirement is designed to address the well-known volatility of virtual currency value and provide guidance on how to report the value of virtual currency contributions. The rule would not require filers to liquidate their virtual currency holdings within any particular timeframe.

The Commission first proposed this rule in September 2021, and then again at their December 2021 and February 2022 meetings. The Commission received numerous public comments, both written and in person, at these meetings. Those comments, and discussions by Commissioners, has resulted in this new proposal, which was discussed at the May 2022 meeting but not adopted.

James Tinley, General Counsel, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rule.

The General Counsel has also determined that for each year of the first five years the proposed new rule is in effect, the public benefit will be consistency and clarity in the Commission's rules regarding acceptance of virtual currency. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

The General Counsel has determined that during the first five years that the proposed new rule is in effect, it will: not create or eliminate a government program; not require the creation of

new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

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

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

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

§22.37. Virtual Currency Contributions.

(a) Virtual currency contributions are considered "in-kind" contributions.

(b) A candidate, officeholder, or political committee must report a gain from the sale of virtual currency contributions on the appropriate schedule if the gain exceeds the reporting threshold set by Section 254.031(9) of the Election Code and amended by §18.31 of this title (relating to Adjustments to Reporting Thresholds).

(c) The value of a virtual currency contribution shall be reported as the fair market value of the virtual currency upon receipt.

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 September 29, 2022.

TRD-202203928

Jim Tinley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 463-5800



CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission (the Commission) proposes amendments to the Texas Ethics Commission rule in Chapter 50. Specifically, the Commission proposes amendments to §50.1, regarding Legislative Per Diem.

The rule as amended would set the per diem for members of the legislature and the lieutenant governor at \$204 for each day during the regular session and any special session.

Jim Tinley, Interim General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule. The fiscal implication for the state over the first five years will be reduction in state spending of \$1.29 million. The anticipated cost savings may be reduced if one or more special sessions are called, or if the per diem is raised before the 2025 legislative session.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, §24, and Article IV, §17, during the regular session and any special session. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

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

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

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code or any other law administered by the Commission.

The proposed amended rule affects amendment affects the Texas Constitution, Article III, §24; Article III, §24a; and Article IV, §17, laws administered by the Commission.

§50.1. *Legislative Per Diem*

(a) The legislative per diem is \$204 [~~\$224~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant

governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the \$204 [~~\$224~~] per diem for 2023 [~~2019~~].

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 September 29, 2022.

TRD-202203929

Jim Tinley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 463-5800



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

SUBCHAPTER B. ELIGIBILITY

DIVISION 6. RESOURCES

1 TAC §372.354

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §372.354, concerning Treatment of Resources in TANF.

BACKGROUND AND PURPOSE

The purpose of the proposal is to align policy regarding the treatment of prepaid burial insurance, funeral plans and other funeral agreements for the Temporary Assistance for Needy Families (TANF) program with recently changed resource policy under the Supplemental Nutrition Assistance Program (SNAP). HHSC proposes to exclude the full amount of funeral agreements as a resource when determining eligibility for TANF.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §372.354 excludes the full amount of one prepaid burial insurance policy, funeral plan or funeral agreement for each household member as a resource when determining TANF eligibility.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand existing rules;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

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 the rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be allowing households to retain existing funeral agreements when applying or recertifying TANF benefits without impacting their eligibility for cash assistance. Additionally, this rule project will align TANF policy with SNAP, simplifying the rules for impacted households.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule only applies to state government and there are no fees or costs to any other persons.

TAKINGS IMPACT ASSESSMENT

HHSC 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 Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.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; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) 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 22R088" in the subject line.

STATUTORY AUTHORITY

The amendment 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 by the health and human services agencies and Texas Human Resources Code §31.003, which requires the Executive Commissioner to adopt rules related to distribution of TANF benefits.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §31.003.

§372.354. *Treatment of Resources in TANF.*

(a) In the TANF Program, the countable resources limit is \$1,000.

(b) Unless a resource is excluded under subsection (c) of this section, the Texas Health and Human Services Commission (HHSC) counts the resources of:

(1) the members of the certified group;

(2) each parent of a child in the certified group living in the household and ineligible or disqualified from receiving TANF benefits;

(3) each sibling of a dependent child in the certified group living in the household and disqualified from receiving TANF benefits; and

(4) the sponsors and the sponsors' spouses, for a household containing a sponsored alien.

(c) HHSC excludes the following resources:

(1) the value [an amount up to \$7,500 per person] of one prepaid burial insurance policy or prepaid funeral plan per household member [or of a prepaid funeral plan];

(2) one burial plot per household member [plots];

(3) crime victim compensation funds;

(4) earned income tax credit payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months;

(5) the homestead and surrounding real property, including:

(A) any structure, including a houseboat or a motor home, the household uses as its residence;

(B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and

(C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(6) resources HHSC determines are not accessible to the household, including:

(A) jointly owned property as described for SNAP in 7 CFR §273.8(d); and

(B) trust funds as described for SNAP in 7 CFR §273.8(e)(8);

(7) business property, including property retained for income-producing business purposes;

(8) vehicles used to transport a disabled household member and property used to maintain such vehicles;

(9) the cash value of all life insurance policies;

(10) funds from the earned income of a child as described in §372.404(2) of this subchapter (relating to Countable and Excluded Income in TANF);

(11) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;

(12) funds from a reimbursement intended for and actually used in the month of receipt to repair or replace a lost or damaged resource excluded under this section, but HHSC counts the funds from such a reimbursement, beginning in the month after receipt, to the extent the funds were not used as intended to repair or replace the lost or damaged resource;

(13) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121, et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(14) any resource federal law excludes;

(15) funds in a retirement account excluded under 7 U.S.C. §2014(g);

(16) funds in an education account excluded under 7 U.S.C. §2014(g);

(17) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(18) funds from educational assistance payments (but only during the quarter, semester, or applicable period the payment is intended to cover);

(19) the value of real property the household is making a good faith effort to sell at a reasonable price;

(20) funds excluded under §372.355(d) of this division (relating to Treatment of Resources in SNAP);

(21) funds excluded under §372.404(25) of this subchapter;

(22) the fair market value of one automobile up to \$4,650; and

(23) funds held in a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §31.0039 of the Texas Human Resources 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.

Filed with the Office of the Secretary of State on September 27, 2022.

TRD-202203890

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 206-4621

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SUBCHAPTER F. BENEFITS

DIVISION 1. BENEFITS IN GENERAL

1 TAC §372.1507

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §372.1507, concerning TANF Supplemental Grandparent Payment.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 263, 87th Legislature, Regular Session, 2021, which requires HHSC to expand who may receive a one-time \$1,000 TANF Supplemental Grandparent Payment from only grandparents to also include aunts, uncles, and siblings.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §372.1507 expands the one-time TANF Supplemental Grandparent Payment to include aunts, uncles and siblings. The proposed amendment also retitles the rule to "TANF Supplemental Relative Payment." This amendment aligns the rule with the requirements of S.B. 263.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand existing rules;

(7) the proposed rule will increase the number of individuals subject to the rule; and

(8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not apply to and will not impose any additional costs on small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be expanded access to the TANF Supplemental Relatives Payment.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because it is assumed the number of new recipients would be small and any cost to implement the provisions of the bill could be absorbed within available resources.

TAKINGS IMPACT ASSESSMENT

HHSC 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 Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.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; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) 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 22R087" in the subject line.

STATUTORY AUTHORITY

The amendment 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 by the health and human services agencies, and Texas Human Resources Code §31.003, which requires the Executive Commissioner to adopt rules related to distribution of TANF benefits.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §31.003.

§372.1507. *TANF Supplemental Relative [Grandparent] Payment.*

In addition to regular TANF benefits, the Texas Health and Human Services Commission pays a one-time payment to an eligible caretaker [grandparents] who cares [cares] for a TANF-certified child [grandchild] as authorized by the Texas Human Resources Code[er] §31.0041.

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 September 27, 2022.

TRD-202203889

Karen Ray
Chief Counsel

Texas Health and Human Services Commission
Earliest possible date of adoption: November 13, 2022
For further information, please call: (512) 206-4621



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.49

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.49 relating to Application for a Rate Adjustment by a Class D Utility Under Texas Water Code §13.1872. Proposed amendments to 16 TAC §24.49 will streamline the process for a Class D water utility to apply for a rate adjustment. It will also provide Class D utilities the benefits of commission's professional resources that will reduce their regulatory compliance burden. The commission also proposes changes to the corresponding Class D utility rate adjustment application form.

Growth Impact Statement

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

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not, in effect, create a new regulation, because it is replacing a similar regulation;
- (6) the proposed rule will repeal an existing regulation, but it will replace that regulation with a similar regulation;
- (7) the same number of individuals will be subject to the proposed rule's applicability as were subject to the applicability of the rule it is being proposed to replace; and
- (8) the proposed rule 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 rule. 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 rule 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

Anna Givens, director of financial review, has determined that for the first five-year period the proposed rule is 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 section.

Public Benefits

Ms. Givens has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section is increased efficiency in processing Class D water utilities rate adjustment applications. It will also provide Class D utilities the benefits of commission's professional resources to reduce their regulatory compliance burden and decrease regulatory lag. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

Local Employment Impact Statement

For each year of the first five years the proposed section is 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 on November 11th, 2022, at 9:00 a.m. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by November 4, 2022. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by November 4, 2022. Comments should be 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 also requests comments on the corresponding Class D utility rate adjustment application form filed under Project No. 54062. The commission will consider the costs and benefits in deciding whether to modify the application form and proposed rules on adoption. All comments should refer to Project No. 54062.

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 include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The rule is proposed under TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment without a hearing; and TWC §13.1873, which requires the commission to adopt rules that allow a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility.

Cross Reference to Statute: Texas Water Code §§13.041, 13.181(b), 13.1872, and 13.1873.

§24.49. *Application for a Rate Adjustment by a Class D Utility Under Texas Water Code §13.1872.*

(a) Purpose. This section establishes procedures for a Class D utility to apply for an adjustment to its water or wastewater rates as allowed by Texas Water Code (TWC) §13.1872(c)(1).

(b) Definitions. In this section, the term application means an application for a rate adjustment filed under this section and TWC §13.1872(c)(1).

(c) Requirements for filing of the application. Subject to the limitations set out in subsection (g) [(f)] of this section, a Class D utility may file an application with the commission.

(1) The utility may request to increase its tariffed monthly fixed customer or meter charges and monthly gallonage charges by no more than five percent.

(2) The application must be on the commission's form. [and must include:]

[(A) a proposal for the provision of notice that is consistent with subsection (e) of this section; and]

[(B) a copy of the relevant pages of the utility's currently approved tariff showing its current monthly fixed customer or meter charges and monthly gallonage charges.]

(d) Determining whether the application is administratively complete.

(1) If commission staff requires additional information in order to process the application, commission staff must file a notification to the utility within 14 days of the filing of the application requesting any necessary information.

(2) An application may not be deemed administratively complete as required by §24.8 of this title (relating to Administrative Completeness) until after the utility has responded to commission staff's request under paragraph (1) of this subsection.

[(d) Processing of the application. The following criteria apply to the processing of an application.]

[(1) Determining whether the application is administratively complete.]

[(A) If commission staff requires additional information in order to process the application, commission staff must file a

notification to the utility within 10 days of the filing of the application requesting any necessary information.}]

[(B) An application may not be deemed administratively complete as required by §24.8 of this title (relating to Administrative Completeness) until after the utility has responded to commission staff's request under paragraph (A) of this paragraph.}]

[(2) Within 30 days of the filing of the application, commission staff must file a recommendation stating whether the application should be deemed administratively complete as required by §24.8 of this title. If commission staff recommends that the application be deemed administratively complete, commission staff must also file a recommendation on final disposition, including, if necessary, a proposed tariff sheet reflecting the requested rate change.}]

(c) Staff recommendation. Within 30 days of the filing of the application, commission staff must file a recommendation stating whether the application should be deemed administratively complete as required by §24.8 of this title. If commission staff recommends that the application be deemed administratively complete, commission staff must also file a recommendation on final disposition, including:

(1) The utility's rate adjustment information as follows:

- (A) Certificate of Convenience and Necessity(CCN) number;
- (B) Affected subdivision(s);
- (C) Existing and proposed base rate by meter size;
- (D) Existing and proposed gallonage rate by block;
- (E) Percentage increase of the rate adjustment;
- (F) Date by which notice is delivered; and
- (G) Effective date of the rate increase.

(2) An updated tariff sheet reflecting the requested rate change; and

(3) The proper notice of approved rates to be provided to the utility's ratepayers as described in subsection (f)(2) of this section.

[(e) Notice of Approved Rates. After the utility receives a written order by the commission approving or modifying the utility's application, including the proposed notice of approved rates, and at least 30 days before the effective date of the proposed change established in the commission's order, the utility must send by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, the approved or modified notice to each ratepayer describing the proposed rate adjustment. The notice must include:}]

[(1) a statement that the utility requested an annual rate adjustment and specifying the percent amount requested;}]

[(2) the existing rate;}]

[(3) the approved rate; and}]

[(4) a statement that the rate adjustment was requested under TWC §13.1872 and that a hearing will not be held for the request.}]

(f) Notice of Approved Rates.

(1) A utility must send by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, notice to each ratepayer describing the proposed rate adjustment. The notice must be sent after the utility receives a written order from the commission approving the application, and at least 30 days before the effective date of the approved change.

(2) A notice of approved rates must include:

(A) a statement that the utility requested an annual rate adjustment and specifying the percent amount requested;

(B) the existing rate;

(C) the approved rate;

(D) a monthly billing comparison; and

(E) a statement that the rate adjustment was requested under TWC §13.1872 and that a hearing will not be held for the request.

[(f) Time between filings. The following criteria apply to the timing of the filing of an application.}]

[(1) A Class D utility may adjust its rates under this section not more than once each calendar year and not more than four times between rate proceedings filed under TWC §13.1872(c)(2).}]

[(2) The filing of applications as allowed by this section is limited to a specific quarter of the calendar year, and is based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below, unless good cause is shown for filing in a different quarter. For a utility holding multiple CCNs, the utility may file an application in any quarter for which any of its CCN numbers is eligible.}]

[(A) Quarter 1 (January-March): CCNs ending in 00 through 27;}]

[(B) Quarter 2 (April-June): CCNs ending in 28 through 54;}]

[(C) Quarter 3 (July-September): CCNs ending in 55 through 81; and}]

[(D) Quarter 4 (October-December): CCNs ending in 82 through 99.}]

(g) Time between filings. A Class D utility may adjust its rates under this section not more than once each calendar year and not more than four times between rate proceedings filed under TWC §13.1872(c)(2).

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 September 29, 2022.

TRD-202203927

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 936-7244



SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.239

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.239, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental. This proposed rule will implement Texas Water Code (TWC) §13.301 and Tex. Gov't Code §1502.055 as revised by House Bill 3717 during the Texas 87th Regular Legisla-

tive Session. The amended rule will clarify the entities to which the rule applies and implement specific requirements for transactions involving the purchase of a municipally owned utility.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Tex. Gov't Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule 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 rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Tex. Gov't Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in Tex. Gov't Code Chapter 2007.

Fiscal Impact on State and Local Government

Tammy Benter, Division Director, Utility Outreach, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Tex. Gov't Code §2001.024(a)(4) as a result of enforcing or administering the section.

Public Benefits

Ms. Benter has determined that for each year of the first five years the proposed section is in effect the public benefits anticipated as a result of enforcing the section will be enhanced clarity to the applicability of the rule, guidance to entities involved in transactions to purchase a municipally owned utility, and expedited approval of the sale of municipally owned utilities. There will be no probable economic cost to persons required to comply with the rule under Tex. Gov't Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore,

no local employment impact statement is required under Tex. Gov't Code §2001.022.

Costs to Regulated Persons

Tex. Gov't Code §2001.0045(b) does not apply to this rule-making because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Tex. Gov't Code §2001.029. The request for a public hearing must be received by November 4, 2022. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by November 4, 2022. Comments should be organized in a manner consistent with the organization of the proposed rule. 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 rule on adoption. All comments should refer to Project Number 54046.

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 include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amendment is proposed under TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amendment is also proposed under TWC §13.301, which governs the sale, acquisition, lease, or rental of water and sewer utilities by entities required to possess a certificate of public convenience and necessity; and Tex. Gov't Code §1502.055, which requires the sale of a utility system to be authorized by a majority vote of the qualified voters of the municipality unless certain circumstances apply.

Cross Reference to Statute: Public Utility Regulatory Act §14.002; TWC §13.301; Tex. Gov't Code §1502.055.

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

(a) Application [for approval of transaction]. Any water supply or sewer service corporation or a water and sewer utility owned by an entity required to possess a certificate of convenience and necessity (CCN) must comply with this section. A municipality, district, or political subdivision may, but is not required to, comply with this section[, and a retail public utility that possesses a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days before the effective date of the transaction. The 120-day period begins on the most recent of:]

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

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

(b) Filing requirements for approval of transaction and public notice. No later than 120 days before the effective date of any sale, transfer, merger, consolidation, acquisition, lease, or rental, a written application must be filed with the commission and public notice of the transaction must be given. Notice is considered given under this subsection on the later of:

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

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

(c) Transaction involving a municipally owned utility. A transaction involving the purchase of a municipally owned utility must comply with this subsection.

(1) A water supply or sewer service corporation or a water and sewer utility owned by an entity required to possess a CCN applying to purchase a municipally owned utility must provide documentation indicating either:

(A) the sale has been authorized by a majority vote of the qualified voters of the municipality in an election held by the governing body of the municipality and in the manner provided for bond elections in the municipality; or

(B) the Texas Commission on Environmental Quality (TCEQ) has issued a notice of violation to the municipally owned utility and the governing body of the municipality finds by official action during an open meeting under Tex. Gov't Code Subchapter 551 that the municipality is either financially or technically unable to restore the municipally owned utility to compliance with the applicable law or regulations.

(2) For a sale authorized as described by paragraph (1)(A) of this subsection, the applicant must provide a copy of the record of proceedings authorizing the sale of the municipally owned utility that comply with Tex. Gov't Code Subchapter 1251; and

(3) For a sale authorized as described by paragraph (1)(B) of this subsection, the applicant must provide notice to the TCEQ of the transaction by certified mail and the following information to the commission:

(A) a copy of the active notice of violation from the TCEQ involving the municipally owned utility;

(B) a copy of the certified mail receipt for the notice issued to the TCEQ regarding the transaction; and

(C) a copy of the official action taken by the governing body of the municipality at an open meeting under Tex. Gov't Code Subchapter 551 finding the municipality is financially or technically unable to restore the municipally owned utility to compliance with the applicable law or regulations.

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

(e) [(e)] Notice to affected parties.

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

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

(B) a description of the requested area;

(C) the following statement: "Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). If you wish to intervene, the commission must receive your letter requesting intervention or motion to intervene by that date."; and

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

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

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

(E) if the transferor is a municipality, the notice must also provide a copy, or a description of where a copy can be accessed electronically, of the following information, as applicable:

(i) the record of proceedings order if subsection (c)(1)(A) of this section applies; or

(ii) the active notice of violation issued by the TCEQ and the official action taken by the governing body of the municipality at an open meeting under Tex. Gov't Code Subchapter 551 relating to financial or technical insufficiency if subsection (c)(1)(B) of this section applies.

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

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

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

(f) [(d)] Requirements for application with fair market valuation.

(1) An application filed under this section for approval of a transaction that includes a fair market valuation of the transferee or the transferee's facilities that was determined using the process established in §24.238 of this title, relating to Fair Market Valuation must include:

(A) copies of the three appraisals performed under §24.238(f);

(B) the purchase price agreed to by the transferor and transferee;

(C) the transaction and closing costs incurred by the transferee that will be requested to be included in the transferee's rate base; and

(D) if applicable, a copy of the transferor's commission-approved tariff that contains the rates in effect at the time of the acquisition.

(2) The commission will review the transaction and closing costs, including fees paid to appraisers, in the rate case in which the transferee requests rate recovery of those costs.

(g) [(e)] A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.227(a) of this title, relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity.

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

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

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

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

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

(3) the transferee has a history of:

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

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

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

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

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

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

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

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

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

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

(G) environmental integrity;

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

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

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

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

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

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

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

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

(2) the date such deposit was made;

(3) the amount of the deposit; and

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

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

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

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

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

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

- (1) the purchase of replacement property;
- (2) a transaction under TWC §13.255; or
- (3) foreclosure on the physical assets of a utility.

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

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

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

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7322



CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes: amendments to 16 TAC §25.30, relating to Complaints; the repeal of existing §25.105, relating to Registration and Reporting by Power Marketers, §25.107, relating to Certification of Retail Electric Providers (REPs) and §25.109, relating to Registration of Power Generation Companies and Self-Generators; new §25.105, relating to Registration by Power Marketers; new §25.107, relating to Certification and Obligations of Retail Electric Providers (REPs); and new §25.109, relating to Registration by Power Generation Companies and Self-Generators; amendments to §25.485, relating to Customer Access and Complaint Handling, and §25.495, relating to Unauthorized Change of Retail Electric Provider. The commission also amends the certification and registration forms and other documents associated with §§25.105, 25.107, and 25.109.

The proposed rules amend §§25.30, 25.485, and 25.495 to change the time period for entities to respond to complaints from 21 days to 15 days. The proposed rules ensure the commission has current information on power marketers and power generation companies (PGCs), disallow certain persons from controlling REPs and PGCs, and strengthen the financial requirements for REPs.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Tex. Gov't 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;

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 Tex. Gov't 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 Tex. Gov't Code, chapter 2007.

Fiscal Impact on State and Local Government

Mariah Benson, Economist, Market Analysis, 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 Tex. Gov't Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Benson has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be a reduction of risk to the market by enhancing the application processes for, and refining the obligations of, market participants. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections.

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 Tex. Gov't Code §2001.022.

Costs to Regulated Persons

Tex. Gov't Code §2001.0045(b) does not apply to this rule-making because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Tex. Gov't Code §2001.029. The request for a public hearing must be received by December 1, 2022. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by November 14, 2022. Reply comments must be filed by December 1, 2022. Comments should be 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 rules. 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 52796.

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 include a bulleted list covering each substantive recommendation made in the comments.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.30

Statutory Authority

The amended rules are proposed under PURA §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. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §17.001, §17.003, and §17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the require-

ments to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 15.051, 17.001, 17.003, 17.004, 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

§25.30. Complaints.

(a) Complaints to the electric utility. A customer or applicant may file a complaint in person, by letter, by email, by electronic form, or by telephone with the electric utility. The electric utility must [shall] promptly investigate and advise the complainant of the results within 15 [24] days. The customer or applicant has the right to request from the electric utility a supervisory review of their complaint if they are not satisfied with the results of the electric utility's initial response to their complaint.

(1) If the electric utility is unable to provide a supervisory review immediately following the customer's request, then arrangements for the review must be made for the earliest possible date.

(2) Service must not be disconnected before completion of the review. If the customer chooses not to participate in a review then the company may disconnect service, providing proper notice has been issued under the disconnect procedures in §25.29 of this title (relating to Disconnection of Service).

(3) The results of the supervisory review must be provided in writing to the customer within ten days of the review, if requested.

(4) Customers who are dissatisfied with the electric utility's supervisory review must be informed of their right to file a complaint with the commission.

~~{(b) Supervisory review by the electric utility. Any electric utility customer or applicant has the right to request a supervisory review if they are not satisfied with the electric utility's response to their complaint.}~~

~~{(1) If the electric utility is unable to provide a supervisory review immediately following the customer's request, then arrangements for the review shall be made for the earliest possible date.}~~

~~{(2) Service shall not be disconnected before completion of the review. If the customer chooses not to participate in a review then the company may disconnect service, providing proper notice has been issued under the disconnect procedures in §25.29 of this title (relating to Disconnection of Service).}~~

~~{(3) The results of the supervisory review must be provided in writing to the customer within ten days of the review, if requested.}~~

~~{(4) Customers who are dissatisfied with the electric utility's supervisory review must be informed of their right to file a complaint with the commission.}~~

(b) [(e)] Complaints to the commission.

(1) If the complainant is dissatisfied with the results of the electric utility's complaint investigation or supervisory review, the electric utility must advise the complainant of the commission's informal complaint resolution process. The electric utility must also provide the customer the following contact information for the commission: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512)936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512)936-7003, e-mail

address: customer@puc.texas.gov [customer@puc.state.tx.us], internet address: www.puc.texas.gov [www.puc.state.tx.us], TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.

(2) The electric utility must [~~shall~~] investigate all complaints and advise the commission in writing of the results of the investigation within 15 [~~24~~] days after the complaint is forwarded to the electric utility.

(3) The electric utility must [~~shall~~] keep a record for two years after determination by the commission of all complaints forwarded to it by the commission. This record must [~~shall~~] show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or charges which require no further action by the electric utility need not be recorded.

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

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SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §§25.105, 25.107, 25.109

Statutory Authority

The repeals are proposed under PURA §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. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the requirements to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 15.051, 17.001, 17.003, 17.004, 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

§25.105. *Registration and Reporting by Power Marketers.*

§25.107. *Certification of Retail Electric Providers (REPs).*

§25.109. *Registration of Power Generation Companies and Self-Generators.*

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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16 TAC §§25.105, 25.107, 25.109

Statutory Authority

The new rules are proposed under PURA §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. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §17.001, §17.003, and §17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the requirements to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 15.051, 17.001, 17.003, 17.004, 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

§25.105. *Registration by Power Marketers.*

(a) Applicability. This section contains the registration and renewal of registration requirements for a power marketer. A person must be registered as a power marketer with the commission to participate in the Texas wholesale market as a power marketer. The registration of a person already registered as a power marketer as of the effective date of this section expires on June 1, 2023, unless the person files a new registration in compliance with the requirements of this section.

(b) Registration information. To register as a power marketer, a person must submit the following information in the manner established by the commission.

(1) The registrant's contact information, including the registrant's:

(A) physical and business mailing address;

(B) business telephone number; and

(C) business e-mail address.

(2) The name of the current regulatory contact, and the contact's e-mail address and telephone number.

(3) The addresses of any facilities used by the registrant in Texas.

(4) A description of the activities the registrant will participate in, and services provided.

(5) As applicable, copies of all information filed with the Federal Energy Regulatory Commission (FERC) relating to the registrant's FERC registration to sell electric energy at market-based rates.

(6) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant affirming that the registrant qualifies as a power marketer. The affidavit must also include the following information:

(A) the business name of any affiliated entity registered with the commission and the type of commission registration associated with each affiliated entity;

(B) whether each affiliate buys or sells electricity at wholesale in Texas; sells electricity at retail in Texas; or is an electric cooperative or municipally owned utility in Texas; and

(C) the business name of any affiliated qualified scheduling entity.

(c) Update of registration. A power marketer must update, in a manner established by the commission, its registration within 30 days of a change to information listed under subsection (b) of this section.

(d) Renewal of registration. A power marketer must renew its registration on or before November 1 of each calendar year by submitting, in a manner established by the commission, the information required by subsection (b) of this section or by submitting a statement that the power marketer's registration information on file with the commission is current.

(1) Commission staff will send one notice to the regulatory contact listed for a power marketer that has not submitted its registration renewal by November 1st. Commission staff's failure to send this notice does not excuse a power marketer from complying with any of the requirements of this section.

(2) A power marketer registration that is not renewed by December 31st of each calendar year expires.

(3) Commission staff will notify the Electric Reliability Council of Texas of a power marketer whose registration has expired.

(4) A person may not continue to operate as a power marketer in Texas after its registration has expired.

(5) A person whose power marketer registration is expired may apply for a new registration at any time.

(e) Commission list of power marketers. The commission will maintain a list of power marketers registered in Texas on the commission's website. A power marketer that fails to renew its registration under subsection (d) of this section may be listed as "Expired" on the commission's list of power marketers.

§25.107. Certification and Obligations of Retail Electric Providers (REPs).

(a) Applicability.

(1) This section contains the certification and reporting requirements applicable to a retail electric provider (REP).

(A) A person must obtain a REP certificate under this section before purchasing, taking title to, or reselling electricity to provide retail electric service. Certification must be maintained on an ongoing basis by timely reporting and updating the certification information as required by this section.

(B) A person that does not purchase, take title to, or resell electricity to provide electric service to a retail customer is not

a REP and must not act as a REP without obtaining a certificate under this section. A REP that outsources retail electric service functions is responsible for those functions in accordance with all applicable laws and commission rules for all activities conducted on its behalf by any third-party provider.

(C) A person operating an electric-vehicle charging station is not, for that reason, required to be certified as a REP.

(2) This section also applies, where specifically stated, to an independent system operator or transmission and distribution utility (TDU).

(3) A person already certified as an Option 1 REP as of the effective date of this section must come into compliance with the requirements of this section by August 15, 2023.

(A) A REP must complete and file a commission approved compliance update form that demonstrates the REP is in compliance with this section on or before August 15, 2023.

(B) A REP who does not demonstrate compliance with this section on or before August 15, 2023 may be subject to a suspension of acquiring new customers under subsection (I) of this section.

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

(1) Affiliate--As defined in §25.5 of this title (relating to Definitions).

(2) Assumed name--has the meaning assigned in Chapter 71 of the Texas Business and Commerce Code.

(3) Continuous and reliable electric service--Retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by the unlawful or unjustified action or inaction of the REP.

(4) Control--The term control (including the terms controlling, controlled by and under common control with) means the direct or indirect possession of binding authority to direct or cause the direction of the management, policies, operations, or decision-making of a person, whether through ownership of voting securities, by contract, formation documents, or otherwise. A principal is a controlling person. A third-party provider may be a controlling person.

(5) Default--As defined in a TDU tariff for retail delivery service, Electric Reliability Council of Texas (ERCOT) qualified scheduling entity (QSE) agreement, or ERCOT load serving entity (LSE) agreement, ERCOT standard form market participant agreement (SFA), or any similar agreement with an applicable independent organization other than ERCOT.

(6) Executive officer--An entity's president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions. Executive officers of subsidiaries may be deemed executive officers of the entity if they perform such policy making functions for the entity.

(7) Guarantor--A person that provides an irrevocable guaranty agreement using the standard form approved by the commission under this section.

(8) Investment-grade credit rating--A long-term unsecured credit rating issued by the bond credit rating companies Moody's Investors' Service (Moody's), Standard & Poor (S&P), or Fitch of at least "Baa3" from Moody's or "BBB-" from S&P or Fitch.

(9) Option 1 REP--A REP that provides its service offerings to any customer class based on geographic service area.

(10) Option 2 REP--A REP that limits its service offerings to specifically identified customers, each of whom contracts for one megawatt or more of capacity.

(11) Option 3 REP--A REP that sells electricity exclusively to a retail customer, other than a small commercial or residential customer, from a distributed generation facility owned by a power generation company (PGC) that has registered in accordance with §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators) located on the same geographic site as the customer.

(12) Person--An individual or any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation. Person does not include an electric cooperative or a municipal corporation.

(13) Principal--Includes:

(A) A sole proprietor;

(B) A general partner;

(C) An executive of a company (e.g., a president, chief executive officer, chief operating officer, chief financial officer, general counsel, or equivalent position);

(D) A manager, managing member, or a member vested with the management authority of a limited liability company or limited liability partnership;

(E) A shareholder with more than 10% equity of the REP, if a public company; or

(F) A person who has apparent or actual authority to exercise control over the REP or exercises control over a principal otherwise described by this subsection. A consultant or third-party provider can be a principal to the extent they exercise control over the REP or its principals.

(14) Shareholder--The legal or beneficial owner of any of the equity of any business entity as the context and applicable business entity requires, including, stockholders of corporations, members of limited liability companies and equity partners of partnerships.

(15) Tangible net worth--Total shareholders' equity, determined in accordance with generally accepted accounting principles, less intangible assets other than goodwill.

(16) Third-party provider--An entity to which a REP outsources or plans to outsource any retail or wholesale electric functions, including a contractor, consultant, agent, or any other person not directly employed by the REP. A third-party provider can be a principal to the extent it exercises control over the REP or its principals.

(c) Application processing.

(1) A person can apply for REP certification by submitting a complete application on a form approved by the commission. Commission staff will review each application for sufficiency and submit a recommendation to the presiding officer within 20 days after the application is filed. The presiding officer will make a determination of sufficiency of the application within ten days of receipt of commission staff's recommendation. If the presiding officer finds that the application is deficient, the presiding officer must notify the applicant. The applicant will have ten days from the issuance of the notice to cure the deficiencies. If the deficiencies are not cured within ten days, the presiding officer may notify the applicant that the certification request is rejected without prejudice.

(2) While an application for certification or amendment is pending, an applicant must notify the commission of any material change to the information provided in the application within ten days of any such change.

(3) Except where good cause exists to extend the time for review, the presiding officer will issue an order approving, rejecting, or approving with modifications, an application within 90 days of finding an application sufficient.

(4) For applications to certify as an Option 1 REP, the presiding officer will deny an application if the configuration of the proposed geographic area would unduly discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; because the customer is located in an economically distressed geographic area or qualifies for low income affordability or energy efficiency services; or because of any other reason prohibited by law.

(5) For applications to certify as an Option 2 REP, if the REP does not file an affidavit from a customer with which it has contracted to provide one megawatt or more of energy by the 30th day of the application being approved, then the presiding officer will administratively revoke the REP certificate without prejudice. The person can file a new application for certification at any time.

(d) Basic requirements.

(1) A REP must maintain its certification by complying with the following subparagraphs.

(A) Only provide retail electric service under the name or names set forth in an approved application for certification or subsequent amendment application. A REP's certificate must contain the REP's legal business name and all assumed names under which it proposes to provide service.

(B) Not use more than five assumed names in the REP's regular course of business.

(C) Maintain an active business registration with the Texas Secretary of State.

(D) Maintain current and accurate contact information including:

(i) physical and business mailing address;

(ii) business telephone number;

(iii) business e-mail address;

(iv) regulatory contact name, telephone number, and e-mail address; and

(v) customer complaint contact name, telephone number, and e-mail address;

(vi) emergency contact's name, telephone number, and e-mail address; and

(vii) primary contact's name, telephone number, and e-mail address.

(E) Maintain current and accurate office information including:

(i) an office open during normal business hours with a street address located within Texas for the purpose of providing customer service and making available to commission staff books and records sufficient to establish the REP's compliance with Public Utility Regulatory Act (PURA) and commission rules; the office must have

a business telephone number, business e-mail address, and business postal address where the REP's staff can be directly reached; and

(ii) an office located within Texas for the purpose of accepting service of process.

(F) Comply with all applicable scheduling, operating, planning, reliability, customer registration, and settlement policies, protocols, guidelines, procedures, and other protocols established by the applicable independent organization including any independent organization requirements for 24-hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

(G) Comply with the registration and certification requirements of the applicable independent organization and its system rules and protocols, or each contract for services with a third-party provider that is required to be registered with or certified by the applicable independent organization.

(H) Maintain adequate staffing and employee training to meet all service level commitments.

(I) Respond within five working days to any commission staff request for information.

(2) An applicant must provide the following information to the commission to certify as a REP under this section.

(A) An application for certification or amendment to a certificate must be made on a form approved by the commission, specify whether the applicant seeks to obtain or amend a REP certificate, and be accompanied by a signed, notarized affidavit attesting that all material provided in the application is true, correct, and complete. The affidavit must be signed by an executive officer of the applicant.

(B) The applicant's Texas Secretary of State registration to verify the information required under paragraphs (1)(A) and (B) of this subsection. A business name must not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by a REP certificate holder.

(C) The applicant's current contact information required under paragraph (1)(D) of this subsection.

(D) The applicant's current office information required under paragraph (1)(E) of this subsection.

(E) Information on controlling persons, including:

(i) an ownership and corporate structure chart that includes the share percentage each person holds, including:

(ii) a list of the registrant's and corporate parent's affiliates identified by name and type of commission registration, provided via external storage for digital media, in Microsoft Excel format;

(iii) a list of all principals, provided via external storage for digital media, in Microsoft Excel format;

(iv) a list of all executive officers, provided via external storage for digital media, in Microsoft Excel format; and

(F) A statement affirming compliance with paragraphs (1)(F)-(H) of this subsection and a short summary describing how the applicant has complied with each subparagraph.

(G) The project and item number where the applicant has filed its Emergency Operations Plan as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).

(H) An applicant for an Option 1 REP certificate must designate one of the following categories as its geographic service area:

(i) The geographic area of the entire state of Texas;

(ii) A specific geographic area (indicating the zip codes applicable to that area);

(iii) The service area of one or more specific TDUs, municipal utilities, or electric cooperatives in which competition is offered; or

(iv) The geographic area of ERCOT or other independent organization to the extent it is within Texas.

(I) An applicant for an Option 2 REP certificate must include a signed, notarized affidavit stating that it will only contract with customers to provide one megawatt or more of energy. Within 30 days of commission approval of the application and before an Option 2 REP begins serving a customer, the Option 2 REP must file with the commission a signed, notarized affidavit from each customer with which it has contracted to provide one megawatt or more of energy. The affidavit may be submitted by the applicant while the application for an Option 2 REP certificate is pending. Each customer affidavit must state that the customer understands and accepts the REP's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.

(J) An applicant for an Option 3 REP certificate must:

(i) identify the name of the PGC that owns the distributed generation facilities and affirm that the PGC is registered under §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators); and

(ii) provide a signed, notarized affidavit from an executive officer of the PGC confirming:

(I) the PGC operating the distributed generation facility conforms to the requirements of §25.211 of this title (relating to Interconnection of On-Site Distributed Generation (DG)) and §25.212 of this title (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation);

(II) the distributed generation facility is installed by a licensed electrician, consistent with the requirements of the Texas Department of Licensing and Regulation; and

(III) the distributed generation facility is installed in accordance with the National Electric Safety Code as adopted by the Texas Department of Licensing and Regulation and otherwise complies with all applicable local and regional building codes.

(e) Technical and managerial requirements. An Option 1 REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, applicable independent organization protocols, and other applicable laws. This subsection does not apply to an Option 2 or Option 3 REP.

(1) Technical and managerial resource requirements. The following are technical and managerial resource requirements a REP must maintain.

(A) One or more executive officers or employees in managerial positions whose combined experience in the competitive electric industry or competitive gas industry equals or exceeds 15 years. A third-party provider's experience may not be used to meet this requirement.

(B) At least one executive officer or employee who has five years of experience in energy commodity risk management of a

substantial energy portfolio. Alternatively, the REP may enter into a contract for a term not less than two years with a third-party provider of commodity risk management services that has been providing such services for a substantial energy portfolio for at least five years. A substantial energy portfolio means managing electricity or gas market risks with a minimum value of at least \$10,000,000.

(C) The capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis.

(D) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.

(2) Technical and managerial documentation requirements. The following must be provided by an applicant to demonstrate compliance with the technical and managerial requirements under paragraph (1) of this subsection.

(A) A list of all third-party providers and a description of their responsibilities and delegation of authority, provided via external storage for digital media, in Microsoft Excel format.

(B) Resumes showing prior experience of one or more of the applicant's executive officers or employees in the competitive retail electric industry or competitive gas industry to demonstrate at least 15 years of experience and, if applicable, five years' experience in commodity risk management.

(C) If relying upon a third-party provider for commodity risk management services to satisfy the requirement for paragraph (1)(B) of this subsection, a copy of the executed contract is required.

(D) Any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application regarding: the applicant; the applicant's and corporate parent's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons.

(i) The complaint history, disciplinary record, and compliance record must include information from any federal agency including the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission; any self-regulatory organization relating to the sales of securities, financial instruments, physical or financial transactions in commodities, or other financial transactions; state public utility commissions, state attorney general offices, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information must include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the complaint history of the applicant's principals and affiliates, disciplinary record, and compliance record.

(iii) Any complaint information on file at the commission may also be considered when reviewing the application.

(E) The following statements must be supported by a signed notarized affidavit made by an executive officer of the applicant.

(i) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations.

(ii) A statement that identifies whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(iii) A statement that the applicant will register with or be certified by the applicable independent organization and that the applicant will comply with the technical and managerial requirements of this subsection; and that third-party providers with whom the applicant has a contractual relationship are registered with or certified by the independent organization, as appropriate, and will comply with all system rules and protocols established by the applicable independent organization.

(iv) A statement that describes an applicant's relationship with any of the following persons.

(I) Identification of all of the applicant's principals, executive officers, employees, third-party providers, and third-party provider's employees that:

(-a) exercised direct or indirect control over a REP that experienced a mass transition of the REP's customers under §25.43 of this title (relating to Provider of Last Resort (POLR)) at any time within the six months prior to the mass transition;

(-b) exercised direct or indirect control at any time within the six months prior to a market participant having had its ERCOT SFA terminated or a similar agreement for an applicable independent organization terminated;

(-c) exercised direct or indirect control within the prior six months of a market participant having exited an electricity or gas market with outstanding payment obligations that remain outstanding; or

(-d) that have been barred, in any way, participation by commission order.

(II) If a relationship exists as described in subclause (I) of this clause, the applicant must include in the affidavit for each such relationship:

(-a) the name of the person;

(-b) the name of the REP that experienced a mass transition of its customers under §25.43 of this title or market participant whose SFA was terminated or exited a market with outstanding payment obligations;

(-c) details about the person's relationship with the REP or market participant;

(-d) factual statements about the events that necessitated this response, including, if applicable, whether and, if so, how the REP that experienced a mass transition of its customers under §25.43 of this title settled all outstanding payment obligations;

(-e) the person's current relationship or position with the applicant; and

(-f) the extent of the person's apparent or actual authority to act in such a way that may be perceived as having direct or indirect control over the applicant.

(f) Financial requirements. An Option 1 REP must maintain compliance with paragraph (1) of this subsection and, as applicable, paragraph (2) and (3) of this subsection. This subsection does not apply to an Option 2 or Option 3 REP.

(1) Access to capital. A REP must maintain the requirements of subparagraphs (A) or (B) of this paragraph on an ongoing basis.

(A) A REP may maintain an executed version of the commission approved standard form irrevocable guaranty agreement.

(i) The guarantor must be:

(I) One or more affiliates of the REP;

(II) A financial institution with an investment-grade credit rating; or

(III) A provider of wholesale power supply for the REP, or one of such power provider's affiliates, with whom the REP has executed a power purchase agreement.

(ii) The guarantor must have:

(I) An investment-grade credit rating; or

(II) Tangible net worth greater than or equal to \$100 million, a minimum current ratio (defined as current assets divided by current liabilities) of 1.0, and a debt to total capitalization ratio not greater than 0.60, where all calculations exclude unrealized gains and losses resulting from valuing to market the power contracts and financial instruments used as supply hedges to serve load.

(B) A REP may maintain an irrevocable stand-by letter of credit with a face value as determined in clause (i) of this subparagraph and based on the number of electronic service identifiers (ESI IDs) the REP serves. Additionally, for the first 24 months a REP is serving load it must maintain not less than one million dollars in shareholders' equity.

(i) Figure: 16 TAC §25.107(f)(1)(B)(i)

(ii) The number of ESI IDs includes all customer classes to which a REP provides retail electric service.

(iii) As the number of ESI IDs served by the REP increases, the irrevocable stand-by letter of credit must be adjusted to reflect the required value as determined in clause (i) of this subparagraph. As the number of ESI IDs served by the REP decreases, the irrevocable stand-by letter of credit may be adjusted to reflect the required value as determined in clause (i) of this subparagraph.

(iv) For the first 24 months a REP is serving load, a REP must not make any distribution or other payment to any shareholders, affiliates, or corporate parent's affiliates if, after giving effect to the distribution or other payment, the REP's shareholders' equity is less than one million dollars. Distributions or other payments include, but are not limited to, dividend distributions, redemptions and repurchases of equity securities, and loans to shareholders or affiliates.

(v) After a REP has continuously served load for 24 months, a prescribed amount of maintained shareholders' equity is no longer required.

(2) Customer deposits and prepayments. A REP certified to collect customer deposits must comply with this paragraph and the requirements of §25.487 of this title (relating to Credit Requirements and Deposits). A REP certified to collect customer prepayments must comply with this paragraph and the requirements of §25.498 of this title (relating to Prepaid Service).

(A) A REP must maintain customer deposits in an escrow account, segregated cash account, or provide an irrevocable stand-by letter of credit. A REP must maintain customer prepayments in an escrow account or provide an irrevocable stand-by letter of credit.

(i) If a REP is certified to collect both customer deposits and prepayments then the same escrow account or irrevocable stand-by letter of credit must be used and maintained by the REP to protect customer deposits and prepayments. A REP certified to collect both customer deposits and prepayments may not use a segregated cash account to protect customer deposits and prepayments.

(ii) For customer deposits, the escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of the REP's outstanding customer deposits held at the close of each calendar month.

(iii) For customer prepayments, a REP must maintain, at minimum, protection for all customer prepayments that equals or exceeds \$50. The balance of an escrow account or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of customer prepayment funds equal to or exceeding \$50 held at the close of each calendar month.

(B) Any irrevocable stand-by letter of credit provided under this paragraph must be in addition to the irrevocable stand-by letter of credit required by paragraph (1)(B) of this subsection.

(3) Bankruptcy disclosure. If a REP files a petition for bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, including being in default with the applicable independent organization or with a TDU:

(A) The REP must notify the commission within three working days of this event and must file with the commission a summary of the nature of the event; and

(B) The notification must be filed in the commission project number established for notices prescribed under this paragraph. If the REP has filed a petition for bankruptcy, then the REP must include in its filing the petition that initiated the bankruptcy.

(4) Financial documentation requirements. The following must be provided, as applicable, by an applicant to demonstrate compliance with the financial requirements under paragraphs (1), (2), and (3) of this subsection. Additionally, the applicant must provide a summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 calendar months immediately preceding the filing of the application.

(A) Investment-grade credit ratings must be documented by reports from a credit reporting agency. The report the applicant provides must be the most recently released report by the credit reporting agency.

(B) Tangible net worth, current ratio, and debt to capitalization ratio calculations must be supported by a signed, notarized affidavit from an executive officer of the guarantor that attests to the accuracy of the calculations and be documented by:

(i) audited financial statements of the guarantor for the most recently completed calendar or fiscal year and include the independent auditor's report and accompanying notes; or

(ii) unaudited financial statements of the guarantor for the most recently completed quarter.

(I) Unaudited financial statements must include a signed, notarized affidavit from the guarantor, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(II) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.

(III) The requirement for financial statements may be satisfied by filing a copy of or providing an electronic link to the guarantor's most recent statement that contains unaudited financials filed with any agency of the federal government, including without limitation, the U.S. Securities and Exchange Commission.

(C) Shareholders' equity must be documented by the audited or unaudited financial statements of the applicant for the most recently completed quarter.

(i) Audited financial statements must include the independent auditor's report and accompany notes.

(ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(I) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements if quarterly statements are not available.

(II) The requirement for financial statements may be satisfied by filing a copy of or providing an electronic link to the REP's most recent statement that contains unaudited financials filed with any agency of the federal government, including without limitation, the U.S. Securities and Exchange Commission.

(D) Segregated cash accounts must be documented by a current account statement.

(i) The account statement must clearly identify:

(I) the name of the financial institution where the applicant has established the account;

(II) the account number; and

(III) the account name, which must clearly indicate the account is designated for containing only customer deposits.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Office of the Comptroller of the Currency or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(iii) An executed agreement with a provider of credit that is not affiliated with the applicant or the applicant's corporate parent, that governs the control and management of the account must be provided. The agreement must identify that the account only holds customer deposits, and that the customer deposits are not the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts.

(E) Escrow accounts must be documented by a current account statement and the escrow account agreement.

(i) The account statement must clearly identify:

(I) the name of the financial institution where the applicant has established the account; and

(II) the account number.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Office of the Comptroller of the Currency or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(iii) The escrow account agreement must provide that the account holds customer deposits and prepayments only, and that the customer deposits and prepayments will be held in trust by the escrow agent and will not be the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits and prepayments are applied to a final bill or to satisfy unpaid amounts.

(F) Irrevocable stand-by letters of credit provided under paragraphs (1) and (2) of this subsection must use the standard form irrevocable stand-by letter of credit template approved by the commission. The original document of the irrevocable stand-by letter of credit must be provided in a manner established by the commission.

(i) The irrevocable stand-by letter of credit must be maintained at a financial institution that is supervised or examined by the Office of the Comptroller of the Currency or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(ii) The irrevocable stand-by letter of credit must:

(I) be irrevocable for a period not less than twelve months;

(II) automatically renew, and only expire if prior notice is provided to the commission at least 90 days before the expiration;

(III) be payable to the commission;

(IV) permit a draw to be made in part or in full;

(V) permit a draw to be made with the return of the original document or a photocopy;

(VI) permit a draw to be made, among other ways, through over-night mail;

(VII) permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit; and

(VIII) require commission staff approve all amendment requests to decrease the value of the irrevocable stand-by letter of credit prior the value of the irrevocable stand-by letter of credit decreasing. Amendments to decrease the value of the irrevocable stand-by letter of credit must be accompanied by a notarized affidavit signed by an executive officer of the REP and include, as applicable, the current number of ESI IDs the REP serves, the value of customer deposits and prepayments the REP is liable for.

(G) Irrevocable guaranty agreements must be executed on the commission approved standard form irrevocable guaranty agreement and must obligate the guarantor to meet commission demands on behalf of the applicant.

(i) The guarantor's obligation to satisfy the commission's demand for payment must be in an amount not less than

\$1,500,000 and must be absolute, and the guarantor may not avoid its obligation for any reason.

(ii) The commission approved standard form irrevocable guaranty agreement must not have an expiration date. The irrevocable guaranty agreement may only be terminable after 90 days advance notice has been provided to the commission in a commission approved method. Until the 90 days advance notice has elapsed or until an amendment to the REP's financial qualifications is approved, whichever occurs first, the guarantor must remain completely and absolutely liable to the extent provided by the terms of the agreement.

(H) A power purchase agreement must be documented by providing a copy of the executed agreement between the applicant and the guarantor.

(5) Commission draw on financial instruments. The commission may seek full or partial funds from a REP's financial resources in any of the following circumstances:

(A) An applicable independent organization performs a mass transition of a REP's customers under §25.43 of this title ;

(B) The commission issues an order revoking a REP's certificate;

(C) ERCOT terminates a REP's SFA or the applicable organization terminates a similar agreement; or

(D) The commission's executive director finds that a REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols.

(6) Proceeds from financial instruments.

(A) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection may be used to satisfy the following obligations of a REP, in the following order of priority:

(i) first, to return of outstanding customer deposits and prepayments if not credited by or transferred to each customer's new REP of record or otherwise returned to each customer by the REP;

(ii) second, to assist in the payment of customer deposits to REPs that volunteer to provide service in a mass transition event under §25.43 of this title for low-income customers as identified by the Low-Income List Administrator under to §25.45 of this title (relating to Low-Income List Administrator);

(iii) third, if available, to assist in the payment of customer deposits to REPs that are designated to provide service in a mass transition event under §25.43 of this title for low-income customers as identified by the Low-Income List Administrator under to §25.45 of this title (relating to Low-Income List Administrator);

(iv) fourth, if available, to assist in the payment of residential customer deposits to REPs that volunteer to provide service in a mass transition event under §25.43 of this title ;

(v) fifth, if available, to assist in the payment of residential customer deposits to REPs that are designated to provide service in a mass transition event under §25.43 of this title for customers;

(vi) sixth, if available, for outstanding payments to the applicable independent organization;

(vii) seventh, if available, for outstanding payments to a TDU; and

(viii) eighth, if available, for administrative penalties assessed under Chapter 15 of PURA.

(B) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection must, to the extent that the proceeds are not needed to satisfy an obligation set out in subparagraph (A) of this paragraph, be paid to the applicable entity identified as the Applicant on the irrevocable stand-by letter of credit or the Guarantor on the irrevocable guaranty agreement.

(g) Persons prohibited from exercising control. An Option 1 REP must maintain compliance with this subsection at all times. This subsection does not apply to an Option 2 or Option 3 REP.

(1) In no instance may any of the following persons control the REP or be relied upon to meet the requirements of subsections (d) and (e) of this section:

(A) a person who was a principal of a REP that experienced a mass transition of the REP's customers under §25.43 of this title at any time within the six months prior to the mass transition;

(B) a person who was a principal of, at any time within the prior six months, a market participant whose ERCOT SFA or similar agreement for an independent organization other than ERCOT was terminated;

(C) a person who was a principal of, at any time within the prior six months, a market participant that exited an electricity or gas market with outstanding payment obligations that remain outstanding; or

(D) a person who, by commission order, is prohibited from serving as a principal for any commission-regulated entity.

(2) To the extent an independent organization or TDU is aware that a person who is otherwise barred from exercising direct or indirect control over a REP is acting in violation of this section or other commission substantive rules, the independent organization or TDU has an affirmative duty to report this information to the division of the commission charged with enforcement of the commission's substantive rules.

(h) Update or relinquishment of certification. A REP must maintain and update the information required by subsections (d), (e), and (f) of this section, as applicable, on an ongoing basis.

(1) A REP must electronically submit updated information in the manner established by the commission within five working days of any change to its contact information as identified in subsection (d)(1)(D) or this section.

(2) A REP must apply to amend its certification within ten working days of a material change to its certification. A REP may apply for the commission to approve a material change by filing an application to amend its certification before the material change is anticipated to occur. A material change includes:

(A) a change in ownership, control, corporate restructuring, or transfer of a REP certificate;

(B) a name change (including addition of assumed names);

(C) for Option 1 REPs, a change in service area;

(D) for Option 1 REPs, a change in technical or managerial qualifications, including:

(i) any information previously provided or attested to under the requirements of subsection (d) of this section,

(ii) personnel relied upon for experience, and

(iii) changes, termination, or expiration of a contract to provide commodity risk management services; and

(E) for Option 1 REPs, a change in financial qualifications, including:

(i) the REP's certificated method for maintaining its access to capital requirement of subsection (f)(1) of this section, including terminations made to the irrevocable standby guaranty agreement or power purchase agreement;

(ii) the certificated method for protecting its customer deposits and prepayments, and

(iii) the approved account for protecting customer deposits and prepayments.

(3) A REP that no longer serves customers may relinquish its REP certificate by filing an application for relinquishment on a form prescribed by the commission. A REP that does not serve customers for two consecutive years must relinquish its certificate. Prior to relinquishing its certificate, the REP must no longer serve any customers. At least 45 days prior to ceasing operations, a REP that intends to cease operations as a REP and is not seeking to relinquish its REP certificate must file a notice in the commission project number established under this paragraph to notify the commission of a REP ceasing operations. A REP must not cease operations as a REP without prior notice of at least 45 days to each of the REP's customers to whom the REP is providing service on the planned date of cessation of operations, and to other affected persons, including the applicable independent organization, TDUs, electric cooperatives, municipally owned utilities, generation suppliers, and providers of last resort. If a REP improperly transfers customers without providing adequate notice, under §25.493 of this title (relating to Acquisition and Transfer of Customers from one Retail Electric Provider to Another) then the REP may be subject to enforcement proceedings even after relinquishment of its certificate. Within the application to relinquish its certificate a REP must include a statement explaining whether customers' deposits were refunded to the customers or transferred to an alternative REP. The statement must be supported by a signed, notarized affidavit from an executive officer of the REP.

(i) Reporting requirements. An Option 1 REP must file with the commission an annual and a semi-annual report each year. Option 2 and Option 3 REPs do not have reporting obligations under this section.

(1) The annual report is due on March 5, or

(A) 65 days after the end of the REP's fiscal year; or

(B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 65 days after the end of the guarantor's fiscal year.

(2) The semi-annual report is due on August 15, or

(A) 225 days after the end of the REP's fiscal year; or

(B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 225 days after the end of the guarantor's fiscal year.

(3) The annual and semi-annual report must include the following information.

(A) A signed, notarized affidavit from an executive officer affirming that the certificate holder is not in material violation of any of the requirements of its certificate under this section and that the information reported in the entire report is true and correct.

(B) Any changes in ownership, control, corporate restructuring, or transfer of a REP certificate.

(C) Any changes in management, experience, and persons relied on for certification in subsection (e) of this section including the person or third-party provider acting as the REP's risk manager.

(D) A list of all principals, provided via external storage for digital media, in Microsoft Excel format.

(E) A list of all executive management, provided via external storage for digital media, in Microsoft Excel format.

(F) A list of all third-party providers and a description of their responsibilities and delegation of authority, provided via external storage for digital media, in Microsoft Excel format.

(G) A copy of a REP's current LSE contact information kept on file with ERCOT, including a copy of all Notices of Change of Information submitted to ERCOT in the time since the REP's last annual or semi-annual report was filed. To the extent the REP's designated QSE is the same entity as the REP or an affiliate of the REP or REP's corporate parent, the REP should also include a copy of the current QSE and counter party contact information kept on file with ERCOT, including a copy of all notices of change of information submitted to ERCOT in the time since the REP's last annual or semi-annual report was filed.

(H) Demonstration of ongoing compliance with the financial requirements of subsection (f) of this section.

(i) This can include, but not be limited to:

(I) calculations demonstrating adequate tangible net worth and financial ratios,

(II) adequate shareholders' equity,

(III) a statement of the value of customer deposits and prepayments the REP is currently liable for, and

(IV) a current account statement demonstrating that the balance of the account in which customer deposits and prepayments are held 100% covers the value of customer deposits and prepayments the REP is liable for.

(ii) A REP must submit relevant documentation as required by subsection (f)(4) of this section to demonstrate its ongoing compliance with the financial requirements of subsection (f)(1) and (2) of this section.

(iii) Financial statements provided as part of the annual and semi-annual report must be as of the end of the most recent fiscal quarter.

(4) In addition to the information required in paragraph (3) of this subsection, the annual report must also include the following information.

(A) Any changes in a REP's contact information identified in subsection (d)(1)(D) of this section.

(B) A list of aggregators with whom the REP has conducted business in the reporting period, and the commission registration number for each aggregator.

(5) Reporting under this subsection does not change the requirement for a REP to amend its certification to reflect the change in accordance with subsection (h) of this section.

(j) Protection of TDU financial integrity.

(1) A TDU must not require a deposit from a REP except to secure the payment of transition charges as provided in §25.108 of

this title (relating to Financial Standards for Retail Electric Providers Regarding Billing and Collection of Transition Charges), or if the REP has defaulted on one or more payments to the TDU. A TDU may impose credit conditions on a REP that has defaulted to the extent specified in its statewide standardized tariff for retail delivery service and as allowed by commission substantive rules.

(2) A TDU must create a regulatory asset for bad debt expenses, net of collateral posted under paragraph (1) of this subsection and bad debt already included in its rates, resulting from a REP's default on its obligation to pay delivery charges to the TDU. Upon a review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset will be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.

(k) Revocation of a REP certificate. A certificate granted under this section may be revoked if the commission finds that a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization has occurred. The revocation of a REP's certificate requires the cessation of all REP activities in the state of Texas, in accordance with commission order. The commission may impose an administrative penalty on a person for a violation of PURA, commission substantive rules, or protocols adopted by an independent organization. Significant violations include, but are not limited to:

(1) Providing false or misleading information to the commission, including a failure to disclose any information required by this section;

(2) Engaging in fraudulent, unfair, misleading, deceptive, or anticompetitive practices, or unlawful discrimination;

(3) Switching, or causing to be switched, the REP for a customer without first obtaining the customer's permission;

(4) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's retail electric service bill;

(5) Failure to maintain continuous and reliable electric service to a customer or customers pursuant to this section;

(6) Failure to maintain financial resources in accordance with subsection (f) of this section;

(7) The inability to meet financial obligations on a reasonable and timely basis;

(8) Failure to timely remit payment for invoiced charges to an independent organization;

(9) Failure to observe any applicable scheduling, operating, planning, reliability, and settlement policies, protocols, guidelines, procedures, and other protocols established by an applicable independent organization;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Termination of the REP's SFA with ERCOT or similar agreements with a applicable independent organization other than ERCOT;

(13) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving fraud, theft, or deceit related to the certificate holder's service;

(14) Failure to provide retail electric service to a customer or customers within 24 months of the certificate being granted by the commission or ceasing to provide retail electric service for a period of 24 months;

(15) Failure to serve as a POLR if required to do so by the commission;

(16) Failure to timely remit payment for invoiced charges to a TDU pursuant to §25.214, of this title (relating to Terms and Conditions of Retail Delivery service Provided by Investor Owned Transmission and Distribution Utilities);

(17) Erroneously imposing switch-holds or failing to remove switch-holds within the timeline described in §25.480 of this title (relating to Bill Payment and Adjustments);

(18) Failure to comply with the terms of the REP's suspension;

(19) Failure to comply with §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates); and

(20) Other significant violations or a pattern of failures to meet the requirements of PURA, commissions rules or orders, or protocols adopted by the applicable independent organization.

(l) Suspension of a REP's ability to acquire new customers. The commission or presiding officer may suspend a REP's ability to acquire new customers upon a showing of facts that reasonably support the occurrence of a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization, consistent with subsection (k) of this section. A suspension of a REP's ability to acquire new customers may be limited to specific customer classes. The commission may also impose administrative penalties and other conditions on a REP whose ability to acquire new customers has been suspended.

(1) A proceeding for suspension of a REP's ability to acquire new customers under this subsection is initiated by the filing of a petition for suspension by commission staff.

(A) Commission staff will provide reasonable notice of a petition for suspension to the affected REP in accordance with §22.55 of this title (relating to Notice in Other Proceedings).

(B) The REP may submit a request for hearing on the petition for suspension within 20 days after the date the REP receives notice of the petition. A request for hearing received more than 20 days after the date the petition is received by the REP will be denied by the presiding officer.

(C) If the REP does not submit a request for hearing within 20 days after receiving notice of the petition for suspension, the presiding officer may administratively approve the petition for suspension under §22.35 of this title (relating to Informal Disposition). The commission delegates authority to the presiding officer to approve a petition for suspension under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title.

(D) If the presiding officer approves the petition for suspension, commission staff will direct ERCOT to stop processing move-in requests for the REP.

(E) At any time during the pendency of the proceeding, without limitation, the presiding officer may issue an emergency order directing ERCOT to stop processing move-in requests for the REP if the presiding officer determines such authorization to be in the public interest.

(2) The presiding officer may lift the suspension under this subsection upon a demonstration of the following:

(A) if applicable, the REP has resolved all violations underlying the suspension and fulfilled all conditions for reinstatement;

(B) the REP is in compliance with all technical, managerial, and financial requirements in this section; and

(C) commission staff recommends that the suspension be lifted.

(3) A REP subject to suspension of acquiring new customers under this section must maintain compliance with this section and all other applicable commission substantive rules while suspended and must continue to serve existing customers consistent with PURA, commission substantive rules, and protocols adopted by the applicable independent organization.

(4) Nothing in this subsection limits the commission's ability to revoke a REP's certificate or proceed with a draw on a REP's financial instruments. Commission staff retains the discretion to seek to revoke the certificate of a REP subject to suspension, as appropriate.

§25.109. Registration by Power Generation Companies and Self-Generators.

(a) Applicability. This section contains the registration and renewal of registration requirements for a power generation company (PGC) as defined by §25.5 of this title (relating to Definitions) and a self-generator as defined in this section.

(1) A person is subject to and must register under this section before the first day it generates electricity.

(2) A person that owns a qualifying facility (QF) and will sell electricity at wholesale or is an exempt wholesale generator (EWG) must register under this section as a PGC.

(3) A person already certified as a PGC or self-generator as of the effective date of this section must come into compliance with the requirements of this section no later than June 1, 2023.

(A) A PGC or self-generator must complete and file a commission approved form that demonstrates the PGC or self-generator is in compliance with this section on or before June 1, 2023.

(B) A PGC or self-generator who does not demonstrate compliance with this section on or before June 1, 2023, may be subject to revocation under subsection (i) of this section.

(b) Definitions. In this section, the following definitions apply unless the context indicates otherwise.

(1) Generating facility--all generating units located at, or providing power to, the electricity-consuming equipment at an entire facility or location.

(2) Principal--includes:

(A) A sole proprietor;

(B) A general partner;

(C) An executive of a company (e.g., a president, chief executive officer, chief operating officer, chief financial officer, general counsel, or equivalent position);

(D) A manager, managing member, or a member vested with the management authority of a limited liability company or limited liability partnership;

(E) A shareholder with more than 10% equity of the person, if a public company; or

(F) A person who has apparent or actual authority to exercise control over the person or exercises control over a principal otherwise described by this subsection.

(3) Self-generator--A QF that does not sell electricity at wholesale or provides electricity only to the purchaser of the facility's thermal output, or a person that:

(A) is not a PGC;

(B) owns an electrical generating facility rated at one megawatt or more, but not more than the maximum megawatt consumption of the co-located load (using historical megawatt consumption data or expectations of megawatt consumption if the co-located load is new or an addition has been made to the existing co-located load); and whose primary purpose is to serve the co-located load, but can sell up to the lesser of 10% of its capacity rating or 10 megawatts of wholesale energy or ancillary services on any given day; and

(C) owns or is under common ownership with the co-located load.

(c) Initial registration information. To register as a PGC or a self-generator a person must use the registration form prescribed by the commission. A person registering as a PGC or a self-generator must provide the following information.

(1) The registrant's contact information, including the registrant's:

(A) physical and business mailing address;

(B) business telephone number;

(C) business e-mail address;

(D) primary and secondary emergency contact; and

(2) The name of the current regulatory contact, the contact's e-mail address and telephone number, and if the regulatory contact is an internal staff member of the registrant.

(3) For each generating facility operated by the registrant:

(A) the name, address, county and power region of operation of each generating facility;

(B) whether the generating facility is an electric storage facility;

(C) the name of the transmission service providers interconnecting the generating facility; and

(D) the capacity rating for each generating unit following the rating method established in §25.91(f) of this title (relating to Generating Capacity Reports).

(4) A description of the types of services provided by the registrant that relate to the generation of electricity.

(5) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting that none of the registrant's principals:

(A) were principals of a commission-regulated person whose license was revoked by commission order within the prior six months of when they were a principal;

(B) were principals of any person registered with the Electric Reliability Council of Texas (ERCOT) whose standard form market participant agreement was terminated by ERCOT for misconduct within the prior six months of when they were a principal; or

(C) are otherwise prohibited by commission order from acting as a principal of a commission-regulated entity.

(d) Additional information required for PGC registration. In addition to the information required under subsection (c) of this section, a person registering as a PGC must also submit the following information to the commission.

(1) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting that the registrant:

(A) generates electricity that is intended to be sold at wholesale;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under §25.5 of this title (related to Definitions); and

(C) does not have a certified service area.

(2) The name of the registrant's corporate parent.

(3) A list of the registrant's and corporate parent's affiliates identified by name that buys and sells electricity at wholesale in Texas, sells electricity at retail in Texas, or is an electric cooperative or municipally owned utility in Texas.

(4) The applicable project and item number that the registrant has filed its initial Emergency Operations Plan in as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).

(5) As applicable, copies of the registrant's Federal Energy Regulatory Commission registration as a QF or an EWG.

(e) Additional information required for self-generator registration. In addition to the information required under subsection (c) of this section, a person registering as a self-generator must also submit an affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting:

(1) that the registrant's generating facilities will not be capable of producing more energy than the co-located load's maximum consumption;

(2) the registrant will not sell more than the lesser of 10% of its capacity rating or 10 megawatts of wholesale energy or ancillary services on any given day; and

(3) the registrant owns or is under common ownership with the co-located load.

(f) Update or relinquishment of registration. A PGC or self-generator may update or relinquish its registration.

(1) A PGC must complete the commission form to amend its registration within 30 days of a change to any information reported in response to subsections (c)(2) through (c)(4) and (d)(2) of this section.

(2) A self-generator must complete the commission form to amend its registration within in 30 days of a change to any of the information reported in response to subsection (c)(2)-(4) of this section. If a self-generator's generating facilities ever produce more energy than the maximum potential load consumption level of the co-located load, or provides more than the lesser of 10% of its capacity rating or 10 megawatts at wholesale on any given day, then the self-generator must file an update to change its registration from a self-generator to a PGC.

(3) A PGC and self-generator must update, in a manner established by the commission, its contact information listed in subsection (c)(1) of this section within 30 days of a change.

(g) Review of registration of PGC or self-generator. Commission staff will review the submitted or updated registration form for sufficiency and submit a written recommendation to the presiding officer within 30 days from the date the registration was filed.

(1) If commission staff recommends the registration form be found insufficient, commission staff will notify the presiding officer in writing of the deficiencies as part of its recommendation. If the presiding officer finds the registration form to be insufficient, it will notify the registrant in writing of the finding and the specific deficiencies. The registrant will have 20 days from the issuance of the notice to cure the deficiencies. Commission staff will have 15 days to review the supplemental information submitted by the registrant and notify the presiding officer if any deficiencies remain. If the presiding officer determines that the deficiencies have not been cured within 20 days of the issuance of the notice, the presiding officer will reject the registration request without prejudice and notify the registrant of the rejection.

(2) Upon finding the registration sufficient, the presiding officer will approve the registration and issue a registration number to the PGC or self-generator.

(h) Renewal of registration. A PGC or self-generator must renew its registration on or before February 28 of every other calendar year by submitting the information required by subsection (c) and, as applicable, (d) and (e) of this section by submitting a statement that the PGC or self-generator's registration information on file with the commission is current and correct.

(1) A PGC or self-generator whose commission registration number is an even number must submit its registration renewal on all even number years.

(2) A PGC or self-generator whose commission registration number is an odd number must submit its registration renewal on all odd number years.

(i) Revocation of registration and administrative penalty. Registration of a PGC under this section is subject to revocation for a significant violation of statute or commission rules. The commission may impose an administrative penalty on a person for a violation of PURA, commission rules, or rules adopted by an independent organization, including:

(1) failure to comply with the reliability standards and operational criteria duly established by the independent organization certified under PURA §39.151 for the ERCOT power region;

(2) failure to observe any scheduling, operating, planning, reliability, or settlement policy, rule, guideline, or procedure established by ERCOT;

(3) providing false or misleading information to the commission, commission staff, or ERCOT;

(4) engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;

(5) a pattern of failure to meet the requirements of statute, this section, or other commission rules, regulations or orders;

(6) suspension or revocation of a registration, certification, or license by any state or federal authority;

(7) failure to operate within the applicable legal parameters established by PURA §39.351; and

(8) failure to timely respond to commission or commission staff inquiries or customer complaints.

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 September 29, 2022.

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Public Utility Commission of Texas

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For further information, please call: (512) 936-7322



SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE PROVIDERS

16 TAC §25.485, §25.495

Statutory Authority

The amended rules are proposed under PURA §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. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §17.001, §17.003, and §17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the requirements to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 15.051, 17.001, 17.003, 17.004, 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

§25.485. *Customer Access and Complaint Handling.*

(a) Applicability. This section contains a customer's entitlement to reasonable access to a retail electric provider's (REP) or aggregator's representatives and identifies a customer's ability make a complaint against a REP or aggregator. REPs and aggregators are subject to processes of this section [The purpose of this section is] to ensure that retail electric customers have the opportunity for impartial and prompt resolution of disputes with REPs or aggregators.

(b) Customer access.

(1) A [Each] retail electric provider (REP) or aggregator must [shall] ensure that customers have reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer's bills, terminate competitive service, and transact any other pertinent business.

(2) Telephone access must [shall] be toll-free and must [shall] afford customers a prompt answer during normal business hours.

(3) A [Each] REP must [shall] provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.

(4) A [Each] REP or [and] aggregator must [shall] employ 24-hour capability for accepting a customer's rescission of the terms of service by telephone, pursuant to rights of cancellation in §25.474(j) of this title (relating to Selection of Retail Electric Provider).

(c) Complaint handling. A residential or small commercial customer has the right to make an informal or formal [a formal or informal] complaint to the commission in accordance with §22.242 of this title (relating to Complaints), and a terms of service agreement cannot impair this right. A REP or aggregator must [shall] not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer from filing [to file] an informal or formal complaint with the commission if dissatisfied with the results of the alternative dispute resolution.

(d) Complaints to REPs or aggregators. A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to a REP or aggregator. The REP or aggregator must [shall] promptly investigate and advise the complainant of the results within 15 [24] days. A customer who is dissatisfied with the REP's or aggregator's review must [shall] be informed of the right to file a complaint with the REP's or aggregator's supervisory review process, if available, and, if not available, with the commission and the Office of Attorney General, Consumer Protection Division. Any supervisory review conducted by the REP or aggregator must [shall] result in a decision communicated to the complainant within ten business days of the request. If the REP or aggregator does not respond to the customer's complaint in writing, the REP or aggregator must [shall] orally inform the customer of the ability to obtain the REP's or aggregator's response in writing upon request.

(e) Complaints to the commission.

(1) Informal complaints.

[~~(A)~~] If a complainant is dissatisfied with the results of a REP's or aggregator's complaint investigation or supervisory review, the REP or aggregator must [shall] advise the complainant of the commission's informal complaint resolution process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov [~~eustomer@puc.state.tx.us~~], internet address: www.puc.texas.gov [~~www.puc.state.tx.us~~], TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.

(A) [~~(B)~~] Requirements applicable to informal complaints.

(i) A complaint must [Complainants should] include sufficient information [~~in a complaint~~] to identify the complainant and the company for which the complaint is made and describe the issue specifically. The following information should be included in the complaint:

(l) [~~(h)~~] The account holder's name, billing and service addresses, and telephone number;

(II) [(ii)] The name of the REP or aggregator;
(III) [(iii)] The customer account number or electric service identifier (ESI-ID);
(IV) [(iv)] An explanation of the facts relevant to the complaint;
(V) [(v)] The complainant's requested resolution; and
(VI) [(vi)] Any documentation that supports the complaint, including copies of bills or terms of service documents.

(ii) [(C)] All REPs and aggregators must [shall] provide the commission an email address to receive notification of customer complaints from the commission.

(iii) [(D)] The REP or aggregator must [shall] investigate all informal complaints and advise the commission in writing of the results of the investigation within 15 [21] days after the complaint is forwarded to the REP or aggregator.

(iv) [(E)] The commission must [shall] review the complaint information and the REP or aggregator's response and notify the complainant of the results of the commission's investigation.

(B) [(2)] Prohibited activities during pendency of informal complaint. While an informal complaint process is pending:

(i) [(A)] The REP or aggregator must [shall] not initiate collection activities, including disconnection of service or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.

(ii) [(B)] A customer must [shall be obligated to] pay any undisputed portion of the bill and the REP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice.

(C) [(3)] Informal complaint record retention. The REP or aggregator must [shall] keep a record for two years after closure by the commission of all informal complaints forwarded to it by the commission. This record must [shall] show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or rates and charges that are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.

(2) [(4)] Formal complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).

§25.495. *Unauthorized Change of Retail Electric Provider.*

(a) Process for resolving unauthorized change of retail electric provider (REP). If a REP is serving a customer without proper authorization pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), the REP, registration agent, and transmission and distribution utility (TDU) must [shall] follow the procedures set forth in this subsection.

(1) Either the original REP or switching REP must [shall] notify the registration agent of the unauthorized change of REP as promptly as possible, using the process approved by the registration agent.

(2) As promptly as possible following receipt of notice by the REP, the registration agent must [shall] facilitate the prompt return

of the customer to the original REP, or REP of choice in the case of a move-in.

(3) The affected REPs, the registration agent, and the TDU must [shall] take all actions necessary to return the customer to the customer's original REP, or REP of choice in the case of a move-in, as quickly as possible. The original REP is [does] not required [need] to obtain an additional authorization from the customer pursuant to §25.474 of this title in order to effectuate the provision of this section.

(4) The affected REPs, the registration agent, and the TDU must [shall] take all actions necessary to bill correctly all charges, so that the end result is that:

(A) the REP that served the customer without proper authorization must [shall] pay all transmission and distribution charges associated with returning the customer to its original REP, or REP of choice in the case of a move-in;

(B) the original REP has the right to bill the customer pursuant to §25.480 of this title (relating to Bill Payment and Adjustment) at the price disclosed in its terms of service from either:

(i) the date the customer is returned to the original REP; or

(ii) any prior date chosen by the original REP for which the original REP had the authorization to serve the customer.

(C) the REP that served the customer without proper authorization must [shall] refund all charges paid by the customer for the time period for which the original REP ultimately bills the customer within five business days after the customer is returned to the original REP, or REP of choice in the case of a move-in;

(D) the customer will [shall] pay no more than the price at which the customer would have been billed had the unauthorized switch or move-in not occurred;

(E) the TDU has the right to seek collection of non-bypassable charges from the REP that ultimately bills the customer under subparagraph (B) of this paragraph; and

(F) the REP that ultimately bills the customer under subparagraph (B) of this paragraph is responsible for non-bypassable charges and wholesale consumption for the customer.

(5) The original REP must [shall] provide the customer all benefits or gifts associated with the service that would have been awarded had the unauthorized switch or move-in not occurred, upon receiving payment for service provided during the unauthorized change;

(6) The affected REPs must [shall] communicate with the customer as appropriate throughout the process of returning the customer to the original REP or REP of choice and resolving any associated billing issues.

(7) In a circumstance where paragraph (4) of this subsection is not applicable or its requirements cannot be effectuated, the market participants involved must [shall] work together in good faith to rectify the unauthorized switch or move-in in a manner that affords the customer and market participants involved a level of protection comparable to that required in this subsection.

(b) Customer complaints, record retention and enforcement.

(1) A customer [Customers] may file a complaint with the commission, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for an alleged failure to comply with the provisions of this section.

(2) Upon receipt of a customer complaint, a REP must [each REP shall]:

(A) respond to the commission within 15 [24] calendar days after receiving the complaint and in the response to the complaint provide to the commission all documentation relied upon by the REP and related to the:

(i) authorization and verification to switch the customer's service; and

(ii) corrective actions taken to date, if any.

(B) cease any collection activity related to the alleged unauthorized switch or move-in until the complaint has been resolved by the commission.

{(c) This section is effective June 1, 2004.}

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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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7322



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER H. COMPLAINT HANDLING

16 TAC §§60.220 - 60.222

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter H, §§60.220, 60.221, and 60.222, regarding inspection provisions. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The proposed rules provide default procedures for any inspection the Department is authorized to conduct under law and are necessary to implement Texas Occupations Code §51.211. The proposed rules provide, among other things, that: (1) the depart-

ment may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconference technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection. Different or more specific procedures may be provided in individual program rules.

SECTION-BY-SECTION SUMMARY

The proposed rules create new §60.220 within Chapter 60, Subchapter H. Proposed §60.220 simply states that the Department shall conduct inspections as provided by Occupations Code §51.211 and §51.351, Chapter 60, and the statutes and rules applicable to the agency's regulatory programs.

The proposed rules also create new §60.221 within Chapter 60, Subchapter H. Section 60.221 includes the default procedures to be used for inspections performed by the Department. Notably, all of the provisions included in §60.221 were drawn from existing program rules including the Department's Driver Education and Safety, Barbering, Cosmetologists, Massage Therapy, Orthotists and Prosthetists, Vehicle Towing and Booting, Vehicle Storage Facilities, and Used Automotive Parts Recyclers programs.

Subsection (a) states that §60.221 applies to any inspection the Department is authorized to conduct pursuant to law. Subsection (b) states that the Department may conduct inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint. Subsection (c) states that inspections will be conducted during the normal operating hours of the location being inspected. Subsection (d) requires the Department to provide a license holder, applicant, or representative thereof a written inspection report.

Subsection (e) of proposed new §60.221 provides that when an inspection report requires corrective action on the part of the license holder or applicant, the Department will provide the license holder, applicant, or representative a list of any required corrective actions and a timeline for completing each. Subsection (e) also provides that the license holder or applicant must complete any required corrective actions within the time period specified by the Department, and that the Department may grant extensions to this time period at its discretion. Subsection (f) states that the Department may assess administrative penalties, administrative sanctions, or both against a license holder or applicant who fails to complete any required corrective actions within this time period.

Subsection (f) of proposed new §60.221 authorizes the Department to use alternative methods, including videoconference or similar technology, to conduct inspections remotely. Lastly, subsection (h) provides that more specific provisions regarding inspections in individual program statutes or rules will prevail over §60.221.

The proposed rules also create new §60.222, entitled "Cooperation with Inspections." Subsection (a) requires a license holder, applicant, or other person to cooperate with an authorized Department inspector during an inspection. Subsection (b) requires a license holder, applicant, or other person to provide a Department inspector with records, notices, or other documents requested by the inspector.

Subsection (c) of proposed new §60.222 prohibits a license holder, applicant, or other person from avoiding, refusing to permit, or failing to cooperate in a Department inspection; interfering with a Department inspection; or threatening or intimidating a Department inspector in connection with an inspection.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy. Thus, the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be more efficient use of department resources, more effective enforcement against repeat violators, and less disruption to businesses with a record of compliance.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules 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, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency 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 or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future 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 not create a new regulation.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules provide additional provisions prohibiting license holders, applicants, or other persons from failing to cooperate in a Department inspection, or threatening or intimidating an authorized inspector. The proposed rules also authorize the Department to use remote inspection technology.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed 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 proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Wilson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 455, 605, 2303, 2308, 2309, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§60.220. Conducting Inspections.

The department shall conduct inspections as provided by Texas Occupations Code §51.211 and §51.351, this chapter, and the statutes and rules applicable to the programs regulated by the commission and the department.

§60.221. Inspection Procedures.

(a) This section applies to any inspection the department is authorized to conduct pursuant to law.

(b) The department may conduct inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint.

(c) Inspections will be conducted during the normal operating hours of the location being inspected.

(d) Upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing. For inspections where violations are identified, the inspection report will list those violations and indicate, if applicable, any corrective actions required.

(e) When corrective actions are required, the inspector will provide the license holder, applicant, or representative a list of any required corrective actions and a time period for completing each corrective action. The license holder or applicant must complete all corrective actions and provide verification, in a manner prescribed by the department, within the specified time period. The department may grant an extension of time at its discretion.

(f) The department may assess administrative penalties, administrative sanctions, or both against a license holder or applicant who fails to complete any required corrective actions, or fails to verify completion of any required corrective actions, within the time period specified by the department.

(g) The department may use alternative inspection methods, including the use of videoconference technology or other methods, instead of conducting an in-person inspection.

(h) If any provision of this section conflicts with the statutes or rules regarding department inspections for a specific program, the program statute or rule will prevail over this section.

§60.222. Cooperation with Inspections.

(a) A license holder, applicant, or other person must cooperate in the performance of an inspection conducted by an inspector authorized by the commission or the department (authorized inspector).

(b) A license holder, applicant, or other person must make available to the authorized inspector all records, notices, and other documents requested by the authorized inspector.

(c) A license holder, applicant, or other person is prohibited from:

(1) avoiding, refusing to permit, or failing to cooperate in an inspection conducted by an authorized inspector;

(2) interfering with an inspection conducted by an authorized inspector; or

(3) threatening or intimidating an authorized inspector or other representative of the commission or the department in connection with an inspection.

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 September 30, 2022.

TRD-202203935

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 463-7750



CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter I, §84.100 and §84.101; and repeals an existing rule at Subchapter I, §84.102, regarding the Driver Education and Safety program.

These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The proposed rules remove periodic inspections from the Driver Education and Safety program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §84.100(a) to remove periodic inspection requirements and to add language stating that driver education providers (formerly referred to as "driver education schools") will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H. The proposed rules also repeal subsections (b) through (d) of § 84.100, as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H. In light of the repeal of subsections (b) through (d), current subsection (e) is being changed to (b).

The proposed rules amend §84.101 to change references to "school" to "provider" in subsections (a) and (b), and to repeal subsections (d) through (f), as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H.

Lastly, the proposed rules repeal §84.102 in its entirety. Section 84.102 requires annual inspections of driver education providers, and repealing this section is necessary to implement §51.211, Occupations Code.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being proposed separately in this issue of the *Texas Register*. Those proposed rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconference technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy. Thus, the agency is not required to pre-

pare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be more efficient use of department resources, more effective enforcement against repeat violators, and less disruption to businesses with a record of compliance.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules 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, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency 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 or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future 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 not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal rules that require periodic inspections or that would be redundant in light of the new rules within 16 T.A.C., Chapter 60, Subchapter H, governing inspections.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed 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 proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER I. INSPECTIONS

16 TAC §84.100, §84.101

STATUTORY AUTHORITY

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed repeal.

§84.100. *Inspections--General.*

(a) Driver education [Education] providers [schools] shall be inspected in accordance with Texas Occupations Code, Chapter 51, and the inspection rules under 16 Texas Administrative Code, Chapter 60, Subchapter H [periodically, or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Code and this chapter].

[(b) Inspections shall be performed during the normal operating hours of the driver education school. Except for initial inspections of driver education schools, the department may conduct inspections under the Act and this chapter without advance notice.]

[(c) The department inspector will contact the driver education school owner, manager, or their representative upon arrival at the school, and before proceeding with the inspection.]

[(d) The driver education school owner, manager, or representative shall cooperate with the inspector in the performance of the inspection.]

(b) [(e)] A driver [Driver] education provider [schools] shall display a copy of the establishment's most recent inspection report issued by the department in a common area, lobby or hallway location within the building in which the provider [school] is located and accessible to the public without assistance or permission during all hours in which the provider [school] is in operation.

§84.101. *Initial Inspections--Inspection of Driver Education Providers [Schools] Before Operation.*

(a) Any new or relocated driver education provider [school] must be inspected and approved by the department before it may operate. Additionally, a driver education provider [school] that has changed ownership must be inspected and approved by the department, but may continue to operate prior to inspection.

(b) The driver education provider [school] owner shall request an initial inspection from the department.

(c) (No change.)

~~[(d) Upon completion of the initial inspection, the owner shall be advised in writing of the results. The inspection report must indicate whether the driver education school meets or does not meet the minimum requirements of the Code and this chapter.]~~

~~[(e) For driver education schools that do not meet the minimum requirements, the report will reflect those minimum requirements that remain to be addressed and corrected by the owner, and a timeline for the corrections to be made.]~~

~~[(f) A driver education school that does not meet the minimum requirements on initial inspection must be re-inspected. The driver education school owner must submit the request for re-inspection before the department will perform the re-inspection].~~

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



16 TAC §84.102

STATUTORY AUTHORITY

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed repeal.

§84.102. *Periodic Inspections.*

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 85. VEHICLE STORAGE FACILITIES

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 85, §85.450; and repeals existing rules at §85.451 and §85.453, regarding the Vehicle Storage Facilities program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 85, implement Texas Occupations Chapter 2303, Vehicle Storage Facility Act.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The proposed rules remove periodic inspections from the Vehicle Storage Facility program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §85.450(a) to remove periodic inspection requirements and to add language stating that towing companies will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H. Additionally, the last sentence of subsection (a) has been moved into new subsection (b).

The proposed rules also repeal subsections (b) through (d) of §85.450, as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H.

The proposed rules also repeal §85.451 and §85.453 in their entirety to remove periodic inspection requirements and to remove concepts that will be covered by the inspections rules contained in Chapter 60, Subchapter H. Repealing these sections is necessary to implement §51.211, Occupations Code.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being proposed separately in this issue of the *Texas Register*. Those proposed rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconference technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy. Thus, the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits

will be more efficient use of department resources, more effective enforcement against repeat violators, and less disruption to businesses with a record of compliance.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed 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, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency 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 or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future 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 not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal rules that require periodic inspections or that would be redundant in light of the new rules within 16 TAC Chapter 60, Subchapter H, governing inspections.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed 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 proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Wilson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §85.450

STATUTORY AUTHORITY

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the proposed rules.

§85.450. *Inspections General.*

(a) Vehicle storage facilities shall be inspected in accordance with Texas Occupations Code, Chapter 51, and the inspection rules under 16 Texas Administrative Code, Chapter 60, Subchapter H.

~~[(a) All VSFs shall be inspected periodically or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to VSF owners and managers on best practices for risk-reduction techniques.]~~

(b) The department may make information available to licensees and managers regarding best practices for risk-reduction techniques.

~~[(b) Inspections shall be performed during the normal operating hours of the VSF. The department may conduct inspections under the Act and these rules with or without advance notice.]~~

~~[(c) The department inspector will contact the VSF owner, manager, or representative upon arrival at the VSF, and before proceeding with the inspection.]~~

~~[(d) The VSF owner, manager, or representative shall cooperate with the inspector in the performance of the inspection.]~~

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



16 TAC §85.451, §85.453

STATUTORY AUTHORITY

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the proposed rules.

§85.451. *Periodic Inspections.*

§85.453. *Corrective Actions Following Inspection.*

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 86. VEHICLE TOWING AND BOOTING

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 86, §86.450; and repeals existing rules at §86.451 and §86.453, regarding the Vehicle Towing and Booting program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 86, implement Texas Occupations Code, Chapter 2308, Vehicle Towing and Booting.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The proposed rules remove periodic inspections from the Vehicle Towing and Booting program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §86.450(a) to remove periodic inspection requirements and to add language stating that towing companies will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H. Additionally, the last sentence of subsection (a) has been moved into new subsection (b).

The proposed rules also repeal subsections (b) through (d) of §86.450, as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H.

The proposed rules also repeal §86.451 and §86.453 in their entirety to remove periodic inspection requirements and to remove concepts that will be covered by the inspections rules contained in Chapter 60, Subchapter H. Repealing these sections is necessary to implement §51.211, Occupations Code.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being proposed separately in this issue of the *Texas Register*. Those proposed rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconferencing technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy. Thus, the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be more efficient use of department resources, more effective enforcement against repeat violators, and less disruption to businesses with a record of compliance.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules 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, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the pro-

posed rules. For each year of the first five years the proposed rules will be in effect, the agency 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 or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future 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 not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal rules that require periodic inspections or that would be redundant in light of the new rules within 16 TAC, Chapter 60, Subchapter H, governing inspections.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed 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 proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Wilson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §86.450

STATUTORY AUTHORITY

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2308.

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

§86.450. *Inspections--General.*

(a) Towing companies [A towing company] shall be inspected in accordance with Texas Occupations Code, Chapter 51, and the inspection rules under 16 Texas Administrative Code, Chapter 60, Subchapter H [periodically or as a result of a complaint. These inspections are performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to licensees and managers on best practices for risk-reduction techniques].

(b) The department may make information available to licensees and managers regarding best practices for risk-reduction techniques.

~~[(b) The towing company owner, manager, or [their] representative must, upon request, make available to the inspector all records, notices and other documents required by these rules.]~~

~~[(c) Upon completion of the inspection, the owner manager, or representative shall be advised in writing of the results of the inspection. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.]~~

~~[(d) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective actions required to address the violations, in accordance with §86.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.]~~

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 September 30, 2022.

TRD-202203947

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 463-7750



16 TAC §86.451, §86.453

STATUTORY AUTHORITY

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51 and 2308.

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

§86.451. *Periodic Inspections.*

§86.453. *Corrective Actions Following Inspection.*

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 463-7750



CHAPTER 87. USED AUTOMOTIVE PARTS RECYCLERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 87, §87.44; and repeals existing rules at §87.45 and §87.47, regarding the Used Automotive Parts Recyclers program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 87, implement Texas Occupations Code, Chapter 2309, Used Automotive Parts Recyclers program.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The proposed rules remove periodic inspections from the Used Automotive Parts Recyclers program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §87.44 to remove periodic inspection requirements and to add language stating that used automotive parts recycling businesses will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H. Additionally, the last sentence of subsection (a) has been moved into new subsection (b).

The proposed rules also repeal subsections (b) through (d) of §87.44, as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H.

The proposed rules also repeal §87.45 and §87.47 in their entirety to remove periodic inspection requirements and to remove concepts that will be covered by the inspections rules contained in Chapter 60, Subchapter H. Repealing these sections is necessary to implement §51.211, Occupations Code.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being proposed separately in this issue of the *Texas Register*. Those proposed rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconferencing technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy. Thus, the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be more efficient use of department resources, more effective enforcement against repeat violators, and less disruption to businesses with a record of compliance.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules 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, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency 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 or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future 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 not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal rules that require periodic inspections or that would be redundant in light of the new rules within 16 T.A.C., Chapter 60, Subchapter H, governing inspections.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed 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 proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Wilson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §87.44

STATUTORY AUTHORITY

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2309. No other statutes, articles, or codes are affected by the proposed rules.

§87.44. *Inspections--General.*

(a) Used [All used] automotive parts recycling businesses shall be inspected in accordance with Texas Occupations Code, Chapter 51, and the inspection rules under 16 Texas Administrative Code, Chapter 60, Subchapter H [periodically, or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and this chapter. In addition, the department may make information available to used automotive parts recycling business owners and managers on best practices for risk-reduction techniques].

(b) The department may make information available to used automotive parts recycling business owners and managers regarding best practices for risk-reduction techniques.

[(b) Inspections shall be performed during the normal operating hours of the used automotive parts recycling business. The department may conduct inspections under the Act and this chapter with or without advance notice.]

[(c) The department inspector will contact the licensee, manager, or representative upon arrival at the facility location, and before proceeding with the inspection.]

[(d) The licensee, manager, or representative shall cooperate with the inspector in the performance of the inspection.]

[(e) Periodic inspections under this section are in addition to any complaint based inspections and those inspections do not restrict the department's right to enter the licensed facility for purposes of enforcement and compliance.]

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 463-7750



16 TAC §87.45, §87.47

STATUTORY AUTHORITY

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51 and 2309. No other statutes, articles, or codes are affected by the proposed repeals.

§87.45. *Inspections--Periodic.*

§87.47. *Corrective Actions Following Inspection.*

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

16 TAC §114.29

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 114, §114.29, regarding the Orthotists and Prosthetists program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 114, implement Texas Occupations Code, Chapter 605, Orthotists and Prosthetists.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The proposed rules remove periodic inspections from the Orthotists and Prosthetists program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §114.29(h) to remove periodic inspection requirements and to add language stating that facili-

ties will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H. The proposed rules also repeal former subsections (h)(1) through (h)(6) of §114.29, as that subject matter will be covered by the inspections rules contained in Chapter 60, Subchapter H.

The proposed rules also change the title of §114.29 to "Accreditation and Inspection of Facilities" (emphasis added).

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being proposed separately in this issue of the *Texas Register*. Those proposed rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconferencing technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy. Thus, the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be more efficient use of department resources, more effective enforcement against repeat violators, and less disruption to businesses with a record of compliance.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules 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, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency 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 or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future 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 not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal rules that require periodic inspections or that would be redundant in light of the new rules within 16 T.A.C., Chapter 60, Subchapter H, governing inspections.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed 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 proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Wilson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the proposed rules.

§114.29. *Accreditation and Inspection of Facilities.*

(a) - (g) (No change.)

(h) Facilities shall be inspected in accordance with Texas Occupations Code, Chapter 51, and the inspection rules under 16 Texas Administrative Code, Chapter 60, Subchapter H.

~~[(h) Inspections.]~~

~~[(1) Inspections will be performed to determine compliance with the requirements of the Act and this chapter, particularly those requirements relating to public safety, licensing, and sanitation.]~~

~~[(2) Each accredited facility shall be inspected at least once every two years to verify compliance with the Act and this chapter.]~~

~~[(3) Facilities are subject to random inspection and inspection to investigate complaints.]~~

~~[(4) The department may conduct inspections under the Act and this chapter without advance notice.]~~

~~[(5) Inspections shall be performed during the hours of normal business operation of the facility. The department inspector will contact the facility practitioner in charge or other representative upon arrival at the facility, and before proceeding with the inspection.]~~

~~[(6) The facility practitioner in charge or representative shall cooperate with the inspector in the performance of the inspection].~~

(i) - (m) (No change.)

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

Filed with the Office of the Secretary of State on September 30, 2022.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



CHAPTER 117. MASSAGE THERAPY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 117, Subchapter F, §117.55; and Subchapter G, §117.82, regarding the Massage Therapy program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 117, implement Texas Occupations Code, Chapter 455.

House Bill (HB) 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Department, added new inspection provisions to Occupations Code, Chapter 51, the Department's enabling statute (see HB 1560, Article 1, Section 1.05). HB 1560 added new §51.211 to Chapter 51, requiring the department to conduct risk-based inspections that prioritize inspections based on key risk factors. HB 1560 also repealed provisions from several program statutes that conflicted with this new provision.

The proposed rules remove periodic inspections from the Massage Therapy program rules and are necessary to implement Texas Occupations Code §51.211.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §117.55(a) to remove periodic inspection requirements and to add language stating that massage therapy schools will be inspected in accordance with Chapter 51, Occupations Code, and new rules governing inspections within 16 TAC, Chapter 60, Subchapter H.

The proposed rules repeal §117.55(b) and (d), as the concepts currently contained in those sections are contained in the global inspection provisions within 16 TAC, Chapter 60, Subchapter H. Accordingly, §117.55(c) has been re-designated as §117.55(b). Similarly, §117.55(e) has been re-designated as §117.55(c).

The proposed rules amend §117.82(f) to remove periodic inspection requirements and concepts that are included within the new rules governing inspections within 16 TAC, Chapter 60, Subchapter H.

The new rules regarding inspections under Chapter 60, Subchapter H, are also currently being proposed separately in this issue of the *Texas Register*. Those proposed rules provide, among other things, that: (1) the department may perform inspections with or without advance notice to ensure compliance with statute or rule, or as a result of a complaint; (2) inspections will be performed during the regular operating hours of the location being inspected; (3) upon completion of an inspection, the license holder, applicant, or representative will be provided with the results of the inspection in writing; (4) the department may use alternative inspection methods, including the use of videoconference technology, instead of conducting an in-person inspection; and (5) a license holder, applicant, or other person must cooperate in the performance of an inspection.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy. Thus, the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits will be more efficient use of department resources, more effective enforcement against repeat violators, and less disruption to businesses with a record of compliance.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules 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, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency 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 or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future 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 not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal rules that require periodic inspections or that would be redundant in light of the new rules within 16 T.A.C., Chapter 60, Subchapter H, governing inspections.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed 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 proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Wilson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER F. LICENSED MASSAGE SCHOOLS

16 TAC §117.55

STATUTORY AUTHORITY

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.55. *Massage School Inspections.*

(a) Massage schools shall be inspected in accordance with Texas Occupations Code, Chapter 51, and the inspection rules under 16 Texas Administrative Code, Chapter 60, Subchapter H.

~~[(a) There will be at least one unannounced inspection at the primary instructional location of each massage school and at each additional location every year. The massage school owner or the designated contact person must be available.]~~

~~[(b) Other inspections may be performed, announced or unannounced, at the discretion of the department to ensure compliance.]~~

~~(b) [(e)] A school must maintain and make available for department or student inspection the following documents for a period of the student's enrollment through thirty-six (36) months after the student completes the curriculum, withdraws, or is terminated:~~

- ~~(1) daily record of attendance;~~
- ~~(2) the following documents if a time clock is used:
 - ~~(A) time clock record(s); and~~
 - ~~(B) time clock failure and repair record(s);~~~~

~~(3) for a student completing instruction through distance learning, all documentation required under §117.59(m); and~~

~~(4) all other relevant documents that account for a student's hours under this chapter.~~

~~[(d) Upon completion of the inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved and will describe any violations identified during the inspection. For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner of the school within ten (10) days. Verification of corrected violations must be provided, in a manner prescribed by the department, within thirty (30) days of completion.]~~

~~(c) [(e)] The department may inspect a school's instruction, including observing or auditing any instruction offered through distance learning.~~

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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Brad Bowman
General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 463-7750



SUBCHAPTER G. LICENSED MASSAGE ESTABLISHMENTS

16 TAC §117.82

STATUTORY AUTHORITY

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.82. Massage Establishments--General Requirements.

(a) - (e) (No change.)

[(f) Massage establishments shall be inspected in accordance with Texas Occupations Code, Chapter 51, and the inspection rules under 16 Texas Administrative Code, Chapter 60, Subchapter H.]

[(f) A massage establishment is subject to inspection to verify compliance with the Act and this chapter by authorized personnel of the department at any reasonable time.]

[(1) Massage establishments shall be inspected periodically and as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and this chapter.]

[(2) The department inspector will contact the establishment owner, manager, or their representative upon arrival at the establishment and before proceeding with the inspection.]

[(3) The establishment owner, manager, or their representative shall cooperate with the inspector in the performance of the inspection.]

[(4) Each establishment shall be inspected at least once every two years.]

[(5) Upon completion of the inspection, the owner, manager, or their representative shall be advised in writing of the results. The inspection report will list violations identified during the inspection.]

(g) - (k) (No change.)

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

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter A, Section 4.10, concerning Common Admission Application Forms. Specifically, this amendment will list elements necessary for determining admission to a general academic teaching institution, public community college, public state college, and public technical institute. This will include (1) biographical information including gender, ethnicity, and date of birth; (2) educational information including coursework, extracurriculars, community and volunteer service, and awards/honors; (3) residency, and (4) certification of information. The amendment will also allow the Coordinating Board to enter into a contract with a public institution of higher education or other vendor to maintain the electronic application system.

This change will align with the agency's authority under Texas Education Code (TEC), Section 51.762, which provides the Coordinating Board with the authority to adopt a common printed or electronic admission application form for use by a person seeking admission to general academic teaching institutions, junior college districts, public state colleges, and public technical institutes and require each institution collect information regarding gender, ethnicity, and date of birth as part of the application process. Additionally, the statute provides the Coordinating Board with the authority to contract with an institution of higher education or other provider to make the common admission application available electronically. This will increase the vendor options to provide a high-quality, secure, user-friendly admissions portal.

The Coordinating Board convened a negotiated rulemaking committee comprised of higher education institutional representatives in accordance with TEC, Section 61.0331, which directs the Coordinating Board to employ the negotiated rulemaking process described in Chapter 2008 of the Texas Government Code when adopting a policy, procedure or rule relating to a uniform admission policy under Section 51.807. The negotiated rulemaking committee met once on August 5, 2022, to develop the proposed rules.

Laura Brennan, Assistant Commissioner for College and Career Advising, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Laura Brennan, Assistant Commissioner for College and Career Advising, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the ability to contract with a vendor that will allow for greater efficacy and efficiency in

maintaining the common admission application form. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Laura Brennan, Assistant Commissioner for College and Career Advising, P.O. Box 12788, Austin, Texas 78711-2788, or via email at cri@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 51.762, which provides the Coordinating Board with the authority to adopt a common printed or electronic admission application form for use by a person seeking admission to general academic teaching institutions, junior college districts, public state colleges, and public technical institutes and require each institution collect information regarding gender, ethnicity, and date of birth as part of the application process. Additionally, the statute provides the Coordinating Board with the authority to contract with an institution of higher education or other provider to make the common admission application available electronically.

The proposed amendment affects Texas Education Code, Sections 51.762 and 61.07762 and rules in Title 19, Texas Administrative Code, Chapter 1, Subchapter G.

§4.10. Common Admission Application Forms.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Apply Texas Advisory Committee--An advisory committee composed of representatives of general academic teaching institutions, community college districts, public state colleges, and public technical institutes, authorized by Texas Education Code, §51.762 and established in accordance with Board rules, Chapter 1, Subchapter G, §§1.128 - 1.134 of this title (relating to Apply Texas Advisory Committee), to provide the Texas Higher Education Coordinating Board assistance in developing and implementing admissions application forms and procedures.

(2) Apply Texas System--The state's system for applying for admission to Texas public institutions of higher education. The System includes an access portal for completing common application forms; help desks to provide users assistance; and a portal through which Texas high school counselors access status data regarding student progress in applying for admission to and financial aid for college.

(b) Acceptance of Admission Applications.

(1) Public community colleges, public state colleges, and public technical institutes shall accept freshman and undergraduate transfer applications submitted using the Board's electronic common admission application forms.

(2) General academic teaching institutions shall accept freshman and undergraduate transfer applications submitted using either the Board's electronic or printed forms.

(c) Common Application Forms.

(1) General application information provided on the common application form shall include:

(A) biographical information including gender, ethnicity, and date of birth;

(B) educational information including coursework, extracurriculars, community and volunteer service, and awards/honors;

(C) residency; and

(D) certification of information.

(2) Adjustments to Paper Forms. When sending a printed common application form to a student with or without other materials, an institution shall not alter the form in any way and shall include instructions for completing the form, general application information, and instructions for accessing a list of deadlines for all institutions.

(d) Outreach to Public High Schools.

(1) The Coordinating Board shall seek advice and recommendation(s) from high school counselors representative of diverse Texas public school districts regarding the common application and the Apply Texas System.

(2) The Coordinating Board shall ensure that copies of the freshman common admission application forms and information for their use are available to appropriate personnel at each Texas public high school. The Coordinating Board will work with institutions and high schools to ensure that all high schools have access to either the printed or electronic common application forms.

(e) Data to be Collected.

(1) Common application forms are to include questions needed for determining an applicant's residence status with regard to higher education and other information the Board considers appropriate.

(2) Each general academic teaching institution, public community college, public state college, and public technical institute shall collect information regarding gender, race/ethnicity, and date of birth as part of the application process and report this information to the Coordinating Board. Common application forms do not have to be the source of those data.

(3) Institutions of higher education may require an applicant to submit additional information within a reasonable time after the institution has received a common application form.

(f) Publicity. The Board shall publicize in both electronic and printed formats the availability of the common admission forms.

(g) Subcontract for Technical Support. The Coordinating Board shall enter into a contract with a public institution of higher education or third-party vendor to maintain the electronic common application system for use by the public in applying for admission to participating institutions and for distribution of the electronic application to the participating institutions designated by the applicant.

(h) Costs.

(1) Participating institutions may charge a reasonable fee for the filing of a common application form.

(2) Operating costs of the system will be paid for by all institutions required to use the common application plus independent and health-related institutions that contract to use the electronic application.

(3) Each participating institution shall pay a portion of the cost based on the percentage of its enrollment compared to the total enrollment of all participating institutions based on the certified enrollment data of the most recent fall semester. The Coordinating Board will monitor the cost of the system and notify the institutions on an annual basis of their share of the cost. Billings for the services for the coming year will be calculated and sent to the institutions by September 1 of each fiscal year and payments must be received no later than December 1 of each fiscal year.

(4) The Coordinating Board shall send participating institutions reminders of payment amounts and the due date. Institutions failing to pay their share of the cost by the due date may be denied access to in-coming application data until such time that payments are received.

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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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6585



SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §4.54

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter C, §4.54, concerning Exemptions, Exceptions and Waivers. Specifically, this amendment will codify the updated college readiness benchmarks for the ACT assessment administered on or after February 15, 2023. These benchmarks are used by entering undergraduates to qualify for an exemption under the requirements of the Texas Success Initiative (TSI) provided in Texas Education Code (TEC), Section F-1, 51.331 (et seq.).

In order to provide the most current standards for students to qualify for an exemption under the requirements of the TSI, the Coordinating Board periodically updates the benchmarks students use to qualify for a TSI exemption. This proposed amendment outlines updated benchmarks for the ACT, one of the assessments undergraduate students use to demonstrate readiness to enroll in entry-level college courses without support or with concurrent support, as required under TSI. Specifically, §4.54(a)(1)(A)(ii) adds the revised college readiness benchmarks effective on or after February 15, 2023. In alignment with assessment benchmarks outlined in §4.54(a)(1)(B), (C), and (D), these benchmarks are based on the assessment vendor's analysis of current student data and the likelihood of earning an

A, B, or C in an entry-level college course in the subject areas of mathematics and English/reading. Section 4.54(a)(1)(A)(iii) adds information regarding the use of assessment score results based on clauses (i) and (ii), allowable since the assessment was not revised. Authority to adopt rules is provided in TEC Section 51.344.

The Coordinating Board determined that the revised benchmarks are necessary to reflect the most current student data available in determining college readiness in meeting the requirements of the TSI.

Jennielle Strother, Assistant Commissioner for Student Success, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Jennielle Strother has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the provision of additional options for non-exempt students to meet the college readiness benchmarks for the Texas Success Initiative. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Suzanne Morales-Vale, Senior Director, P.O. Box 12788, Austin, Texas 78711-2788, or via email at suzanne.morales-vale@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 51.344, which provides the Coordinating Board with the authority to adopt rules as necessary to implement this subchapter.

The proposed amendment affects allowable exemptions under the Texas Success Initiative.

§4.54. Exemptions, Exceptions and Waivers.

(a) The following students shall be exempt from the requirements of this title, whereby exempt students shall not be required to provide any additional demonstration of college readiness and shall

be allowed to enroll in any entry-level freshman course as defined in §4.53(13) of this title (relating to Definitions):

(1) For a period of five (5) years from the date of testing, a student who is tested and performs at or above the following standards that cannot be raised by institutions:

(A) ACT:

(i) ACT administered prior to February 15, 2023: composite score of 23 with a minimum of 19 on the English test shall be exempt for both the reading and writing sections of the TSI Assessment, and/or 19 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment.^[§]

(ii) ACT administered on or after February 15, 2023: a combined score of 40 on the English and Reading (E+R) tests shall be exempt for both reading and writing or ELAR sections of the TSI Assessment. A score of 22 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment. There is no composite score.

(iii) The use of scores from both the ACT administered prior to February 15, 2023, and the ACT administered after February 15, 2023, is allowable, as long as the benchmarks set forth in clause (ii) of this subparagraph are met.

(B) - (D) (No change.)

(2) - (10) (No change.)

(b) - (d) (No change.)

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6262



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

The State Board of Education (SBOE) proposes the repeal of §113.10 and §113.17 and amendments to §§113.11-113.16, 113.18-113.20, 113.31, and 113.41-113.44, concerning Texas Essential Knowledge and Skills (TEKS) for social studies. The proposed revisions would align with recent legislative requirements by updating the standards for Kindergarten-Grade 8 and five high school courses: Economics with Emphasis on the Free Enterprise System and its Benefits, United States History Studies Since 1877, World History Studies, World Geography Studies, and United States Government.

BACKGROUND INFORMATION AND JUSTIFICATION: The TEKS for social studies and economics were originally adopted effective September 1, 1998. The Kindergarten-Grade 12 social studies TEKS and the TEKS for economics were revised effective

August 23, 2010. In 2018, the SBOE approved streamlining revisions to the social studies TEKS for Kindergarten-Grade 8 and four high school social studies courses: U.S. History Studies, World History Studies, World Geography, and United States Government. The SBOE also streamlined the TEKS for Economics with Emphasis on the Free Enterprise System and its Benefits and consolidated the TEKS for economics into Chapter 113.

In 2015, the SBOE adopted revisions to the TEKS for certain Advanced Placement (AP) and International Baccalaureate (IB) social studies courses to require that students demonstrate proficiency in the TEKS for the corresponding AP and IB courses in addition to the AP or IB course requirements.

In 2021, the 87th Texas Legislature passed Senate Bill (SB) 1063, amending TEC, §28.025, to add a one-half credit course in personal financial literacy and economics as an option to meet the one-half credit graduation requirement for economics under the Foundation High School Program. SB 1063 requires that the SBOE adopt TEKS for the personal financial literacy and economics course and that the required curriculum for the course allocate two-thirds of the instructional time to personal financial literacy and one-third of instructional time to economics. At the June 2021 SBOE meeting, the SBOE adopted new §113.76 to be effective 20 days after filing with the Texas Register, and the rule became effective August 1, 2022.

Additionally, the 87th Texas Legislature passed House Bill 4509, Regular Session, 2021, and SB 3, Second Called Session, 2021, to require the teaching of informed patriotism and the founding documents of the United States and require the SBOE to adopt essential knowledge and skills for social studies that develop each student's civic knowledge, including an understanding of the fundamental moral, political, and intellectual foundations of the U.S. government.

At the June and November 2021 SBOE meetings, the board discussed the review of the social studies TEKS. Board members designated content advisors for the social studies TEKS review in August 2021. An application to serve on work groups was posted on the Texas Education Agency (TEA) website in September 2021. Additionally, in September 2021, a survey was posted on the TEA website to ask for feedback on the current TEKS for social studies. TEA staff provided SBOE members applications for approval to serve on the social studies work groups in September, October, and November 2021 and January and April 2022. The content advisors convened to discuss consensus recommendations in December 2021 and January 2022. In April 2022, the SBOE asked TEA to convene work groups to develop TEKS for two additional ethnic studies courses: Native American studies and Asian American studies. The SBOE directed future work groups to develop TEKS for Kindergarten-Grade 8 as follows: the TEKS for Kindergarten-Grade 2 would address topics in Texas, U.S., and world history thematically and work groups should look to see if there are other organizational options for organizing the Kindergarten-Grade 2 content; and the TEKS for Grades 3-8 would address history chronologically with Grades 3-5 focusing on world history and Grades 6-8 focusing on Texas and U.S. history. In May 2022, the SBOE convened a special meeting to hear public feedback on the proposed new framework for the Kindergarten-Grade 8 TEKS. Work groups were convened to develop recommendations for the social studies TEKS in January, February, March, April, May, June, and July 2022. At a special called meeting held August 1, 2022, the SBOE discussed the proposed new social studies TEKS and

held a public hearing regarding the new standards. Following the discussion, a final work group was convened in August to develop final recommendations.

At the August-September SBOE meeting, the board determined that it would not move forward with proposed new social studies standards. Instead, the board asked TEA staff to bring to the next SBOE meeting a draft of the current standards with proposed revisions only to address requirements of SB 3, 87th Texas Legislature, Second Called Session, 2021, that are not currently addressed in the TEKS.

The SBOE approved the proposed revisions for first reading and filing authorization at its September 26, 2022 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect (2022-2026), there are fiscal implications to the state. The estimated cost to the TEA related to revision of the social studies TEKS is \$15,000. As part of the SBOE's TEKS review process, TEA executes personal services contracts with SBOE-appointed content advisors to provide written feedback on the TEKS. The content advisors may also be invited to testify before the board at an SBOE meeting. Expenses for travel to attend a meeting are reimbursed.

There may be fiscal implications for school districts and charter schools to implement the proposed revisions to the TEKS, which is expected to include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

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 existing regulations by amending existing social studies standards required to be taught by school districts and charter schools to align with the requirements of SB 3.

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 ap-

plicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez 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 updating the standards to align with recent legislative requirements and ensure the standards remain current. 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 October 14, 2022, and ends at 5:00 p.m. on November 14, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in November 2022 in accordance with the SBOE board operating policies and procedures. 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 October 14, 2022.

SUBCHAPTER A. ELEMENTARY

19 TAC §113.10

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(h), which requires the SBOE and each school district to require the teaching of informed patriotism, Texas history, and the free enterprise system in the adoption of instructional materials for Kindergarten-Grade 12, including the founding documents of the United States; TEC, §28.002(h-1), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic engagement in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; and TEC, §28.002(h-2), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, entrepreneurial, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic government in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; the ability to analyze and

determine the reliability of information sources, formulate and articulate reasoned positions, understand the manner in which local, state, and federal governments work and operate through the use of simulations and models of governmental and democratic processes, actively listen and engage in civic discourse, and participate as a citizen in a constitutional democracy by voting; and an appreciation of the importance and responsibility of participating in civic life, a commitment to the United States and its form of government, and a commitment to free speech and civil discourse.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (h), (h-1), and (h-2).

§113.10. *Implementation of Texas Essential Knowledge and Skills for Social Studies, Elementary, Adopted 2018.*

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



19 TAC §§113.11 - 113.16

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(h), which requires the SBOE and each school district to require the teaching of informed patriotism, Texas history, and the free enterprise system in the adoption of instructional materials for Kindergarten-Grade 12, including the founding documents of the United States; TEC, §28.002(h-1), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic engagement in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; and TEC, §28.002(h-2), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, entrepreneurial, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic government in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; the ability to analyze and determine the reliability of information sources, formulate and articulate reasoned positions, understand the manner in which local, state, and federal governments

work and operate through the use of simulations and models of governmental and democratic processes, actively listen and engage in civic discourse, and participate as a citizen in a constitutional democracy by voting; and an appreciation of the importance and responsibility of participating in civic life, a commitment to the United States and its form of government, and a commitment to free speech and civil discourse.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (h), (h-1), and (h-2)+.

§113.11. *Social Studies, Kindergarten, Adopted 2022 [2018].*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] Introduction.

(1) In Kindergarten, the study of the self, home, family, and classroom establishes the foundation for responsible citizenship in society. Students explore state and national heritage by examining the celebration of patriotic holidays and the contributions of individuals. The concept of chronology is introduced. Students apply geographic concepts of location and physical and human characteristics of place. Students identify basic human needs and ways people meet these needs. Students learn the purpose of rules and the role of authority figures in the home and school. Students learn customs, symbols, and celebrations that represent American beliefs and principles and contribute to our national identity. Students compare family customs and traditions and describe examples of technology in the home and school. Students acquire information from a variety of oral and visual sources. Students practice problem-solving, decision-making, and independent-thinking skills.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich material is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) [(b)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those con-

taining the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) Students must demonstrate learning performance related to any federal and state mandates regarding classroom instruction. Although Kindergarten is not required to participate in Celebrate Freedom Week, according to the TEC, §29.907, primary grades lay the foundation for subsequent learning. As a result, Kindergarten Texas essential knowledge and skills include standards related to this patriotic observance.

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(c) [(b)] Knowledge and skills.

(1) History. The student understands that holidays are celebrations of special events. The student is expected to:

(A) identify national patriotic holidays such as Constitution Day, Presidents' Day, Veterans Day, and Independence Day; and

(B) identify customs associated with national patriotic holidays such as parades and fireworks on Independence Day.

(2) History. The student understands how historical figures helped shape the state and nation. The student is expected to identify contributions of historical figures, including Stephen F. Austin, George Washington, Christopher Columbus, and José Antonio Navarro, who helped to shape the state and nation.

(3) Geography. The student understands the concept of location. The student is expected to:

(A) use spatial terms, including over, under, near, far, left, and right, to describe relative location;

(B) locate places on the school campus and describe their relative locations; and

(C) identify and use geographic tools that aid in determining location, including maps and globes.

(4) Geography. The student understands physical and human characteristics of place to better understand self, home, family, classroom, and the world around them. The student is expected to:

(A) identify the physical characteristics of place such as landforms, bodies of water, Earth's resources, and weather; and

(B) identify how geographic location influences human characteristics of place such as shelter, clothing, food, and activities.

(5) Economics. The student understands the difference between human needs and wants and how they are met. The student is expected to:

(A) identify basic human needs of food, clothing, and shelter;

(B) explain the difference between needs and wants; and

(C) explain how basic human needs and wants can be met.

(6) Economics. The student understands the value of jobs. The student is expected to:

(A) identify jobs in the home, school, and community; and

(B) explain why people have jobs.

(7) Government. The student understands the purpose of rules. The student is expected to:

(A) identify purposes for having rules; and

(B) identify rules that provide order, security, and safety in the home and school.

(8) Government. The student understands the role of authority figures. The student is expected to:

(A) identify authority figures in the home, school, and community; and

(B) explain how authority figures enforce rules.

(9) Citizenship. The student understands important symbols, customs, and responsibilities that represent American beliefs and principles and contribute to our national identity. The student is expected to:

(A) identify the United States flag and the Texas state flag;

(B) recite the Pledge of Allegiance to the United States Flag and the Pledge to the Texas Flag; and

(C) use voting as a method for group decision making.

(10) Culture. The student understands similarities and differences among individuals. The student is expected to identify similarities and differences among individuals such as kinship and religion.

(11) Culture. The student understands the importance of family traditions. The student is expected to:

(A) describe and explain the importance of family traditions; and

(B) compare traditions among families.

(12) Science, technology, and society. The student understands ways technology is used in the home and school and how technology affects people's lives. The student is expected to:

(A) identify examples of technology used in the home and school;

(B) describe how technology helps accomplish specific tasks and meet people's needs; and

(C) describe how his or her life might be different without modern technology.

(13) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a

variety of valid sources, including technology. The student is expected to:

(A) identify and state facts based on relevant evidence;

(B) identify different kinds of historical sources and artifacts and explain how they can be used to study the past;

(C) [(A)] gather information about a topic using a variety of valid oral and visual sources such as interviews, music, pictures, symbols, and artifacts with adult assistance; and

(D) [(B)] sequence and categorize information.

(14) Social studies skills. The student communicates in oral and visual forms. The student is expected to:

(A) place events in chronological order;

(B) use social studies terminology related to time and chronology correctly, including before, after, next, first, last, yesterday, today, and tomorrow;

(C) communicate information visually, orally, or in writing based on knowledge and experiences in social studies;

~~[(C) express ideas orally based on knowledge and experiences; and]~~

(D) create and interpret visuals, including pictures and maps; and[-]

(E) apply and practice classroom rules and procedures for listening and responding respectfully.

(15) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) use democratic procedures to collaborate with others when making decisions on issues in the classroom, school, or community; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.12. Social Studies, Grade 1, Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] Introduction.

(1) In Grade 1, students study their relationship to the classroom, school, and community to establish the foundation for responsible citizenship in society. Students develop concepts of time and chronology by distinguishing among past, present, and future events. Students identify anthems and mottoes of the United States and Texas. Students create simple maps to identify the location of places in the classroom, school, and community. Students explore the concepts of goods and services and the value of work. Students identify individuals who exhibit good citizenship. Students describe the importance of family customs and traditions and identify how technology has changed family life. Students sequence and categorize information. Students practice problem-solving, decision-making, and independent-thinking skills.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich material is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) [(b)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) Students must demonstrate learning performance related to any federal and state mandates regarding classroom instruction. Although Grade 1 is not required to participate in Celebrate Freedom Week, according to the TEC, §29.907, primary grades lay the foundation for subsequent learning. As a result, Grade 1 Texas essential knowledge and skills include standards related to this patriotic observance.

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(c) [(b)] Knowledge and skills.

(1) History. The student understands the origins of customs, holidays, and celebrations. The student is expected to:

(A) describe the origins of customs, holidays, and celebrations of the community, state, and nation such as Constitution Day, Independence Day, and Veterans Day; and

(B) compare the observance of holidays and celebrations.

(2) History. The student understands how historical figures helped shape the state and nation. The student is expected to:

(A) identify contributions of historical figures, including Sam Houston, George Washington, Abraham Lincoln, and Martin Luther King Jr., who have influenced the state and nation; and

(B) compare the lives of historical figures who have influenced the state and nation.

(3) Geography. The student understands the relative location of places. The student is expected to:

(A) describe the location of self and objects relative to other locations in the classroom and school using spatial terms; and

(B) locate places using the four cardinal directions.

(4) Geography. The student understands the purpose of geographic tools, including maps and globes. The student is expected to:

(A) create and use simple maps such as maps of the home, classroom, school, and community; and

(B) locate and explore the community, Texas, and the United States on maps and globes.

(5) Geography. The student understands physical and human characteristics of place to better understand their community and the world around them. The student is expected to:

(A) identify and describe the physical characteristics of place such as landforms, bodies of water, Earth's resources, and weather; and

(B) identify and describe how geographic location influences the human characteristics of place such as shelter, clothing, food, and activities.

(6) Economics. The student understands how families meet basic human needs. The student is expected to:

(A) describe ways that families meet basic human needs; and

(B) describe similarities and differences in ways families meet basic human needs.

(7) Economics. The student understands the concepts of goods and services. The student is expected to:

(A) identify examples of goods and services in the home, school, and community;

(B) identify ways people exchange goods and services; and

(C) identify the role of markets in the exchange of goods and services.

(8) Economics. The student understands the condition of not being able to have all the goods and services one wants. The student is expected to:

(A) identify examples of people wanting more than they can have;

(B) explain why wanting more than they can have requires that people make choices; and

(C) identify examples of choices families make when buying goods and services.

(9) Economics. The student understands the value of work. The student is expected to:

(A) describe the tools of various jobs and the characteristics of a job well performed; and

(B) describe how various jobs contribute to the production of goods and services.

(10) Government. The student understands the purpose of rules and laws. The student is expected to:

(A) explain the purpose for rules and laws in the home, school, and community; and

(B) identify rules and laws that establish order, provide security, and manage conflict.

(11) Government. The student understands the role of authority figures and public officials. The student is expected to:

(A) identify the responsibilities of authority figures in the home, school, and community; and

(B) identify and describe the roles of public officials in the community, state, and nation.

(12) Citizenship. The student understands characteristics of good citizenship as exemplified by historical figures and other individuals. The student is expected to:

(A) identify characteristics of good citizenship, including truthfulness, justice, equality, respect for oneself and others, responsibility in daily life, and participation in government by educating oneself about the issues, respectfully holding public officials to their word, and voting; and

(B) identify historical figures and other individuals who have exemplified good citizenship such as Benjamin Franklin and Eleanor Roosevelt.

(13) Citizenship. The student understands important symbols, customs, and celebrations that represent American beliefs and principles that contribute to our national identity. The student is expected to:

(A) explain state and national patriotic symbols, including the United States and Texas flags, the Liberty Bell, the Statue of Liberty, and the Alamo;

(B) recite the Pledge of Allegiance to the United States Flag and the Pledge to the Texas Flag;

(C) identify anthems and mottoes of Texas and the United States;

(D) explain and practice voting as a way of making choices and decisions; and

(E) explain how patriotic customs and celebrations reflect American individualism and freedom.

(14) Culture. The student understands the importance of family and community beliefs, language, and traditions. The student is expected to:

(A) describe and explain the importance of beliefs, language, and traditions of families and communities; and

(B) explain the way folktales and legends reflect beliefs, language, and traditions of communities.

(15) Science, technology, and society. The student identifies individuals who created or invented new technology and under-

stands how technology affects daily life, past and present. The student is expected to:

- (A) describe how technology has affected the ways families live;
- (B) describe how technology has affected communication, transportation, and recreation; and
- (C) identify the contributions of scientists and inventors such as Alexander Graham Bell, Thomas Edison, and Garrett Morgan.

(16) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including technology. The student is expected to:

- (A) identify and state facts based on relevant evidence;
- (B) identify different kinds of historical sources and artifacts and explain how they can be used to study the past;
- (C) ~~[(A)]~~ gather information about a topic using a variety of valid oral and visual sources such as interviews, music, pictures, symbols, and artifacts with adult assistance; and
- (D) ~~[(B)]~~ sequence and categorize information.

(17) Social studies skills. The student communicates in oral, visual, and written forms. The student is expected to:

- (A) use a simple timeline to distinguish among past, present, and future;
- (B) use a calendar to describe and measure time in days, weeks, months, and years;
- (C) communicate information visually, orally, or in writing based on knowledge and experiences in social studies;
- ~~[(C) express ideas orally based on knowledge and experiences;]~~
- (D) create and interpret visual and written material; ~~[and]~~
- (E) use social studies terminology correctly; and [-]
- (F) apply and practice classroom rules and procedures for listening and responding respectfully.

(18) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

- (A) use democratic procedures to collaborate with others when making decisions on issues in the classroom, school, or community; and
- (B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.13. Social Studies, Grade 2, Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) ~~[(a)]~~ Introduction.

(1) In Grade 2, students focus on a study of their local community by examining the impact of significant individuals and events on the history of the community as well as on the state and nation. Students begin to develop the concepts of time and chronology. The relationship between the physical environment and human activities is introduced as are the concepts of consumers and producers. Students identify functions of government as well as services provided by the local government. Students continue to acquire knowledge of customs, symbols, and celebrations that represent American beliefs and principles. Students identify the significance of works of art in the local community and explain how technological innovations have changed transportation and communication. Students communicate what they have learned in written, oral, and visual forms.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich material such as nonfiction texts, primary sources, biographies, folklore, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, online tours, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection ~~(c)~~ ~~[(b)]~~ of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) Students must demonstrate learning performance related to any federal and state mandates regarding classroom instruc-

tion. Although Grade 2 is not required to participate in Celebrate Freedom Week, according to the TEC, §29.907, primary grades lay the foundation for subsequent learning. As a result, Grade 2 Texas essential knowledge and skills include standards related to this patriotic observance.

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(c) [(b)] Knowledge and skills.

(1) History. The student understands the historical significance of landmarks and celebrations in the community, state, and nation. The student is expected to:

(A) explain the significance of various community, state, and national celebrations such as Veterans Day, Memorial Day, Independence Day, and Thanksgiving; and

(B) identify and explain the significance of various community, state, and national landmarks such as monuments and government buildings.

(2) History. The student understands how historical figures helped shape the community, state, and nation. The student is expected to:

(A) identify contributions of historical figures, including Thurgood Marshall, Irma Rangel, and Theodore Roosevelt, who have influenced the state and nation; and

(B) describe how people and events have influenced local community history.

(3) Geography. The student uses simple geographic tools, including maps and globes. The student is expected to:

(A) identify and use information on maps and globes using basic map elements such as title, cardinal directions, and legend; and

(B) create maps to show places and routes within the home, school, and community.

(4) Geography. The student understands the location of places in their community, state, country, and the world. The student is expected to:

(A) identify major landforms and bodies of water, including each of the seven continents and each of the oceans, on maps and globes; and

(B) locate places, including the local community, Texas, the United States, the state capital, the U.S. capital, and the bordering countries of Canada and Mexico on maps and globes.

(5) Geography. The student understands how humans use and modify the physical environment. The student is expected to:

(A) identify ways in which people have modified the physical environment such as clearing land, building roads, using land for agriculture, and drilling for oil;

(B) identify consequences of human modification of the physical environment; and

(C) identify ways people can conserve and replenish Earth's resources.

(6) Economics. The student understands the value of work. The student is expected to:

(A) explain how work provides income to purchase goods and services; and

(B) explain the choices people can make about earning, spending, and saving money.

(7) Economics. The student understands the roles of producers and consumers in the production of goods and services. The student is expected to:

(A) distinguish between producing and consuming;

(B) identify ways in which people are both producers and consumers; and

(C) trace the development of a product from a natural resource to a finished product.

(8) Government. The student understands the purpose of governments. The student is expected to:

(A) identify functions of governments such as establishing order, providing security, and managing conflict; and

(B) identify governmental services in the community such as police and fire protection, libraries, schools, and parks and explain their value to the community.

(9) Government. The student understands the role of public officials. The student is expected to:

(A) name current public officials, including mayor, governor, and president;

(B) compare the roles of public officials, including mayor, governor, and president;

(C) identify ways that public officials are selected, including election and appointment to office; and

(D) identify how citizens participate in their own governance through staying informed of what public officials are doing, providing input to them, and volunteering to participate in government functions.

(10) Citizenship. The student understands characteristics of good citizenship as exemplified by historical figures and other individuals. The student is expected to:

(A) identify characteristics of good citizenship, including truthfulness, justice, equality, respect for oneself and others, responsibility in daily life, and participation in government by educating oneself about the issues, respectfully holding public officials to their word, and voting;

(B) identify historical figures and other individuals who have exemplified good citizenship such as Paul Revere, Abigail Adams, World War II Women Airforce Service Pilots (WASPs), Navajo Code Talkers, and Sojourner Truth; and

(C) identify ways to actively practice good citizenship, including involvement in community service.

(11) Citizenship. The student understands important symbols, customs, and celebrations that represent American beliefs and principles that contribute to our national identity. The student is expected to:

(A) recite the Pledge of Allegiance to the United States Flag and the Pledge to the Texas Flag;

(B) sing, recite, or identify selected patriotic songs, including "The Star-Spangled Banner" and "America the Beautiful";

(C) use voting as a method for group decision making;

(D) [(C)] identify symbols such as state and national birds and flowers and Uncle Sam; and

(E) [(D)] identify how selected symbols, customs, and celebrations reflect an American love of individualism, inventiveness, and freedom.

(12) Culture. The student understands ethnic and/or cultural celebrations. The student is expected to:

(A) identify the significance of various ethnic and/or cultural celebrations; and

(B) compare ethnic and/or cultural celebrations.

(13) Science, technology, and society. The student understands how science and technology have affected life, past and present. The student is expected to:

(A) describe how science and technology have affected communication, transportation, and recreation; and

(B) explain how science and technology have affected the ways in which people meet basic needs.

(14) Science, technology, and society. The student identifies individuals who exhibited individualism and inventiveness. The student is expected to identify individuals who have exhibited individualism and inventiveness such as Amelia Earhart and George Washington Carver.

(15) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including technology. The student is expected to:

(A) identify and state facts based on relevant evidence;

(B) identify different kinds of historical sources and artifacts and explain how they can be used to study the past;

(C) [(A)] gather information about a topic using a variety of valid oral and visual sources such as interviews, music, pictures, maps, and artifacts; and

(D) [(B)] interpret oral, visual, and print material by sequencing, categorizing, identifying the main idea, predicting, comparing, and contrasting.

(16) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) describe the order of events by using designations of time periods such as historical and present times;

(B) apply vocabulary related to chronology, including past, present, and future;

(C) create and interpret timelines for events in the past and present;

(D) use social studies terminology correctly;

(E) communicate information visually, orally, or in writing based on knowledge and experiences in social studies;

[(E) express ideas orally based on knowledge and experiences; and]

(F) create written and visual material such as stories, maps, and graphic organizers to express ideas; and[-]

(G) apply and practice classroom rules and procedures for listening and responding respectfully.

(17) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) use democratic procedures to collaborate with others when making decisions on issues in the classroom, school, or community; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.14. *Social Studies, Grade 3, Adopted 2022 [2018].*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] Introduction.

(1) In Grade 3, students learn how diverse individuals have changed their communities and world. Students study the effects inspiring heroes have had on communities, past and present. Students learn about the lives of heroic men and women who made important choices, overcame obstacles, sacrificed for the betterment of others, and embarked on journeys that resulted in new ideas, new inventions, new technologies, and new communities. Students expand their knowledge through the identification and study of people who made a difference, influenced public policy and decision making, and participated in resolving issues that are important to all people. Throughout Grade 3, students develop an understanding of the economic, cultural, and scientific contributions made by individuals.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich material such as biographies, founding documents, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) [(b)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(c) [(b)] Knowledge and skills.

(1) History. The student understands how individuals, events, and ideas have influenced the history of various communities. The student is expected to:

(A) describe how individuals, events, and ideas have changed communities, past and present;

(B) identify individuals, including Pierre-Charles L'Enfant, Benjamin Banneker, and Benjamin Franklin, who have helped to shape communities; and

(C) describe how individuals, including Daniel Boone and the Founding Fathers have contributed to the expansion of existing communities or to the creation of new communities.

(2) History. The student understands common characteristics of communities, past and present. The student is expected to:

(A) identify reasons people have formed communities, including a need for security and laws, religious freedom, and material well-being; and

(B) compare ways in which people in the local community and other communities meet their needs for government, education, communication, transportation, and recreation.

(3) Geography. The student understands how humans adapt to and/or modify the physical environment. The student is expected to:

(A) describe similarities and differences in the physical environment, including climate, landforms, natural resources, and natural hazards;

(B) identify and compare how people in different communities adapt to or modify the physical environment in which they live such as deserts, mountains, wetlands, and plains; and

(C) describe the effects of human processes such as building new homes, conservation, and pollution in shaping the landscape.

(4) Geography. The student understands the concepts of location, distance, and direction on maps and globes. The student is expected to:

(A) use cardinal and intermediate directions to locate places on maps and globes in relation to the local community;

(B) use a scale to determine the distance between places on maps and globes; and

(C) identify, create, and interpret maps of places that contain map elements, including a title, compass rose, legend, scale, and grid system.

(5) Economics. The student understands the purposes of earning, spending, saving, and donating money. The student is expected to:

(A) identify ways of earning, spending, saving, and donating money; and

(B) create a simple budget that allocates money for spending and saving.

(6) Economics. The student understands the concept of the free enterprise system and how businesses operate in the U.S. free enterprise system. The student is expected to:

(A) explain how supply and demand affect the price of a good or service;

(B) define and identify examples of scarcity;

(C) explain how the cost of production and selling price affect profits; and

(D) identify individuals, past and present, such as Henry Ford and Sam Walton who have started new businesses.

(7) Government. The student understands the basic structure and functions of various levels of government. The student is expected to:

(A) describe the basic structure of government in the local community, state, and nation;

(B) identify local, state, and national government officials and explain how they are chosen; and

(C) identify services commonly provided by local, state, and national governments.

(8) Government. The student understands important ideas in historical documents at various levels of government. The student is expected to:

(A) identify the purposes of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights; and

(B) describe the concept of "consent of the governed."

(9) Citizenship. The student understands characteristics of good citizenship as exemplified by historical and contemporary figures and organizations. The student is expected to:

(A) identify characteristics of good citizenship, including truthfulness, justice, equality, respect for oneself and others, responsibility in daily life, and participation in government by educating oneself about the issues, respectfully holding public officials to their word, and voting;

(B) identify figures such as Helen Keller, Clara Barton, and Ruby Bridges who exemplify good citizenship;

(C) identify and describe individual acts of civic responsibility, including obeying laws, serving and improving the community, serving on a jury, and voting; ~~and~~

(D) identify examples of nonprofit and/or civic organizations such as the Red Cross and explain how they serve the common good; ~~and~~[-]

(E) use voting as a method for group decision making.

(10) Culture. The student understands ethnic and/or cultural celebrations of the local community and other communities. The student is expected to:

(A) explain the significance of various ethnic and/or cultural celebrations in the local community and other communities; and

(B) compare ethnic and/or cultural celebrations in the local community with other communities.

(11) Culture. The student understands the role of heroes in shaping the culture of communities, the state, and the nation. The student is expected to:

(A) identify and describe the heroic deeds of state and national heroes and military and first responders such as Hector P. Garcia, James A. Lovell, and the Four Chaplains; and

(B) identify and describe the heroic deeds of individuals such as Harriet Tubman, Todd Beamer, and other contemporary heroes.

(12) Culture. The student understands the importance of writers and artists to the cultural heritage of communities. The student is expected to identify how various writers and artists such as Kadir Nelson, Tomie dePaola, Carmen Lomas Garza, and Laura Ingalls Wilder and their stories, poems, statues, and paintings contribute to the cultural heritage of communities.

(13) Science, technology, and society. The student understands how individuals have created or invented new technology and affected life in various communities, past and present. The student is expected to:

(A) identify individuals who have discovered scientific breakthroughs or created or invented new technology such as Jonas Salk, Cyrus McCormick, Bill Gates, Louis Pasteur, and others; and

(B) describe the impact of scientific breakthroughs and new technology in computers, pasteurization, and medical vaccines on various communities.

(14) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including technology. The student is expected to:

(A) gather information, including historical and current events and geographic data, about the community using a variety of resources;

(B) differentiate and compare the information about a specific issue or event provided in primary and secondary sources;

~~(C)~~ [(B)] interpret oral, visual, and print material by sequencing, categorizing, identifying the main idea, distinguishing between fact and opinion, identifying cause and effect, comparing, and contrasting; ~~and~~

~~(D)~~ [(C)] interpret and create visuals, including graphs, charts, tables, timelines, illustrations, and maps;[-]

(E) identify the central claim in a primary or secondary source; and

(F) develop and communicate a claim and supporting evidence visually, orally, or in writing related to a social studies topic.

(15) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) create and interpret timelines;

(C) apply the terms year, decade, and century to describe historical times;

(D) express ideas orally based on knowledge and experiences; ~~and~~

(E) create written and visual material such as stories, pictures, maps, and graphic organizers to express ideas; ~~and~~[-]

(F) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(16) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) use democratic procedures to simulate making decisions on school, local, or state issues; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.15. Social Studies, Grade 4, Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] Introduction.

(1) In Grade 4, students examine the history of Texas from the early beginnings to the present within the context of influences of North America. Historical content focuses on Texas history, including the Texas Revolution, establishment of the Republic of Texas, and subsequent annexation to the United States. Students discuss important issues, events, and individuals of the 19th, 20th, and 21st centuries. Students conduct a thorough study of regions in Texas and North America resulting from human activity and from physical features. The location, distribution, and patterns of economic activities and settlement in Texas further enhance the concept of regions. Students describe how early American Indians in Texas and North America met their basic economic needs. Students identify motivations for European exploration and colonization and reasons for the establishment of Spanish settlements and missions. Students explain how American Indians governed themselves and identify characteristics of Spanish colonial and Mexican governments in Texas. Students recite and explain the meaning of the Pledge to the Texas Flag. Students identify the contributions of people of various racial, ethnic, and religious groups to Texas and describe the impact of science and technology on life in the state. Students use critical-thinking skills to identify cause-and-effect relationships, compare and contrast, and make generalizations and predictions.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as documents, biographies, novels, speeches, letters, poetry, songs, and artworks is encouraged. Where appropriate, local topics should be included. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) [(b)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their

authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(c) [(b)] Knowledge and skills.

(1) History. The student understands the origins, similarities, and differences of American Indian groups in Texas before European exploration. The student is expected to:

(A) explain the possible origins of American Indian groups in Texas;

(B) identify and compare the ways of life of American Indian groups in Texas before European exploration such as the Lipan Apache, Karankawa, Caddo, and Jumano;

(C) describe the cultural regions in which American Indians lived such as Gulf, Plains, Puebloan, and Southeastern; and

(D) locate American Indian groups remaining in Texas such as the Ysleta Del Sur Pueblo, Alabama-Coushatta, and Kickapoo.

(2) History. The student understands the causes and effects of European exploration and colonization of Texas. The student is expected to:

(A) summarize motivations for European exploration and settlement of Texas, including economic opportunity, competition, and the desire for expansion;

(B) identify the accomplishments and explain the impact of significant explorers, including Cabeza de Vaca; Francisco Coronado; and René Robert Cavelier, Sieur de la Salle, on the settlement of Texas;

(C) explain when, where, and why the Spanish established settlements and Catholic missions in Texas as well as important individuals;

(D) identify Texas' role in the Mexican War of Independence and the war's impact on the development of Texas; and

(E) identify the accomplishments and explain the economic motivations and impact of significant empresarios, including Stephen F. Austin and Martín de León, on the settlement of Texas.

(3) History. The student understands the importance of the Texas Revolution, the Republic of Texas, and the annexation of Texas to the United States. The student is expected to:

(A) analyze the causes, major events, and effects of the Texas Revolution, including the Battle of the Alamo, the Texas Declaration of Independence, the Runaway Scrape, and the Battle of San Jacinto;

(B) summarize the significant contributions of individuals such as William B. Travis, James Bowie, David Crockett, Juan N. Seguín, Plácido Benavides, José Francisco Ruiz, Antonio López de Santa Anna, Susanna Dickinson, and Enrique Esparza;

(C) identify leaders important to the founding of Texas as a republic and state, including José Antonio Navarro, Sam Houston, Mirabeau Lamar, and Anson Jones;

(D) describe the successes, problems, and organizations of the Republic of Texas such as the establishment of a constitution, economic struggles, relations with American Indians, and the Texas Rangers; and

(E) explain the events that led to the annexation of Texas to the United States and the impact of the U.S.-Mexican War.

(4) History. The student understands the political, economic, and social changes in Texas during the last half of the 19th century. The student is expected to:

(A) describe the impact of the Civil War and Reconstruction on Texas;

(B) explain the growth, development, and impact of the cattle industry such as contributions made by Charles Goodnight, Richard King, and Lizzie Johnson;

(C) explain the effects of the railroad industry on life in Texas, including changes to cities and major industries; and

(D) explain the effects on American Indian life brought about by the Red River War, building of U.S. forts and railroads, and loss of buffalo.

(5) History. The student understands important issues, events, and individuals of the 20th century in Texas. The student is expected to:

(A) explain the impact of various events on life in Texas such as the Great Depression, the Dust Bowl, and World War II and notable individuals such as Audie Murphy, Cleto Rodríguez, and Bessie Coleman and other local individuals; and

(B) explain the development and impact of the oil and gas industry on industrialization and urbanization in Texas, including Spindletop and important people such as Pattillo Higgins.

(6) Geography. The student understands the concept of regions. The student is expected to:

(A) identify, locate, and describe the physical regions of Texas (Mountains and Basins, Great Plains, North Central Plains, Coastal Plains), including their characteristics such as landforms, climate, vegetation, and economic activities; and

(B) compare the physical regions of Texas (Mountains and Basins, Great Plains, North Central Plains, Coastal Plains).

(7) Geography. The student understands the location and patterns of settlement and the geographic factors that influence where people live. The student is expected to:

(A) explain the geographic factors such as landforms and climate that influence patterns of settlement and the distribution of population in Texas, past and present; and

(B) identify and explain patterns of settlement such as the location of towns and cities in Texas at different time periods.

(8) Geography. The student understands how people adapt to and modify their environment. The student is expected to:

(A) describe ways people have adapted to and modified their environment in Texas, past and present, such as timber clearing, agricultural production, wetlands drainage, energy production, and construction of dams;

(B) explain reasons why people have adapted to and modified their environment in Texas, past and present, such as the use of natural resources to meet basic needs, facilitate transportation, and enhance recreational activities; and

(C) compare the positive and negative consequences of human modification of the environment in Texas, past and present.

(9) Economics. The student understands the basic economic activities of early societies in Texas. The student is expected to:

(A) explain the economic activities various early American Indian groups in Texas used to meet their needs and wants such as farming, trading, and hunting; and

(B) explain the economic activities early settlers to Texas used to meet their needs and wants.

(10) Economics. The student understands the characteristics and benefits of the free enterprise system in Texas. The student is expected to:

(A) describe how the free enterprise system works, including supply and demand;

(B) identify examples of the benefits of the free enterprise system such as choice and opportunity; and

(C) describe the development of the free enterprise system in Texas such as the growth of cash crops by early colonists and the railroad boom.

(11) Economics. The student understands patterns of work and economic activities in Texas. The student is expected to:

(A) identify how people in different regions of Texas earn their living, past and present;

(B) explain how physical geographic factors such as climate and natural resources have influenced the location of economic activities in Texas;

(C) identify the effects of exploration, immigration, migration, and limited resources on the economic development and growth of Texas; and

(D) explain how developments in transportation and communication have influenced economic activities in Texas.

(12) Government. The student understands how people organized governments in different ways during the early development of Texas. The student is expected to:

(A) compare how various American Indian groups such as the Caddo and the Comanche governed themselves; and

(B) compare characteristics of the Spanish colonial government and the early Mexican governments in Texas.

(13) Government. The student understands important ideas in historical documents of Texas and the United States. The student is expected to:

(A) identify the purposes and explain the importance of the Texas Declaration of Independence and the Texas Constitution;

(B) identify and explain the basic functions of the three branches of government according to the Texas Constitution; and

(C) identify the intent, meaning, and importance of the Declaration of Independence, the U.S. Constitution, and the Bill of Rights (Celebrate Freedom Week).

(14) Citizenship. The student understands important customs, symbols, and celebrations of Texas. The student is expected to:

(A) explain the meaning of various patriotic symbols and landmarks of Texas, including the six flags that flew over Texas, the Alamo, and the San Jacinto Monument;

(B) sing or recite "Texas, Our Texas";

(C) recite and explain the meaning of the Pledge to the Texas Flag; and

(D) describe the origins and significance of state celebrations such as Texas Independence Day and Juneteenth.

(15) Citizenship. The student understands the importance of active individual participation in the democratic process. The student is expected to:

(A) identify important individuals who have participated voluntarily in civic affairs at state and local levels such as Adina de Zavala and Clara Driscoll;

(B) explain how individuals can participate voluntarily in civic affairs at state and local levels through activities such as respectfully holding public officials to their word, writing letters, and participating in historic preservation and service projects;

(C) explain the duty of the individual in state and local elections such as being informed and voting;

(D) identify the importance of historical figures and important individuals who modeled active participation in the democratic process such as Sam Houston, Barbara Jordan, Lorenzo de Zavala, Ann Richards, Henry B. González, Wallace Jefferson, and other local individuals; ~~and~~

(E) explain how to contact elected and appointed leaders in state and local governments; ~~and~~[-]

(F) use voting as a method for group decision making.

(16) Citizenship. The student understands the importance of effective leadership in a constitutional republic. The student is expected to:

(A) identify leaders in state, local, and national governments, including the governor, local members of the Texas Legislature, the local mayor, U.S. senators, local U.S. representatives, and Texans who have been president of the United States; and

(B) identify leadership qualities of state and local leaders, past and present.

(17) Culture. The student understands the contributions of people of various racial, ethnic, and religious groups to Texas culture. The student is expected to:

(A) identify customs, celebrations, and traditions of various cultural, regional, and local groups in Texas such as Cinco de Mayo, Oktoberfest, and Fiesta San Antonio; and

(B) summarize the contributions of artists of various racial, ethnic, and religious groups in the development of Texas culture such as Lydia Mendoza, Chelo Silva, and Julius Lorenzo Cobb Bledsoe.

(18) Science, technology, and society. The student understands the impact of science and technology on life in Texas. The student is expected to:

(A) identify famous inventors and scientists such as Gail Borden, Joseph Glidden, Michael DeBakey, and Millie Hughes-Fulford and their contributions; and

(B) describe how scientific discoveries and innovations such as in aerospace, agriculture, energy, and technology have benefited individuals, businesses, and society in Texas.

(19) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as technology; interviews; biographies; oral, print, and visual material; documents; and artifacts to acquire information about Texas;

(B) differentiate and compare the information about a specific issue or event provided in primary and secondary sources;

(C) ~~[(B)]~~ analyze information by applying absolute and relative chronology through sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(D) ~~[(C)]~~ organize and interpret information in outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps; ~~and~~

(E) ~~[(D)]~~ identify different points of view about an issue, topic, historical event, or current event;[-]

(F) identify the central claim in a primary or secondary source; and

(G) develop and communicate a claim and supporting evidence visually, orally, or in writing related to a social studies topic.

(20) Social studies skills. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) apply mapping elements, including grid systems, legends, symbols, scales, and compass roses, to create and interpret maps; and

(B) interpret geographic data, population distribution, and natural resources into a variety of formats such as graphs and maps.

(21) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) incorporate main and supporting ideas in verbal and written communication;

(C) express ideas orally based on research and experiences; ~~and~~

(D) create written and visual material such as journal entries, reports, graphic organizers, outlines, and bibliographies; and[-]

(E) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(22) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) use democratic procedures to simulate making decisions on school, local, or state issues; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.16. *Social Studies, Grade 5, Adopted 2022 [2018].*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] Introduction.

(1) In Grade 5, students survey the history of the United States from 1565 to the present. Historical content includes the colonial period, the American Revolution, the establishment of the U.S. Constitution and American identity, westward expansion, the Civil War and Reconstruction, immigration and industrialization, and the 20th and 21st centuries. Students study a variety of regions in the United States that result from physical features and human activity and identify how people adapt to and modify the environment. Students explain the characteristics and benefits of the free enterprise system and describe economic activities in the United States. Students identify the roots of representative government in this nation as well as the important ideas in the Declaration of Independence and the U.S. Constitution. Students study the fundamental rights guaranteed in the Bill of Rights. Students examine the importance of effective leadership in a constitutional republic and identify important leaders in the national government. Students recite and explain the meaning of the Pledge of Allegiance to the United States Flag. Students describe the cultural impact of various racial, ethnic, and religious groups in the nation and identify the accomplishments of notable individuals in the fields of science and technology. Students explain symbols, traditions, and landmarks that represent American beliefs and principles. Students use critical-thinking skills to sequence, categorize, and summarize information and to draw inferences and conclusions.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as documents, biographies, novels, speeches, letters, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) [(b)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(c) [(b)] Knowledge and skills.

(1) History. The student understands the reasons for and the role of key people in the European colonization of North America beginning in 1565, the founding of St. Augustine. The student is expected to:

(A) explain when, where, and why groups of people explored, colonized, and settled in the United States, including the search for religious freedom and economic gain; and

(B) describe the accomplishments of significant individuals who settled for religious freedom and economic gain during the colonial period, including William Bradford, Anne Hutchinson, William Penn, John Smith, and Roger Williams.

(2) History. The student understands how conflict between the American colonies and Great Britain led to American independence and the formation of the United States. The student is expected to:

(A) analyze the causes and effects of events prior to and during the American Revolution, including the taxation resulting from the French and Indian War and the colonist response to taxation such as the Boston Tea Party;

(B) identify the Founding Fathers and Patriot heroes, including John Adams, Benjamin Franklin, Thomas Jefferson, the Sons of Liberty, and George Washington, and their motivations and contributions during the revolutionary period; and

(C) summarize the results of the American Revolution, including the establishment of the United States.

(3) History. The student understands the significant individuals who contributed to the creation of the U.S. Constitution and the government it established. The student is expected to identify the contributions of Founding Fathers James Madison and George Mason who helped create the U.S. Constitution.

(4) History. The student understands political, economic, and social changes that occurred in the United States during the 19th century. The student is expected to:

(A) describe the causes and effects of the War of 1812 such as impressment of sailors, territorial conflicts with Great Britain, and the increase in U.S. manufacturing;

(B) identify and explain how changes resulting from the Industrial Revolution led to conflict among sections of the United States;

(C) identify significant events and concepts associated with U.S. territorial expansion, including the Louisiana Purchase, the expedition of Lewis and Clark, and Manifest Destiny;

(D) explain the central role of the expansion of slavery in causing sectionalism, disagreement over states' rights, and the Civil War;

(E) explain the effects of the Civil War, including Reconstruction and the 13th, 14th, and 15th amendments to the U.S. Constitution; and

(F) identify the challenges, opportunities, and contributions of people from various American Indian and immigrant groups such as the settlement of the frontier and building of the Transcontinental Railroad.

(5) History. The student understands important issues, events, and individuals in the United States during the 20th and 21st centuries. The student is expected to:

(A) explain the significance of issues and events of the 20th century such as industrialization, urbanization, the Great Depression, the world wars, the civil rights movement, and military actions;

(B) analyze various issues and events of the 21st century such as the War on Terror and the 2008 presidential election; and

(C) identify the accomplishments and contributions of individuals and groups such as Susan B. Anthony, Martin Luther King Jr., Rosa Parks, Cesar Chavez, Franklin D. Roosevelt, Ronald Reagan, the Tuskegee Airmen, and the 442nd Regimental Combat Team in the areas of civil rights, women's rights, military actions, and politics.

(6) Geography. The student understands places and regions in the United States. The student is expected to:

(A) describe political and economic regions in the United States that result from patterns of human activity;

(B) describe regions in the United States based on physical characteristics such as landform, climate, and vegetation;

(C) locate on a map important political features such as the five largest cities by population in the United States and the 50 states; and

(D) create a map of important physical features such as the Appalachian Mountains, Great Lakes, Mississippi River, Great Plains, and Rocky Mountains.

(7) Geography. The student understands the location and patterns of settlement and the geographic factors that influence where people live. The student is expected to:

(A) identify and describe the patterns of settlement such as rural, urban, and suburban;

(B) explain the geographic factors that influence patterns of settlement and the distribution of population in the United States; and

(C) analyze the geographic factors that influence the location of the five largest urban areas in the United States and explain their distribution.

(8) Geography. The student understands how people adapt to and modify their environment. The student is expected to:

(A) describe how and why people have adapted to and modified their environment in the United States such as the use of human resources to meet basic needs; and

(B) analyze the positive and negative consequences of human modification of the environment in the United States.

(9) Economics. The student understands the basic economic patterns of early societies in the United States. The student is expected to:

(A) explain the economic patterns of early European colonies; and

(B) identify major industries of colonial America such as shipbuilding and growing of cash crops.

(10) Economics. The student understands the development, characteristics, and benefits of the free enterprise system in the United States. The student is expected to:

(A) identify the development of the free enterprise system in colonial America and the United States;

(B) describe how the free enterprise system works in the United States; and

(C) give examples of the benefits of the free enterprise system in the United States.

(11) Economics. The student understands the impact of supply and demand on consumers and producers in a free enterprise system. The student is expected to:

(A) explain how supply and demand affects consumers in the United States; and

(B) evaluate the effects of supply and demand on industry and agriculture, including the plantation system, in the United States.

(12) Economics. The student understands patterns of work and economic activities in the United States. The student is expected to:

(A) compare how people in different regions of the United States earn a living, past and present;

(B) identify and explain how geographic factors have influenced the location of economic activities in the United States;

(C) analyze the effects of immigration and migration on the economic development and growth of the United States; and

(D) describe the impact of mass production, specialization, and division of labor on the economic growth of the United States.

(13) Government. The student understands the organization of governments in colonial America. The student is expected to:

(A) compare the systems of government of early European colonists, including representative government and monarchy; and

(B) identify examples of representative government in the American colonies, including the Mayflower Compact and the Virginia House of Burgesses.

(14) Government. The student understands important ideas in the Declaration of Independence, the U.S. Constitution, and the Bill of Rights. The student is expected to:

(A) explain the purposes, key elements, and the importance of the Declaration of Independence;

(B) explain the purposes of the U.S. Constitution as identified in the Preamble; and

(C) explain the reasons for the creation of the Bill of Rights and its importance.

(15) Government. The student understands the framework of government created by the U.S. Constitution of 1787. The student is expected to:

(A) identify and explain the basic functions of the three branches of government;

(B) identify the reasons for and describe the system of checks and balances outlined in the U.S. Constitution; and

(C) distinguish between national and state governments and compare their responsibilities in the U.S. federal system.

(16) Citizenship. The student understands important symbols, customs, celebrations, and landmarks that represent American beliefs and principles that contribute to our national identity. The student is expected to:

(A) explain various patriotic symbols, including Uncle Sam; national celebrations such as Labor Day; and political symbols such as the donkey and elephant;

(B) sing or recite "The Star-Spangled Banner" and explain its history;

(C) recite and explain the meaning of the Pledge of Allegiance to the United States Flag; and

(D) explain the significance of important landmarks, including the White House, the Statue of Liberty, and Mount Rushmore.

(17) Citizenship. The student understands the importance of individual participation in the democratic process at the local, state, and national levels. The student is expected to:

(A) explain why individuals have a duty to participate in civic affairs at the local, state, and national levels; [and]

(B) explain how to contact elected and appointed leaders in local, state, and national governments; and[.]

(C) use voting as a method for group decision making.

(18) Citizenship. The student understands the importance of effective leadership in a constitutional republic. The student is expected to:

(A) identify past and present leaders in the national government, including the president and various members of Congress, and their political parties; and

(B) identify leadership qualities of national leaders, past and present.

(19) Citizenship. The student understands the fundamental rights of American citizens guaranteed in the Bill of Rights. The student is expected to describe the fundamental rights guaranteed in the Bill of Rights, including freedom of religion, speech, and press; the right to assemble and petition the government; the right to keep and bear arms; the right to trial by jury; and the right to an attorney.

(20) Culture. The student understands the relationship between the arts and the times during which they were created. The student is expected to:

(A) identify significant examples of art, music, and literature from various periods in U.S. history such as the painting *American Progress*, "Yankee Doodle," and "Paul Revere's Ride"; and

(B) explain how examples of art, music, and literature reflect the times during which they were created.

(21) Culture. The student understands the contributions of people of various racial, ethnic, and religious groups to the United States culture. The student is expected to:

(A) describe customs and traditions of various racial, ethnic, and religious groups in the United States; and

(B) summarize the contributions of people of various racial, ethnic, and religious groups to our national identity.

(22) Science, technology, and society. The student understands the impact of science and technology on society in the United States. The student is expected to:

(A) identify the accomplishments of notable individuals in the fields of science and technology such as Benjamin Franklin, Eli Whitney, John Deere, Thomas Edison, Alexander Graham Bell, George Washington Carver, the Wright Brothers, and Neil Armstrong;

(B) identify how scientific discoveries, technological innovations, and the rapid growth of technology industries have advanced the economic development of the United States, including the transcontinental railroad and the space program; and

(C) explain how scientific discoveries and technological innovations in the fields of medicine, communication, and transportation have benefited individuals and society in the United States.

(23) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as technology; interviews; biographies; oral, print, and visual material; documents; and artifacts to acquire information about the United States;

(B) identify and ask questions about the credibility of different kinds of primary and secondary sources;

(C) [~~B~~] analyze information by applying absolute and relative chronology through sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(D) [~~C~~] organize and interpret information in outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps;

(E) [~~D~~] identify different points of view about an issue, topic, historical event, or current event; [and]

(F) [~~E~~] identify the historical context of an event;[-]

(G) identify the central claim in a primary or secondary source; and

(H) develop and communicate a claim and supporting evidence visually, orally, or in writing related to a social studies topic.

(24) Social studies skills. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) apply mapping elements, including grid systems, legends, symbols, scales, and compass roses, to create and interpret maps; and

(B) interpret geographic data, population distribution, and natural resources into a variety of formats such as graphs and maps.

(25) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) incorporate main and supporting ideas in verbal and written communication;

(C) express ideas orally based on research and experiences; [and]

(D) create written and visual material such as journal entries, reports, graphic organizers, outlines, and bibliographies; and[-]

(E) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(26) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) use democratic procedures to simulate making decisions on school, local, or state issues; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider

options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

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 October 3, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 475-1497



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §113.17

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(h), which requires the SBOE and each school district to require the teaching of informed patriotism, Texas history, and the free enterprise system in the adoption of instructional materials for Kindergarten-Grade 12, including the founding documents of the United States; TEC, §28.002(h-1), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic engagement in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; and TEC, §28.002(h-2), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, entrepreneurial, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic government in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; the ability to analyze and determine the reliability of information sources, formulate and articulate reasoned positions, understand the manner in which local, state, and federal governments work and operate through the use of simulations and models of governmental and democratic processes, actively listen and engage in civic discourse, and participate as a citizen in a constitutional democracy by voting; and an appreciation of the importance and responsibility of participating in civic life, a commitment to the United States and its form of government, and a commitment to free speech and civil discourse.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (h), (h-1), and (h-2).

§113.17. *Implementation of Texas Essential Knowledge and Skills for Social Studies, Middle School, Adopted 2018.*

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 475-1497



19 TAC §§113.18 - 113.20

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(h), which requires the SBOE and each school district to require the teaching of informed patriotism, Texas history, and the free enterprise system in the adoption of instructional materials for Kindergarten-Grade 12, including the founding documents of the United States; TEC, §28.002(h-1), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic engagement in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; and TEC, §28.002(h-2), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, entrepreneurial, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic government in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; the ability to analyze and determine the reliability of information sources, formulate and articulate reasoned positions, understand the manner in which local, state, and federal governments work and operate through the use of simulations and models of governmental and democratic processes, actively listen and engage in civic discourse, and participate as a citizen in a constitutional democracy by voting; and an appreciation of the importance and responsibility of participating in civic life, a commitment to the United States and its form of government, and a commitment to free speech and civil discourse.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (h), (h-1), and (h-2).

§113.18. *Social Studies, Grade 6, Adopted 2022 [2018].*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] Introduction.

(1) In Grade 6, students study people, places, and societies of the contemporary world. Societies for study are from the following regions of the world: Europe, Russia and the Eurasian republics, North America, Central America and the Caribbean, South America, Southwest Asia-North Africa, Sub-Saharan Africa, South Asia, East Asia, Southeast Asia, Australia, and the Pacific realm. Students describe the influence of individuals and groups on historical and contemporary events in those societies and identify the locations and geographic characteristics of various societies. Students identify different ways of organizing economic and governmental systems. The concepts of limited and unlimited government are introduced, and students describe the nature of citizenship in various societies. Students compare institutions common to all societies such as government, education, and religious institutions. Students explain how the level of technology affects the development of the various societies and identify different points of view about events. The concept of frame of reference is introduced as an influence on an individual's point of view.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, novels, speeches, letters, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, art galleries, and historical sites.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) [(b)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course,

enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(c) [(b)] Knowledge and skills.

(1) History. The student understands that historical events influence contemporary events. The student is expected to:

(A) trace characteristics of various contemporary societies in regions that resulted from historical events or factors such as colonization, immigration, and trade; and

(B) analyze the historical background of various contemporary societies to evaluate relationships between past conflicts and current conditions.

(2) History. The student understands the influences of individuals and groups from various cultures on various historical and contemporary societies. The student is expected to:

(A) identify and describe the historical influence of individuals or groups on various contemporary societies; and

(B) describe the social, political, economic, and cultural contributions of individuals and groups from various societies, past and present.

(3) Geography. The student understands the factors that influence the locations and characteristics of locations of various contemporary societies on maps and/or globes. The student is expected to:

(A) identify and explain the geographic factors responsible for patterns of population in places and regions;

(B) explain ways in which human migration influences the character of places and regions;

(C) identify and locate major physical and human geographic features such as landforms, water bodies, and urban centers of various places and regions; and

(D) identify the location of major world countries for each of the world regions.

(4) Geography. The student understands how geographic factors influence the economic development and political relationships of societies. The student is expected to:

(A) explain the geographic factors responsible for the location of economic activities in places and regions; and

(B) identify geographic factors such as location, physical features, transportation corridors and barriers, and distribution of natural resources that influence a society's political relationships.

(5) Geography. The student understands the impact of interactions between people and the physical environment on the development and conditions of places and regions. The student is expected to:

(A) describe ways people have been impacted by physical processes such as earthquakes and climate;

(B) identify and analyze ways people have adapted to the physical environment in various places and regions; and

(C) identify and analyze ways people have modified the physical environment such as mining, irrigation, and transportation infrastructure.

(6) Economics. The student understands the factors of production in a society's economy. The student is expected to:

(A) describe ways in which the factors of production (natural resources, labor, capital, and entrepreneurs) influence the economies of various contemporary societies;

(B) identify problems that may arise when one or more of the factors of production is in relatively short supply; and

(C) explain the impact of the distribution of resources on international trade and economic interdependence among and within societies.

(7) Economics. The student understands the various ways in which people organize economic systems. The student is expected to:

(A) compare ways in which various societies organize the production and distribution of goods and services;

(B) compare and contrast free enterprise, socialist, and communist economies in various contemporary societies, including the benefits of the U.S. free enterprise system; and

(C) understand the importance of ethics in maintaining a functional free enterprise system.

(8) Economics. The student understands categories of economic activities and the data used to measure a society's economic level. The student is expected to:

(A) define and give examples of agricultural, retail, manufacturing (goods), and service industries; and

(B) describe levels of economic development of various societies using indicators such as life expectancy, gross domestic product (GDP), GDP per capita, and literacy.

(9) Government. The student understands the concepts of limited and unlimited governments. The student is expected to:

(A) describe and compare examples of limited and unlimited governments such as constitutional (limited) and totalitarian (unlimited);

(B) identify reasons for limiting the power of government; and

(C) identify and describe examples of human rights abuses by limited or unlimited governments such as the oppression of religious, ethnic, and political groups.

(10) Government. The student understands various ways in which people organize governments. The student is expected to:

(A) identify and give examples of governments with rule by one, few, or many;

(B) compare ways in which various societies such as China, Germany, India, and Russia organize government and how they function; and

(C) identify historical origins of democratic forms of government such as Ancient Greece.

(11) Citizenship. The student understands that the nature of citizenship varies among societies. The student is expected to:

(A) describe and compare roles and responsibilities of citizens in various contemporary societies, including the United States; and

(B) explain how opportunities for citizens to participate in and influence the political process vary among various contemporary societies.

(12) Citizenship. The student understands the relationship among individual rights, responsibilities, duties, and freedoms in societies with representative governments. The student is expected to:

(A) identify and explain the duty of civic participation in societies with representative governments; and

(B) explain relationships among rights, responsibilities, and duties in societies with representative governments.

(13) Culture. The student understands the similarities and differences within and among cultures in various world societies. The student is expected to:

(A) identify and describe common traits that define cultures and culture regions;

(B) define a multicultural society;

(C) analyze the experiences and contributions of diverse groups to multicultural societies; and

(D) identify and explain examples of conflict and cooperation between and among cultures.

(14) Culture. The student understands that all societies have basic institutions in common even though the characteristics of these institutions may differ. The student is expected to:

(A) identify institutions basic to all societies, including government, economic, educational, and religious institutions;

(B) compare characteristics of institutions in various contemporary societies; and

(C) analyze the efforts and activities institutions use to sustain themselves over time.

(15) Culture. The student understands relationships that exist among world cultures. The student is expected to:

(A) identify and describe means of cultural diffusion such as trade, travel, and war;

(B) identify and describe factors that influence cultural change such as improvements in communication, transportation, and economic development;

(C) analyze the impact of improved communication technology among cultures; and

(D) identify the impact of cultural diffusion on individuals and world societies.

(16) Culture. The student understands the relationship that exists between the arts and the societies in which they are produced. The student is expected to:

(A) explain the relationships that exist between societies and their architecture, art, music, and literature;

(B) describe ways in which contemporary issues influence creative expressions; and

(C) identify examples of art, music, and literature that convey universal themes such as religion, justice, and the passage of time.

(17) Culture. The student understands the relationships among religion, philosophy, and culture. The student is expected to:

(A) explain the relationship among religious ideas, philosophical ideas, and cultures; and

(B) explain the significance of religious holidays and observances such as Christmas, Easter, Ramadan, the annual hajj, Yom Kippur, Rosh Hashanah, Diwali, and Vaisakhi in various contemporary societies.

(18) Science, technology, and society. The student understands the influences of science and technology on contemporary societies. The student is expected to:

(A) identify examples of scientific discoveries, technological innovations, and scientists and inventors that have shaped the world;

(B) explain how resources, economic factors, and political decisions affect the use of technology; and

(C) make predictions about future social, political, economic, cultural, and environmental impacts that may result from future scientific discoveries and technological innovations.

(19) Social studies skills. The student applies critical-thinking skills to organize and use information acquired through established research methodologies from a variety of valid sources, including technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as oral, print, and visual material and artifacts to acquire information about various world cultures;

(B) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(C) organize and interpret information from outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps; [and]

(D) identify different points of view about an issue or current topic;[-]

(E) formulate and communicate visually, orally, or in writing a claim supported by evidence and reasoning related to a social studies topic; and

(F) evaluate a variety of historical and contemporary sources for validity, credibility, bias, and accuracy.

(20) Social studies skills. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) answer geographic questions, including: Where is it located? Why is it there? What is significant about its location? How is its location related to the location of other people, places, and environments? Using latitude and longitude, where is it located?;

(B) pose and answer questions about geographic distributions and patterns for various world regions and countries shown on maps, graphs, and charts;

(C) compare various world regions and countries using data from maps, graphs, and charts; and

(D) create and interpret regional sketch maps, thematic maps, graphs, and charts depicting aspects such as population, disease, and economic activities of various world regions and countries.

(21) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) incorporate main and supporting ideas in verbal and written communication based on research;

(C) express ideas orally based on research and experiences;

(D) create written and visual material such as journal entries, reports, graphic organizers, outlines, and bibliographies based on research; [and]

(E) use effective written communication skills, including proper citations to avoid plagiarism; and[-]

(F) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(22) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) describe governmental and democratic processes such as voting, due process, and caucuses using simulations and models; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.19. Social Studies, Grade 7, Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] Introduction.

(1) In Grade 7, students study the history of Texas from early times to the present. Content is presented with more depth and breadth than in Grade 4. Students examine the full scope of Texas history, including Natural Texas and its People; Age of Contact; Spanish Colonial; Mexican National; Revolution and Republic; Early Statehood; Texas in the Civil War and Reconstruction; Cotton, Cattle, and Railroads; Age of Oil; Texas in the Great Depression and World War II; Civil Rights and Conservatism; and Contemporary Texas eras. The focus in each era is on key individuals, events, and issues and their impact. Students identify regions of Texas and the distribution of population within and among the regions and explain the factors that caused Texas to change from an agrarian to an urban society. Students describe the structure and functions of municipal, county, and state governments, explain the influence of the U.S. Constitution on the Texas Constitution, and examine the rights and responsibilities of Texas citizens. Students use primary and secondary sources to examine the rich and diverse cultural background of Texas as they identify the different racial and ethnic groups that settled in Texas to build a republic and then a state. Students analyze the impact of scientific discoveries and technological innovations on the development of Texas in various industries such as agricultural, energy, medical, computer, and aerospace. Students use primary and secondary sources to acquire information about Texas.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, novels, speeches, letters, diaries, poetry, songs, and images is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) [(b)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function

in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(c) [(b)] Knowledge and skills.

(1) History. The student understands traditional historical points of reference in Texas history. The student is expected to:

(A) identify the major eras in Texas history, describe their defining characteristics, and explain the purpose of dividing the past into eras, including Natural Texas and its People; Age of Contact; Spanish Colonial; Mexican National; Revolution and Republic; Early Statehood; Texas in the Civil War and Reconstruction; Cotton, Cattle, and Railroads; Age of Oil; Texas in the Great Depression and World War II; Civil Rights; and Contemporary Texas; and

(B) explain the significance of the following dates: 1519, mapping of the Texas coast and first mainland Spanish settlement; 1718, founding of San Antonio; 1821, independence from Spain; 1836, Texas independence; 1845, annexation; 1861, Civil War begins; 1876, adoption of current state constitution; and 1901, discovery of oil at Spindletop.

(2) History. The student understands how individuals, events, and issues through the Mexican National Era shaped the history of Texas. The student is expected to:

(A) compare the cultures of American Indians in Texas prior to European colonization such as Gulf, Plains, Puebloan, and Southeastern;

(B) identify important individuals, events, and issues related to European exploration of Texas such as Alonso Álvarez de

Pineda, Álvaro Núñez Cabeza de Vaca, the search for gold, and the conflicting territorial claims between France and Spain;

(C) identify important individuals, events, and issues related to European colonization of Texas, including the establishment of Catholic missions, towns, and ranches, and the contributions of individuals such as Fray Damián Massanet, Antonio Margil de Jesús, and Francisco Hidalgo;

(D) identify the individuals, issues, and events related to Mexico becoming an independent nation and its impact on Texas, including Father Miguel Hidalgo, Texas involvement in the fight for independence, José Gutiérrez de Lara, the Battle of Medina, the Mexican federal Constitution of 1824, the merger of Texas and Coahuila as a state, the State Colonization Law of 1825, and slavery;

(E) identify the contributions of significant individuals, including Moses Austin, Stephen F. Austin, Erasmo Seguín, Martín De León, and Green DeWitt, during the Mexican settlement of Texas; and

(F) contrast Spanish, Mexican, and Anglo purposes for and methods of settlement in Texas.

(3) History. The student understands how individuals, events, and issues related to the Texas Revolution shaped the history of Texas. The student is expected to:

(A) describe the chain of events that led to the Texas Revolution, including the Fredonian Rebellion, the Mier y Terán Report, the Law of April 6, 1830, the Turtle Bayou Resolutions, and the arrest of Stephen F. Austin;

(B) explain the roles played by significant individuals during the Texas Revolution, including George Childress, Lorenzo de Zavala, James Fannin, Sam Houston, Antonio López de Santa Anna, Juan N. Seguín, and William B. Travis; and

(C) explain the issues surrounding significant events of the Texas Revolution, including the Battle of Gonzales; the siege of the Alamo, William B. Travis's letter "To the People of Texas and All Americans in the World," and the heroism of the diverse defenders who gave their lives there; the Constitutional Convention of 1836; Fannin's surrender at Goliad; and the Battle of San Jacinto.

(4) History. The student understands how individuals, events, and issues shaped the history of the Republic of Texas and early Texas statehood. The student is expected to:

(A) identify individuals, events, and issues during the administrations of Republic of Texas Presidents Houston, Lamar, and Jones such as the Texas Navy, the Texas Rangers, Jack Coffee Hays, Chief Bowles, William Goyens, Mary Maverick, José Antonio Navarro, the Córdoba Rebellion, the Council House Fight, the Santa Fe Expedition, slavery, and the roles of racial and ethnic groups;

(B) analyze the causes of and events leading to Texas annexation such as security and public debt; and

(C) identify individuals, events, and issues during early Texas statehood, including the U.S.-Mexican War, the Treaty of Guadalupe-Hidalgo, slavery, and the Compromise of 1850.

(5) History. The student understands how events and issues shaped the history of Texas during the Civil War and Reconstruction. The student is expected to:

(A) explain the central role the expansion of slavery played in the involvement of Texas in the Civil War;

(B) identify significant events concerning Texas and the Civil War such as the Battle of Galveston, the Battle of Sabine Pass, and the Battle of Palmito Ranch; and

(C) explain the political, economic, and social effects of the Civil War and Reconstruction in Texas.

(6) History. The student understands how individuals, events, and issues shaped the history of Texas from Reconstruction through the beginning of the 20th century. The student is expected to:

(A) identify significant individuals, events, and issues, including the factors leading to the expansion of the Texas frontier, the effects of westward expansion on American Indians, the buffalo soldiers, and Quanah Parker;

(B) identify significant individuals, events, and issues, including the development of the cattle industry from its Spanish beginnings and the cowboy way of life;

(C) identify significant individuals, events, and issues, including the effects of the growth of railroads and the contributions of James Hogg; and

(D) explain the political, economic, and social impact of the agricultural industry and the development of West Texas resulting from the close of the frontier.

(7) History. The student understands how individuals, events, and issues shaped the history of Texas during the late 19th, 20th, and early 21st centuries. The student is expected to:

(A) explain how the oil industry led to the industrialization of Texas;

(B) define and trace the impact of "boom-and-bust" cycles of leading Texas industries throughout the 20th and early 21st centuries such as farming, oil and gas production, cotton, ranching, real estate, banking, and computer technology;

(C) describe and compare the impact of reform movements in Texas in the 19th and 20th centuries such as progressivism, populism, women's suffrage, agrarianism, labor reform, and the conservative movement of the late 20th century;

(D) describe and compare the civil rights and equal rights movements of various groups in Texas in the 20th century and identify key leaders in these movements such as James L. Farmer Jr., Hector P. Garcia, Oveta Culp Hobby, Lyndon B. Johnson, the League of United Latin American Citizens (LULAC), Jane McCallum, and Lulu Belle Madison White; and

(E) analyze the political, economic, and social impact of World War I, the Great Depression, World War II, and significant issues in the latter half of the 20th and early 21st centuries such as political and economic controversies, immigration, and migration on the history of Texas.

(8) Geography. The student understands the location and characteristics of places and regions of Texas. The student is expected to:

(A) locate and compare the Mountains and Basins, Great Plains, North Central Plains, and Coastal Plains regions;

(B) locate and compare places of importance in Texas in terms of physical and human characteristics such as major cities, waterways, natural and historic landmarks, political and cultural regions, and local points of interest; and

(C) analyze the effects of physical and human factors such as climate, weather, landforms, irrigation, transportation, and communication on major events in Texas.

(9) Geography. The student understands the effects of the interaction between humans and the environment in Texas. The student is expected to:

(A) identify ways in which Texans have adapted to and modified the environment and explain the positive and negative consequences of the modifications; and

(B) explain ways in which geographic factors such as the Galveston Hurricane of 1900, the Dust Bowl, limited water resources, and alternative energy sources have affected the political, economic, and social development of Texas.

(10) Geography. The student understands the characteristics, distribution, and migration of population in Texas in the 19th, 20th, and 21st centuries. The student is expected to:

(A) identify why immigrant groups came to Texas and where they settled;

(B) describe how immigration and migration to Texas have influenced Texas;

(C) describe the structure of the population of Texas using demographic concepts such as growth rate and age distribution; and

(D) analyze the effects of the changing population distribution and growth in Texas and the additional need for education, health care, and transportation.

(11) Economics. The student understands the factors that caused Texas to change from an agrarian to an urban society. The student is expected to:

(A) explain economic factors and the development of major industries that led to the urbanization of Texas such as transportation, oil and gas, and manufacturing; and

(B) explain the changes in the types of jobs and occupations that have resulted from the urbanization of Texas.

(12) Economics. The student understands the interdependence of the Texas economy with the United States and the world. The student is expected to:

(A) explain the impact of national and international markets on the production of goods and services in Texas, including agriculture and oil and gas;

(B) explain the impact of economic concepts within the free enterprise system such as supply and demand, profit, and world competition on the economy of Texas; and

(C) analyze the impact of significant industries in Texas such as aerospace, medical, and computer technologies on local, national, and international markets.

(13) Government. The student understands the basic principles reflected in the Texas Constitution. The student is expected to:

(A) identify how the Texas Constitution reflects the principles of limited government, republicanism, checks and balances, federalism, separation of powers, popular sovereignty, and individual rights; and

(B) compare the principles and concepts of the Texas Constitution to the U.S. Constitution, including the Texas and U.S. Bill of Rights.

(14) Government. The student understands the structure and functions of government created by the Texas Constitution. The student is expected to:

(A) describe the structure and functions of government at municipal, county, and state levels; and

(B) identify major sources of revenue for state and local governments such as property taxes, sales taxes, bonds, and fees.

(15) Citizenship. The student understands the rights and responsibilities of Texas citizens in a democratic society. The student is expected to:

(A) explain rights of Texas citizens; and

(B) explain civic responsibilities of Texas citizens and the importance of civic participation.

(16) Citizenship. The student understands the importance of the expression of different points of view in a democratic society. The student is expected to:

(A) identify different points of view of political parties and interest groups on important Texas issues, past and present; and

(B) describe the importance of free speech and press in a democratic society.

(17) Citizenship. The student understands the importance of effective leadership in a democratic society. The student is expected to:

(A) identify the leadership qualities of elected and appointed leaders of Texas, past and present, including Texans who have been president of the United States; and

(B) identify the contributions of Texas leaders such as Lawrence Sullivan "Sul" Ross, John Nance Garner ("Cactus Jack"), James A. Baker III, Henry B. González, Kay Bailey Hutchison, Barbara Jordan, Raymond L. Telles, Sam Rayburn, and Raul A. Gonzalez Jr.

(18) Culture. The student understands the concept of diversity within unity in Texas. The student is expected to:

(A) explain how the diversity of Texas is reflected in a variety of cultural activities and celebrations;

(B) describe how people from various racial, ethnic, and religious groups attempt to maintain their cultural heritage while adapting to the larger Texas culture;

(C) identify examples of Spanish influence and the influence of other cultures on Texas such as place names, vocabulary, religion, architecture, food, and the arts; and

(D) identify contributions to the arts by Texans such as Roy Bedichek, Diane Gonzales Bertrand, J. Frank Dobie, Scott Joplin, Elisabet Ney, Amado Peña Jr., Walter Prescott Webb, and Horton Foote.

(19) Science, technology, and society. The student understands the impact of scientific discoveries and technological innovations on the political, economic, and social development of Texas. The student is expected to:

(A) compare types and uses of technology, past and present;

(B) identify Texas leaders in science and technology such as Walter Cunningham, Michael DeBakey, Denton Cooley, Benjy Brooks, Michael Dell, and Howard Hughes Sr.;

(C) analyze the effects of various scientific discoveries and technological innovations on the development of Texas such as advancements in the agricultural, energy, medical, computer, and aerospace industries;

(D) evaluate the effects of scientific discoveries and technological innovations on the use of resources such as fossil fuels, water, and land; and

(E) analyze how scientific discoveries and technological innovations have resulted in an interdependence among Texas, the United States, and the world.

(20) Social studies skills. The student applies critical-thinking skills to organize and use information acquired through established research methodologies from a variety of valid sources, including technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as media and news services, biographies, interviews, and artifacts to acquire information about Texas;

(B) analyze information by applying absolute and relative chronology through sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(C) organize and interpret information from outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps;

(D) identify bias and points of view from the historical context surrounding an event that influenced the participants;

(E) formulate and communicate visually, orally, or in writing a claim supported by evidence and reasoning related to a social studies topic; and

(F) evaluate a variety of historical and contemporary sources for validity, credibility, bias, and accuracy.

~~[(E) support a point of view on a social studies issue or event; and]~~

~~[(F) evaluate the validity of a source based on corroboration with other sources and information about the author.]~~

(21) Social studies skills. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) create and interpret thematic maps, graphs, and charts representing various aspects of Texas during the 19th, 20th, and 21st centuries; and

(B) analyze and interpret geographic distributions and patterns in Texas during the 19th, 20th, and 21st centuries.

(22) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) use effective written communication skills, including proper citations and avoiding plagiarism; ~~and~~

(C) create written, oral, and visual presentations of social studies information; ~~and~~[-]

(D) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(23) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) describe governmental and democratic processes such as voting, due process, and caucuses using simulations and models; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.20. Social Studies, Grade 8, Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] Introduction.

(1) In Grade 8, students study the history of the United States from the early colonial period through Reconstruction. The knowledge and skills in subsection (c) [(b)] of this section comprise the first part of a two-year study of U.S. history. The second part, comprising U.S. history from Reconstruction to the present, is provided in §113.41 of this title (relating to United States History Studies Since 1877 (One Credit), Beginning with School Year 2011-2012). The content in Grade 8 builds upon that from Grade 5 but provides more depth and breadth. Historical content focuses on the political, economic, religious, and social events and issues related to the colonial and revolutionary eras, the creation and ratification of the U.S. Constitution, challenges of the early republic, the Age of Jackson, westward expansion, sectionalism, Civil War, and Reconstruction. Students describe the physical characteristics of the United States and their impact on population distribution and settlement patterns in the past and present. Students analyze the various economic factors that influenced the development of colonial America and the early years of the republic and identify the origins of the free enterprise system. Students examine the American beliefs and principles, including limited government, checks and balances, federalism, separation of powers, and individual rights, reflected in the U.S. Constitution and other historical documents. Students evaluate the impact of Supreme Court cases and major reform movements of the 19th century and examine the rights and responsibilities of citizens of the United States as well as the importance of effective leadership in a constitutional republic. Students evaluate the impact of scientific discoveries and technological innovations on the development of the United States. Students use critical-thinking skills, including the identification of bias in written, oral, and visual material.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as the complete text of the U.S. Constitution and the Declaration of Independence, landmark cases of the U.S. Supreme Court,

biographies, autobiographies, novels, speeches, letters, diaries, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) [(b)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(c) [(b)] Knowledge and skills.

(1) History. The student understands traditional historical points of reference in U.S. history through 1877. The student is expected to:

(A) identify the major eras in U.S. history through 1877, including colonization, revolution, creation and ratification of the Constitution, early republic, the Age of Jackson, westward expansion, reform movements, sectionalism, Civil War, and Reconstruction, and describe their causes and effects; and

(B) explain the significance of the following dates: 1607, founding of Jamestown; 1620, arrival of the Pilgrims and signing of the Mayflower Compact; 1776, adoption of the Declaration of Independence; 1787, writing of the U.S. Constitution; 1803, Louisiana Purchase; and 1861-1865, Civil War.

(2) History. The student understands the causes of exploration and colonization eras. The student is expected to:

(A) identify reasons for English, Spanish, and French exploration and colonization of North America; and

(B) compare political, economic, religious, and social reasons for the establishment of the 13 English colonies.

(3) History. The student understands the foundations of representative government in the United States. The student is expected to:

(A) explain the reasons for the growth of representative government and institutions during the colonial period;

(B) analyze the importance of the Mayflower Compact, the Fundamental Orders of Connecticut, and the Virginia House of Burgesses to the growth of representative government; and

(C) describe how religion and virtue contributed to the growth of representative government in the American colonies.

(4) History. The student understands significant political and economic issues of the revolutionary and Constitutional eras. The student is expected to:

(A) analyze causes of the American Revolution, including the Proclamation of 1763, the Intolerable Acts, the Stamp Act, mercantilism, lack of representation in Parliament, and British economic policies following the French and Indian War;

(B) explain the roles played by significant individuals during the American Revolution, including Abigail Adams, John Adams, Wentworth Cheswell, Samuel Adams, Mercy Otis Warren, James Armistead, Benjamin Franklin, Crispus Attucks, King George III, Patrick Henry, Thomas Jefferson, the Marquis de Lafayette, Thomas Paine, and George Washington;

(C) explain the issues surrounding important events of the American Revolution, including declaring independence; fighting the battles of Lexington and Concord, Saratoga, and Yorktown; enduring the winter at Valley Forge; and signing the Treaty of Paris of 1783; and

(D) analyze the issues of the Constitutional Convention of 1787, including the Great Compromise and the Three-Fifths Compromise.

(5) History. The student understands the challenges confronted by the government and its leaders in the early years of the republic and the Age of Jackson. The student is expected to:

(A) describe major domestic problems faced by the leaders of the new republic, including maintaining national security, creating a stable economic system, and setting up the court system;

(B) explain the effects of the Fugitive Slave Act of 1793;

(C) [~~B~~] summarize arguments regarding protective tariffs, taxation, and the banking system;

(D) [~~C~~] explain the origin and development of American political parties;

(E) [~~D~~] explain the causes, important events, and effects of the War of 1812;

(F) [~~E~~] identify the foreign policies of presidents Washington through Monroe and explain the impact of Washington's Farewell Address and the Monroe Doctrine;

(G) [~~F~~] explain the impact of the election of Andrew Jackson, including expanded suffrage; and

(H) [~~G~~] analyze the reasons for the removal and resettlement of Cherokee Indians during the Jacksonian era, including the Indian Removal Act, Worcester v. Georgia, and the Trail of Tears.

(6) History. The student understands westward expansion and its effects on the political, economic, and social development of the nation. The student is expected to:

(A) explain how the Northwest Ordinance established principles and procedures for orderly expansion of the United States;

(B) analyze the westward growth of the nation, including the Louisiana Purchase and Manifest Destiny; and

(C) explain the causes and effects of the U.S.-Mexican War and their impact on the United States.

(7) History. The student understands how political, economic, and social factors led to the growth of sectionalism and the Civil War. The student is expected to:

(A) analyze the impact of tariff policies on sections of the United States before the Civil War;

(B) compare the effects of political, economic, and social factors on slaves and free Blacks [~~blacks~~];

(C) analyze the impact of the Fugitive Slave Act of 1850 on slavery, free Blacks, and abolitionists;

(D) [~~C~~] analyze the impact of slavery on different sections of the United States; and

(E) [~~D~~] identify the provisions and compare the effects of congressional conflicts and compromises prior to the Civil War, including the role of John Quincy Adams.

(8) History. The student understands individuals, issues, and events of the Civil War. The student is expected to:

(A) explain the roles played by significant individuals during the Civil War, including Jefferson Davis, Ulysses S. Grant, Robert E. Lee, and Abraham Lincoln, and heroes such as congressional Medal of Honor recipients William Carney and Philip Bazaar;

(B) explain the central role of the expansion of slavery in causing sectionalism, disagreement over states' rights, and the Civil War;

(C) explain significant events of the Civil War, including the firing on Fort Sumter; the battles of Antietam, Gettysburg, and Vicksburg; the Emancipation Proclamation; Lee's surrender at Appomattox Court House; and the assassination of Abraham Lincoln; and

(D) analyze Abraham Lincoln's ideas about liberty, equality, union, and government as contained in his first and second

inaugural addresses and the Gettysburg Address and contrast them with the ideas contained in Jefferson Davis's inaugural address.

(9) History. The student understands the effects of Reconstruction on the political, economic, and social life of the nation. The student is expected to:

(A) evaluate legislative reform programs of the Radical Reconstruction Congress and reconstructed state governments;

(B) explain the impact of the election of African Americans from the South such as Hiram Rhodes Revels; and

(C) explain the economic, political, and social problems during Reconstruction and evaluate their impact on different groups.

(10) Geography. The student understands the location and characteristics of places and regions of the United States, past and present. The student is expected to:

(A) locate places and regions directly related to major eras and turning points in the United States during the 17th, 18th, and 19th centuries;

(B) compare places and regions of the United States in terms of physical and human characteristics; and

(C) analyze the effects of physical and human geographic factors such as weather, landforms, waterways, transportation, and communication on major historical events in the United States.

(11) Geography. The student understands the physical characteristics of North America and how humans adapted to and modified the environment through the mid-19th century. The student is expected to:

(A) analyze how physical characteristics of the environment influenced population distribution, settlement patterns, and economic activities in the United States; and

(B) describe the positive and negative consequences of human modification of the physical environment of the United States.

(12) Economics. The student understands why various sections of the United States developed different patterns of economic activity through 1877. The student is expected to:

(A) identify economic differences among different regions of the United States;

(B) explain reasons for the development of the plantation system, the transatlantic slave trade, and the spread of slavery; and

(C) analyze the causes and effects of economic differences among different regions of the United States at selected times.

(13) Economics. The student understands how various economic forces resulted in the Industrial Revolution in the 19th century. The student is expected to:

(A) analyze the economic effects of the War of 1812; and

(B) identify the economic factors that brought about rapid industrialization and urbanization.

(14) Economics. The student understands the origins and development of the free enterprise system in the United States. The student is expected to:

(A) explain why a free enterprise system of economics developed in the new nation, including minimal government regulation, taxation, and property rights; and

(B) describe the characteristics and the benefits of the U.S. free enterprise system through 1877.

(15) Government. The student understands the American beliefs and principles reflected in the Declaration of Independence, the U.S. Constitution, and other important historic documents. The student is expected to:

(A) identify the influence of ideas from historic documents, including the Magna Carta, the English Bill of Rights, the Mayflower Compact, and the Federalist Papers, on the U.S. system of government;

(B) summarize the strengths and weaknesses of the Articles of Confederation;

(C) identify colonial grievances listed in the Declaration of Independence and explain how those grievances were addressed in the U.S. Constitution and the Bill of Rights;

(D) analyze how the U.S. Constitution reflects the principles of limited government, republicanism, checks and balances, federalism, separation of powers, popular sovereignty, and individual rights; and

(E) explain the role of significant individuals such as Thomas Hooker, Charles de Montesquieu, and John Locke in the development of self-government in colonial America.

(16) Government. The student understands the purpose of changing the U.S. Constitution and the impact of amendments on American society. The student is expected to:

(A) summarize the purposes for amending the U.S. Constitution; and

(B) describe the impact of the 13th, 14th, and 15th amendments.

(17) Government. The student understands the dynamic nature of the powers of the national government and state governments in a federal system. The student is expected to:

(A) analyze the arguments of the Federalists and Anti-Federalists, including those of Alexander Hamilton, Patrick Henry, James Madison, and George Mason, and explain how their debates exemplify civil discourse; and

(B) explain constitutional issues arising over the issue of states' rights, including the Nullification Crisis and the Civil War.

(18) Government. The student understands the impact of landmark Supreme Court cases. The student is expected to:

(A) identify the origin of judicial review;

(B) summarize the issues, decisions, and significance of landmark Supreme Court cases, including *Marbury v. Madison*, *McCulloch v. Maryland*, and *Gibbons v. Ogden*; and

(C) evaluate the impact of the landmark Supreme Court decision *Dred Scott v. Sandford* on life in the United States.

(19) Citizenship. The student understands the rights and responsibilities of citizens of the United States. The student is expected to:

(A) define and give examples of unalienable rights;

(B) summarize rights guaranteed in the Bill of Rights; and

(C) identify examples of responsible citizenship, including obeying rules and laws, staying informed on public issues, voting, and serving on juries.

(20) Citizenship. The student understands the importance of voluntary individual participation in the democratic process. The student is expected to:

(A) evaluate the contributions of the Founding Fathers as models of civic virtue; and

(B) analyze reasons for and the impact of selected examples of civil disobedience in U.S. history such as the Boston Tea Party and Henry David Thoreau's refusal to pay a tax.

(21) Citizenship. The student understands the importance of the expression of different points of view in a constitutional republic. The student is expected to:

(A) identify different points of view of political parties and interest groups on important historical issues;

(B) describe the importance of free speech and press in a constitutional republic; and

(C) summarize historical events in which compromise resulted in a resolution such as the Missouri Compromise, Compromise of 1850, and Kansas-Nebraska Act.

(22) Citizenship. The student understands the importance of effective leadership in a constitutional republic. The student is expected to:

(A) analyze the leadership qualities of elected and appointed leaders of the United States such as George Washington, John Marshall, and Abraham Lincoln; and

(B) describe the contributions of significant political, social, and military leaders of the United States such as Frederick Douglass, John Paul Jones, Susan B. Anthony, and Elizabeth Cady Stanton.

(23) Culture. The student understands the relationships between and among people from various groups, including racial, ethnic, and religious groups, during the 17th, 18th, and 19th centuries. The student is expected to:

(A) identify racial, ethnic, and religious groups that settled in the United States and explain their reasons for immigration;

(B) explain how urbanization contributed to conflicts resulting from differences in religion, social class, and political beliefs;

(C) identify ways conflicts between people from various racial, ethnic, and religious groups were addressed;

(D) analyze the contributions of people of various racial, ethnic, and religious groups to our national identity; and

(E) identify the political, social, and economic contributions of women to American society.

(24) Culture. The student understands the major reform movements of the 19th century. The student is expected to:

(A) describe and evaluate the historical development of the abolition [abolitionist] movement, including activities that focused attention on the moral ills of slavery; and

(B) evaluate the impact of reform movements, including educational reform, temperance, the women's rights movement, prison reform, the labor reform movement, and care of the disabled.

(25) Culture. The student understands the impact of religion on the American way of life. The student is expected to:

(A) trace the development of religious freedom in the United States;

(B) describe religious influences on social movements, including the impact of the first and second Great Awakenings; and

(C) analyze the impact of the First Amendment guarantees of religious freedom on the American way of life.

(26) Culture. The student understands the relationship between the arts and the times during which they were created. The student is expected to:

(A) identify examples of American art, music, and literature that reflect society in different eras such as the Hudson River School artists, the "Battle Hymn of the Republic," and transcendental literature; and

(B) analyze the relationship between the arts and continuity and change in the American way of life.

(27) Science, technology, and society. The student understands the impact of science and technology on the economic development of the United States. The student is expected to:

(A) explain the effects of technological and scientific innovations such as the steamboat, the cotton gin, the telegraph, and interchangeable parts;

(B) analyze how technological innovations changed the way goods were manufactured and distributed, nationally and internationally; and

(C) analyze how technological innovations brought about economic growth such as the development of the factory system and the construction of the Transcontinental Railroad.

(28) Science, technology, and society. The student understands the impact of scientific discoveries and technological innovations on daily life in the United States. The student is expected to:

(A) compare the effects of scientific discoveries and technological innovations that have influenced daily life in different periods in U.S. history; and

(B) identify examples of how industrialization changed life in the United States.

(29) Social studies skills. The student applies critical-thinking skills to organize and use information acquired through established research methodologies from a variety of valid sources, including technology. The student is expected to:

(A) differentiate between, locate, and use valid primary and secondary sources such as media and news services, biographies, interviews, and artifacts to acquire information about the United States;

(B) analyze information by applying absolute and relative chronology through sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(C) organize and interpret information from outlines, reports, databases, and visuals, including graphs, charts, timelines, and maps;

(D) identify bias and points of view created by the historical context surrounding an event;

(E) formulate and communicate visually, orally, or in writing a claim supported by evidence and reasoning related to a social studies topic;

(F) evaluate a variety of historical and contemporary sources for validity, credibility, bias, and accuracy;

~~[(E) support a point of view on a social studies issue or event;]~~

~~[(F) evaluate the validity of a source based on corroboration with other sources and information about the author;]~~

(G) create a visual representation of historical information such as thematic maps, graphs, and charts representing various aspects of the United States; and

(H) pose and answer questions about geographic distributions and patterns shown on maps, graphs, and charts.

(30) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) use effective written communication skills, including proper citations and avoiding plagiarism; ~~and~~

(C) create written, oral, and visual presentations of social studies information; ~~and~~[-]

(D) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(31) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) describe governmental and democratic processes such as voting, due process, and caucuses using simulations and models; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 475-1497



SUBCHAPTER C. HIGH SCHOOL

19 TAC §§113.31, 113.41 - 113.44

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state

assessment instruments; TEC, §28.002(h), which requires the SBOE and each school district to require the teaching of informed patriotism, Texas history, and the free enterprise system in the adoption of instructional materials for Kindergarten-Grade 12, including the founding documents of the United States; TEC, §28.002(h-1), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic engagement in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; TEC, §28.002(h-2), which requires the SBOE to adopt essential knowledge and skills that develop each student's civic knowledge, including an understanding of the fundamental moral, political, entrepreneurial, and intellectual foundations of the American experiment in self-government; the history, qualities, traditions, and features of civic government in the United States; the structure, function, and processes of local, state, and federal, government institutions; and the founding documents of the United States; the ability to analyze and determine the reliability of information sources, formulate and articulate reasoned positions, understand the manner in which local, state, and federal governments work and operate through the use of simulations and models of governmental and democratic processes, actively listen and engage in civic discourse, and participate as a citizen in a constitutional democracy by voting; and an appreciation of the importance and responsibility of participating in civic life, a commitment to the United States and its form of government, and a commitment to free speech and civil discourse; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-1)(4), which requires the SBOE to require by rule that students successfully complete three credits in social studies, including one credit in United States history, at least one-half credit in government and at least one-half credit in economics or personal financial literacy and economics, and one credit in world geography or world history.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (h), (h-1), and (h-2); and 28.025(a) and (b-1)(4).

§113.31. Economics with Emphasis on the Free Enterprise System and Its Benefits, High School (One-Half Credit), Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instruc-

tional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] General requirements. This course will be taught in the social studies department and is recommended to be taught in Grade 12.

(c) [(b)] Introduction.

(1) Economics with Emphasis on the Free Enterprise System and Its Benefits is the culmination of the economic content and concepts studied from Kindergarten through required secondary courses. The focus is on the basic principles concerning production, consumption, and distribution of goods and services (the problem of scarcity) in the United States and a comparison with those in other countries around the world. Students analyze the interaction of supply, demand, and price. Students will investigate the concepts of specialization and international trade, economic growth, key economic measurements, and monetary and fiscal policy. Students will study the roles of the Federal Reserve System and other financial institutions, government, and businesses in a free enterprise system. Types of business ownership and market structures are discussed. The course also incorporates instruction in personal financial literacy. Students apply critical-thinking skills using economic concepts to evaluate the costs and benefits of economic issues.

(2) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(3) Economics with Emphasis on the Free Enterprise System and Its Benefits builds upon the foundation in economics and social studies laid by the social studies essential knowledge and skills in Kindergarten-Grade 12. The course will apply these skills to current economic situations. The content enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(4) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(5) As referenced in House Bill 492, an act of the Texas Legislature signed into law in 2005, the concepts of personal financial literacy are to be mastered by students in order that they may become self-supporting adults who can make informed decisions relating to personal financial matters. These concepts are incorporated into the student expectations of Economics with Emphasis on the Free Enterprise System and Its Benefits: understanding interest, avoiding and eliminating credit card debt; understanding the rights and responsibilities of renting or buying a home; managing money to make the transition from renting a home to home ownership; starting a small business; being a prudent investor in the stock market and using other investment options; beginning a savings program and planning for retirement; bankruptcy; types of bank accounts available to consumers and benefits of maintaining a bank account; balancing a checkbook; types of loans available to consumers and becoming a low-risk borrower; understanding insurance; and charitable giving.

(6) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school

district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(7) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(d) [(e)] Knowledge and skills.

(1) Economics. The student understands the concepts of scarcity and opportunity costs. The student is expected to:

(A) explain why scarcity and choice are basic economic problems faced by every society;

(B) describe how societies answer the basic economic questions: what to produce, how to produce, and for whom to produce;

(C) describe the economic factors of production: land, labor, capital, and entrepreneurship; and

(D) interpret a production-possibilities curve and apply the concepts of opportunity costs and scarcity.

(2) Economics. The student understands the interaction of supply, demand, and price. The student is expected to:

(A) understand the effect of changes in price on the quantity demanded and quantity supplied;

(B) identify the non-price determinants that create changes in supply and demand, which result in a new equilibrium price; and

(C) interpret a supply-and-demand graph using supply-and-demand schedules.

(3) Economics. The student understands the reasons for international trade and its importance to the United States and the global economy. The student is expected to:

(A) apply the concepts of absolute and comparative advantages;

(B) compare the effects of free trade and trade barriers on economic activities, including the benefits and costs of participating in international trade; and

(C) analyze the effects of changes in exchange rates on imports and exports.

(4) Economics. The student understands free enterprise, socialist, and communist economic systems. The student is expected to:

(A) explain the basic characteristics of economic systems, including property rights, incentives, economic freedom, competition, and the role of government;

(B) contrast current and historic examples of the free enterprise system, socialism, and communism using the basic characteristics of economic systems; and

(C) analyze the contributions of various economic philosophers, including Friedrich Hayek, Milton Friedman, John Maynard Keynes, and Adam Smith, and their impact on the U.S. free enterprise system.

(5) Economics. The student understands the basic characteristics and benefits of the U.S. free enterprise system. The student is expected to:

(A) explain the benefits of the U.S. free enterprise system, including individual freedom of consumers and producers, variety of goods, responsive prices, investment opportunities, and the creation of wealth; and

(B) analyze recent changes in the basic characteristics, including private property, incentives, economic freedom, competition, and the limited role of government, of the U.S. economy.

(6) Economics. The student understands the right to own, use, and dispose of private property. The student is expected to:

(A) analyze the costs and benefits of the purchase, use, or disposal of personal and business property; and

(B) identify and evaluate examples of restrictions that the government places on the use of business and individual property.

(7) Economics. The student understands the circular-flow model of the economy. The student is expected to:

(A) interpret the roles of resource owners and firms in a circular-flow model of the economy and provide real-world examples to illustrate elements of the model; and

(B) explain how government actions affect the circular-flow model.

(8) Economics. The student understands types of market structures. The student is expected to:

(A) describe characteristics and give examples of pure competition, monopolistic competition, oligopoly, and monopoly; and

(B) identify regulations that apply to the establishment and operation of various types of market structures.

(9) Economics. The student understands key economic measurements. The student is expected to:

(A) interpret economic data, including unemployment rate, gross domestic product, gross domestic product per capita as a measure of national wealth, and rate of inflation; and

(B) analyze business cycles using key economic indicators.

(10) Economics. The student understands key components of economic growth. The student is expected to:

(A) analyze how productivity relates to growth;

(B) analyze how technology relates to growth; and

(C) analyze how trade relates to growth.

(11) Economics. The student understands the role of money in an economy. The student is expected to:

(A) describe the functions of money;

(B) describe the characteristics of money, including commodity money, fiat money, and representative money; and

(C) analyze the positive and negative aspects of barter, currency, and debit cards.

(12) Economics. The student understands the role of the Federal Reserve System in establishing monetary policy. The student is expected to:

(A) explain the structure of the Federal Reserve System;

(B) analyze the three basic tools used to implement U.S. monetary policy, including reserve requirements, the discount rate and the federal funds rate target, and open-market operations;

(C) explain how the actions of the Federal Reserve System affect the nation's money supply; and

(D) describe the current role of the U.S. dollar in trade in the world market and analyze how that has changed over time, in particular since departing from the gold standard in 1971.

(13) Economics. The student understands the role that the government plays in the U.S. free enterprise system. The student is expected to:

(A) describe the role of government in the U.S. free enterprise system and the changes in that role over time; and

(B) analyze the costs and benefits of U.S. economic policies, rules, and regulations related to the economic goals of economic growth, stability, full employment, freedom, security, equity (equal opportunity versus equal outcome), and efficiency.

(14) Economics. The student understands the economic impact of fiscal policy decisions at the local, state, and national levels. The student is expected to:

(A) identify types of taxes at the local, state, and national levels and the economic importance of each;

(B) explain the categories of revenues and expenditures in the U.S. federal budget; and

(C) analyze the impact of fiscal policy decisions on the economy.

(15) Personal financial literacy. The student understands types of business ownership. The student is expected to:

(A) explain the characteristics of sole proprietorships, partnerships, and corporations; and

(B) analyze the advantages and disadvantages of sole proprietorships, partnerships, and corporations.

(16) Personal financial literacy. The student understands the role of financial markets/institutions in saving, borrowing, and capital formation. The student is expected to:

(A) explain the functions of financial institutions and how they affect households and businesses;

(B) explain how the amount of savings in an economy is the basis of capital formation;

(C) analyze the role of interest and risk in allocating savings to its most productive use; and

(D) examine the types of accounts available to consumers from financial institutions and the risks, monetary costs, and benefits of maintaining these accounts.

(17) Personal financial literacy. The student understands the role of individuals in financial markets. The student is expected to:

(A) assess ways to be a wise investor in the stock market and in other personal investment options such as developing a personal retirement plan;

(B) explain how to begin a savings program;

(C) demonstrate how to maintain a checking account, including reconciling a bank statement;

(D) identify the types of loans available to consumers;

(E) explain the responsibilities and obligations of borrowing money; and

(F) develop strategies to become a low-risk borrower by improving and understanding one's personal credit score.

(18) Personal financial literacy. The student applies critical-thinking skills to analyze the costs and benefits of personal financial decisions. The student is expected to:

(A) examine ways to avoid and eliminate credit card debt;

(B) evaluate the costs and benefits of declaring personal bankruptcy;

(C) evaluate the costs and benefits of buying insurance; and

(D) evaluate the costs and benefits of charitable giving.

(19) Personal financial literacy. The student understands how to provide for basic needs while living within a budget. The student is expected to:

(A) evaluate the costs and benefits of renting a home versus buying a home; and

(B) assess the financial aspects of making the transition from renting to home ownership.

(20) Personal financial literacy. The student understands the various methods available to pay for college and other postsecondary education and training. The student is expected to:

(A) understand how to complete the Free Application for Federal Student Aid (FAFSA) provided by the United States Department of Education;

(B) research and evaluate various scholarship opportunities such as those from state governments, schools, employers, individuals, private companies, nonprofits, and professional organizations;

(C) analyze and compare student grant options;

(D) analyze and compare student loan options, including private and federal loans; and

(E) research and evaluate various work-study program opportunities.

(21) Social studies skills. The student applies critical-thinking skills to organize and use information acquired through established research methodologies from a variety of valid sources, including technology. The student is expected to:

(A) analyze economic information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, con-

trasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(B) create economic models, including production-possibilities curves, circular-flow charts, and supply-and-demand graphs, to analyze economic concepts or issues;

(C) explain a point of view on an economic issue;

(D) analyze and evaluate a variety the validity of economic information from primary and secondary sources for validity, credibility, accuracy, bias, propaganda, point of view, and frame of reference; ~~and~~

(E) evaluate economic data using charts, tables, graphs, and maps; ~~and~~[-]

(F) formulate and communicate visually, orally, or in writing a claim supported by evidence and reasoning for an intended audience and purpose.

(22) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly; ~~and~~

(B) create written, oral, and visual presentations of economic information using effective communication skills, including proper citations and avoiding plagiarism; ~~and~~[-]

(C) apply foundational language skills to engage in civil discourse about economics topics, including those with multiple perspectives.

(23) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.41. United States History Studies Since 1877 (One Credit), Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] General requirements. Students shall be awarded one unit of credit for successful completion of this course.

(c) [(b)] Introduction.

(1) In United States History Studies Since 1877, which is the second part of a two-year study that begins in Grade 8, students

study the history of the United States from 1877 to the present. The course content is based on the founding documents of the U.S. government, which provide a framework for its heritage. Historical content focuses on the political, economic, and social events and issues related to industrialization and urbanization, major wars, domestic and foreign policies, and reform movements, including civil rights. Students examine the impact of geographic factors on major events and eras and analyze their causes and effects. Students examine the impact of constitutional issues on American society, evaluate the dynamic relationship of the three branches of the federal government, and analyze efforts to expand the democratic process. Students describe the relationship between the arts and popular culture and the times during which they were created. Students analyze the impact of technological innovations on American life. Students use critical-thinking skills and a variety of primary and secondary source material to explain and apply different methods that historians use to understand and interpret the past, including multiple points of view and historical context.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, landmark cases of the U.S. Supreme Court, novels, speeches, letters, diaries, poetry, songs, and artworks is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (d) [(e)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of

our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(d) [(e)] Knowledge and skills.

(1) History. The student understands the principles included in the Celebrate Freedom Week program. The student is expected to:

(A) analyze and evaluate the text, intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights;

(B) analyze and evaluate the application of these founding principles to historical events in U.S. history; and

(C) explain the meaning and historical significance of the mottos "E Pluribus Unum" and "In God We Trust."

(2) History. The student understands traditional historical points of reference in U.S. history from 1877 to the present. The student is expected to:

(A) identify the major eras in U.S. history from 1877 to the present and describe their defining characteristics; and

(B) explain the significance of the following years as turning points: 1898 (Spanish-American War), 1914-1918 (World War I), 1929 (the Great Depression begins), 1939-1945 (World War II), 1957 (Sputnik launch ignites U.S.-Soviet space race), 1968 (Martin Luther King Jr. assassination), 1969 (U.S. lands on the moon), 1991 (Cold War ends), 2001 (terrorist attacks on World Trade Center and the Pentagon), and 2008 (election of first black president, Barack Obama).

(3) History. The student understands the political, economic, and social changes in the United States from 1877 to 1898. The student is expected to:

(A) analyze political issues such as Indian policies, the growth of political machines, and civil service reform;

(B) analyze economic issues such as industrialization, the growth of railroads, the growth of labor unions, farm issues, the cattle industry boom, the growth of entrepreneurship, and the pros and cons of big business; and

(C) analyze social issues affecting women, minorities, children, immigrants, and urbanization.

(4) History. The student understands the emergence of the United States as a world power between 1898 and 1920. The student is expected to:

(A) explain why significant events, policies, and individuals, including the Spanish-American War, U.S. expansionism, Al-

fred Thayer Mahan, Theodore Roosevelt, and Sanford B. Dole moved the United States into the position of a world power;

(B) evaluate American expansionism, including acquisitions such as Guam, Hawaii, the Philippines, and Puerto Rico;

(C) identify the causes of World War I and reasons for U.S. entry;

(D) understand the contributions of the American Expeditionary Forces (AEF) led by General John J. Pershing, including the Battle of Argonne Forest;

(E) analyze the impact of machine guns, airplanes, tanks, poison gas, and trench warfare as significant technological innovations in World War I on the Western Front; and

(F) analyze major issues raised by U.S. involvement in World War I, including isolationism, neutrality, Woodrow Wilson's Fourteen Points, and the Treaty of Versailles.

(5) History. The student understands the effects of reform and third-party movements in the early 20th century. The student is expected to:

(A) analyze the impact of Progressive Era reforms, including initiative, referendum, recall, and the passage of the 16th, 17th, 18th, and 19th amendments;

(B) evaluate the impact of muckrakers and reform leaders such as Upton Sinclair, Susan B. Anthony, Jane Addams, Ida B. Wells, and W. E. B. DuBois on American society; and

(C) analyze the impact of third parties, including the Populist and Progressive parties.

(6) History. The student understands significant events, social issues, and individuals of the 1920s. The student is expected to:

(A) analyze causes and effects of events and social issues such as immigration, Social Darwinism, the Scopes Trial, eugenics, race relations, nativism, the Red Scare, Prohibition, and the changing role of women; and

(B) analyze the impact of significant individuals such as Henry Ford, Marcus Garvey, and Charles A. Lindbergh.

(7) History. The student understands the domestic and international impact of U.S. participation in World War II. The student is expected to:

(A) identify reasons for U.S. involvement in World War II, including the aggression of Italian, German, and Japanese dictatorships, especially the attack on Pearl Harbor;

(B) evaluate the domestic and international leadership of Franklin D. Roosevelt and Harry Truman during World War II, including the U.S. relationship with its allies;

(C) analyze major issues of World War II, including the Holocaust, the internment of Japanese Americans as a result of Executive Order 9066, and the development of atomic weapons;

(D) analyze major military events of World War II, including fighting the war on multiple fronts, the Bataan Death March, the U.S. military advancement through the Pacific Islands, the Battle of Midway, the invasion of Normandy, and the liberation of concentration camps;

(E) describe the military contributions of leaders during World War II, including Dwight Eisenhower, Douglas MacArthur, and Chester W. Nimitz;

(F) explain issues affecting the home front, including volunteerism, the purchase of war bonds, and Victory Gardens and opportunities and obstacles for women and ethnic minorities; and

(G) explain how American patriotism inspired high levels of military enlistment and the bravery and contributions of the Tuskegee Airmen, the Flying Tigers, and the Navajo Code Talkers.

(8) History. The student understands the impact of significant national and international decisions and conflicts in the Cold War on the United States. The student is expected to:

(A) describe U.S. responses to Soviet aggression after World War II, including the Truman Doctrine, the Marshall Plan, the Berlin Airlift, the North Atlantic Treaty Organization, and John F. Kennedy's role in the Cuban Missile Crisis;

(B) describe how Cold War tensions were intensified by the House Un-American Activities Committee (HUAC), McCarthyism, the arms race, and the space race;

(C) explain reasons and outcomes for U.S. involvement in the Korean War and its relationship to the containment policy;

(D) explain reasons and outcomes for U.S. involvement in foreign countries and their relationship to the Domino Theory, including the Vietnam War;

(E) analyze the major events of the Vietnam War, including the escalation of forces, the Tet Offensive, Vietnamization, and the fall of Saigon; and

(F) describe the responses to the Vietnam War, including [such as] the draft, the 26th Amendment, the role of the media, the credibility gap, the silent majority, and the anti-war movement.

(9) History. The student understands the impact of the American civil rights movement. The student is expected to:

(A) trace the historical development of the civil rights movement from the late 1800s through the 21st century, including the 13th, 14th, 15th, and 19th amendments;

(B) explain how Jim Crow laws and the Ku Klux Klan created obstacles to civil rights for minorities such as the suppression of voting;

(C) describe the roles of political organizations that promoted African American, Chicano, American Indian, and women's civil rights;

(D) identify the roles of significant leaders who supported various rights movements, including Martin Luther King Jr., Cesar Chavez, Dolores Huerta, Rosa Parks, and Betty Friedan;

(E) compare and contrast the approach taken by the Black Panthers with the nonviolent approach of Martin Luther King Jr.;

(F) discuss the impact of the writings of Martin Luther King Jr., including [such as] his "I Have a Dream" speech and "Letter from Birmingham Jail" on the civil rights movement;

(G) describe presidential actions and congressional votes to address minority rights in the United States, including desegregation of the armed forces, the Civil Rights Act of 1964, and the Voting Rights Act of 1965;

(H) explain how George Wallace, Orval Faubus, and the Congressional bloc of southern Democrats sought to maintain the status quo;

(I) evaluate changes in the United States that have resulted from the civil rights movement, including increased participation of minorities in the political process; and

(J) describe how *Sweatt v. Painter* and *Brown v. Board of Education* played a role in protecting the rights of the minority during the civil rights movement.

(10) History. The student understands the impact of political, economic, and social factors in the U.S. from the 1970s through 1990. The student is expected to:

(A) describe Richard M. Nixon's leadership in the normalization of relations with China and the policy of *détente*;

(B) describe Ronald Reagan's leadership in domestic and international policies, including Reagan's economic policies and *Peace Through Strength*;

(C) describe U.S. involvement in the Middle East such as support for Israel, the Camp David Accords, the Iran Hostage Crisis, Marines in Lebanon, and the Iran-Contra Affair;

(D) describe the causes and key organizations of the conservative resurgence of the 1980s such as the Heritage Foundation and the Moral Majority; and

(E) describe significant societal issues of this time period such as the War on Drugs and the AIDS epidemic.

(11) History. The student understands the emerging political, economic, and social issues of the United States from the 1990s into the 21st century. The student is expected to:

(A) describe U.S. involvement in world affairs, including the end of the Cold War, the Persian Gulf War, the events surrounding September 11, 2001, and the global War on Terror;

(B) identify significant social and political issues such as health care, immigration, and education from different viewpoints across the political spectrum;

(C) analyze the impact of third parties on the 1992 and 2000 presidential elections; and

(D) identify the impact of international events, multinational corporations, government policies, and individuals on the 21st century economy.

(12) Geography. The student understands the impact of geographic factors on major events. The student is expected to analyze the impact of physical and human geographic factors on the Klondike Gold Rush, the Panama Canal, the Dust Bowl, and the levee failure in New Orleans after Hurricane Katrina.

(13) Geography. The student understands the causes and effects of migration and immigration on American society. The student is expected to:

(A) analyze the causes and effects of changing demographic patterns resulting from migration within the United States, including western expansion, rural to urban, the Great Migration, and the Rust Belt to the Sun Belt; and

(B) analyze the causes and effects of changing demographic patterns resulting from immigration to the United States.

(14) Geography. The student understands the relationship between population growth and the physical environment. The student is expected to:

(A) identify the effects of population growth and distribution on the physical environment; and

(B) identify the roles of governmental entities and private citizens in managing the environment such as the establishment of the National Park System, the Environmental Protection Agency (EPA), and the Endangered Species Act.

(15) Economics. The student understands domestic and foreign issues related to U.S. economic growth from the 1870s to 1920. The student is expected to:

(A) describe how the economic impact of the Transcontinental Railroad and the Homestead Act contributed to the close of the frontier in the late 19th century;

(B) describe the changing relationship between the federal government and private business, including the growth of free enterprise, costs and benefits of *laissez-faire*, Sherman Antitrust Act, Interstate Commerce Act, and Pure Food and Drug Act;

(C) explain how foreign policies affected economic issues such as the Chinese Exclusion Act of 1882, the Open Door Policy, Dollar Diplomacy, and immigration quotas; and

(D) describe the economic effects of international military conflicts, including the Spanish-American War and World War I, on the United States.

(16) Economics. The student understands significant economic developments between World War I and World War II. The student is expected to:

(A) analyze causes of economic growth and prosperity in the 1920s, including Warren Harding's Return to Normalcy, reduced taxes, and increased production efficiencies;

(B) identify the causes of the Great Depression, including the impact of tariffs on world trade, stock market speculation, bank failures, and the monetary policy of the Federal Reserve System;

(C) analyze the effects of the Great Depression on the U.S. economy and society such as widespread unemployment and deportation and repatriation of people of Mexican heritage;

(D) compare the New Deal policies and its opponents' approaches to resolving the economic effects of the Great Depression; and

(E) describe how various New Deal agencies and programs, including the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Social Security Administration, continue to affect the lives of U.S. citizens.

(17) Economics. The student understands the economic effects of government policies from World War II through the present. The student is expected to:

(A) describe the economic effects of World War II on the home front such as mobilization, the end of the Great Depression, rationing, and increased opportunity for women and minority employment;

(B) identify the causes of prosperity in the 1950s, including the Baby Boom and the impact of the GI Bill (Servicemen's Readjustment Act of 1944), and the effects of prosperity in the 1950s such as increased consumption and the growth of agriculture and business;

(C) describe the economic impact of defense spending on the business cycle and education priorities from 1945 to the 1990s;

(D) identify the actions and outcomes of government policies intended to create economic opportunities for citizens such as the Great Society, affirmative action, and Title IX; and

(E) describe the dynamic relationship between U.S. international trade policies and the U.S. free enterprise system such as the Organization of Petroleum Exporting Countries (OPEC) oil embargo, the General Agreement on Tariffs and Trade (GATT), and the North American Free Trade Agreement (NAFTA).

(18) Government. The student understands changes over time in the role of government. The student is expected to:

(A) evaluate the impact of New Deal legislation on the historical roles of state and federal government;

(B) explain constitutional issues raised by federal government policy changes during times of significant events, including World War I, the Great Depression, World War II, the 1960s, and September 11, 2001;

(C) describe the effects of political scandals, including Teapot Dome, Watergate, and Bill Clinton's impeachment, on the views of U.S. citizens concerning trust in the federal government and its leaders; and

(D) describe the role of contemporary government legislation in the private and public sectors such as the Community Reinvestment Act of 1977, USA PATRIOT Act of 2001, and the American Recovery and Reinvestment Act of 2009.

(19) Government. The student understands the changing relationships among the three branches of the federal government. The student is expected to:

(A) describe the impact of events such as the Gulf of Tonkin Resolution and the War Powers Act on the relationship between the legislative and executive branches of government; and

(B) evaluate the impact of relationships among the legislative, executive, and judicial branches of government, including Franklin D. Roosevelt's attempt to increase the number of U.S. Supreme Court justices and the presidential election of 2000.

(20) Government. The student understands the impact of constitutional issues on American society. The student is expected to:

(A) analyze the effects of landmark U.S. Supreme Court decisions, including *Plessy v. Ferguson*, *Brown v. Board of Education*, *Hernandez v. Texas*, *Tinker v. Des Moines*, and *Wisconsin v. Yoder*; and

(B) explain why landmark constitutional amendments have been proposed and ratified from 1877 to the present.

(21) Citizenship. The student understands the concept of American exceptionalism as identified by Alexis de Tocqueville. The student is expected to:

(A) discuss values crucial to America's success as a constitutional republic, including liberty, egalitarianism, individualism, populism, and laissez-faire; and

(B) describe how American values are different and unique from those of other nations.

(22) Citizenship. The student understands the promises of the Declaration of Independence and the protections of the U.S. Constitution and the Bill of Rights. The student is expected to:

(A) identify and analyze methods of expanding the right to participate in the democratic process, including lobbying, non-violent protesting, litigation, and amendments to the U.S. Constitution;

(B) evaluate various means of achieving equality of political rights, including the 19th, 24th, and 26th amendments and congressional acts such as the American Indian Citizenship Act of 1924;

(C) explain how participation in the democratic process reflects our national identity, patriotism, and civic responsibility; and

(D) summarize the criteria and explain the process for becoming a naturalized citizen of the United States.

(23) Citizenship. The student understands the importance of effective leadership in a constitutional republic. The student is expected to:

(A) evaluate the contributions of significant political and social leaders in the United States such as Andrew Carnegie, Thurgood Marshall, Billy Graham, Sandra Day O'Connor, and Hillary Clinton; and

(B) explain the importance of Congressional Medal of Honor recipients such as Army First Lieutenant Vernon J. Baker, Army Corporal Alvin York, and Army Master Sergeant Raul "Roy" Perez Benavidez.

(24) Culture. The student understands the relationship between the arts and the times during which they were created. The student is expected to:

(A) describe how the characteristics of and issues in U.S. history have been reflected in various genres of art, music, film, and literature;

(B) describe the impacts of cultural movements in art, music, and literature such as Tin Pan Alley, the Harlem Renaissance, the Beat Generation, rock and roll, the Chicano Mural Movement, and country and western music on American society; and

(C) identify and analyze the global diffusion of American culture through various media.

(25) Culture. The student understands how people from various groups contribute to our national identity. The student is expected to:

(A) explain actions taken by people to expand economic opportunities and political rights for racial, ethnic, gender, and religious groups in American society;

(B) describe the Americanization movement to assimilate immigrants and American Indians into American culture;

(C) explain how the contributions of people of various racial, ethnic, gender, and religious groups shape American culture; and

(D) identify the contributions of women such as Rosa Parks, Eleanor Roosevelt, and Sonia Sotomayor to American society.

(26) Science, technology, and society. The student understands the impact of science, technology, and the free enterprise system on the economic development of the United States. The student is expected to:

(A) explain the effects of scientific discoveries and technological innovations such as electric power, telephone and satellite communications, petroleum-based products, steel production, and computers on the economic development of the United States;

(B) explain how specific needs result in scientific discoveries and technological innovations in agriculture, the military, and medicine; and

(C) describe the effect of technological innovations in the workplace such as assembly line manufacturing and robotics.

(27) Science, technology, and society. The student understands the influence of scientific discoveries, technological

innovations, and the free enterprise system on the standard of living in the United States. The student is expected to:

(A) analyze how scientific discoveries, technological innovations, space exploration, and the application of these by the free enterprise system improve the standard of living in the United States, including changes in transportation and communication; and

(B) describe how the free enterprise system drives technological innovation and its application in the marketplace such as cell phones, inexpensive personal computers, and global positioning products.

(28) Social studies skills. The student understands how historians use historiography to interpret the past and applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including technology. The student is expected to:

(A) analyze primary and secondary sources such as maps, graphs, speeches, political cartoons, and artifacts to acquire information to answer historical questions;

(B) analyze information by applying absolute and relative chronology through sequencing, categorizing, identifying cause-and-effect relationships, comparing and contrasting, finding the main idea, summarizing, making generalizations, making predictions, drawing inferences, and drawing conclusions;

(C) apply the process of historical inquiry to research, interpret, and use multiple types of sources of evidence;

(D) evaluate a variety of historical and contemporary sources for validity, credibility, bias, and accuracy;

~~[(D) evaluate the validity of a source based on corroboration with other sources and information about the author, including points of view, frames of reference, and historical context; and]~~

(E) identify bias and support with historical evidence a point of view on a social studies issue or event; and[-]

(F) formulate and communicate visually, orally, or in writing a claim supported by evidence and reasoning for an intended audience and purpose.

(29) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) create written, oral, and visual presentations of social studies information using effective communication skills, including proper citations and avoiding plagiarism; and]

(B) use social studies terminology correctly; and[-]

(C) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(30) Social studies skills. The student uses geographic tools to collect, analyze, and interpret data. The student is expected to:

(A) create a visual representation of historical information such as thematic maps, graphs, and charts; and

(B) pose and answer questions about geographic distributions and patterns shown on maps, graphs, charts, and available databases.

(31) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) explain governmental and democratic processes such as voting, due process, and caucuses using simulations and models; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.42. World History Studies (One Credit), Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] General requirements. Students shall be awarded one unit of credit for successful completion of this course.

(c) [(b)] Introduction.

(1) World History Studies is a survey of the history of humankind. Due to the expanse of world history and the time limitations of the school year, the scope of this course should focus on "essential" concepts and skills that can be applied to various eras, events, and people within the standards in subsection (d) [(e)] of this section. The major emphasis is on the study of significant people, events, and issues from the earliest times to the present. Traditional historical points of reference in world history are identified as students analyze important events and issues in western civilization as well as in civilizations in other parts of the world. Students evaluate the causes and effects of political and economic imperialism and of major political revolutions since the 17th century. Students examine the impact of geographic factors on major historic events and identify the historic origins of contemporary economic systems. Students analyze the process by which constitutional governments evolved as well as the ideas from historic documents that influenced that process. Students trace the historical development of important legal and political concepts. Students examine the history and impact of major religious and philosophical traditions. Students analyze the connections between major developments in science and technology and the growth of industrial economies, and they use the process of historical inquiry to research, interpret, and use multiple sources of evidence.

(2) The following periodization should serve as the framework for the organization of this course: 8000 BC-500 BC (Development of River Valley Civilizations); 500 BC-AD 600 (Classical Era); 600-1450 (Post-classical Era); 1450-1750 (Connecting Hemispheres); 1750-1914 (Age of Revolutions); and 1914-present (20th Century to the Present). Specific events and processes may transcend these chronological boundaries.

(3) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as state papers, legal documents, charters, constitutions, biographies, autobiographies, speeches, letters, literature, music, art, and architecture is encouraged. Motivating resources are available from museums, art galleries, and historical sites.

(4) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (d) [(e)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies.

(5) A greater depth of understanding of complex content material can be attained by integrating social studies content and skills and by analyzing connections between and among historical periods and events. The list of events and people in this course curriculum should not be considered exhaustive. Additional examples can and should be incorporated. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(6) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(7) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation, as referenced in the Texas Education Code (TEC), §28.002(h).

(8) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(9) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(10) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(d) [(e)] Knowledge and skills.

(1) History. The student understands traditional historical points of reference in world history. The student is expected to:

(A) identify major causes and describe the major effects of the following events from 8000 BC to 500 BC: the development of agriculture and the development of the river valley civilizations;

(B) identify major causes and describe the major effects of the following events from 500 BC to AD 600: the development of the classical civilizations of Greece, Rome, Persia, India (Maurya and Gupta), China (Zhou, Qin, and Han), and the development of major world religions;

(C) identify major causes and describe the major effects of the following important turning points in world history from 600 to 1450: the spread of major world religions and their impact on Asia, Africa, and Europe and the Mongol invasions and their impact on Europe, China, India, and Southwest Asia;

(D) identify major causes and describe the major effects of the following important turning points in world history from 1450 to 1750: the rise of the Ottoman Empire, the influence of the Ming dynasty on world trade, European exploration and the Columbian Exchange, European expansion, and the Renaissance and the Reformation;

(E) identify major causes and describe the major effects of the following important turning points in world history from 1750 to 1914: the Scientific Revolution, the Industrial Revolution and its impact on the development of modern economic systems, European imperialism, and the Enlightenment's impact on political revolutions; and

(F) identify major causes and describe the major effects of the following important turning points in world history from 1914 to the present: the world wars and their impact on political, economic, and social systems; communist revolutions and their impact on the Cold War; independence movements; and globalization.

(2) History. The student understands how early civilizations developed from 8000 BC to 500 BC. The student is expected to:

(A) summarize the impact of the development of farming (Neolithic Revolution) on the creation of river valley civilizations;

(B) identify the characteristics of civilization; and

(C) explain how major river valley civilizations influenced the development of the classical civilizations.

(3) History. The student understands the contributions and influence of classical civilizations from 500 BC to AD 600 on subsequent civilizations. The student is expected to:

(A) describe the major political, religious/philosophical, and cultural influences of Persia, India, China, Israel, Greece, and Rome;

(B) explain the impact of the fall of Rome on Western Europe; and

(C) compare the factors that led to the collapse of Rome and Han China.

(4) History. The student understands how, after the collapse of classical empires, new political, economic, and social systems evolved and expanded from 600 to 1450. The student is expected to:

(A) explain the development of Roman Catholicism and Eastern Orthodoxy as social and political factors in medieval Europe and the Byzantine Empire;

(B) describe the major characteristics of and the factors contributing to the development of the political/social system of feudalism and the economic system of manorialism;

(C) explain the political, economic, and social impact of Islam on Europe, Asia, and Africa;

(D) describe the interactions among Muslim, Christian, and Jewish societies in Europe, Asia, and North Africa;

(E) describe the interactions between Muslim and Hindu societies in South Asia;

(F) explain how the Crusades, the Black Death, and the Hundred Years' War contributed to the end of medieval Europe;

(G) summarize the major political, economic, and cultural developments in Tang and Song China and their impact on Eastern Asia;

(H) explain the evolution and expansion of the slave trade;

(I) analyze how the Silk Road and the African gold-salt trade facilitated the spread of ideas and trade; and

(J) summarize the changes resulting from the Mongol invasions of Russia, China, and the Islamic world.

(5) History. The student understands the causes, characteristics, and impact of the European Renaissance and the Reformation from 1450 to 1750. The student is expected to:

(A) explain the political, intellectual, artistic, economic, and religious impact of the Renaissance; and

(B) explain the political, intellectual, artistic, economic, and religious impact of the Reformation.

(6) History. The student understands the characteristics and impact of the Maya, Inca, and Aztec civilizations. The student is expected to:

(A) compare the major political, economic, social, and cultural developments of the Maya, Inca, and Aztec civilizations and explain how prior civilizations influenced their development; and

(B) explain how the Inca and Aztec empires were impacted by European exploration/colonization.

(7) History. The student understands the causes and impact of increased global interaction from 1450 to 1750. The student is expected to:

(A) analyze the causes of European expansion from 1450 to 1750;

(B) explain the impact of the Columbian Exchange;

(C) explain the impact of the Atlantic slave trade on West Africa and the Americas;

(D) explain the impact of the Ottoman Empire on Eastern Europe and global trade;

(E) explain Ming China's impact on global trade; and

(F) explain new economic factors and principles of Europe's Commercial Revolution.

(8) History. The student understands the causes and the global impact of the Industrial Revolution and European imperialism from 1750 to 1914. The student is expected to:

(A) explain how the Industrial Revolution led to political, economic, and social changes;

(B) identify the major political, economic, and social motivations that influenced European imperialism;

(C) explain the major characteristics and impact of European imperialism; and

(D) explain the effects of free enterprise in the Industrial Revolution.

(9) History. The student understands the causes and effects of major political revolutions between 1750 and 1914. The student is expected to:

(A) compare the causes, characteristics, and consequences of the American and French revolutions, emphasizing the role of the Enlightenment;

(B) explain the impact of Napoleon Bonaparte and the Napoleonic Wars on Europe and Latin America;

(C) trace the influence of the American and French revolutions on Latin America, including the role of Simón Bolívar; and

(D) identify the influence of ideas such as separation of powers, checks and balances, liberty, equality, democracy, popular sovereignty, human rights, constitutionalism, and nationalism on political revolutions.

(10) History. The student understands the causes and impact of World War I. The student is expected to:

(A) identify the importance of imperialism, nationalism, militarism, and the alliance system in causing World War I;

(B) identify major characteristics of World War I, including total war, trench warfare, modern military technology, and high casualty rates;

(C) explain the political and economic impact of the Treaty of Versailles, including changes in boundaries and the mandate system; and

(D) identify the causes of the February (March) and October (November) revolutions of 1917 in Russia, their effects on the outcome of World War I, and the Bolshevik establishment of the Union of Soviet Socialist Republics.

(11) History. The student understands the causes and impact of the global economic depression immediately following World War I. The student is expected to:

(A) summarize the international, political, and economic causes of the global depression; and

(B) explain the responses of governments to the global depression such as in the United States, Germany, Great Britain, and France.

(12) History. The student understands the causes and impact of World War II. The student is expected to:

(A) describe the emergence and characteristics of totalitarianism;

(B) explain the roles of various world leaders, including Benito Mussolini, Adolf Hitler, Hideki Tojo, Joseph Stalin, Franklin D.

Roosevelt, and Winston Churchill, prior to and during World War II; and

(C) explain the major causes and events of World War II, including the German invasions of Poland and the Soviet Union, the Holocaust, the attack on Pearl Harbor, the Normandy landings, and the dropping of the atomic bombs.

(13) History. The student understands the impact of major events associated with the Cold War and independence movements. The student is expected to:

(A) summarize how the outcome of World War II contributed to the development of the Cold War;

(B) summarize the factors that contributed to communism in China, including Mao Zedong's role in its rise;

(C) identify major events of the Cold War, including the Korean War, the Vietnam War, and the arms race;

(D) explain the roles of modern world leaders, including Ronald Reagan, Mikhail Gorbachev, Lech Walesa, and Pope John Paul II, in the collapse of communism in Eastern Europe and the Soviet Union;

(E) summarize the rise of independence movements in Africa, the Middle East, and South Asia and reasons for ongoing conflicts; and

(F) discuss factors contributing to the Arab-Israeli conflict, including the rejection of the existence of the state of Israel by the Arab League and a majority of Arab nations.

(14) History. The student understands the development and use of radical Islamic terrorism in the second half of the 20th century and the early 21st century. The student is expected to:

(A) explain the impact of geopolitical influences on the development of radical Islamic terrorism;

(B) explain the impact of radical Islamic terrorism on global events; and

(C) explain the U.S. response to the events surrounding September 11, 2001, and other acts of radical Islamic terrorism.

(15) Geography. The student understands the impact of geographic factors on major historic events and processes. The student is expected to:

(A) locate places and regions of historical significance directly related to major eras and turning points in world history;

(B) analyze the influence of human and physical geographic factors on major events in world history such as the development of river valley civilizations, trade in the Indian Ocean, and the opening of the Panama and Suez canals; and

(C) interpret maps, charts, and graphs to explain how geography has influenced people and events in the past.

(16) Economics. The student understands the impact of the Neolithic and Industrial revolutions and globalization on humanity. The student is expected to:

(A) identify important changes in human life caused by the Neolithic Revolution;

(B) summarize the role of economics in driving political changes as related to the Industrial Revolution; and

(C) describe the economic impact of globalization.

(17) Economics. The student understands the historical origins of contemporary economic systems and the benefits of free enterprise in world history. The student is expected to:

(A) identify the historical origins and characteristics of the free enterprise system, including the influence of Adam Smith;

(B) identify the historical origins and characteristics of communism, including the influence of Karl Marx;

(C) identify the historical origins and characteristics of socialism;

(D) identify the historical origins and characteristics of fascism; and

(E) explain why communist command economies collapsed in competition with free market economies at the end of the 20th century.

(18) Government. The student understands the characteristics of major political systems throughout history. The student is expected to:

(A) identify the characteristics of monarchies and theocracies as forms of government in early civilizations; and

(B) identify the characteristics of the following political systems: theocracy, absolute monarchy, democracy, republic, oligarchy, limited monarchy, and totalitarianism.

(19) Government. The student understands how contemporary political systems have developed from earlier systems of government. The student is expected to:

(A) explain the development of democratic-republican government from its beginnings in Judeo-Christian legal tradition and classical Greece and Rome through the French Revolution;

(B) identify the impact of political and legal ideas contained in the following documents: Hammurabi's Code, the Jewish Ten Commandments, Justinian's Code of Laws, Magna Carta, the English Bill of Rights, the Declaration of Independence, the U.S. Constitution, and the Declaration of the Rights of Man and of the Citizen;

(C) explain the political philosophies of individuals such as John Locke, Thomas Hobbes, Voltaire, Charles de Montesquieu, Jean Jacques Rousseau, Thomas Aquinas, John Calvin, and William Blackstone; and

(D) explain the significance of the League of Nations and the United Nations.

(20) Citizenship. The student understands the significance of political choices and decisions made by individuals, groups, and nations throughout history. The student is expected to:

(A) describe how people have participated in supporting or changing their governments;

(B) describe the rights and responsibilities of citizens and noncitizens in civic participation throughout history; and

(C) identify examples of key persons who were successful in shifting political thought, including William Wilberforce.

(21) Citizenship. The student understands the historical development of significant legal and political concepts related to the rights and responsibilities of citizenship. The student is expected to:

(A) summarize the development of the rule of law from ancient to modern times;

(B) identify the origins of ideas regarding the right to a "trial by a jury of your peers" and the concepts of "innocent until proven guilty" and "equality before the law" from sources including the Judeo-Christian legal tradition and in Greece and Rome;

(C) identify examples of politically motivated mass murders such as in Cambodia, China, Latin America, and the Soviet Union;

(D) identify examples of genocide, including the Holocaust and genocide in Armenia, the Balkans, Rwanda, and Darfur;

(E) identify examples of individuals who led resistance to political oppression such as Nelson Mandela, Mohandas Gandhi, Las Madres de la Plaza de Mayo, and Chinese student protestors in Tiananmen Square; and

(F) identify examples of American ideals that have advanced human rights and democratic ideas throughout the world.

(22) Culture. The student understands the history and relevance of major religious and philosophical traditions. The student is expected to:

(A) describe the historical origins and central ideas in the development of monotheism;

(B) describe the historical origins, central ideas, and spread of major religious and philosophical traditions, including Buddhism, Christianity, Confucianism, Hinduism, Islam, Judaism, and Sikhism; and

(C) identify examples of religious influence on various events referenced in the major eras of world history.

(23) Culture. The student understands the roles of women, children, and families in different historical cultures. The student is expected to:

(A) describe the changing roles of women, children, and families during major eras of world history; and

(B) describe the major influences of women during major eras of world history such as Elizabeth I, Queen Victoria, Mother Teresa, Indira Gandhi, Margaret Thatcher, and Golda Meir.

(24) Culture. The student understands how the development of ideas has influenced institutions and societies. The student is expected to:

(A) summarize the fundamental ideas and institutions of Eastern civilizations that originated in China and India;

(B) summarize the fundamental ideas and institutions of Western civilizations that originated in Greece and Rome;

(C) explain how the relationship between Christianity and Humanism that began with the Renaissance influenced subsequent political developments; and

(D) explain how geopolitical and religious influences have impacted law and government in the Muslim world.

(25) Culture. The student understands the relationship between the arts and the times during which they were created. The student is expected to:

(A) analyze examples of how art, architecture, literature, music, and drama reflect the history of the cultures in which they are produced; and

(B) describe examples of art, music, and literature that transcend the cultures in which they were created and convey universal themes.

(26) Science, technology, and society. The student understands how major scientific and mathematical discoveries and technological innovations affected societies prior to 1750. The student is expected to:

(A) identify the origin and diffusion of major ideas in mathematics, science, and technology that occurred in river valley civilizations, classical Greece and Rome, classical India, the Islamic caliphates between 700 and 1200, and China from the Tang to Ming dynasties;

(B) summarize the major ideas in astronomy, mathematics, and architectural engineering that developed in the Maya, Inca, and Aztec civilizations;

(C) explain the impact of the printing press on the Renaissance and the Reformation in Europe;

(D) describe the origins of the Scientific Revolution in 16th century Europe and explain its impact on scientific thinking worldwide; and

(E) identify the contributions of significant scientists such as Archimedes, Copernicus, Eratosthenes, Galileo, Pythagoras, Isaac Newton, and Robert Boyle.

(27) Science, technology, and society. The student understands how major scientific and mathematical discoveries and technological innovations have affected societies from 1750 to the present. The student is expected to:

(A) explain the role of textile manufacturing, steam technology, development of the factory system, and transportation technology in the Industrial Revolution;

(B) explain the roles of military technology, transportation technology, communication technology, and medical advancements in initiating and advancing 19th century imperialism;

(C) explain the effects of major new military technologies on World War I, World War II, and the Cold War;

(D) explain the role of telecommunication technology, computer technology, transportation technology, and medical advancements in developing the modern global economy and society; and

(E) identify the contributions of significant scientists and inventors such as Marie Curie, Thomas Edison, Albert Einstein, Louis Pasteur, and James Watt.

(28) Social studies skills. The student understands how historians use historiography to interpret the past and applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including technology. The student is expected to:

(A) identify methods used by archaeologists, anthropologists, historians, and geographers to analyze evidence;

(B) explain how historians analyze sources for frame of reference, historical context, and point of view to interpret historical events;

(C) analyze primary and secondary sources to determine frame of reference, historical context, and point of view;

(D) evaluate a variety of historical and contemporary sources for validity, credibility, bias, and accuracy;

~~{(D) evaluate the validity of a source based on bias, corroboration with other sources, and information about the author;}~~

(E) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, drawing inferences and conclusions, and developing connections between historical events over time; and

(F) formulate and communicate visually, orally, or in writing a claim supported by evidence and reasoning for an intended audience and purpose.

~~[(F) construct a thesis on a social studies issue or event supported by evidence.]~~

(29) Social studies skills. The student uses geographic skills and tools to collect, analyze, and interpret data. The student is expected to:

(A) create and interpret thematic maps, graphs, and charts to demonstrate the relationship between geography and the historical development of a region or nation; and

(B) analyze and compare geographic distributions and patterns in world history shown on maps, graphs, charts, and models.

(30) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly;

(B) use effective written communication skills, including proper citations and avoiding plagiarism; ~~and~~

(C) interpret and create written, oral, and visual presentations of social studies information; and[-]

(D) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(31) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) explain governmental and democratic processes such as voting, due process, and caucuses using simulations and models; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.43. World Geography Studies (One Credit), Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instruc-

tional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) [(a)] General requirements. Students shall be awarded one unit of credit for successful completion of this course.

(c) [(b)] Introduction.

(1) In World Geography Studies, students examine people, places, and environments at local, regional, national, and international scales from the spatial and ecological perspectives of geography. Students describe the influence of geography on events of the past and present with emphasis on contemporary issues. A significant portion of the course centers around the physical processes that shape patterns in the physical environment; the characteristics of major landforms, climates, and ecosystems and their interrelationships; the political, economic, and social processes that shape cultural patterns of regions; types and patterns of settlement; the distribution and movement of the world population; relationships among people, places, and environments; and the concept of region. Students analyze how location affects economic activities in different economic systems. Students identify the processes that influence political divisions of the planet and analyze how different points of view affect the development of public policies. Students compare how components of culture shape the characteristics of regions and analyze the impact of technology and human modifications on the physical environment. Students use problem-solving and decision-making skills to ask and answer geographic questions.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as contemporary and historic maps of various types, satellite-produced images, photographs, graphs, map sketches, and diagrams is encouraged.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (d) [(e)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(d) [(e)] Knowledge and skills.

(1) History. The student understands how geography and processes of spatial exchange (diffusion) influenced events in the past and helped to shape the present. The student is expected to:

(A) analyze significant physical features and environmental conditions that have influenced the past and migration patterns and have shaped the distribution of culture groups today; and

(B) trace the spatial diffusion of phenomena such as the Columbian Exchange or the diffusion of American popular culture and describe the effects on regions of contact.

(2) History. The student understands how people, places, and environments have changed over time and the effects of these changes. The student is expected to:

(A) describe the human and physical characteristics of the same regions at different periods of time to analyze relationships between past events and current conditions; and

(B) explain how changes in societies such as population shifts, technological advancements, and environmental policies have led to diverse uses of physical features over time such as terrace farming, dams, and polders.

(3) Geography. The student understands how physical processes shape patterns in the physical environment. The student is expected to:

(A) explain weather conditions and climate in relation to annual changes in Earth-Sun relationships;

(B) describe the physical processes that affect the environments of regions, including weather, tectonic forces, erosion, and soil-building processes; and

(C) describe how physical processes such as hurricanes, El Niño, earthquakes, and volcanoes affect the lithosphere, atmosphere, hydrosphere, and biosphere.

(4) Geography. The student understands the patterns and characteristics of major landforms, climates, and ecosystems of Earth and the interrelated processes that produce them. The student is expected to:

(A) explain how elevation, latitude, wind systems, ocean currents, position on a continent, and mountain barriers influence temperature, precipitation, and distribution of climate regions;

(B) describe different landforms such as plains, mountains, and islands and the physical processes that cause their development; and

(C) explain the influence of climate on the distribution of biomes in different regions.

(5) Geography. The student understands how political, economic, and social processes shape cultural patterns and characteristics in various places and regions. The student is expected to:

(A) analyze how the character of a place is related to its political, economic, social, and cultural elements; and

(B) interpret political, economic, social, and demographic indicators (gross domestic product per capita, life expectancy, literacy, and infant mortality) to determine the level of development and standard of living in nations using the levels as defined by the Human Development Index.

(6) Geography. The student understands the types, patterns, and processes of settlement. The student is expected to:

(A) locate and describe human and physical features that influence the size and distribution of settlements; and

(B) explain the processes that have caused changes in settlement patterns, including urbanization, transportation, access to and availability of resources, and economic activities.

(7) Geography. The student understands the growth, distribution, movement, and characteristics of world population. The student is expected to:

(A) analyze population pyramids and use other data, graphics, and maps to describe the population characteristics of different societies and to predict future population trends;

(B) explain how physical geography and push and pull forces, including political, economic, social, and environmental conditions, affect the routes and flows of human migration;

(C) describe trends in world population growth and distribution; and

(D) analyze how globalization affects connectivity, standard of living, pandemics, and loss of local culture.

(8) Geography. The student understands how people, places, and environments are connected and interdependent. The student is expected to:

(A) compare ways that humans depend on, adapt to, and modify the physical environment, including the influences of culture and technology;

(B) analyze the consequences of extreme weather and other natural disasters such as El Niño, floods, tsunamis, and volcanoes on people and their environment; and

(C) evaluate the economic and political relationships between settlements and the environment, including sustainable development and renewable/non-renewable resources.

(9) Geography. The student understands the concept of region as an area of Earth's surface with related geographic characteristics. The student is expected to:

(A) identify physical and/or human factors such as climate, vegetation, language, trade networks, political units, river systems, and religion that constitute a region; and

(B) describe different types of regions, including formal, functional, and perceptual regions.

(10) Economics. The student understands the distribution, characteristics, and interactions of the economic systems in the world. The student is expected to:

(A) describe the forces that determine the distribution of goods and services in traditional, free enterprise, socialist, and communist economic systems;

(B) classify countries along the economic spectrum between free enterprise and communism;

(C) compare the ways people satisfy their basic needs through the production of goods and services such as subsistence agriculture versus commercial agriculture or cottage industries versus commercial industries; and

(D) compare global trade patterns over time and analyze the implications of globalization, including outsourcing and free trade zones.

(11) Economics. The student understands how geography influences economic activities. The student is expected to:

(A) understand the connections between levels of development and economic activities (primary, secondary, tertiary, and quaternary);

(B) identify the factors affecting the location of different types of economic activities, including subsistence and commercial agriculture, manufacturing, and service industries; and

(C) assess how changes in climate, resources, and infrastructure (technology, transportation, and communication) affect the location and patterns of economic activities.

(12) Economics. The student understands the economic importance of, and issues related to, the location and management of resources. The student is expected to:

(A) analyze how the creation, distribution, and management of key natural resources affects the location and patterns of movement of products, money, and people; and

(B) evaluate the geographic and economic impact of policies related to the development, use, and scarcity of natural resources such as regulations of water.

(13) Government. The student understands the spatial characteristics of a variety of global political units. The student is expected to:

(A) interpret maps to explain the division of land, including man-made and natural borders, into separate political units such as cities, states, or countries; and

(B) compare maps of voting patterns and political boundaries to make inferences about the distribution of political power.

(14) Government. The student understands the processes that influence political divisions, relationships, and policies. The student is expected to:

(A) analyze current events to infer the physical and human processes that lead to the formation of boundaries and other political divisions;

(B) compare how democracy, dictatorship, monarchy, republic, theocracy, and totalitarian systems operate in specific countries; and

(C) analyze the human and physical factors that influence control of territories and resources, conflict/war, and international relations of sovereign nations such as China, the United States, Japan, and Russia and international organizations such as the United Nations (UN) and the European Union (EU).

(15) Citizenship. The student understands how different points of view influence the development of public policies and decision-making processes at national and international levels. The student is expected to:

(A) identify and give examples of different points of view that influence the development of public policies and decision-making processes at national and international levels; and

(B) explain how citizenship practices, public policies, and decision making may be influenced by cultural beliefs, including nationalism and patriotism.

(16) Culture. The student understands how the components of culture affect the way people live and shape the characteristics of regions. The student is expected to:

(A) describe distinctive cultural patterns and landscapes associated with different places in Texas, the United States, and other regions of the world and how these patterns influenced the processes of innovation and diffusion;

(B) describe elements of culture, including language, religion, beliefs, institutions, and technologies; and

(C) describe life in a variety of urban and rural areas in the world to compare political, economic, social, and environmental changes.

(17) Culture. The student understands the distribution, patterns, and characteristics of different cultures. The student is expected to:

(A) describe and compare patterns of culture such as language, religion, land use, education, and customs that make specific regions of the world distinctive;

(B) describe central ideas and spatial distribution of major religious traditions, including Buddhism, Christianity, Hinduism, Islam, Judaism, and Sikhism;

(C) compare economic, political, or social opportunities in different cultures for underrepresented populations such as women and ethnic and religious minorities; and

(D) evaluate the experiences and contributions of diverse groups to multicultural societies.

(18) Culture. The student understands the ways in which cultures change and maintain continuity. The student is expected to:

(A) analyze cultural changes in specific regions caused by migration, war, trade, innovations, and diffusion;

(B) assess causes and effects of conflicts between groups of people, including modern genocides and terrorism;

(C) identify examples of cultures that maintain traditional ways, including traditional economies; and

(D) evaluate the spread of cultural traits to find examples of cultural convergence and divergence such as the spread of democratic ideas, language, foods, technology, or global sports.

(19) Science, technology, and society. The student understands the impact of technology and human modifications on the physical environment. The student is expected to:

(A) evaluate the significance of major technological innovations in the areas of transportation and energy that have been used to modify the physical environment;

(B) analyze ways technological innovations such as air conditioning and desalinization have allowed humans to adapt to places; and

(C) analyze the environmental, economic, and social impacts of advances in technology on agriculture and natural resources.

(20) Science, technology, and society. The student understands how current technology affects human interaction. The student is expected to:

(A) describe the impact of new information technologies such as the Internet, Global Positioning System (GPS), or Geographic Information Systems (GIS); and

(B) examine the economic, environmental, and social effects of technology such as medical advancements or changing trade patterns on societies at different levels of development.

(21) Social studies skills. The student applies critical-thinking skills to organize and use information acquired through established research methodologies from a variety of valid sources, including technology. The student is expected to:

(A) analyze and evaluate a variety of [the validity and utility of multiple] sources of geographic information such as primary and secondary sources, aerial photographs, and maps for validity, utility, credibility, bias, and accuracy;

(B) identify places of contemporary geopolitical significance on a map;

(C) create and interpret different types of maps to answer geographic questions, infer relationships, and analyze change;

(D) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, drawing inferences and conclusions, and developing connections over time; [and]

(E) identify different points of view about an issue or current topic; and [-]

(F) formulate and communicate visually, orally, or in writing a claim supported by evidence and reasoning for an intended audience and purpose.

(22) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) create appropriate graphics such as maps, diagrams, tables, and graphs to communicate geographic features, distributions, and relationships;

(B) generate summaries, generalizations, and thesis statements supported by evidence;

(C) use social studies terminology correctly; [and]

(D) create original work using effective written communication skills, including proper citations and understanding and avoiding plagiarism; and [-]

(E) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(23) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) explain governmental and democratic processes such as voting, due process, and caucuses using simulations and models;

(B) ~~[(A)]~~ plan, organize, and complete a research project that involves asking geographic questions; acquiring, organizing, and analyzing information; answering questions; and communicating results;

(C) ~~[(B)]~~ use case studies and GIS to identify contemporary challenges and to answer real-world questions; and

(D) ~~[(C)]~~ use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

§113.44. United States Government (One-Half Credit), Adopted 2022 [2018].

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(1) No later than July 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2025-2026 school year and apply to the 2025-2026 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) ~~[(a)]~~ General requirements. Students shall be awarded one-half unit of credit for successful completion of this course.

(c) ~~[(b)]~~ Introduction.

(1) In United States Government, the focus is on the principles and beliefs upon which the United States was founded and on the structure, functions, and powers of government at the national, state, and local levels. This course is the culmination of the civic and governmental content and concepts studied from Kindergarten through required secondary courses. Students learn major political ideas and forms of government in history. A significant focus of the course is on the U.S. Constitution, its underlying principles and ideas, and the form of government it created. Students analyze major concepts of republicanism, federalism, checks and balances, separation of powers, popular sovereignty, and individual rights and compare the U.S. system of government with other political systems. Students identify

the role of government in the U.S. free enterprise system and examine the strategic importance of places to the United States. Students analyze the impact of individuals, political parties, interest groups, and the media on the American political system, evaluate the importance of voluntary individual participation in a constitutional republic, and analyze the rights guaranteed by the U.S. Constitution. Students examine the relationship between governmental policies and the culture of the United States. Students identify examples of government policies that encourage scientific research and use critical-thinking skills to create a product on a contemporary government issue.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as the complete text of the U.S. Constitution, selected Federalist Papers, landmark cases of the U.S. Supreme Court (such as those studied in Grade 8 and U.S. History Since 1877), biographies, autobiographies, memoirs, speeches, letters, and periodicals that feature analyses of political issues and events is encouraged.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (d) [(e)] of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together. Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under

subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text from the Declaration of Independence: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students discuss how and whether the actions of U.S. citizens and the local, state, and federal governments have achieved the ideals espoused in the founding documents.

(d) [(e)] Knowledge and skills.

(1) History. The student understands how constitutional government, as developed in America and expressed in the Declaration of Independence, the Articles of Confederation, and the U.S. Constitution, has been influenced by ideas, people, and historical documents. The student is expected to:

(A) explain major political ideas in history, including the laws of nature and nature's God, unalienable rights, divine right of kings, social contract theory, and the rights of resistance to illegitimate government;

(B) identify major intellectual, philosophical, political, and religious traditions that informed the American founding, including Judeo-Christian (especially biblical law), English common law and constitutionalism, Enlightenment, and republicanism, as they address issues of liberty, rights, and responsibilities of individuals;

(C) identify the individuals whose principles of laws and government institutions informed the American founding documents, including those of Moses, William Blackstone, John Locke, and Charles de Montesquieu;

(D) identify the contributions of the political philosophies of the Founding Fathers, including John Adams, Alexander Hamilton, Thomas Jefferson, James Madison, John Jay, George Mason, Roger Sherman, and James Wilson, on the development of the U.S. government;

(E) analyze debates and compromises that impacted the creation of the founding documents; and

(F) identify significant individuals in the field of government and politics, including George Washington, Thomas Jefferson, John Marshall, Andrew Jackson, Abraham Lincoln, Theodore Roosevelt, Franklin D. Roosevelt, and Ronald Reagan.

(2) History. The student understands the roles played by individuals, political parties, interest groups, and the media in the U.S. political system, past and present. The student is expected to:

(A) describe the processes used by individuals, political parties, interest groups, or the media to affect public policy; and

(B) analyze the impact of political changes brought about by individuals, political parties, interest groups, or the media, past and present.

(3) Geography. The student understands how geography can influence U.S. political districts and policies. The student is expected to:

(A) explain how population shifts affect voting patterns;

(B) examine political boundaries to make inferences regarding the distribution of political power; and

(C) explain how political districts are crafted and how they are affected by Supreme Court decisions such as *Baker v. Carr*.

(4) Economics. The student understands the roles played by local, state, and national governments in both the public and private sectors of the U.S. free enterprise system. The student is expected to:

(A) explain how government fiscal, and regulatory policies influence the economy at the local, state, and national levels;

(B) compare the role of government in the U.S. free enterprise system and other economic systems; and

(C) explain how government taxation, expenditures, and regulation can influence the U.S. economy and impact private enterprise.

(5) Economics. The student understands the relationship between U.S. government policies and the economy. The student is expected to:

(A) analyze how economic and natural resources influence U.S. foreign policy; and

(B) describe the roles of the executive and legislative branches in setting international trade and fiscal policies.

(6) Government. The student understands the American beliefs and principles reflected in the U.S. Constitution and why these are significant. The student is expected to:

(A) explain the importance of a written constitution;

(B) explain how the federal government serves the purposes set forth in the Preamble to the U.S. Constitution;

(C) analyze how the Federalist Papers such as Number 10 and Number 51 explain the principles of the American constitutional system of government;

(D) evaluate constitutional provisions for limiting the role of government, including republicanism, checks and balances, federalism, separation of powers, popular sovereignty, and individual rights;

(E) describe the constitutionally prescribed procedures by which the U.S. Constitution can be changed and analyze the role of the amendment process in a constitutional government; and

(F) identify how the Declaration of Independence and the U.S. Constitution continue to shape American beliefs and principles in the United States today.

(7) Government. The student understands the structure and functions of the government created by the U.S. Constitution. The student is expected to:

(A) analyze the structure and functions of the legislative branch of government, including the bicameral structure of Congress, the role of committees, and the procedure for enacting laws;

(B) analyze the structure and functions of the executive branch of government, including the constitutional powers of the president, the growth of presidential power, and the role of the Cabinet and executive departments;

(C) analyze the structure and functions of the judicial branch of government, including the federal court system, types of jurisdiction, and judicial review;

(D) identify the purpose of selected independent executive agencies, including the National Aeronautics and Space Administration (NASA), and regulatory commissions, including the Environmental Protection Agency (EPA), Occupational Safety and Health Ad-

ministration (OSHA), Food and Drug Administration (FDA), and Federal Communications Commission (FCC);

(E) explain how provisions of the U.S. Constitution provide for checks and balances among the three branches of government;

(F) analyze selected issues raised by judicial activism and judicial restraint;

(G) explain the major responsibilities of the federal government for domestic and foreign policy such as national defense; and

(H) compare the structures, functions, and processes of national, state, and local governments in the U.S. federal system.

(8) Government. The student understands the concept of federalism. The student is expected to:

(A) explain why the Founding Fathers created a distinctly new form of federalism and adopted a federal system of government instead of a unitary system;

(B) categorize government powers as national, state, or shared;

(C) analyze historical and contemporary conflicts over the respective roles of national and state governments; and

(D) explain how the U.S. Constitution limits the power of national and state governments.

(9) Government. The student understands the processes for filling public offices in the U.S. system of government. The student is expected to:

(A) identify different methods of filling public offices, including elected and appointed offices at the local, state, and national levels;

(B) explain the process of electing the president of the United States and analyze the Electoral College; and

(C) analyze the impact of the passage of the 17th Amendment.

(10) Government. The student understands the role of political parties in the U.S. system of government. The student is expected to:

(A) analyze the functions of political parties and their role in the electoral process at local, state, and national levels; and

(B) explain the two-party system and evaluate the role of third parties in the United States.

(11) Government. The student understands the similarities and differences that exist among the U.S. system of government and other political systems. The student is expected to:

(A) compare the U.S. constitutional republic to historical and contemporary forms of government such as monarchy, a classical republic, authoritarian, socialist, direct democracy, theocracy, tribal, and other republics; and

(B) analyze advantages and disadvantages of presidential and parliamentary systems of government.

(12) Citizenship. The student understands the rights that are protected and secured by the U.S. Constitution and Bill of Rights. The student is expected to:

(A) explain the roles of limited government and the rule of law in the protection of individual rights;

(B) identify and define the unalienable rights;

(C) identify the freedoms and rights protected and secured by each amendment in the Bill of Rights;

(D) analyze the reasons the Founding Fathers protected religious freedom in America and guaranteed its free exercise by saying that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," and compare this to the concept of separation of church and state;

(E) analyze U.S. Supreme Court interpretations of rights guaranteed by the U.S. Constitution in selected cases, including *Engel v. Vitale*, *Schenck v. United States*, *Texas v. Johnson*, *Miranda v. Arizona*, *Gideon v. Wainwright*, *Mapp v. Ohio*, and *Roe v. Wade*;

(F) explain the importance of due process rights to the protection of individual rights and in limiting the powers of government; and

(G) recall the conditions that produced the 14th Amendment and describe subsequent efforts to selectively extend some of the Bill of Rights to the states through U.S. Supreme Court rulings and analyze the impact on the scope of fundamental rights and federalism.

(13) Citizenship. The student understands the difference between personal and civic responsibilities. The student is expected to:

(A) describe scenarios where good citizenship may require the subordination of personal desire for the sake of the public good;

(B) explain the responsibilities, duties, and obligations of citizenship such as being well informed about civic affairs, serving in the military, voting, serving on a jury, observing the laws, paying taxes, and serving the public good; and

(C) describe the voter registration process and the criteria for voting in elections.

(14) Citizenship. The student understands the importance of voluntary individual participation in the U.S. constitutional republic. The student is expected to:

(A) analyze the effectiveness of various methods of participation in the political process at local, state, and national levels;

(B) analyze historical and contemporary examples of citizen movements to bring about political change or to maintain continuity; and

(C) describe the factors that influence an individual's political attitudes and actions.

(15) Citizenship. The student understands the importance of the expression of different points of view in a constitutional republic. The student is expected to:

(A) analyze different points of view of political parties and interest groups such as the League of United Latin American Citizens (LULAC), the National Rifle Association (NRA), and the National Association for the Advancement of Colored People (NAACP) on important contemporary issues; and

(B) analyze the importance of the First Amendment rights of petition, assembly, speech, and press and the Second Amendment right to keep and bear arms.

(16) Culture. The student understands the relationship between government policies and the culture of the United States. The student is expected to:

(A) evaluate a U.S. government policy or court decision that has affected a particular racial, ethnic, or religious group, including [such as] the Civil Rights Act of 1964 and the U.S. Supreme Court cases of *Hernandez v. Texas* and *Grutter v. Bollinger*; and

(B) explain changes in American culture brought about by government policies such as voting rights, the Servicemen's Readjustment Act of 1944 (GI Bill of Rights), the Immigration and Nationality Act of 1965, the Immigration Reform and Control Act of 1986, affirmative action, and racial integration.

(17) Science, technology, and society. The student understands the role the government plays in developing policies and establishing conditions that influence scientific discoveries and technological innovations. The student is expected to:

(A) explain how U.S. constitutional protections such as patents have fostered competition and entrepreneurship; and

(B) identify examples of government-assisted research that, when shared with the private sector, have resulted in improved consumer products such as computer and communication technologies.

(18) Science, technology, and society. The student understands the impact of advances in science and technology on government. The student is expected to:

(A) describe the potential impact of recent scientific discoveries and technological innovations on government policy; and

(B) evaluate the impact of the Internet and other electronic information on the political process.

(19) Social studies skills. The student applies critical-thinking skills to organize and use information acquired through established research methodologies from a variety of valid sources, including technology. The student is expected to:

(A) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(B) create a product on a contemporary government issue or topic using critical methods of inquiry;

(C) analyze and defend a point of view on a current political issue;

(D) analyze and evaluate a variety of historical and contemporary sources for [the] validity of information, arguments, [and] counterarguments, credibility, accuracy, [from primary and secondary sources for] bias, propaganda, point of view, and frame of reference; [and]

(E) evaluate government data using charts, tables, graphs, and maps; and [-]

(F) formulate and communicate visually, orally, or in writing a claim supported by evidence and reasoning for an intended audience and purpose.

(20) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(A) use social studies terminology correctly; [and]

(B) create written, oral, and visual presentations of social studies information using effective communication skills, including proper citations and avoiding plagiarism; and[-]

(C) apply foundational language skills to engage in civil discourse about social studies topics, including those with multiple perspectives.

(21) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others. The student is expected to:

(A) explain governmental and democratic processes such as voting, due process, and caucuses using simulations and models; and

(B) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution.

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-202203969

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 117. END STAGE RENAL DISEASE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §117.41, concerning Governing Body; §117.45, concerning Provision and Coordination of Treatment and Services; and §117.91, concerning Fire Prevention, Protection, and Emergency Contingency Plan in Texas Administrative Code, Title 25, Part 1, Chapter 117, End Stage Renal Disease Facilities.

BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 1876, 87th Legislature, Regular Session, 2021, which, in part, added Texas Health and Safety Code (HSC) §251.016 and §251.017. S.B. 1876 requires an end stage renal disease (ESRD) facility to adopt a written emergency preparedness and contingency operations plan to address the provision of care during an emergency and an emergency contingency plan for the continuity of essential building systems during an emergency.

The proposal is also necessary to correct outdated information, improve readability, and update language to reflect the transition of regulatory authority from the Department of State Health Services (DSHS) to HHSC.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §117.41 improves readability and updates the reference to §117.45(b) for accuracy.

The proposed amendment to §117.45 updates the emergency preparedness requirements in subsection (b) to ensure consistency with the S.B. 1876 provisions for the emergency preparedness and contingency operations plan, updates a reference from "department" to "HHSC" to reflect the transition of regulatory authority from DSHS to HHSC, and makes other non-substantive changes to increase clarity and readability.

The proposed amendment to §117.91 defines, in new subsection (h), "emergency" and updates the emergency contingency plan for power and potable water requirements to ensure consistency with S.B. 1876. The proposed amendment also updates the contact information for submitting fire incident reports under subsection (a) and makes other non-substantive changes to clarify language and increase readability.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be publicly acces-

sible emergency plan requirements for ESRD facilities that are consistent with statutory requirements and ensure patients have access to dialysis and continued care during emergencies, which will enhance the health and safety of Texans.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not require persons subject to the rules to alter their current business practices; these entities are required to comply with the law as added by S.B. 1876 and the proposed amendments only ensure consistency with current statutory requirements.

TAKINGS IMPACT ASSESSMENT

HHSC 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 Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.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; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the 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 22R070" in the subject line.

SUBCHAPTER D. MINIMUM STANDARDS FOR PATIENT CARE AND TREATMENT

25 TAC §117.41, §117.45

STATUTORY AUTHORITY

The amendments are 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 by the health and human services agencies, Texas Health and Safety Code §251.003, which authorizes the Executive Commissioner of HHSC to adopt rules governing ESRD facilities, and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code §§251.003, 251.014, 251.016, and 251.017.

§117.41. *Governing Body.*

(a) There shall be an identified governing body responsible for the organization, management, control, and operation of the facility, including the appointment of the facility's medical director as defined in §117.2(48) of this title (relating to Definitions).

(1) A qualified medical director is a physician who is board certified in internal medicine by the American Board of Internal

Medicine or pediatrics by the American Board of Pediatrics or is board certified in nephrology or pediatric nephrology, and has at least 12 months of experience providing care to patients receiving dialysis.

(2) A facility may request a waiver to appoint or retain as medical director a physician who does not meet one or more of the qualifications in paragraph (1) of this subsection. The waiver shall explain why a physician meeting the board certification requirement is not available and include a resume of the physician the facility seeks to appoint or retain. A written request for waiver shall be made through the Texas Department of State Health Services, Health Facility Compliance Group, Mail Code 1979, P.O. Box 149347, Austin, Texas, 78714-9347 for transmission to CMS.

(b) The governing body shall develop, implement, and enforce policies [policies] and procedures for all services provided by the facility.

(c) The governing body shall ensure that the medical staff has current bylaws, rules and regulations that are adopted, implemented, and enforced.

(d) The governing body shall ensure that effective administrative rules, regulations, and policies designed to protect the health and safety of patients are implemented and reviewed annually.

(e) The governing body shall ensure that there is a quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care. The governing body shall review and monitor QAPI activities quarterly.

(f) The governing body shall ensure that all facility staff are qualified (i.e., advanced practice registered nurse, physician assistant, registered nurse, licensed vocational nurse, licensed master social worker, registered dietitian, patient care technician, and other technical staff) to serve the complex needs of dialysis patients and deliver dialysis services. The registered nurse, licensed vocational nurse, patient care technician and other technical staff must demonstrate and sustain the skills needed to perform the specific duties of their positions.

(g) The governing body shall ensure adequate numbers of qualified personnel are present whenever patients are undergoing dialysis so that the patient/staff ratio is appropriate to the level of dialysis care given and meets the needs of patients.

(h) The governing body shall review and approve the facility's training program for staff, patients, and/or patient's caregiver.

(i) The governing body shall develop, implement, and enforce policies and procedures relating to the facility's disaster preparedness plan, to meet the requirements of §117.45(b) [§117.45(b)(5)] of this title (relating to Provision and Coordination of Treatment and Services). The plan shall address the continuity of essential building systems including emergency power and water, or a contract with another licensed ESRD facility to provide emergency contingency care to patients to meet the requirements of §117.91(h) of this title (relating to Fire Prevention, Protection, and Emergency Contingency Plan).

(j) The governing body shall ensure that all equipment utilized by facility staff and/or patients is properly maintained in accordance with the manufacturer's direction for use.

(k) The governing body shall ensure a physical environment that protects the health and safety of patients, personnel, and the public. The physical premises of the facility and those areas of the facility's surrounding physical structure that are used by the patients (including stairwells, corridors, and passageways) shall meet the local building and fire safety codes as they relate to design and space requirements for safe access and patient privacy.

(l) The governing body shall develop, implement, and enforce policies and procedures regarding disruptive patients or family members to ensure the health and safety of patients, personnel and the public.

(m) The governing body shall ensure that personnel shall be assigned to assist a social worker(s) with ancillary tasks (e.g., assistance with financial services, transportation, administrative, clerical, etc.), when the patient load, including all modalities, exceeds 100 patients per facility. The maximum patient load, including all modalities, per full-time equivalent qualified social worker, with assigned personnel assistance, is 125 patients.

§117.45. *Provision and Coordination of Treatment and Services.*

(a) Patient plan of care.

(1) A facility shall develop, implement, and enforce policies and procedures on the patient's plan of care process which specifies the services necessary to address the patient's comorbid conditions and other needs based on the patient's interdisciplinary assessment. The patient services are coordinated using an interdisciplinary team approach. The interdisciplinary team shall consist of the patient, the patient's primary dialysis physician, registered nurse, social worker, and dietitian.

(2) The interdisciplinary team shall engage in an interactive conference in order to develop a written, individualized, comprehensive patient plan of care that specifies the services necessary to address the patient's medical, psychological, social, and functional needs, and includes treatment goals.

(3) The plan of care shall include measurable and expected outcomes and estimated timetables to achieve these outcomes. The plan of care shall include, but not be limited to, the patient's current dose of dialysis, dialysis adequacy, other medical comorbidity issues, nutritional status, mineral metabolism, anemia, vascular access, psychosocial status, modality, transplantation status, rehabilitation status, patient's goals, and patient education and training.

(4) The patient plan of care shall include evidence of coordination with other service providers (e.g., hospitals, long term care facilities, home and community support services agencies, or transportation providers) as needed to assure the provision of continuity of safe care.

(5) The patient plan of care shall include evidence of the patient's (or patient's legal representative's) input and participation, unless they refuse to participate. At a minimum, the patient plan of care shall demonstrate that the content was discussed with the patient or the patient's legal representative by a member of the interdisciplinary team.

(6) The patient plan of care shall be developed and implemented within 30 calendar days or 13 outpatient dialysis treatments from the patient's admission to the facility. The plan of care shall be revised due to the patient's lack of progress towards the goals of the plan of care, marked deterioration in health status, significant changes in the patient's psychosocial needs, or changes in the patient's nutritional condition, as needed but no less than annually after the date of the patient's last plan of care.

(7) The facility shall monitor the plan of care at least monthly to recognize and address any deviations from the plan of care as follows:

(A) implement changes in interventions due to the lack of progress toward the goals of the plan of care;

(B) document as to the reasons why the patient was unable to achieve the goals; and

(C) implement changes to address the revised plan of care.

(8) An interdisciplinary team conference may be conducted via phone conferencing. A phone plan of care conference conducted with the interdisciplinary team and the patient (or their legal representative) shall be documented as a phone conference.

(9) In the case of disruptive patients or family members or patients who do not conform to the treatment plan, the facility shall develop, implement, and enforce a process for more intensive interdisciplinary team intervention with this patient to include assessment of needs and planned interventions to assist the patient in adjusting to the requirements for safe care.

(b) Emergency preparedness.

(1) In this subsection, unless the context clearly indicates otherwise, "emergency" means an incident likely to threaten the health, welfare, or safety of a facility's patients, facility staff, or the public, including a fire, equipment failure, power outage, flood, interruption in utility service, medical emergency, or natural or other disaster.

(2) [(+) In accordance with Texas Health and Safety Code §251.016, a [A] facility shall implement a written emergency preparedness and contingency operations plan that describes [~~procedures which describe~~] staff and patient actions to manage potential medical and non-medical emergencies, including [~~but not limited to~~] fire, equipment failure, power outages, medical emergencies, and natural or other disasters which are likely to threaten the health, welfare, or safety of facility patients, the staff, or the public. The plan shall comply with the following requirements.

(A) The facility shall update the plan at least annually.

(B) The facility's leadership shall approve the plan each time the facility updates the plan.

(C) The plan shall include:

(i) procedures for notifying each of the following entities, as soon as practicable, regarding the closure or reduction in hours of operation of the facility due to an emergency:

(I) the Texas Health and Human Services Commission (HHSC);

(II) each hospital with which the facility has a transfer agreement in accordance with paragraph (10) of this subsection;

(III) the trauma service area regional advisory council that serves the geographic area in which the facility is located; and

(IV) each applicable local emergency management agency;

(ii) a documented patient communications plan that includes procedures for notifying a patient when that patient's scheduled dialysis treatment is interrupted;

(iii) a continuity of care plan for the provision of dialysis treatment to facility patients during an emergency that meets the requirements under paragraph (4) of this subsection; and

(iv) a disaster preparedness plan for natural and other disasters that:

(I) is specific to the facility based on an assessment of the probability and type of disaster in the region and the local resources available to the facility;

(II) incorporates the use of the HHSC-approved reporting system and participation in the ESRD Network of Texas disaster preparedness activities;

(III) includes procedures designed to minimize harm to patients and staff along with ensuring safe facility operations;

(IV) along with in-service programs for patients and staff, includes provisions or procedures for responsibility of direction and control, communications, alerting and warning systems, evacuation, and closure;

(V) requires each staff member employed by or under contract with the facility to be able to demonstrate their role or responsibility to implement the facility's disaster preparedness plan.

(VI) designates a person in each facility to monitor and coordinate disaster preparedness activities;

(VII) maintains in each facility documentation of the monitoring and coordination of disaster preparedness activities; and

(VIII) addresses the continuity of essential building systems, including emergency power and water, or a contract with another licensed ESRD facility to provide emergency contingency care to patients to meet the requirements of §117.91(h) of this chapter (relating to Fire Prevention, Protection, and Emergency Contingency Plan); and

(D) except as provided by paragraph (3) of this subsection, requires a facility to execute a contract with another ESRD facility located within a 100-mile radius of the facility stipulating that the other ESRD facility will provide dialysis treatment to facility patients who are unable to receive scheduled dialysis treatment due to the facility's closure or reduction in hours.

(3) A facility is not required to contract with another ESRD facility under paragraph (2)(D) of this subsection if:

(A) no other ESRD facility is located within a 100-mile radius of the facility; and

(B) the facility obtains written approval from HHSC exempting the facility from that requirement.

(4) A facility shall develop a continuity of care plan for the provision of dialysis treatment to facility patients during an emergency that:

(A) includes procedures for distributing written materials to facility patients that specifically describe the facility's emergency preparedness and contingency operations plan;

(B) includes detailed procedures on the facility's contingency plans, based on the facility's patient population, including transportation options, for patients to access dialysis treatment at each ESRD facility with which the facility has an agreement or made advance preparations to ensure that the facility's patients have the option to receive dialysis treatment and procedures for notifying a patient when that patient's scheduled dialysis treatment is interrupted;

(C) is approved by the facility's leadership; and

(D) is provided by the facility to each patient before providing or scheduling dialysis treatment.

(5) On request, a facility shall provide the facility's emergency preparedness and contingency operations plan adopted under paragraph (2) of this subsection to:

(A) HHSC;

(B) each hospital with which the facility has a transfer agreement in accordance with paragraph (10) of this subsection;

(C) the trauma service area regional advisory council that serves the geographic area in which the facility is located; and

(D) each applicable local emergency management agency.

(6) A facility shall provide annual training to facility staff on the facility's emergency preparedness and contingency operations plan required by paragraph (2) of this subsection.

(7) A facility shall annually contact a local and state disaster management representative, an emergency operations center, and a trauma service area regional advisory council to:

(A) request comments on whether the emergency preparedness and contingency plan adopted by the facility under paragraph (2) of this subsection should be modified; and

(B) ensure that local agencies, regional agencies, state agencies, and hospitals are aware of the facility, the facility's policy on provision of life saving treatment, the facility's patient population and potential transportation needs, and the anticipated number of patients affected.

(8) [(2)] A facility shall have a functional plan to access the community emergency medical services.

(9) [(3)] A facility shall have personnel qualified to operate emergency equipment and to provide emergency care to patients on site and available during all treatment times. A charge nurse qualified to provide basic cardiopulmonary life support (BCLS) shall be on site and available to the treatment area whenever patients are present. All direct care staff members shall maintain current certification and competency in BCLS.

(10) [(4)] A facility shall have a transfer agreement with one or more hospitals which provide acute dialysis service for the provision of inpatient care and other hospital services to the facility's patients. The facility shall have documentation from the hospital to the effect that patients from the facility shall be accepted and treated in emergencies. There shall be reasonable assurances that:

(A) the transfer or referral of patients will be effected between the hospital and the facility whenever such transfer or referral is determined as medically appropriate by the attending physician, with timely acceptance and admission;

(B) the interchange of medical and other information necessary or useful in the care and treatment of the patient transferred shall occur within one working day; and

(C) security and accountability shall be assured for the transferred patient's personal effects.

[(5) A written disaster preparedness plan for natural and other disasters specific to each facility shall be developed and in place. The plan shall be based on an assessment of the probability and type of disaster in each region and the local resources available to the facility.]

[(A) The plan shall incorporate the use of the department approved reporting system and participation in the ESRD Network of Texas disaster preparedness activities. Contact shall be made annually with a local disaster management representative Emergency Operations Center (EOC) to assess the need to revise the plan and to ensure that local agencies are aware of the dialysis facility, its provision of life-saving treatment, and the patient population served.]

[(B) The plan shall include procedures designed to minimize harm to patients and staff along with ensuring safe facility oper-

ations. The plan and in-service programs for patients and staff shall include provisions or procedures for responsibility of direction and control, communications, alerting and warning systems, evacuation, and closure. Each staff member employed by or under contract with the facility shall be able to demonstrate their role or responsibility to implement the facility's disaster preparedness plan. The facility shall designate a person to monitor and coordinate disaster preparedness activities. The facility shall maintain documentation of the monitoring and coordination of disaster preparedness activities.]

[(C) The plan shall address the continuity of essential building systems including emergency power and water, or a contract with another licensed ESRD facility to provide emergency contingency care to patients to meet the requirements of §117.91(h) (relating to Fire Prevention, Protection, and Emergency Contingency Plan).]

(11) [(6)] A facility shall post a telephone number listing specific to the facility equipment and locale to assist staff in contacting mechanical and technical support in the event of an emergency.

(12) [(7)] The facility shall maintain information on the HHSC [department] approved reporting system to be updated online monthly.

(c) Medication storage and administration.

(1) Pharmaceutical and therapeutic items shall be provided in accordance with accepted professional principles and federal and state laws and regulations.

(2) Medications shall be administered only if such medication is ordered by the patient's physician or an attending physician. Medication shall be administered as ordered.

(3) All verbal or telephone physician orders shall be documented and authenticated or countersigned by the physician not more than 15 calendar days from the date the order was given.

(4) Medications maintained in the facility shall be properly stored and safeguarded in enclosures of sufficient size which are not accessible to unauthorized persons. Refrigerators used for storage of medications shall be maintained with documentation of the appropriate temperatures for such storage.

(5) A facility shall maintain emergency medications, as specified by the medical director, to treat the emergency needs of patients.

(6) Medications shall not be prepared for administration in the patient's immediate treatment area. The medication preparation area shall be located in such a manner as to prevent contamination of medicines being prepared for administration and shall include a work counter and a sink.

(7) Medication vials shall not be taken to a patient station. Intravenous medication vials labeled for single-use shall not be punctured more than once.

(8) Medications not given immediately shall be labeled with the patient's name, the name of the medication, the dosage prepared, and the initials of the person preparing the medication, and shall be protected to prevent contamination and casual access of the prepared medications to unauthorized persons. All medications shall be administered by the individual who prepared the medication.

(9) All medications shall be administered by licensed nurses, physician assistants, or physicians except that intravenous normal saline, intravenous heparin, subcutaneous lidocaine, and oxygen may be administered as part of a routine hemodialysis treatment by dialysis technicians qualified according to §117.62 of this title (relating to Training Curricula and Instructors) and §117.63 of this

title (relating to Competency Evaluation). Such administration by dialysis technicians shall be in compliance with Chapter 157 of the Occupations Code concerning the delegation of medical acts by a licensed physician in the State of Texas.

(d) Nursing services.

(1) Nursing services shall be provided to prevent or reduce complications, to maximize the patient's functional status, and to educate the ESRD patient, the patient's family, patient's caregiver, or significant other.

(2) A full-time supervising nurse shall be employed to supervise and manage the provision of safe patient care. A contract staff person shall not be considered an employee, and shall not be considered for the full-time supervising nurse.

(3) A registered nurse shall:

(A) be in the facility when patients are present in the facility;

(B) conduct admission nursing assessments;

(C) conduct assessments of a patient when indicated by a question relating to a change in the patient's status, extended or frequent hospitalizations, or at the patient's request;

(D) participate in the interdisciplinary team review of a patient's progress;

(E) recommend changes in treatment based on the patient's current needs;

(F) facilitate communication between the patient, patient's family or significant other, and other interdisciplinary members to ensure needed care is delivered;

(G) provide oversight and direction to dialysis technicians and licensed vocational nurses; and

(H) participate in the facility's QAPI activities.

(4) A registered nurse functioning in the charge role shall be present during all dialysis treatments.

(5) If pediatric dialysis is provided, a registered nurse with experience or training in pediatric dialysis shall be available to provide care for pediatric dialysis patients smaller than 35 kilograms in weight.

(6) Sufficient direct care staff, as defined in §117.2(25) of this title (relating to Definitions), shall be on site to meet the needs of the patients, and at least one licensed nurse shall be available on site for every twelve patients or portion thereof.

(A) During treatment of seven or fewer patients, direct care staff shall consist of one registered nurse and one direct care staff as demonstrated in Table 1 of §117.106 of this title (relating to Tables).

(B) During treatment of eight but not more than twelve patients, the registered nurse functioning as charge nurse shall not be assigned as direct care staff as demonstrated in Table 1 of §117.106 of this title.

(C) For pediatric dialysis patients, one licensed nurse shall be provided on site for each patient weighing less than ten kilograms and one licensed nurse provided on site for every two patients weighing from ten to 20 kilograms.

(7) A facility shall ensure that patients are in view of staff during hemodialysis treatments, and shall visualize the patient, their access site, and their bloodline connections during the dialysis treatment.

(8) A licensed nurse or dialysis technician shall collect and document objective and subjective data for each patient before and after treatment according to facility policy and the staff member's level of training. There shall be written policies and procedures specific to the facility to guide actions to be taken by the nursing staff in the event a patient's condition deteriorates during treatment, to identify parameters which would require a patient be referred to a nurse for evaluation. A registered nurse shall conduct a patient assessment when indicated by a question relating to a change in the patient's status or at the patient's request.

(9) A registered nurse shall conduct the initial patient assessment at the time of the patient's initial dialysis treatment in the facility.

(e) This chapter does not preclude a licensed vocational nurse (LVN) from practicing in accordance with the rules adopted by the Texas Board of Nursing. If the LVN is acting in the capacity of a dialysis technician, the facility shall determine that the LVN has passed a training and competency evaluation curriculum which meets the requirements in §117.62 of this title and §117.63 of this title.

(f) A dialysis technician providing direct patient care shall demonstrate knowledge and competency for the responsibilities specified in §117.62 of this title and §117.63 of this title.

(g) Nutrition services.

(1) Nutrition services shall be provided to a patient and the patient's caregiver(s) in order to maximize the patient's nutritional status.

(2) The dietitian shall be responsible for:

(A) conducting a nutrition assessment of a patient;

(B) participating in an interdisciplinary team review of a patient's progress;

(C) recommending therapeutic diets in consideration of cultural preferences and changes in treatment based on the patient's nutritional needs in consultation with the patient's physician;

(D) counseling a patient, a patient's family, and a patient's significant other on prescribed diets and monitoring adherence and response to diet therapy. Correctional institutions shall not be required to provide counseling to family members or significant others;

(E) referring a patient for assistance with nutrition resources such as financial assistance, community resources, or in-home assistance;

(F) participating in the facility's QAPI activities; and

(G) providing ongoing monitoring of subjective and objective data to determine the need for timely intervention and follow-up. Measurement criteria include but are not limited to weight changes, blood chemistries, adequacy of dialysis, and medication changes which affect nutrition status and potentially cause adverse nutrient interactions.

(3) The initial contact between the dietitian and the patient to assess nutritional status shall occur, and be documented, within two weeks or seven treatments from admission to the facility, whichever occurs later. A comprehensive nutrition assessment with an educational component shall be completed within 30 days or 13 treatments from the patient's admission to the facility, whichever occurs later.

(4) A nutrition reassessment shall be conducted no less than annually or more often when indicated by a question relating to a change in the patient's status, extended or frequent hospitalizations, a change in the patient's modality, or at the patient's request.

(5) Each facility shall employ or contract with a dietitian(s) to provide clinical nutrition services for each patient. One full-time equivalent of dietitian time shall be available for up to 100 patients per facility with the maximum patient load per full-time equivalent of dietitian time being 125 patients for all modalities.

(6) Nutrition services shall be available at the facility during scheduled treatment times. Access to services may require an appointment.

(7) There shall be written physician standing orders specific to the facility authorizing delegation of responsibilities for the facility dietitian as determined by the Medical Director and the facility. These standing orders shall be reviewed and approved by the medical director at least annually, and be consistent with the statutes and rules of the Texas Medical Board, the Texas Board of Nursing, and the Texas State Board of Examiners of Dietitians licensure.

(8) If the facility is using a medication algorithm/protocol for managing renal bone disease the nutritional care for each patient shall be individualized.

(h) Social services.

(1) Social services shall be provided to patients and their families and shall be directed at supporting and maximizing the adjustment, social functioning, and rehabilitation of the patient.

(2) The social worker shall be responsible for:

(A) conducting psychosocial evaluations, which include health-related quality of life surveys;

(B) participating in the interdisciplinary team review of a patient's progress;

(C) providing an ongoing assessment and recommend changes in treatment based on the patient's current psychosocial needs;

(D) providing social work interventions including counseling, case work and group work services to patients and their families in dealing with the special problems associated with end stage renal disease;

(E) except in the case of social workers providing service in correctional institutions, identifying community social agencies and other resources, and assisting patients and families to utilize them;

(F) participating in the facility's QAPI activities; and

(G) assisting patients to achieve optimum levels of productive activity and making rehabilitation referrals as appropriate.

(3) Initial contact between the social worker and the patient shall occur, and be documented, within two weeks or seven treatments from the patient's admission, whichever occurs later. A comprehensive psychosocial assessment shall be completed within 30 days or 13 treatments from the patient's admission, whichever occurs later.

(4) A psychosocial reassessment shall be conducted no less than annually or more often when indicated by a significant change in the patient's psychosocial needs, extended or frequent hospitalizations, any event that would interfere with the patient's ability to follow aspects of the plan of care, a change in the patient's modality, or at the patient's request.

(5) Each facility shall employ or contract with a social worker(s) to meet the psychosocial needs of the patients. Personnel shall be assigned to assist a social worker(s) with ancillary tasks (e.g., assistance with financial services, transportation, administrative, clerical, etc.), when the patient load per facility, including all modalities, exceeds 100 patients. The maximum patient load, including

all modalities, per full-time equivalent qualified social worker, with assigned personnel assistance, is 125 patients.

(6) Social services shall be available at the facility during the times of patient treatment. Access to social services may require an appointment.

(i) Medical services.

(1) The medical director is responsible for:

(A) developing facility treatment goals which are based on review of aggregate data assessed through QAPI activities;

(B) assuring adequate training of licensed nurses and dialysis technicians;

(C) adequate monitoring of patients and the dialysis process; and

(D) developing, implementing, and enforcing all policies required by this chapter.

(2) Medical staff.

(A) Each patient shall be under the care of a nephrologist on the medical staff.

(B) The care of a pediatric dialysis patient shall be in accordance with this subparagraph. If a pediatric nephrologist is not available as the primary physician, an adult nephrologist may serve as the primary physician with direct patient evaluation by a pediatric nephrologist according to the following schedule:

(i) for patients two years of age or younger--monthly (two of three evaluations may be by phone);

(ii) for patients three to 12 years of age--quarterly; and

(iii) for patients 13 to 18 years of age--semiannually.

(C) At a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once every two weeks during the patient's treatment time. Home dialysis patients shall be seen by a physician, advanced practice registered nurse, or physician's assistant no less than one time a month. If home dialysis patients are seen by an advanced practice registered nurse or a physician's assistant, the physician shall see the patient at least one time every three months. This visit may be conducted in the dialysis facility, at the physician's office, or in the patient's home. The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month.

(D) A physician on the medical staff shall be on call and available 24 hours a day (in person or by telecommunication) to patients and staff.

(E) Orders for treatment shall be in writing and signed by the physician. Routine orders for treatment shall be updated at least annually. Any changes in patient treatment shall be per physician's order.

(i) Orders for hemodialysis treatment shall include length of treatment, dialyzer, blood flow rate, dialysate composition, target weight, medications including heparin, and, as needed, specific infection control measures.

(ii) Orders for peritoneal dialysis treatment shall include fill volume(s), number of exchanges, dialysate concentrations, catheter care, medications, and, as needed, specific infection control measures.

(3) Physician Extenders. If advanced practice registered nurses or physician assistants are utilized:

(A) there shall be evidence of communication with the treating physician whenever the advanced practice registered nurse or physician assistant changes treatment orders;

(B) the advanced practice registered nurse or physician assistant may not replace the physician in participating in patient care planning or in QAPI activities;

(C) the advanced practice registered nurse or physician assistant may not replace the physician for the every two week evaluation of the in-center dialysis patient;

(D) the advanced practice registered nurse or physician assistant shall notify the treating physician of patient medical emergencies;

(E) if an advanced practice registered nurse or physician assistant is utilized, such individuals shall meet the requirements established by the Texas Board of Nursing (for an advanced practice registered nurse) or the Texas Medical Board (for a physician assistant); and

(F) if an advanced practice registered nurse or a physician assistant is utilized such individuals shall utilize mechanisms which provide authority for that care. These mechanisms shall include, but are not limited to protocols or other written authorization. The protocols or other written authorization shall be jointly developed by the practitioner and the appropriate physician(s), be signed by both the practitioner and the physician(s), be reviewed and re-signed at least annually, be maintained in the practice setting of the practitioner, and be made available as necessary to the department to verify authority to provide medical aspects of care.

(j) Home dialysis service.

(1) A dialysis facility that provides home dialysis training and support shall be approved to provide home dialysis services, and ensure through its interdisciplinary team that home dialysis services are at least equivalent to those provided to in-facility patients and meet all applicable licensure rules.

(2) A facility shall provide a separate room for home dialysis services.

(A) The room shall include a hand washing sink with hands-free operable controls, warm water, and soap to facilitate hand washing. Provisions for hand drying shall be included at each hand washing sink.

(B) Clean areas shall be clearly designated for the preparation, handling, and storage of medications and unused supplies and equipment. Medications or clean supplies shall not be handled and stored in the same or an immediately adjacent area to that where used supplies, equipment, or blood samples are handled.

(C) There shall be a designated area in the facility with a separate sink for the disposal of blood or body fluids. Contaminated areas where used supplies, equipment, or blood samples are handled shall be clearly designated.

(3) On completion of training, each individual home dialysis patient, regardless of modality, shall be assigned one machine for the patient's exclusive use in the home.

(4) The staffing level for home dialysis patients, including all modalities, shall be one full-time equivalent registered nurse per 20 patients, or portion thereof.

(5) The training curriculum for the facility that provides home dialysis training and support shall be developed and approved by the medical director of the facility and include, but not be limited to, the following:

(A) be conducted by a registered nurse with at least 12 months clinical experience and six months experience in the specific modality with the responsibility for training the patient, and the patient's caregiver;

(B) be conducted for each home dialysis patient and address the specific needs of the patient, in the nature and management of end stage renal disease;

(C) include the full range of techniques associated with the treatment modality selected, including effective use of dialysis supplies and equipment in achieving and delivering the physician's prescription;

(D) training of the patient, and/or caregiver regarding the effective, and safe administration of erythropoiesis-stimulating agent(s) (if prescribed) to achieve and maintain a target level hemoglobin, hematocrit, and blood pressure levels, or hematocrit as written in the patient's plan of care;

(E) training of the patient, and/or caregiver how to detect, report, and manage potential dialysis complications, including water treatment problems;

(F) training of the patient, and/or caregiver regarding the availability of support resources and how to access and use resources;

(G) training of the patient, and/or caregiver how to self-monitor health status and record and report health status information;

(H) training of the patient, and/or caregiver how to handle medical and nonmedical emergencies;

(I) training of the patient, and/or caregiver regarding infection control precautions;

(J) training of the patient, and/or caregiver regarding proper waste storage and disposal procedures;

(K) training of the patient, and/or caregiver how to order supplies on an ongoing basis;

(L) training of the patient, and/or caregiver that non-medical electrical equipment shall not be used within 6 feet of the home hemodialysis machine; and

(M) maintain the documentation in the clinical record that the patient, the caregiver, or both received and demonstrated adequate comprehension of the training.

(6) The interdisciplinary team shall oversee training of the home dialysis patient and the designated caregiver before the initiation of home dialysis, and when the home dialysis caregiver or home dialysis modality changes.

(7) The dialysis facility shall retrieve and review complete self-monitoring data and other information from the home dialysis self-patient or their designated caregiver(s) at least every two months, and maintain this information in the patient's clinical record in the facility.

(8) A home dialysis facility shall furnish home dialysis support services, regardless of whether dialysis supplies may be provided by the dialysis facility or a durable medical equipment company.

(9) Services include, but are not limited to, the following:

(A) initial monitoring visit of the patient's home adaptation, including visits to the patient's home by facility personnel (including, but not limited to, the registered nurse responsible for training the patient in the chosen modality and technical staff as appropriate) in accordance with the patient's plan of care, and no less than annually thereafter. The initial home visit shall be completed prior to the patient beginning training for the selected home modality.

(B) The patient shall be seen by the prescribing physician, advanced practice registered nurse, or physician's assistant no less than one time a month. The prescribing physician shall see the patient at least one time every three months, if an advanced practice registered nurse, or physician's assistant sees the patient on a monthly basis. This visit may be conducted in the dialysis facility, at the physician's office, or in the patient's home.

(C) The development and periodic review of the patient's individualized comprehensive plan of care that specifies the services necessary to address the patient's needs and meets the measurable and expected outcomes, which meet a hemodialysis Kt/V of at least 1.2 (3 times a week), or standard Kt/V of 2.0 (4-6 times a week), or a peritoneal dialysis weekly Kt/V of at least 1.7, or meet an alternative equivalent professionally-accepted clinical practice standard for adequacy of dialysis.

(D) The facility shall provide patient consultation with members of the interdisciplinary team, as needed.

(10) A home dialysis facility shall monitor the quality of water and dialysate used by a home hemodialysis patient including an on-site evaluation and testing of the water and dialysate system initially, and any time repairs or exchanges of the water treatment equipment are made.

(A) An AAMI analysis of the product water used for dialysate preparation shall be performed annually.

(B) The water and dialysate system shall be tested in accordance with the manufacturer's direction for use.

(C) The water and dialysate system shall be tested in accordance with the system's Food and Drug Administration (FDA) approved labeling, for integrated dialysis system designed, tested, and validated to meet AAMI quality (which includes standards for chemical and chlorine/chloramines testing) water and dialysate. The facility shall meet testing and other requirements of AAMI RD 52:2004, when using an integrated water and dialysate system, which is designed and validated to meet AAMI quality.

(D) The bacteriological and endotoxin testing of water used for dialysate preparation and dialysate shall be performed monthly until results do not exceed 200 CFU/ml and an endotoxin concentration less than 2 EU/ml are obtained for three consecutive months and quarterly thereafter, on a more frequent basis as needed, to ensure that the water and dialysate are within the AAMI limits.

(11) The dialysis facility shall correct any water and dialysate quality problem for the home hemodialysis patient, and if necessary, arrange for backup dialysis until the problem is corrected if:

(A) an analysis of the water and dialysate quality indicates contamination; or

(B) if the home hemodialysis patient demonstrates clinical symptoms associated with water and dialysate contamination.

(12) The dialysis facility shall be responsible for the purchase, lease, or rent, and delivery, installation, repair, and shall maintain medically necessary home dialysis supplies and equipment (including supportive equipment) as prescribed by the attending physi-

cian. (If the patient purchases, leases or rents dialysis equipment, the facility shall ensure that the equipment is installed, repaired and maintained in accordance with the manufacturer's directions for use.)

(13) The dialysis facility shall identify a plan and arrange for emergency backup dialysis services when needed.

(14) The dialysis facility shall maintain a record keeping system that ensures continuity of care and patient privacy.

(15) Hemodialysis machines of home patients shall be cultured and measured for colony forming units and endotoxins prior to disinfection, if the machine is to be disinfected.

(16) All dialysis machines and dialysis equipment shall have maintenance logs maintained at the dialysis facility.

(17) The electrical connection for the home hemodialysis machines shall be connected to a GFCI receptacle in accordance with §117.102(i)(8)(F) of this title (relating to Construction Requirements for a New End Stage Renal Disease Facility).

(18) Equipment for home hemodialysis includes the conventional (single pass) dialysis machine, the integrated dialysis system, the dialysis system which uses manufactured bagged dialysate, the peritoneal dialysis system which uses manufactured bagged dialysis solution, and the sorbent regeneration system.

(A) The conventional (single pass) dialysis machine shall comply with the requirements at §117.31 of this title (relating to Equipment), and §117.32 of this title (relating to Water Treatment, Dialysate Concentrates, and Reuse). The facility shall ensure that the water pressure in the patient's home meets the minimum requirement specified by the manufacturer of the water treatment system.

(B) Integrated dialysis system.

(i) The facility shall perform an analysis of the source water used for dialysate to ensure the water quality meets the manufacturer's guidelines for source water purity annually or if there is a change in the source water.

(ii) The chemical quality of the product water shall be obtained every six months prior to a replacement of the water purification disposable component, or when any modifications are made to the integrated dialysis system to ensure that the product water meets the primary standards of AAMI RD 52:2004.

(iii) A means shall be provided to sample the product water to test for chlorine/chloramines levels immediately prior to using the dialysate. Chlorine/chloramines level shall be less than 0.1 mg/L, and the results shall be documented.

(iv) The microbiological quality of the dialysate shall be obtained at the end of a prepared dialysate bag, with the requirements at §117.32 of this title.

(C) The dialysis system, which uses sterile manufactured bagged dialysate, in its existing form, shall be used according to manufacturer's directions for use.

(D) The peritoneal dialysis system, which uses manufactured bagged dialysis solution, shall be used according to manufacturer's directions for use.

(E) When sorbent technology is used, the quantity of water used shall not exceed six liters per treatment; and testing for chlorine/chloramines is not required. Prior to each treatment the sorbent regeneration dialysis system (machine) shall be tested through the manufacturer's self-test method, and the evidence of the self-test shall be documented. The facility shall perform an analysis of the source

water used for dialysate to ensure the water quality meets the manufacturer's guidelines for source water purity annually or if there is a change in the source water.

(19) A [An ESRD] facility which was licensed prior to the effective date of these rules shall comply with §117.101 of this title (relating to Construction Requirements for an Existing End Stage Renal Disease Facility). A [An ESRD] facility which is licensed after the effective date of these rules shall provide a separate training room for home dialysis patients in compliance with §117.102(d)(5) of this title.

(k) If a facility dialyzes a patient who is normally dialyzed in a distant facility, the facility shall meet the requirements in this subsection.

(1) The facility shall continuously evaluate staffing levels and utilize this information in determining whether to accept a transient patient for treatment.

(2) The facility shall obtain the information described in §117.47(e) of this title (relating to Clinical Records) prior to providing dialysis. However, if the transient patient arrives unannounced, the facility may provide dialysis with, at a minimum, the following information:

(A) evidence of evaluation of the patient by a physician on the staff of the facility;

(B) orders for treatment;

(C) hepatitis B status; and

(D) medical justification by the physician ordering treatment that the patient's need for dialysis outweighs the need for the additional clinical information set out in §117.47(e) of this title.

(3) In the event a transient patient's hepatitis status is unknown, the patient may undergo treatment as if the HBsAg test results were potentially positive, except that such a patient shall not be treated in the HBsAg isolation room, area, or machine.

(l) A facility that provides laboratory services shall comply with the requirements of Federal Public Law 100 - 578, Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988). CLIA 1988 applies to all facilities that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(m) A facility shall not violate Occupations Code, Chapter 102, concerning the prohibition on soliciting patients or patronage.

(n) The facility shall comply with the Health and Safety Code, Chapter 166, concerning out-of-hospital do-not-resuscitate orders.

(o) A facility or its corporate ownership, shall develop, implement, and enforce a compliance policy for monitoring its receipt and expenditure of state or federal funds.

(p) If the facility has a contract or agreement with an accredited school of health care to use their facility for a portion of the students' clinical experience, those students may provide care under the following conditions.

(1) Students may be used in facilities, provided the instructor gives class supervision and assumes responsibility for all student activities occurring within the facility. If the student is licensed (e.g., a licensed vocational nurse attending a registered nurse program for licensure as a registered nurse) the facility shall ensure that the administration of any medication(s) is within the student's licensed scope of practice.

(2) A student may administer medications only if:

(A) on assignment as a student of his or her school of health care; and

(B) the instructor is on the premises and immediately supervises the administration of medication by an unlicensed student and the administration of such medication is within the instructor's licensed scope of practice.

(3) Students shall not be used to fulfill the requirement for administration of medications by licensed personnel.

(4) Students shall not be considered when determining staffing levels required by the facility.

(q) A facility shall adopt, implement, and enforce procedures for the resolution of complaints relevant to quality of care or services rendered by licensed health care professionals and other members of the facility staff, including contract services or staff. The facility shall document the receipt and the disposition of the complaint. The investigation and documentation shall be completed within 30 calendar days after the facility receives the complaint, unless the facility has and documents reasonable cause for a delay.

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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For further information, please call: (512) 834-4591



SUBCHAPTER G. FIRE PREVENTION AND SAFETY REQUIREMENTS

25 TAC §117.91

STATUTORY AUTHORITY

The amendment 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 by the health and human services agencies, Texas Health and Safety Code §251.003, which authorizes the Executive Commissioner of HHSC to adopt rules governing ESRD facilities, and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code §§251.003, 251.014, 251.016, and 251.017.

§117.91. Fire Prevention, Protection, and Emergency Contingency Plan.

(a) An end stage renal disease (ESRD) [ESRD] facility shall comply with the provisions of this section with respect to fire prevention and protection.

(1) The [An ESRD] facility shall comply with local fire codes.

(2) The facility shall report all [All] incidents of fire [shall be reported] to the local fire authority and to Texas Health and Hu-

man Services Commission Complaint and Incident Intake [shall be reported in writing to the Facility Licensing Group, Regulatory Licensing Unit, Department of State Health Services, Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347] as soon as possible, but not later than 10 calendar days following the incident. Any fire incident causing injury to a person shall be reported within one [no later than the next] business day.

(3) The [An ESRD] facility shall adopt, implement, and enforce a written smoking policy.

(b) The [An ESRD] facility shall adopt, implement, and enforce a written policy for periodic inspection, testing, and maintenance of fire fighting equipment, portable fire extinguishers, and when installed sprinkler systems. If installed, fire sprinkler systems shall comply with National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 2002 Edition (NFPA 13).

(1) All fire sprinkler systems, fire pumps, fire standpipe and hose systems, water storage tanks, and valves and fire department connections shall be inspected, tested, and maintained in accordance with National Fire Protection Association 25, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, 2002 Edition.

(2) Every portable fire extinguisher located in [an ESRD] or upon the facility's [ESRD facility] property shall be installed, tagged, and maintained in accordance with National Fire Protection Association 10, Standard for Portable Fire Extinguishers, 2002 Edition.

(c) A plan for the protection of patients in the event of fire and their evacuation from the building when necessary shall be formulated according to NFPA 101, §21.7.1.1. Copies of the plan shall be available to all staff.

(1) An evacuation floor plan shall be prominently and conspicuously posted for display throughout the [ESRD] facility in public areas that are readily visible to patients, employees, and visitors.

(2) Each [ESRD] facility shall conduct an annual training program for instruction of all personnel in the location and use of fire fighting equipment. All employees shall be instructed regarding their duties under the fire protection and evacuation plan.

(3) The [ESRD] facility shall conduct one fire drill per shift per quarter, which shall include the transmission of the fire alarm signal and simulation of the emergency fire condition, simulation of evacuation of patients and other occupants, and use of fire-fighting equipment. Written reports shall be maintained to include evidence of patient and staff participation. Fire exit drills shall incorporate the minimum requirements of NFPA 101, §21.7.1.2 - 21.7.2.3.

(4) All staff shall be familiar with the locations of fire fighting equipment. Fire fighting equipment shall be located so that a person shall not have to travel more than 75 feet from any point to reach the equipment.

(d) A fire alarm system shall be installed, maintained, and tested, in accordance with National Fire Protection Association 72, National Fire Alarm Code, 2002 Edition (NFPA 72) and NFPA 101, §21.3.4.

(e) A reliable communication system shall be provided as a means of reporting a fire to the fire department. This is in addition to the automatic alarm transmission to the fire department required by NFPA 101, §21.3.4.4.

(f) As an aid to fire department services, every ESRD facility shall provide the following:

(1) The [ESRD] facility shall maintain driveways, free from all obstructions, to main buildings for fire department apparatus use.

(2) Upon request, the [ESRD] facility shall submit a copy of the floor plans of the building to the local fire department officials.

(3) The [ESRD] facility shall place proper identification on the outside of the main building showing the locations of siamese connections and standpipes as required by the local fire department services.

(g) When the [an ESRD] facility is located outside of the service area or range of the public fire protection, arrangements shall be made to have the nearest fire department respond in case of a fire.

(h) In this subsection, unless the context clearly indicates otherwise, "emergency" means an incident likely to threaten the health, welfare, or safety of a facility's patients, facility staff, or the public, including a fire, equipment failure, power outage, flood, interruption in utility service, medical emergency, or natural or other disaster.

(1) [(h)] In accordance with Texas Health and Safety Code §251.017, the [The ESRD] facility shall adopt [provide] an emergency contingency plan for the continuity of emergency essential building systems that meets the requirements described by paragraph (2), (3), or (4) of this subsection. [The emergency contingency plan shall consist of one of the three options as described as follows.]

(2) [(4)] The facility shall have an [An] onsite permanent emergency generator affixed to a generator pad[shall be provided] with a Type 2 [H] essential electrical distribution system in accordance with National Fire Protection Association (NFPA) [requirements of NFPA] 99: Health Care Facilities Code, 2002 Edition, §4.5, and NFPA [National Fire Protection Association] 110[:] Standard for Emergency and Standby Power Systems, 2002 Edition.

(A) The [An] emergency generator [standby power system(s)] shall require an onsite fuel source and enough fuel capacity in the tank for a period of 24 [twenty-four] hours or more, as determined by the electrical load demand on the emergency generator for that period. When a vapor liquefied petroleum gas (LPG) (natural gas) system is used, the 24 [twenty-four]-hour fuel capacity on site is not required. The vapor liquefied petroleum gas [withdrawal LPG] system shall require a dedicated fuel supply. [The fuel tank capacity shall be sized by the electrical load demand on the emergency generator for a period of twenty-four hours.]

(B) The facility shall install, test, and maintain the on-site [The] emergency generator [shall be installed, tested and maintained] in accordance with NFPA [the National Fire Protection Association] 99: Health Care Facilities Code, 2002 Edition, §4.5.4, and NFPA [National Fire Protection Association] 110[:] Standard for Emergency and Standby Power Systems [; 2002 Edition].

(C) The facility shall always keep [When] the emergency generator not less than 10 feet from any [generator(s) and] electrical transformer [transformer(s) are located within the same area, they shall be located at least 10 feet apart].

(D) The facility shall maintain on-site a sufficient [Sufficient] quantity of potable water supply [shall be on site] for the operation of the water treatment system for at least 24 [twenty-four] hours.

(E) The facility shall provide and maintain a [A] water valve connection that allows an outside vendor to provide [shall be provided to allow hook-up for] potable water to operate [from an outside vendor to supply] the facility's water treatment system.

(3) The facility shall:

(A) maintain sufficient resources to provide on demand or to execute a contract with an outside supplier or vendor to provide on demand:

(i) a portable emergency generator that:

(I) has an electrical transfer switch with a plug-in device sized to provide emergency power for patient care areas and complies with NFPA 99: Health Care Facilities Code, 2002 Edition, §4.5.2.2.2; and

(II) has a water valve connection that allows for the use of potable water to operate the facility's water treatment system; and

(ii) an alternate power source for light, including battery-powered light, that:

(I) is separate and independent from the normal electrical power source;

(II) can provide light for at least one-and-a-half hours;

(III) can provide enough light to allow for safe evacuation of the building; and

(IV) is maintained and tested at least four times each year; and

(iii) potable water;

(B) implement the emergency contingency plan when the facility loses of electrical power due to a natural or man-made event during which the electrical power may not be restored within 24 hours; and

(C) contact the outside supplier or vendor with which the facility contracts under subparagraph (A) of this subsection, if applicable, within 36 hours after the facility loses electrical power.

(4) The facility shall execute a contract with another licensed ESRD facility located within a 100-mile radius of the facility stipulating that the other ESRD facility will provide emergency contingency care to the facility's patients. The other ESRD facility with which the facility contracts must have an alternate power source for light, including battery-powered light, that:

(A) is separate and independent from the normal electric power source;

(B) can provide light for at least one-and-a-half hours;

(C) can provide enough light to allow for safe evacuation of the building; and

(D) is maintained and tested at least four times each year.

[(2) An executed contract with an outside supplier/vendor that will provide a portable emergency generator(s) and potable water on demand.]

[(A) An electrical transfer switch with plug-in device sized to provide emergency power for the patient care areas and the provisions in NFPA 99, §4.5.2.2.2.]

[(B) A water valve connection to allow hook-up for potable water from an outside vendor to supply the water treatment system.]

[(C) An alternate source of power (battery power lighting) shall be provided separate and independent from the normal elec-

trical power source that will be effective for a minimum of 1-1/2 hours after loss of the electrical power. The emergency lighting system shall be capable of providing sufficient illumination to allow safe evacuation from the building. The battery pack systems shall be maintained and tested quarterly.]

{(D) The facility shall implement the emergency contingency plan upon the loss of electrical power following a natural weather or man-made event when the electrical power may not be restored within 24 hours. The facility shall exercise the contract(s) with the supplier/vendor(s) in order to have portable emergency generator(s) and potable water available within 36 hours after the loss of electrical power.]

{(3) An executed contract with another licensed ESRD facility within a 100-mile radius to provide emergency contingency care for the patient(s).]

{(A) The accepting licensed ESRD facility shall meet the requirements of paragraph (1) of this subsection.]

{(B) An alternate source of power shall be provided separate and independent from the normal electrical power source that will be effective for a minimum of 1-1/2 hours after loss of the electrical power. The emergency lighting system shall be capable of providing sufficient illumination to allow safe evacuation from the building. The battery pack systems shall be maintained and tested quarterly.]

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 October 3, 2022.

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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 307. BEHAVIORAL HEALTH PROGRAMS

The Texas Health and Human Services Commission (HHSC) proposes amendments to §307.155, concerning Definitions; §307.163, concerning Assessment, Reassessment and Court Reporting; §307.165, concerning Discharge Requirements; §307.167, concerning Data; §307.169, concerning Written Policies and Procedures; §307.175, concerning Compliance with Statutes and Rules; the repeal of §307.157, concerning Criteria for Admission to an Outpatient Competency Restoration Program; §307.159, concerning Recommendation Regarding Outpatient Competency Restoration Program Admission; and new §307.157, concerning Recommendation Regarding Outpatient Competency Restoration Program Admission; and §307.159, concerning Admission to an Outpatient Competency Restoration Program.

BACKGROUND AND PURPOSE

The proposal implements Senate Bill 49, 87th Legislature, Regular Session, 2021 which amended Texas Code of Criminal Procedure Article 46B relating to when competency restoration services begin and when an extension of the initial restoration period begins. In addition, HHSC proposes additional amendments to clarify statutory requirements and language for consistency and understanding, reorder requirements in the order in which processes occur, and update and add cross references.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §307.155 adds a definition for "extension" and deletes the definition of intellectual disability as the term is not used in this subchapter. Other definitions were renumbered accordingly.

Proposed new §307.157 contains the requirements that were originally in §307.159 to reflect the order in which processes occur regarding criteria for assessing an individual, informing the court of the individual's appropriateness for outpatient competency restoration (OCR) services, and treatment planning. The requirements have been updated to reflect current terminology and cross references.

Proposed repeal of §307.157 deletes the rule language so it can be proposed in new §307.159 to reflect the order in which processes occur regarding court order of an individual's participation in an OCR program.

Proposed new §307.159 clarifies the procedures set forth in Code of Criminal Procedure Articles 46B.0711 and 46B.072 concerning court orders for outpatient competency restoration when an individual has been charged with a Class A or B misdemeanor or a felony. Proposed new §307.159(d) sets forth when the initial competency restoration period begins.

Proposed repeal of §307.159 deletes the rule language so it can be proposed in new §307.157 to reflect the order in which processes occur regarding court order of an individual's participation in an OCR program.

Proposed amendment to §307.163 amends the section title; updates references; deletes "if the individual is active in the program" in §307.163(a)(2)(B); adds new §307.163(a)(4) regarding the deadline for notifying the court that the initial restoration period is to expire as required by Article 46B.079; and adds new §307.163(b) which states that the notification to the court may include a request for a 60-day extension of the initial restoration period for OCR services, and it must include an explanation for the request in accordance with Texas Code of Criminal Procedure, Article 46B.079(d).

Proposed amendment to §307.165(a) establishes that discharge planning begins upon the individual's admission into the OCR program; consolidates §307.165(a)(8) with §307.165(a)(2) deleting duplicative information; clarifies that the LMHA or LBHA in the individual's county of residence coordinates ongoing services while the LIDDA responsible for coordination of ongoing services is based on the 5000 section of the LIDDA Handbook posted on HHSC's website; and clarifies that the individual's designated LIDDA facilitates service coordination in §307.165(b)(2).

Proposed amendment to §307.167 updates language regarding the data an OCR provider must collect and report; and adds language that clarifies that the court determines whether an individual has not restored to competency at the conclusion of the court-ordered services.

Proposed amendment to §307.169 revises the list of required written policies and procedures an OCR provider must develop and implement to outline processes; adds "to stand trial" in §307.169(11)(B); and adds a cross reference to Article 46B.077(c).

Proposed amendment to §307.175 updates the other applicable statutes and rules for which an OCR provider must comply.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner, Intellectual and Developmental Disability and Behavioral Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be improved by ensuring understanding and consistency in OCR programs. There is no anticipated cost for compliance with the proposed amendments since current OCR providers are not required to change any business practices that will impose an additional cost.

TAKINGS IMPACT ASSESSMENT

HHSC 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 Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSCForensicsAndJailDiversion-Services@hhs.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; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the 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 "22R003" in the subject line.

SUBCHAPTER D. OUTPATIENT COMPETENCY RESTORATION

**26 TAC §§307.155, 307.157, 307.159, 307.163, 307.165,
307.167, 307.169, 307.175**

STATUTORY AUTHORITY

The amendments and new rules are 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 by the health and human services agencies, and Texas Health & Safety Code §§534.052 and 534.058, which authorize the Executive Commissioner to develop rules and standards of care for services provided by local mental health authorities and its subcontractors; and Texas Code of Criminal Procedure Articles 46B.0095, 46B.0711, 46B.072, 46B.0735, 46B.077, 46B.079, 46B.080, 46B.0805, 46B.082, 46B.083, and 46B.086, which set forth requirements for OCR programs.

The proposed amendments and new sections affect Texas Government Code §531.0055 and Texas Health and Safety Code §534.052 and §534.058.

§307.155. *Definitions.*

The following words and terms, when used in this subchapter, have the following meanings.

- (1) Adaptive behavior--The effectiveness with which, or degree to which, an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group.
- (2) Competency restoration--The treatment or education process for restoring an individual's ability to consult with the individual's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the individual.
- (3) Court--A court of law presided over by a judge, judges, or a magistrate in civil and criminal cases.

(4) Extension--The term has the meaning described in Texas Code of Criminal Procedure, Article 46B.080(d). An extension begins on the later of:

(A) the date the court enters the order under Article 46B.080(a); or

(B) the date competency restoration services begin pursuant to the order entered under Article 46B.080(a).

(5) ~~[(4)]~~ HHSC--Texas Health and Human Services Commission or its designee.

~~[(5) ID--Intellectual disability. Consistent with Texas Health and Safety Code §591.003, significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originating before age 18.]~~

(6) Individual--A person receiving services under this subchapter.

(7) IST--Incompetent to stand trial. The term has the meaning described in Texas Code of Criminal Procedure, Article 46B.003.

(8) LBHA--Local behavioral health authority. An entity designated as an LBHA by HHSC in accordance with Texas Health and Safety Code §533.0356.

(9) LIDDA--Local intellectual and developmental disability authority. An entity designated as a LIDDA by HHSC in accordance with Texas Health and Safety Code §533A.035(a).

(10) LMHA--Local mental health authority. An entity designated as an LMHA by HHSC in accordance with Texas Health and Safety Code §533.035.

(11) Medical record--An organized account of information relevant to the medical services provided to an individual, including an individual's history, present illness, findings on examination, treatment and discharge plans, details of direct and indirect care and services, and notes on progress.

(12) OCR--Outpatient competency restoration. A community-based program with the specific objective of attaining restoration to competency pursuant to Texas Code of Criminal Procedure Chapter 46B.

(13) OCR provider--An entity identified in §307.153 of this subchapter (relating to Application) that provides OCR services.

(14) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §531.02251, including care for mental health conditions and substance use disorders.

(15) Subcontractor--A person or entity that contracts with an OCR provider to provide OCR services.

(16) TAC--Texas Administrative Code.

§307.157. Recommendation Regarding Outpatient Competency Restoration Program Admission.

(a) The OCR provider must assess the individual to determine if OCR services are appropriate by ensuring the following assessments are conducted by a person qualified to conduct such an assessment:

(1) a clinical assessment, including substance use history;
and

(2) a violence risk assessment utilizing a validated risk assessment tool.

(b) If an OCR provider determines that OCR services are appropriate for an individual, the provider must:

(1) inform the court, in writing, that the individual is being recommended for admission into the OCR program; and

(2) develop and submit a comprehensive treatment plan to the court in accordance with Texas Code of Criminal Procedure, Article 46B.0711(c)(1) or 46B.072(c)(1) as applicable, identifying the persons responsible for providing treatment to the individual and listing services the individual will be provided, including:

(A) competency restoration education;

(B) access to housing resources;

(C) access to transportation resources; and

(D) a regimen of medical, psychiatric, or psychological care or treatment.

(c) If an OCR provider determines that OCR services are inappropriate for an individual, the provider must:

(1) inform the court, in writing, of the individual's ineligibility for admission into the OCR program; and

(2) document reasons for ineligibility in the individual's medical record.

§307.159. Admission to an Outpatient Competency Restoration Program.

(a) An OCR provider must admit an individual to an OCR program upon receipt of a court order requiring the individual to participate in OCR services under Texas Code of Criminal Procedure Chapter 46B, Subchapter D.

(b) In accordance with Texas Code of Criminal Procedure, Article 46B.0735, the initial competency restoration period begins on the later of:

(1) the date the individual is ordered to participate in OCR services; or

(2) the date the individual is committed to a mental health facility, residential care facility, or jail-based competency restoration program; or

(3) the date competency restoration services begin.

§307.163. Assessment, Reassessment, ~~and~~ Court Reporting, and Extension.

(a) An OCR provider must:

(1) regularly evaluate the individual's progress towards attainment of competency to stand trial and likeliness to restore to competency in the foreseeable future; ~~and~~

(2) report the individual's progress toward achieving competency to the court in accordance with Texas Code of Criminal Procedure, Article 46B.077 ~~[Article 46B.079]:~~

(A) no later than the 14th day after the date competency restoration services begin; and

(B) at least once each 30-day period following the date of the first report to the court after competency restoration services begin; ~~if the individual is active in the program]; ~~and~~~~

(3) ~~[(C)]~~ promptly report to the court the individual's attainment of competency or whether the individual is not likely to restore to competency in the foreseeable future in accordance with Texas Code of Criminal Procedure, Article 46B.079; ~~and~~[-]

(4) notify the court no later than 15 days before the date on which the initial restoration period is to expire that the period is about

to expire in accordance with Texas Code of Criminal Procedure, Article 46B.079.

(b) The notice provided under subsection (a)(4) of this section may include a request for a 60-day extension of the initial restoration period for OCR services, and include an explanation for the request in accordance with Texas Code of Criminal Procedure, Article 46B.079(d).

§307.165. *Discharge Requirements.*

(a) When an OCR provider discharges an individual from OCR services upon completion of court-ordered participation in the OCR program, the OCR provider ~~[program]~~ must provide continuity of care services ~~[by coordinating the individual's continued services and supports after discharge from the OCR program]~~. Discharge planning begins upon admission into the OCR program and includes:

(1) a plan for maintaining housing and utilities for three months or more after discharge;

(2) coordination of ongoing services through the [an] LMHA or[;] LBHA in the individual's county of residence or the individual's designated[;] LIDDA as provided in section 5000 of the LIDDA handbook available on HHSC's website[; or other outpatient service to ensure continuity of care];

(3) the provision of medication and documentation of a scheduled psychiatric follow-up appointment after discharge;

(4) completion of all appropriate benefits applications on behalf of any individual, including signing up for long-term subsidized housing;

(5) confirmation that an assisted living facility to which an individual is referred is licensed under Texas Health and Safety Code Chapter 247 and Chapter 553 of this title (relating to Licensing Standards for Assisted Living Facilities) by contacting the HHSC Assisted Living Facility Licensing and Certification Unit, if applicable;

(6) coordination of appropriate transfer to an inpatient treatment facility, if applicable; and

(7) coordination of appropriate transfer if returned to custody[; and]

~~[(8) facilitation of service coordination with the LMHA, LBHA, or LIDDA of the individual's county of residence to ensure the individual's continuity of care.]~~

(b) For an unplanned discharge, an OCR provider must:

(1) notify the court of the unplanned discharge ~~[discharges]~~;

(2) make efforts to assist in facilitating service coordination with the LMHA ~~or[;] LBHA[; or LIDDA]~~ in the individual's county of residence or the individual's designated LIDDA to ensure the individual's continuity of care; and

(3) document continuity of care efforts in the individual's medical record.

(c) An OCR provider must document the reasons for the individual's failure to complete the OCR program in the individual's record, if applicable.

(d) Before an individual is discharged from an OCR program, an OCR provider must collaborate with courts to encourage timely resolution of legal issues.

§307.167. *Data.*

(a) An OCR provider must collect and report the following data into HHSC's designated automation system for each individual admitted to or discharged from an OCR program, including:

(1) whether the individual has been charged with a felony;

(2) whether the individual has been charged with a misdemeanor;

(3) whether the individual withdrew from the OCR program without the court's authorization;

(4) whether the individual received an additional charge of a Class B misdemeanor or a higher category of offense while ordered to the OCR program;

(5) whether the individual has been restored to competency within the ~~timeframe~~ ~~[time frame]~~ allotted by statute;

(6) the number of days from the day the court orders OCR to the day the individual begins participation in the OCR program;

(7) the number of days ~~[for]~~ an individual charged with a felony received treatment and services in the OCR program ~~[to restore to competency]~~;

(8) the number of days ~~[for]~~ an individual charged with a misdemeanor received treatment and services in the OCR program ~~[to restore to competency]~~;

(9) whether an extension of services was sought for an [the] individual [was] charged with a felony [and not restored to competency within the initial restoration period, and for whom an extension of services was sought];

(10) whether an extension of services was sought for an [the] individual [was] charged with a misdemeanor [and not restored to competency within the initial restoration period, and for whom an extension of services was sought];

(11) whether an individual has not restored to competency at the conclusion of court-ordered services as determined by the court; and

(12) types of services provided to the individual other than psychiatric services and competency restoration education.

(b) In a format specified by HHSC, an OCR provider must submit costs associated with operating the OCR program to HHSC quarterly.

(c) In a format specified by HHSC, an OCR provider must submit administrative outcomes on the OCR program regarding:

(1) reported and confirmed cases of abuse, neglect, and exploitation;

(2) reported and confirmed cases of rights violations;

(3) restraints and seclusions used;

(4) emergency medications used;

(5) serious injuries; and

(6) deaths.

§307.169. *Written Policies and Procedures.*

An OCR provider must develop and implement written policies and procedures that outline processes for:

(1) maintaining a list of each staff member providing OCR services, including the staff members':

(A) position and credentials;

- (B) reporting structure; and
- (C) responsibilities;
- (2) maintaining staff member training records;
- (3) describing an individual's eligibility and ineligibility criteria for OCR services;
- (4) screening an individual's appropriateness for OCR services;
- (5) admitting an individual within the OCR program provider's catchment area;
- (6) developing a treatment plan and discharge plan;
- (7) delivering all required components of competency restoration services;
- (8) admitting an individual:
 - (A) who is referred by another LMHA, LBHA, or LIDDA that is outside of the OCR program's catchment area but is within close physical proximity to the OCR program;
 - (B) who is without an OCR program in the individual's service area; and
 - (C) where OCR services are potentially appropriate;
- (9) documenting the types of services provided in the OCR program other than competency restoration services in accordance with §307.161 of this subchapter (relating to General Service Requirements);
- (10) regularly monitoring, evaluating, and documenting the individual's progress towards attainment of competency to stand trial and likelihood to restore to competency in the foreseeable future in accordance with §307.163 of this subchapter (relating to Assessment, Reassessment, ~~and~~ Court Reporting, and Extension);
- (11) notifying the court:
 - (A) that the initial restoration period will expire and when it will expire;
 - (B) if the individual has attained competency to stand trial or is not likely to attain competency in the foreseeable future;
 - (C) of a request for [if] an extension of [for] continued restoration services [is requested] as specified in the Texas Code of Criminal Procedure, Articles 46B.079(d) and [Article] 46B.080; and
 - (D) the individual's readiness to return to court;
- (12) complying with reporting procedures specified in Texas Code of Criminal Procedure, Article 46B.079;
- (13) preparing for an individual's planned or unplanned discharge from the OCR program and ensuring continuity of care in accordance with §307.165 of this subchapter (relating to Discharge Requirements), as appropriate; and
- (14) educating an individual about the individual's rights and participation in the OCR program.

§307.175. Compliance with Statutes and Rules.

In addition to any applicable federal or state law or rule, an OCR provider must comply with:

- (1) Texas Health and Safety Code Chapter 574;
- (2) Texas Code of Criminal Procedure Chapter 46B;
- (3) ~~Other [Health Insurance Portability and Accountability Act of 1996 and other]~~ applicable federal and state laws, including:

(A) Health Insurance Portability and Accountability Act of 1996;

(B) ~~[(A)]~~ 42 CFR Part 2 and Part 51, Subpart D [Texas Health and Safety Code Chapter 241, Subchapter G];

(C) ~~[(B)]~~ 45 CFR Parts 160 and 164 [Texas Health and Safety Code Chapter 595];

(D) ~~[(C)]~~ Texas Health and Safety Code Chapters 181, 595, and [Chapter] 611; [and]

(E) ~~[(D)]~~ Texas Health and Safety Code §533.009, §576.005, §576.007, and §614.017;

(F) Texas Occupations Code Chapter 159; and

(G) Texas Business and Commerce Code §521.053;

(4) 25 TAC Chapter 405, Subchapter K (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers) as it relates to community-based services and community centers;

(5) Chapter 306, Subchapter A of this title (relating to Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD));

(6) 25 TAC Chapter 414, Subchapter L (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers); and

(7) 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services).

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 September 27, 2022.

TRD-202203905

Karen Ray
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 695-6936



26 TAC §307.157, §307.159

STATUTORY AUTHORITY

The repeals are 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 by the health and human services agencies, and Texas Health & Safety Code §§534.052 and 534.058, which authorize the Executive Commissioner to develop rules and standards of care for services provided by local mental health authorities and its subcontractors; and Texas Code of Criminal Procedure Articles 46B.0095, 46B.0711, 46B.072, 46B.0735, 46B.077, 46B.079, 46B.080, 46B.0805, 46B.082, 46B.083, and 46B.086, which set forth requirements for OCR programs.

The proposed repeals affect Texas Government Code §531.0055 and Texas Health and Safety Code §534.052 and §534.058.

§307.157. *Criteria for Admission to an Outpatient Competency Restoration Program.*

§307.159. *Recommendation Regarding Outpatient Competency Restoration Program Admission.*

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. OPERATIONAL RULES SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §675.20, §675.21

The Texas Low-Level Radioactive Waste Disposal Compact Commission (TLLRWDC or Commission) proposes to amend 31 Texas Administrative Code §675.20, concerning Definitions, and §675.21, concerning Exportation of Waste to a Non-Party State for Disposal.

SECTION BY SECTION ANALYSIS. Amendments to section 675.20 define the terms "contingent event" and "exigent event," while amendments to section 675.21 adjust timelines for the Commission to consider and approve exportation of low-level radioactive waste when required by contingent and exigent circumstances, after an opportunity for public comment.

The Commission proposes the rules to implement and fulfill its responsibilities under 42 United States Code §§2021(b) - 2021(j) which allows the Commission to "Upon petition, allow an individual generator, a group of generators, or the host state of the compact to export low-level radioactive waste to a low-level radioactive waste disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the commission. Monitor the exportation outside of the party states of material which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility."

The rules also implement and comply with Texas Health and Safety Code §403.006 ("the Texas Low-Level Radioactive Waste

Disposal Compact" or "the Compact") §3.04(7), which requires the Commission to prepare, adopt, and implement contingency plans for the disposal and management of low-level radioactive waste in the event that the compact facility should be closed, and Compact §3.05(7), which requires the Commission, upon petition, to allow an individual generator, a group of generators, or the host state of the compact to export low-level radioactive waste to a low-level radioactive waste disposal facility located outside the party states. The Commission has determined that it is in the public interest that the Commission provide an approval process for the exportation of low-level radioactive waste and that the Commission adopt definitions and plans for contingent and exigent events.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. Stephen Raines, the Commission's Executive Director, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the Commission or for units of state or local government because of the administration or enforcement of the proposed rules.

PUBLIC BENEFIT/COST NOTE. Mr. Raines has also determined, for each year of the first five years the proposed rules would be in effect if adopted, the public benefit anticipated from the changes seen in the proposed rules will be improved process with respect to the presence of low-level radioactive waste in Texas, the Compact's host state, if it becomes impossible to dispose of low-level radioactive waste at the Compact Waste Facility located in Andrews County, Texas, the only such facility in the two Compact states. By defining the terms "contingent event" and "exigent event," the proposed Commission rules benefit Texas, the Compact's host state, and the public by allowing a process to ensure the safe disposal of low-level waste that cannot be disposed of in Texas due to permanent or temporary closure of the Compact Waste Facility. Mr. Raines further has determined there will be no probable economic cost to businesses and individuals required to comply with the rule because no additional burden or requirement on businesses or individuals are added. The new rules impose no additional reporting requirements.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no effect on local economy for the first five years that the proposed amendments are in effect because the rules concern activities of only parties involved in the importation, exportation, and disposal of low-level radioactive waste. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is exempt from the requirements of Texas Government Code §2001.0045 because under subsection (c)(6), the rules are necessary to protect the health, safety, and welfare of the residents of the state; the proposal is also exempt under subsection (c)(9) because the rules implement a legislative requirement to adopt contingency plan. In any case, as described above in the public benefit and cost note, the proposed amendments do not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The Commission has determined the proposed rules will not have an adverse economic impact on small businesses, microbusinesses, or

rural communities because of implementing these amendments; therefore, a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the agency has prepared a government growth impact statement. During the first five years the proposed rule is in effect, this proposed amendments: (1) will not create or eliminate a government program; (2) will not result in an increase or decrease in the number of agency employees; (3) will not require an increase or decrease in future legislative appropriations to the agency because there are no costs associated with the rule; (4) will not lead to an increase or decrease in fees paid to a state agency because the rule does not involve fees; (5) will not create a new regulation except to ease the time constraints involved in approving an export application; (6) will not repeal an existing regulation; and (7) will not result in an increase or decrease in the number of individuals subject to the rule because it concerns the one waste disposal facility in Texas, which already is subject to the rule as it currently reads; and (8) The proposed amendment will not positively or adversely affect the state's economy because it involves no fiscal requirements, but instead provides solutions to allow low level radioactive waste to be exported with minimal delay when the one disposal site in Texas is not available, whether temporarily or permanently.

ENVIRONMENTAL REGULATORY ANALYSIS. The Commission has determined the proposed rules are not "major environmental rules" as defined by Texas Government Code, §2001.0225 and are not subject to its requirements.

TAKINGS STATEMENT. The Commission has concluded the proposed rules do not restrict or limit an owner's right to his or her real property that would otherwise exist in the absence of this action.

SUBMITTAL OF COMMENTS. Written comments may be submitted to Stephen Raines, Executive Director, 919 Congress Avenue, Austin, Texas 78701, or, by electronic mail to comments@tllrwddc.org. All comments should reference "Rules." The Comment period closes on November 10, 2022. Copies of the proposed rulemaking can be obtained from the Commission's website at <http://www.tllrwddc.org/rules/>. For further information, please contact Stephen Raines, Executive Director, (512) 350-6241.

STATUTORY AUTHORITY. The rules are proposed under the authority granted in §3.05(4) of the Compact, which authorizes the Commission to adopt, by a majority vote, bylaws and rules necessary to carry out the terms of the Compact.

The proposed rules implement §3.04(7) and §3.05(7) and (8) of the Compact as set out at Tex. Health & Safety Code §403.006.

§657.20. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) The term "Commission," where used in this subchapter, means the Texas Low-Level Radioactive Waste Disposal Compact Commission established by the Texas Low-Level Radioactive Waste Disposal Compact.

(2) The term "Compact" refers to the agreement between the State of Texas and the State of Vermont to which Congress consented in Public Law 105-236, enacted September 20, 1998. The text of the Compact can be found in Texas Health and Safety Code, §403.006 and Vermont Statutes Annotated Title 10, §7069.

(3) The terms "Compact Facility" and "Facility" mean any site, location, structure, or property located in and provided by the host state for the purpose of disposal of low-level radioactive waste for which the party states are responsible.

(4) "Compact waste" means low-level radioactive waste that:

(A) is originally generated onsite in a host state or a party state; or

(B) is not generated in a host state or a party state but has been approved for importation into this state by the Commission under §3.05 of the Compact.

(5) "Contingency event" is one that causes a disruption of the normal operation of the Compact Waste Facility.

(6) [~~5~~] The word "days" shall mean calendar days unless the rule in which it is used specifies otherwise.

(7) [~~6~~] "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

(8) "Exigent event" means a sudden, unexpected occurrence, requiring interim or immediate action to prevent, minimize, or mitigate, risk of loss of life, damage to property, or disruption of essential public services, or other circumstances as the Commission finds require interim or immediate action by the Commission.

(9) [~~7~~] The term "generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(10) [~~8~~] The term "generator" means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the Commission. For purposes of this subchapter, the identity of a "generator" shall be determined in accordance with the following:

(A) For low-level radioactive waste acquired on or after April 27, 2012, and that is not of international origin:

(i) if a licensed manufacturer of sealed sources or devices chooses to accept from a customer a sealed source or device that it (or an entity that it acquired) manufactured, the manufacturer may declare that it is the generator when that source or device is disposed;

(ii) if a licensed manufacturer of sealed sources or devices accepts from a customer a sealed source or device manufactured by another entity, the customer will be considered the generator of the source or device when it is disposed;

(iii) if a licensed initial distributor of radioactive sealed sources or devices chooses to accept from a customer a sealed source or device that it distributed, the initial distributor may declare that it is the generator of that source or device when it is disposed;

(iv) if a licensed initial distributor of radioactive sealed sources or devices chooses to accept from a customer a sealed source or device that the distributor did not distribute, the customer will be considered the generator of the source or device when it is disposed;

(v) if a licensed distributor other than the initial distributor of the radioactive sealed sources or devices chooses to accept

from a customer a sealed source or device, the customer will be considered the generator of that source or device when it is disposed;

(vi) if a licensed waste broker or waste processor chooses to accept radioactive materials from any customer, the customer will be considered the generator of those materials when they are disposed; and

(vii) when a licensed decontamination service provider provides decontamination services to any customer, the customer will be considered the generator of any waste generated by the provision of the decontamination service.

(B) A waste broker, waste processor, initial distributor, other distributor, decontamination service provider, or licensed manufacturer of sealed sources or devices who received radioactive materials from a customer before April 27, 2012 may complete TCEQ Form 20225 as the generator of that waste if it provides adequate documentation that the waste is not of international origin. Such waste may only be disposed of in the Compact Facility as party-state (in-compact) waste if the entity acting as the generator of the waste provides adequate documentation that the waste is from Texas or Vermont. If the entity acting as the generator of the waste cannot adequately document that the waste is from Texas or Vermont, the waste will be treated as non-party-state (out-of-compact) waste and will require import authorization in accordance with §675.23 of this title (relating to Importation of Waste from a Non-Party Generator for Disposal). To provide the documentation described in this subparagraph, the entity acting as the generator of the waste may rely on various records, including, but not limited to, source/device leak tests, source/device inventories, transfer/receipt records, transportation manifests, purchasing records, or other records determined by the Commission to be suitable as documentation regarding the origin of the waste.

(C) If the customer of a waste broker, waste processor, initial distributor, other distributor, decontamination service provider, or licensed manufacturer of sealed sources or devices is considered the generator of waste under subparagraph (A) of this paragraph, the waste may not be disposed of in the Compact Facility unless the customer is a public, private or governmental entity located in the United States or a territory of the United States. The waste will be considered party-state waste (in-compact) only if the customer is located in Texas or Vermont; if the customer is located in any other state or territory of the United States, the waste will be considered non-party state waste (out-of-compact).

(D) If a licensed user, initial distributor, or manufacturer of sealed sources or devices is a generator of waste, that waste may be disposed of in the Compact Facility only if the generator is a public, private or governmental entity located in the United States.

(11) [(9)] "Host county" means a county in the host state in which a disposal facility is located or is being developed.

(12) [(10)] "Host state" means a party state in which a Compact Facility is located or is being developed. The state of Texas is the host state under the Compact.

(13) [(11)] "Low-level radioactive waste" has the same meaning as that term is defined in Section 2(9) of the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b(9)), or in the host state statute so long as the waste is not incompatible with disposal at the Compact Facility.

(14) [(12)] "Management" means collection, consolidation, storage, packaging, or treatment.

(15) [(13)] "Non-party compact waste" means low-level radioactive waste imported from a state other than a party state as authorized by §3.05(6) of the Compact.

(16) [(14)] "Operator" means a person who operates a disposal facility.

(17) [(15)] "Party state" means any state that has become a party in accordance with Article VII of the Compact. Texas and Vermont are the party states to the Compact.

(18) [(16)] "Party-state waste" means low-level radioactive waste generated in a party state.

(19) [(17)] "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(20) [(18)] A "small quantity generator" is a generator of low-level radioactive waste that generates no more than 200 cubic feet or no more than 100 curies of such waste per year, and does not include nuclear power generation facilities, electric utilities, or the United States Department of Defense.

(21) [(19)] The acronym "TCEQ" means the Texas Commission on Environmental Quality and any successor entity.

(22) [(20)] A "transporter" is a person who transports low-level radioactive waste.

(23) [(21)] "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory of the United States, including waste subsequently stored or processed in the United States.

§675.21. *Exportation of Waste to a Non-Party State for Disposal.*

(a) Permit Required--No low-level radioactive waste generated within a party state shall be exported for disposal in a non-party state unless the Commission has issued an export permit allowing the exportation of that waste pursuant to this section.

(b) Petition Required--The term "petitioner" shall include a person who is a generator, a broker acting on behalf of one or more generators, an authorized representative of the Department of Defense, or the host state (when proposing to export low-level radioactive waste to a low-level radioactive waste disposal facility outside the party states). Each petitioner shall submit a petition for an export permit to the Commission.

(c) Form of Petition--The petition or a request to amend a permit shall be in writing and on a form promulgated by the Commission and posted on the Commission's website. A petitioner must submit its petition or request to amend a permit to the Commission and to the Compact Facility both by electronic mail and by United Parcel Service (UPS) or FedEx delivery service.

(d) Petitioners must receive the Commission's permission to export before exporting any waste out of the party states. No petition for the exportation of Class B or Class C waste for disposal in a non-party state will be approved unless the petitioner can show good cause.

(e) Notice of Petition--Export petitions submitted to the Commission will be posted to the Commission's website within five business days of their submission.

(f) Any person may submit comments on an export petition to the Commission by electronic mail or by sending a hard copy of the comments to the Commission using the UPS or FedEx delivery service. The Commission will consider all comments received at least one week before the meeting at which it considers action on the petition. The Commission may, but shall not be bound to, consider comments submitted less than one week before such a meeting.

(g) Review of Petition--After receiving the export petition and any comments about the petition, the Commission shall, no earlier than 15 [30] days after the petition is posted and no later than 75 [120] after the petition is posted unless a Contingency or Exigent event exists that justifies acting sooner, act on the export petition, considering the following factors:

(1) The volume of waste proposed for exportation, the type of waste proposed for exportation by the generator, the approximate radioactivity of the waste, the time of the proposed exportation, and the location and name of the facility that will receive the waste for treatment and ultimate disposal;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste involved;

(4) The economic impact on the host county, the host state, and the Compact Facility Operator of granting the export permit;

(5) The economic impact on the petitioner;

(6) Whether the low-level radioactive waste disposal compact or the state unaffiliated with such a compact in which the proposed disposal facility is located authorizes the importation of the waste being exported from the party state or states;

(7) The existence of unresolved violations associated with radioactive waste receipt, handling, processing, or transportation pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has such unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from any interested person;

(10) The projected effect, if any, on the rates to be charged for disposal of in-compact waste;

(11) The projected effect on preservation of Compact Facility capacity for the party states; and

(12) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(h) Decision by the Commission--The Commission may: approve the export petition in whole or in part; deny the export petition in whole or in part; approve the export petition subject to terms and conditions selected by the Commission and included in the export permit; or request additional information needed for a decision. The Commission's decision to approve or deny the petition, either in whole or in part, or to approve the petition subject to the Commission's terms and conditions, is final without the filing of a motion for rehearing. Export petitions approved by the Commission are effective immediately.

(i) Terms and Conditions--The Commission may include any reasonable terms or conditions in the export permit that it deems appropriate or necessary.

(j) Permit Duration, Amendment, Revocation, Reporting, and Assignment.

(1) An export permit shall be issued for the term specified in the permit and shall remain in effect for that term unless amended, revoked, or canceled by the Commission. The specified term in the export permit shall not authorize shipments of waste by the petitioner to occur beyond the end of the fiscal year for which the export permit is approved.

(2) The Commission may add requirements or limitations to or delete requirements or limitations from the permit. Before doing so, the Commission will provide the permit holder and the Compact Facility Operator five business days' notice, so that they may comment on the proposed amendments to the permit. The Commission may also provide the permit holder a reasonable time to make any changes necessary to comply with the additional requirements or limitations imposed by the Commission. No exports will be allowed under any amended export permit until:

(A) the amendment to the export permit has been executed by both the permittee and the Commission; and

(B) the permittee has made any changes necessary to comply with any additional requirements that the Commission has imposed.

(3) The Commission's Chair or his or her delegate may review applications for amendments and, in consultation with a committee of the Commission or other persons employed by or retained by the Commission for the purpose approve minor amendments without a vote of the entire Commission, although the Chair or his or her delegate has the discretion to refer an application for an amendment to the full Commission for a decision. Notwithstanding the foregoing, the Commission will not approve an amendment that will extend the date on which an export permit expires beyond the end of a fiscal year.

(4) Not later than October 31 of each calendar year, a person who holds an export permit shall file with the Commission a report concerning the waste exported in the immediately preceding period from September 1 to August 31. The report shall specify the volume of low-level radioactive waste actually exported for disposal, the total radioactivity of the waste exported, the date or dates on which the waste was exported, and the name and location of the disposal facility to which the exported waste was delivered, along with the date or dates on which it was delivered to that facility. If the dates of exportation and the dates of delivery are not available at the time the report is due, the permittee will make the dates available to the Commission within 10 days of those dates being made available to the permittee. Failure to timely file this report may result in denial of future export petitions.

(5) An export permit is not assignable or transferable to any other person.

(k) Agreements to Export--Nothing in this subchapter shall limit the authority of the Commission to enter into agreements with the United States, other regional compact commissions, or individual states for the exportation or management of low-level radioactive waste. Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by an in-compact generator, or its disposal pursuant to 10 Code of Federal Regulations §20.2002.

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 October 3, 2022.

TRD-202203970

Stephen Raines

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 350-6241



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §425.1

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 425, Fire Service Instructors, §425.1

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §425.1 updates the reference material to NFPA 1141 standards.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

There is no impact on state and local government.

PUBLIC BENEFIT AND COST NOTE

There is no cost note with proposed amendments.

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 Code §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

There is no impact on costs to regulated persons.

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 amanda.khan@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 §419.026, 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.

§425.1. *Minimum Standards for Fire Service Instructor Certification.*

(a) Training programs that are intended to satisfy the requirements for fire service instructor certification must meet the curriculum and competencies based upon NFPA 1041, Standard for Fire and Emergency Services Instructor Professional Qualifications or its successor. All applicants for certification must meet the examination requirements of this section.

(b) Prior to being appointed to fire service instructor duties, all personnel must complete a commission approved fire service instructor program and successfully pass the commission examination pertaining to that curriculum.

(c) Personnel who receive probationary or temporary appointment to fire service instructor duties must be certified by the commission within one year from the date of appointment to such position.

(d) An out-of-state, military, or federal instructor training program may be accepted by the commission as meeting the training requirements for certification as a fire service instructor if the training has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved instructor course for that particular level of fire service instructor certification.

(e) An individual who holds a bachelor's degree or higher in education from a regionally accredited educational institution or a teaching certificate issued by the State Board for Educator Certification or an associate degree with twelve semester hours of education instructional courses is considered to have training equivalent to the commission's curriculum requirements for Instructor I, II and III training.

(f) Personnel holding any level of fire service instructor certification must comply with the continuing education requirements specified in §441.21 of this title (relating to Continuing Education for Fire Service Instructor).

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 October 3, 2022.

TRD-202203964

Mike Wisko

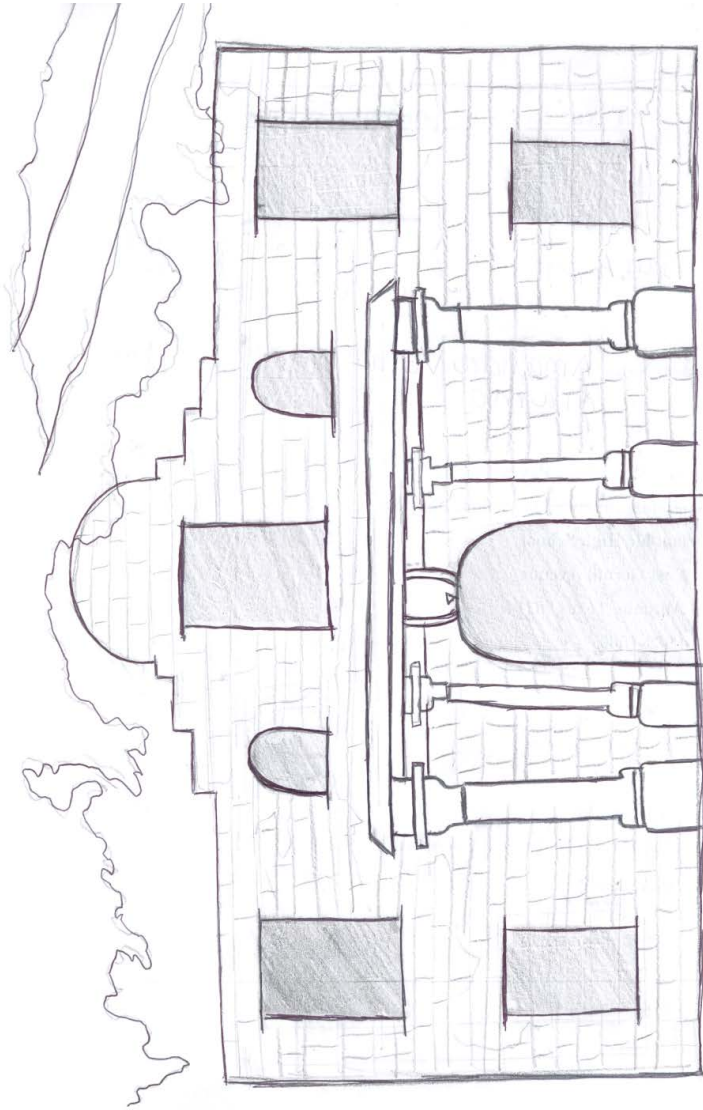
Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: November 13, 2022

For further information, please call: (512) 936-3812





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 2. TEXAS ETHICS COMMISSION

CHAPTER 8. ADVISORY OPINIONS

1 TAC §8.11

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 8. Specifically, the Commission adopts amended §8.11, regarding Review and Processing of a Request. The amendment is adopted without changes to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5047). The rule will not be republished.

There has been some uncertainty about whether, and when, a requestor can withdraw his request for an advisory opinion. This rule would clarify that withdrawals are not permitted after the agency posts the question on a meeting agenda.

The Commission received oral comments from one person at their September Commission meeting. This commenter supported the rule as it would allow the Commission, if it chooses, to release drafts of advisory opinions for public comment while preventing a requestor from withdrawing the request if the opinion was unfavorable to the requestor. The Commission agreed with those comments.

The amended rule affects Title 15 of the Election Code.

The amended rule is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government 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 September 30, 2022.

TRD-202203944

Jim Tinley

General Counsel

Texas Ethics Commission

Effective date: October 20, 2022

Proposal publication date: August 26, 2022

For further information, please call: (512) 463-5800



CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 18. Specifically, the Commission amends §18.31, regarding Adjustments to Reporting Thresholds. The amendment is adopted without changes to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5048). The rule will not be republished.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in the statutes listed in Figures 1 through 4 of §18.31 are also duplicated in numerous Commission rules, and therefore those rules must be similarly adjusted so they are consistent; amendments to these rules have been submitted concurrently with this proposal.

No public comments were received on this amended rule.

The amended rule is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, Chapters 302, 303, 305, 572, and section 2155.003 of the Government Code. The amended rule affects Title 15 of the Election Code, Chapters 302, 303, 305, 572, and section 2155.003 of the Government 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 October 3, 2022.

TRD-202203953

Jim Tinley
General Counsel
Texas Ethics Commission
Effective date: January 1, 2023
Proposal publication date: August 26, 2022
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 20, Texas Administrative Code (TAC). Specifically, the Commission adopts amendments to §20.62, regarding Reporting Staff Reimbursement, and §20.65, regarding Reporting No Activity; §20.217, regarding Modified Reporting, §20.219, regarding Content of Candidate's Sworn Report of Contributions and Expenditures, §20.220, regarding Additional Disclosure for the Texas Comptroller of Public Accounts, and §20.221, regarding Special Pre-Election Report by Certain Candidates; §20.275, regarding Exception from Filing Requirement for Certain Local Officeholders, and §20.279, regarding Contents of Officeholder's Sworn Report of Contributions and Expenditures, §20.301, regarding Thresholds for Campaign Treasurer Appointment, §20.303, regarding Appointment of Campaign Treasurer, §20.313, regarding Converting to a General-Purpose Committee, §20.329, regarding Modified Reporting, §20.331, regarding Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures, and §20.333, regarding Special Pre-Election Report by Certain Specific-Purpose Committees; §20.401, regarding Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee, §20.405, regarding Campaign Treasurer Appointment for a General-Purpose Committee, §20.431 regarding Monthly Reporting, §20.433 regarding Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures, §20.434, regarding Alternate Reporting Requirements for General-Purpose Committees, and §20.435, regarding Special Pre-Election Reports by Certain General-Purpose Committees; §20.553, regarding County Executive Committee Accepting Contributions or Making Expenditures Under Certain Amount, and §20.555, regarding County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount. The amendments are adopted without changes to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5049). The rules will not be republished.

Section 571.064(b) of the Texas Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section

2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

No public comments were received on these amended rules.

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.62, §20.65

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Title 15 of the Election 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 October 3, 2022.

TRD-202203954
Jim Tinley
General Counsel
Texas Ethics Commission
Effective date: January 1, 2023
Proposal publication date: August 26, 2022
For further information, please call: (512) 463-5800

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SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §§20.217, 20.219 - 20.221

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code; Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute; and Texas Government Code §2155.003, which requires the Commission to adopt rules to implement that section.

The amended rules affect Title 15 of the Election 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 October 3, 2022.

TRD-202203955

Jim Tinley
General Counsel
Texas Ethics Commission
Effective date: January 1, 2023
Proposal publication date: August 26, 2022
For further information, please call: (512) 463-5800



SUBCHAPTER D. REPORTING REQUIREMENTS FOR AN OFFICEHOLDER WHO DOES NOT HAVE A CAMPAIGN TREASURER APPOINTMENT ON FILE

1 TAC §§20.275, §20.279

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rule affects Title 15 of the Election 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 October 3, 2022.

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Jim Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800



SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §§20.301, 20.303, 20.313, 20.329, 20.331, 20.333

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Title 15 of the Election 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.

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SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL-PURPOSE COMMITTEE

1 TAC §§20.401, 20.405, 20.431, 20.433 - 20.435

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Title 15 of the Election 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.

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Jim Tinley
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SUBCHAPTER I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY EXECUTIVE COMMITTEE

1 TAC §§20.553, §20.555

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Title 15 of the Election 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.

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CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §§22.1, 22.6, 22.7

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 22. Specifically, the Commission adopts amendments to §22.1, regarding Certain Campaign Treasurer Appointments Required before Political Activity Begins, §22.6, regarding Reporting Direct Campaign Expenditures, and §22.7, regarding Contribution from Out-of-State Committee. The amendments are adopted without changes to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5061). The rules will not be republished.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

No public comments were received on these amended rules.

The amended rules affect Title 15 of the Election Code.

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

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

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Jim Tinley

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Texas Ethics Commission

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For further information, please call: (512) 463-5800



**CHAPTER 34. REGULATION OF LOBBYISTS
SUBCHAPTER B REGISTRATION REQUIRED
1 TAC §34.41, §34.43**

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 34. Specifically, the Commission adopts amendments to §34.41, regarding Expenditure Threshold, and §34.43, regarding Compensation and Reimbursement Threshold. The amendments are adopted without changes to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5063). The rules will not be republished.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2023, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

No public comments were received on these amended rules.

The amended rules affect Chapter 305 of the Government Code.

The amendments are adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 305 of the Election Code; Texas Government Code §305.003, which authorizes the Commission to determine by rule the amount of expenditures made or compensation received over which a person is required to register as a lobbyist; and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

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

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Jim Tinley

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Texas Ethics Commission

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For further information, please call: (512) 463-5800



**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 §351.807

The Texas Health and Human Services Commission (HHSC) adopts an amendment to Texas Administrative Code, Title 1, Part 15, Chapter 351, Subchapter B, §351.807 concerning the Behavioral Health Advisory Committee. The amendment to §351.807 is adopted without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3597), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amended rule revises the Behavioral Health Advisory Committee (BHAC) membership to align with federal best practices and accommodate current and future changes to the provision of behavioral health services. The amendment also aligns the format of §351.807 to follow agency guidelines.

COMMENTS

The 31-day comment period ended July 25, 2022.

During this period, HHSC received four comments from The Arc of Texas and Disability Rights Texas regarding the proposed rule amendment. A summary of comments and HHSC's responses follow.

Comment: One commenter suggested including committee member representation from one adult with intellectual or developmental disability (IDD) who received, or is receiving, services for substance use or co-occurring mental health and substance use issues.

Response: HHSC declines to make the suggested change at this time. Individuals with a dual diagnosis of IDD and mental health or substance use are already eligible for the committee positions for adults who have received, or are receiving, mental health, substance use, or co-occurring mental health and substance use services in §351.807(f)(1)(A) and (B).

Comment: One commenter suggested including committee member representation from a family member of someone with IDD who has received, or is receiving, services for mental health, substance use, or co-occurring mental health and substance use issues.

Response: HHSC declines to make the suggested change at this time. Family members of someone with a dual diagnosis of IDD and mental health or substance use are already eligible for the family representative position in §351.807(f)(1)(D).

Comment: Two commenters suggested including committee member representation from an organization representing individuals with a dual diagnosis of IDD and mental health.

Response: HHSC declines to make the suggested change at this time. There are already two positions available for behavioral health advocates or a representative of behavioral health advocacy organizations in §351.807(f)(1)(J). Organizations representing individuals with a dual diagnosis of IDD and mental health or substance use are already eligible for these positions.

Comment: Both commenters suggested the inclusion of Disability Rights Texas as a member of the Behavioral Health Advisory Committee.

Response: HHSC declines to make the suggested change at this time. A representative from Disability Rights Texas is already eligible for the positions for a representative from a behavioral health advocacy organization in §351.807(f)(1)(J).

Comment: One commenter suggested having public comment prior to ending each agenda item during committee meetings.

Response: HHSC declines to revise the rule in response to this comment as public comment is a process not addressed in the rule. HHSC will coordinate with appropriate departments to provide this feedback.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.012, which provides that the Executive Commissioner of HHSC shall adopt rules for advisory committees established under §531.012; and Texas Government Code §2110.005, which provides that a state agency must promulgate rules concerning the purpose and tasks of an advisory committee and describe the manner in which the committee will report to HHSC.

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 September 27, 2022.

TRD-202203886

Karen Ray

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Texas Health and Human Services Commission

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For further information, please call: (737) 263-7827

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL
SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.20, §20.22

The Texas Department of Agriculture (the Department) adopts amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 20, Subchapter C, §20.20, concerning Pest Management Zones, and §20.22, concerning Stalk Destruction Requirements, without changes to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5064). The rules will not be republished.

These proposed amendments are in response to a request from Texas cotton producers to the Texas Boll Weevil Eradication Foundation's Board of Directors (Board) to consolidate and renumber certain pest management areas within pest management zones.

The Board forwarded this request to its Technical Advisory Committee (Committee) for further review. The Committee indicated these zones are currently in functionally eradicated or eradicated areas of Texas, and do not have a boll weevil presence. Accordingly, they no longer face pest control demands requiring destruction and planting dates specific to their areas, as currently reflected. The Committee also determined that, with the advent of new cotton varieties, combined with a decrease in the number of producers, consolidation of the areas within these zones would facilitate production more efficiently for those producers who operate across multiple zones.

The consolidation of areas necessitates changes to stalk destruction dates to achieve uniformity in the reorganized pest management zones. Dates were selected to reflect the latest stalk destruction dates in the areas being consolidated. In its review, the Committee also aligned the earliest planting date and end date for destruction requirements to reflect these changes.

Following the Committee's review, its Chairman presented the recommendations to the Board. The Board agreed that these recommendations reflect industry demands and aim at aiding cotton producers in increasing the effectiveness of their efforts at producing pest-free cotton. The Department concluded that implementing these changes would not only aid producers but also increase the Department's efficiency at managing its hostable cotton program.

The amendments to §20.20 combine the areas of Pest Management Zone 2 into a single Zone 2, renumber Pest Management Zone 6 to become Zone 5, combine the areas of Pest Management Zone 7 and renumber it to become Zone 6, combine the areas of Pest Management Zone 8 and renumber it to become Zone 7, renumber Pest Management Zone 9 to become Zone 8, and renumber Pest Management Zone 10 to become Zone 9.

The amendments to §20.22 change references to Pest Management Zones 9 and 10 to Zones 8 and 9, respectively, to account for the proposed amendments to §20.20. The amendments also revise the table in §20.22(a)(3) to reflect the proposed amendments to the pest management zones in §20.20, and change earliest planting dates, destruction deadlines, and end dates for destruction requirements for particular zones.

The Department received no comments regarding the proposed amendments.

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

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

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TRD-202203903

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For further information, please call: (512) 936-9360

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TITLE 16. ECONOMIC REGULATION

**PART 2. PUBLIC UTILITY
COMMISSION OF TEXAS**

**CHAPTER 25. SUBSTANTIVE RULES
APPLICABLE TO ELECTRIC SERVICE
PROVIDERS**

The Public Utility Commission of Texas (commission) repeals 16 Texas Administrative Code (TAC) §25.55 relating to Weather Emergency Preparedness and adopts new 16 TAC §25.55 relating to Weather Emergency Preparedness. The commission adopts this rule with changes to the proposed rule as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3376). The new rule will be republished. New 16 TAC §25.55 represents the second phase of the two phases in the commission's development of robust weather emergency preparedness reliability standards to ensure that the electric industry is prepared to provide continuously reliable electric service. Specifically, it requires generation entities and transmission service providers (TSPs) in the Electric Reliability Council of Texas, Inc. (ERCOT) power region to maintain weatherization preparation standards for both winter and summer seasons. The new rule requires ERCOT to conduct on-site inspections of every generation resource and transmission facility in the ERCOT region. Additionally, the new rule requires utilities who do not comply with weatherization preparedness standards to undergo an independent assessment by a qualified professional engineer.

This new rule implements Senate Bill 3 §13 and §16 from the 87th Regular Session of the Texas Legislature, which amended Public Utility Regulatory Act (PURA) §35.0021 relating to Emergency Weather Preparedness and §38.075 relating to Emergency Weather Preparedness.

The commission received comments on the proposed rule from Advanced Power Alliance and the American Clean Power Association (APA and ACP); AEP Texas, Inc. and Electric Transmission LLC (collectively, AEP); Andrew Dessler; Broad Reach Power, LLC (Broad Reach); CenterPoint Energy (CenterPoint); Constellation Energy Generation, LLC (Constellation); Enbridge, Inc. (Enbridge); Environmental Defense Fund, Texas Consumer Association, and Alison Silverstein Consulting (collectively, EDF, TCA, and ASC); the Lower Colorado River Authority (LCRA); NextEra Energy Resources, LLC (NextEra); NRG Energy, Inc. (NRG); the Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company LLC (Oncor); San Miguel Electric Cooperative, Inc. (SMEC); Sharyland Utilities, LLC (Sharyland); the Steering Committee of Cities served by Oncor (OCSC); Texas Competitive Power Advocates (TCPA); Texas Electric Cooperatives, Inc. (TEC); Texas Industrial Energy Consumers (TIEC); the Texas Public Power Association (TPPA); the Texas Solar

Power Association (TSPA); Texas-New Mexico Power Company (TNMP); and Vistra Corp. (Vistra).

The structure of the proposed rule contained several nonconsecutive, similar or identical provisions. In particular, there was heavy overlap within and between subsections (c) and (f) of this rule. Due to the large number of stakeholder comments addressing nonconsecutive provisions together, some issues that are relevant to multiple provisions of this rule may only be addressed in one location.

General Comments

NextEra and SMEC expressed general support for the proposed rule, but also proposed modifications to the rule. OPUC expressed appreciation for the efforts the commission has made to implement effective weatherization standards. Sierra Club expressed its appreciation to the commission for separating weatherization rules into two phases so the market would have adequate time to prepare for both summer and winter weather emergency conditions. LCRA expressed appreciation for commission staff's work in developing a set of "all seasons" preparation standards for generation and transmission facilities. LCRA emphasized the continuing need for this rule to be considered and enforced as a preparation standard.

Broad Reach expressed its ability and willingness to support this initiative and work towards implementing reasonable standards to protect the system.

Transparency

OCSC encouraged the commission to ensure full public transparency regarding electric weather emergency preparedness due to its potential effect on the general health and welfare of Texas citizens. Specifically, OCSC recommended that facilities subject to §25.55 that experience weather-related forced service interruptions and that fail to comply with commission remedial orders be publicly disclosed.

Commission Response

Any entity that fails to comply with the requirements of this rule may be subject to a commission enforcement action resulting in a publicly available order imposing administrative penalties. This strikes the appropriate balance between public transparency and protecting the confidentiality of sensitive critical energy infrastructure information.

Consistent Standards

Sharyland recommended establishing consistent and reasonable overload or safety factors consistent with recognized industry standards such as those established by the National Electric Safety Code (NESC), the Institute of Electrical and Electronic Engineers (IEEE), and American National Standards Institute (ANSI).

Commission Response

The purpose of the weatherization rule is to create a preparedness standard for all generation resources and transmission facilities for summer and winter weather in Texas. Preparation of resources and facilities under this rule is symbiotic with and parallel to other applicable industry standards. Accordingly, the commission does not adopt similar industry standards in this rule.

Effective date of requirements

APA and ACP requested the commission clarify when weatherization requirements will be effective as the phrase "beginning in 2023" in proposed §25.55(c)(1)(B), (c)(2)(B), (f)(1)(B), and (f)(2)(B) is unclear as to whether the proposed effective date is January 1, 2023, for all weatherization requirements or if the requirements are seasonally based, meaning an effective date of June 1, 2023, for summer preparedness and December 1, 2023, for winter preparedness. Oncor recommended proposed §25.55(f)(1)(B) be revised to stated "Beginning in the 2023-2024 winter season" to be more specific in its applicability.

Commission Response

Under the adopted rule, the current winter preparation requirements remain in effect and apply to the 2022-2023 winter season. The winter temperature standards take effect on December 1, 2023. The summer temperature standards are effective June 1, 2023. The commission adds language to clarify these effective dates.

Cyclical review of weatherization standards

OPUC asked the commission to consider reviewing the weatherization requirements on a cyclical basis, such as every five years, to allow Texas to respond more effectively to changing weather patterns and prevent or mitigate future weather emergency events.

Commission Response

The commission declines to modify the language of the rule in response to OPUC's comments. Under the adopted rule, ERCOT is required to revise and file with the commission a new weather study at least once every five years and affected entities are required to update their preparation measures in response to ERCOT's revised weather study. Moreover, under Tex. Gov't Code §2001.039, the commission is required to review each of its rules every four years. Finally, the commission acknowledges the importance of weather preparedness standards to grid reliability and will be monitoring the effectiveness of the rule accordingly.

Design limitations and warranties

APA and ACP noted that renewable generation asset owners and operators have minimal latitude to change "capabilities, specifications, or characteristics without voiding Original Equipment Manufacturer (OEM) warranties" and accordingly recommended any weather preparedness standards be adopted with this reality in mind. APA and ACP noted that wind turbines, solar generators, and battery energy storage units are designed to shut down if a certain ice accumulation level or ambient temperature is exceeded. Accordingly, APA and ACP recommended the commission clarify that the proposed rule "will not require generation owners or operators to operate beyond OEM design tolerances during severe weather events." Enbridge agreed with APA and ACP that weatherization preparedness standards should account for OEM warranties.

APA and ACP further recommended that the proposed rule "clearly require generation resources to take reasonable measures to ensure operational availability to generate according to OEM specifications and ERCOT dispatch instructions." Specifically, AEP and ACP recommended the rule include weather emergency event planning requirements for generators and ensure penalties for non-compliance will not be assessed "solely upon the failure of a generation unit to produce electricity provided that such generator complied with the preparation requirements set forth in the rule." Enbridge also agreed with

APA's and ACP's comments that the weatherization preparedness standards under the rule should consider commercially available technology and original design parameters.

TCPA recommended the commission "limit required weatherization measures to those that are reasonably possible in consideration of particular plants' existing design limitations" as not all facilities are the same. TCPA stressed that any weatherization requirements the commission adopts should not require generation owners to "effectively rebuild generators" to "withstand all possible heat stress scenarios beyond existing plant capabilities."

Enbridge proposed edits to clarify that the weather emergency preparedness standard requires generators take reasonable measures to be able to operate as designed during a weather emergency, to keep consistent with SB3. Further, Enbridge urged the commission to take the same approach in Phase II as the commission did with Phase I which focuses on establishing preparedness standards and provided generation resources the flexibility to implement these measures.

NextEra recommended clarifying that the Phase II standard does not require generation resources or transmission facilities to operate equipment beyond design limits.

Commission Response

Under the adopted rule, each TSP and generation entity is required to implement weather emergency preparation measures that could reasonably be expected to ensure the sustained operation of its facility or resource during seasonal weather conditions. The commission clarifies, at Enbridge's request, that this is a preparation standard similar to the existing Phase I rule. Compliance with the preparation standard in this rule will not be assessed based on performance. However, a failure to perform may prompt a commission investigation into whether the resource or facility was adequately prepared, as required by the rule.

With regard to the specific preparation measures discussed by commenters above, it is not the commission's expectation that resources or facilities are operated in a fashion that would endanger life or safety, or void the OEM warranty of equipment. The commission agrees that each resource or facility is different and that which specific preparation measures would be reasonably expected to ensure a particular resource or facility can sustain operations through the relevant weather scenarios is, in many cases, a fact-based question. However, the commission rejects arguments that would uniformly permit current design limitations to serve as a justification for not meeting the preparation standard in the rule. Under this adopted rule, the commission does not require a TSP or a generation entity to "effectively rebuild" its facility or resource but does require a TSP or generation entity to install preparation measures that are in addition to the facility's or resource's original design and are appropriate for the facility or resource to reasonably ensure sustained operations during seasonal weather conditions.

Ambient Temperature Requirement

APA and ACP, TPPA, and Vistra recommended the 2023 weather preparedness standards under proposed §25.55(c)(2)(B) and (f)(2)(B) rely only on the ERCOT weather study under proposed §25.55(i) and not the minimum or maximum ambient temperature at which the resource has experienced sustained operations. APA and ACP maintained that a resource "may sustain operations at a lower or higher

limit than the stated design range" but such outlier events should not set expectations for consistent performance at those levels. TPPA argued that ambient temperature standards would disadvantage older generators that have been exposed to more diverse temperature standards over time.

Vistra argued that the ambient temperature requirement would "create an ambiguous standard that would render the ERCOT weather study (and the associated weather predictions from the state climatologist) irrelevant to the weather preparedness rule" and therefore is contrary to the requirements of PURA §35.0021. Vistra concluded the ambient temperature standard would "add material risk, complexity, and costs to compliance efforts" and more severely impact generators that cannot recover the costs associated with compliance. Vistra provided draft language consistent with its recommendations.

TPPA recommended proposed §25.55(c)(3)(A)(iii), (c)(3)(B)(iii), (f)(3)(A)(iii), and (f)(3)(B)(iii), which require disclosure of the minimum and maximum ambient temperature the resource was able to sustain operations for generation entities and TSPs, respectively, be replaced with a single baseline for compliance, namely "the 95th percentile minimum average 72-hour temperature reported in ERCOT's historical weather study" as discussed for proposed §25.55(c)(1)(B), (c)(2)(B), (f)(1)(B), and (f)(2)(B).

Commission Response

The commission declines to remove the maximum local ambient temperature standard from the rule for the summer season. The ambient temperature standard provides a more localized assessment of the temperatures for which resources need to prepare during the summer. This is important for resiliency, because local conditions may differ within a weather zone. This standard is intended to consider those local conditions to the extent they vary from those provided by the ERCOT historical weather study. Specifically, this provision requires a resource to be able to sustain operations at ambient temperatures that it has previously been able to sustain operations - essentially, requiring the resource to match its past performance.

The commission declines to include a specific time period for this requirement, as this is unnecessary for a preparation standard. A generation entity needs to implement weather preparation measures that allow it to operate its resource in the temperature ranges indicated by the ERCOT weather study, unless the past performance of the resource indicates it is capable of outperforming this range. In that instance, it must prepare to match its prior performance.

The commission disagrees that this provision is contrary to PURA. PURA §35.0021 and §38.075 do not require the commission to strictly adhere to a weather study or the weather predictions of the state climatologist. Rather, PURA directs the commission to require generation entities "to implement measures...to provide adequate electric generation service" and TSPs to "maintain service quality and reliability" during a weather emergency. This directive is more effectively achieved if each entity is required to prepare for the conditions that exist where its facilities and resources are located. Moreover, the requirement that each entity implement preparation measures reasonably expected to allow each of its resources and facilities to match its past performance will prevent the grid from becoming less resilient over time.

However, the commission does remove the local ambient temperature standard for the winter months and, instead, bolsters the cold weather standard by including a consideration of wind

chill in §25.55(c)(1)(B) and (f)(1)(B), as calculated in the ERCOT weather study as the "95th percentile minimum average 72-hour wind chill temperature." This modification will help ensure that the grid is prepared for winter weather conditions while instituting a more predictable preparation standard for entities subject to the rule.

Revision of Weather Report

TPPA recommended ERCOT "complete a revised weather study that complies with the statute and contains all elements that generation entities and TSPs should consider before the Commission adopts a final rule." TPPA elaborated, stating that a revised report would be consistent with proposed §25.55(c)(1)(B), (c)(2)(B), (f)(1)(B), and (f)(2)(B), which, beginning in 2023, require compliance with weather preparation measures consistent with ERCOT's report. TPPA alternatively recommended deleting all four provisions as well as deleting proposed §25.55(i) and instead directly coordinate with the office of the state climatologist to more fully and transparently comply with SB 3.

Commission Response

On July 13, 2022, ERCOT filed in Project Number 52691 a final version of its weather study which included data for the Panhandle weather zone and the 95th percentile of the 72-hour sustained minimum and maximum temperatures for each weather zone. No additional information from ERCOT is necessary for entities to comply with the temperature standards prescribed by the rule. In preparing the weather study, commission staff and ERCOT consulted with the state climatologist's office. Going forward, adopted subsection (i)(3) requires ERCOT to continue to consult with the state climatologist's office in its preparation of future weather studies.

TPPA recommended that proposed §25.55(c)(1), (c)(2), (f)(1), and (f)(2) be revised to clearly indicate that an entity would only be required to update its weatherization preparation measures "if necessary" to comply with ERCOT's revised report. TPPA also recommended that the commission specify that the one-year compliance deadline is one year from the date "the Commission issues an order approving or modifying ERCOT's historical weather study report," rather than from the date ERCOT files the report with the commission. TPPA provided draft language consistent with its recommendations.

Commission Response

The commission agrees with TPPA that the requirements regarding updates of an entity's weather preparation measures to comply with revisions to ERCOT's report should be clarified. The proposed language has been modified. Adopted §25.55(c)(1), (c)(2), (f)(1), and (f)(2) require entities to update weather preparedness measures only if necessary to come into compliance with ERCOT's revised report. The one-year period for the compliance deadline is counted from the date that ERCOT files its historical weather study.

Black-start facilities

EDF, TCA, and ASC commented that the 95th percentile standard based on the ERCOT historical weather study is insufficient to assure the weather readiness of black-start facilities and transmission assets related to such black-start resources in light of events such as Winter Storm Uri. Accordingly, EDF, TCA, and ASC recommended a higher standard of weather preparedness be required for every generation resource and transmission asset necessary for black-start service.

Commission Response

The commission declines to modify the rule to include heightened requirements for black start generation resources and transmission assets, because issues pertaining to black start resources are beyond the scope of this rulemaking. This rulemaking project is focused on adopting standards that apply to every generation resource and transmission facility in ERCOT, not particular subsets such as black start resources. Moreover, the commission did not notice heightened requirements for black start resources in its proposal for publication, so the operators of these resources have not been given a chance to contribute to the development of an appropriate heightened standard.

Black start resources may be addressed by the commission in a future rulemaking project or as part of the commission's market redesign process.

Climate trends

EDF, TCA, and ASC stated that the proposed rule "does not adequately protect Texas grid reliability and resilience" from weather events as it fails to account for the impact of floods, tornadoes, hurricanes and wildfires and impact of changing climate trends on historical and future weather events. EDF, TCA, and ASC recommended the commission incorporate standards based on Federal Energy Regulatory Commission rulemakings related to weather vulnerability assessments and transmission planning performance requirements.

Sierra Club recommended the commission reject the temperature standards in the proposed rule and adopt more specific requirements to consider future weather patterns that account for changing climate trends in the preparations of weather preparedness requirements for TSPs and generators.

Commission Response

The adopted weather preparation standards establish regulations related to winter and summer weather emergencies, primarily related to temperature. These standards are to be implemented in advance of the winter or summer season. The commission declines to reject in the temperature standards in this rule in favor of more forward-looking weather assessment, as recommended by the Sierra Club. The adopted rule requires summer preparation to the 95th percentile of the ERCOT weather study and supplements this requirement with an ambient temperature standard that ensures local conditions are taken into account and that weather preparedness ratchets up, as resources and facilities are able to sustain operations through severe weather conditions. Similarly, the adopted rule requires winter preparation measures to be implemented with an additional consideration of wind chill, to ensure that winter preparations are sufficient for the conditions faced by resources and facilities during the winter months.

Preparations related to floods, tornadoes, and hurricanes are currently addressed in an entity's emergency operations plan, as required under 16 TAC §25.53, and are also addressed in the NESC and various other industry-accepted design and operating standards. These other weather conditions are beyond the scope of this rulemaking project but may be taken up by the commission in the future, as necessary.

Inspection costs

TCPA recommended that any costs associated with weatherization inspections be "socialized through the ERCOT system administration fee, and not borne solely by the generation entities

whose facilities are subject to inspection." TCPA explained that because the purpose of the weatherization requirements and related inspections are in the public interest and accrue to all Texas consumers by increasing reliability and reducing forced outages, and are therefore consistent with ERCOT's core function, it is appropriate to recover inspection costs through ERCOT's system administration fee. TCPA added that under PURA §35.0021(c), ERCOT is required to inspect generation assets and therefore recovery of the costs associated with such inspection "be handled in the same manner as any of ERCOT's other prescribed duties, meaning cost recovery should be equitable and competitively neutral."

Commission Response

The funding of inspection costs is being addressed through the ERCOT protocols. The commission declines to specify how these costs must be allocated at this time as cost allocation is out of scope of this rulemaking.

Good cause exception

TCPA recommended the good cause exception under existing §25.55(c)(6) and existing (f)(4), which allowed a generation or TSP to submit a notice asserting good cause for noncompliance with the weather preparation measures required by the rule, to be included in the adopted rule. TCPA commented that under NPRR 1108, "no minimum amount of capacity is required for generation planned outages" and that in the spring of 2022 ERCOT has "exercised its authority to request the cancellation of or rescheduling of approved generator outages" and that both events have adversely impacted a resource owner's ability to conduct maintenance, including completing weather preparedness measures. Accordingly, TCPA argued that "resource owners who are unable to comply with weatherization standards because ERCOT has shortened, delayed, or rejected necessary requested outages, should not be penalized" and that such entities should instead be able to communicate with ERCOT and commission staff to obtain a good cause exception. TCPA further recommended that good cause exceptions should be granted for older resources "that are physically unable to meet certain of these standards in an effort to prevent their mothball or retirement" so as to not jeopardize ERCOT's resource adequacy and reliability.

TEC and TPPA recommended the good cause exception not be deleted from the existing rule as the new rule may impose requirements that are "impractical, unnecessary, or not cost-effective" as the level and type of weather preparedness required will vary between facility and location. TEC and TPPA recommended adding a new §25.55(c)(6) which would consist of the good cause exception from the current, 2021 version of the rule.

TPPA also requested the commission clarify what additional measures are expected from entities if "there is a shortfall between the contemplated standard and the resource or facility's ability to comply with that shortfall." TPPA highlighted the significant time and investment weather preparedness measures may require of entities under the proposed rule.

Commission Response

The good cause exception was included in the existing rule because of the short time period between adoption of the requirements and the compliance deadline. The winter preparedness standards are substantially similar to those required in 2021 and facilities are not required to comply with the summer preparedness standards until 2023. Therefore, a good cause exception

process is unnecessary moving forward. Every resource or facility needs to be prepared to operate during weather emergencies, and there is sufficient time before the new weather standards take effect to make this happen.

With regard to the concerns expressed by commenters above, the commission disagrees with TCPA that recent ERCOT actions require the retention of a good cause exception. In addition to the time that entities have to implement the additional preparation requirements before they take effect in 2023, one of the factors that ERCOT must take into account in determining an appropriate cure period for compliance failures identified in ERCOT inspections is what preparation measures the entity could reasonably have been expected to implement prior to the inspection. If an entity can produce documentation that it could not implement sufficient preparation measures by the relevant deadline, this will be taken into account in determining the cure period.

The commission disagrees that this rule would require the implementation of preparation measures that are impractical, unnecessary, or impossible for resources, such as older resources, to implement. Under this rule, each generation entity and TSP is only required to implement preparation measures that could be reasonably expected to ensure its resources and facilities can sustain operations during the relevant seasonal weather conditions.

The adopted rule requires each entity to implement emergency weather preparation measures that could be reasonably expected to ensure its generation resources and transmission facilities can sustain operations through the relevant seasonal weather conditions. This preparation requirement exists regardless of whether the resource or facility ultimately meets the temperature standards in the rule. If, upon inspection, ERCOT determines that the preparations were inadequate, it will provide the entity with a reasonable cure period. If the entity is still not able to implement adequate preparation measures, an enforcement investigation may be warranted. However, each of these steps is a fact-based inquiry into what measures were, ultimately, reasonable to expect the entity to implement. The commission will not pre-judge each potential fact pattern resulting in compliance shortfalls in this order, but several aspects of this question are discussed in response to more specific comments below.

Conflict with ERCOT protocols

TPPA commented that, under the proposed Nodal Protocol Revision Request (NPRR) 1132 and the proposed rule, entities would be responsible for submitting duplicative data to ERCOT and the commission but on different dates. TPPA recommended the commission "immediately sunset the conflicting and overlapping portions of NPRR 1132, Communicate Operating Limitations during Cold and Hot Weather Conditions, when the proposed rule is made effective, consistent with its complete authority over ERCOT's operations.

Commission Response

The standards imposed by the adopted rule are separate and distinct from the requirements of NPRR 1132, which is focused on implementing FERC and NERC requirements. Sunsetting NPRR 1132 is beyond the scope of this rulemaking project.

Mothballed and suspended units

TEC indicated that the proposed language under proposed §25.55(a)(1) and (c)(3)(C) may disincentivize mothballed or

suspended units from returning to respond to the immediate needs of the grid. TEC therefore recommended an exception to compliance be granted for "certain generation resources returning to support reliability."

Commission Response

The commission declines to include an exception to compliance for "certain generation resources to support reliability" as recommended by TEC. A mothballed unit that is returning or is considering the possibility of returning must be able to perform as reliably as any other resource or it cannot be depended upon for reliability purposes.

Preamble

OPUC requested that the preamble language of the public benefits section be changed in reference to microbusinesses to acknowledge that there may be some economic cost to weatherizing electric facilities.

Commission Response

The preamble language to the commission's proposal for publication has already been published in the *Texas Register* in accordance with the Administrative Procedure Act under Tex. Gov't Code §2001.0221. The commission is not able to amend that language.

Trainings

TPPA requested clarification on the training of operational personnel required under proposed §25.55(c)(1)(D), (c)(2)(D), (f)(1)(D), and (f)(2)(D) as it is unclear whether summer and winter trainings can be combined or should there be separate trainings. TPPA recommended the phrase "ensure that relevant personnel are trained" be inserted into each proposed subparagraph.

Commission Response

The adopted rule only specifies the date by which training must be complete. It does not otherwise mandate when this training must occur or whether the seasonal trainings can be combined. This is intended to provide entities with flexibility in implementing this requirement. However, each entity should design its training program to ensure its employees are adequately prepared to respond to emergency weather conditions.

Public compliance reports

TPPA recommended proposed §25.55(c)(4), (c)(5), (f)(4), and (f)(5) explicitly require ERCOT to publicly file a compliance report addressing whether a generation entity or TSP has filed the appropriate declaration and host the report on the front page of ERCOT's website. TPPA also recommended those provisions address whether the declaration was filed for all resources under control of the generation entity or TSP.

Commission Response

In balancing the competing interests of public transparency and maintaining the confidentiality of sensitive critical energy infrastructure information, publicizing such report on the ERCOT website is not currently necessary. Further, ERCOT must report compliance for all resources under the control of a generation entity and all facilities maintained by a TSP or facilities owned by each generation entity or TSP to the commission, therefore requiring ERCOT to file the report publicly and host it on ERCOT's webpage to the proposed rule is not warranted. Therefore, the

commission declines to revise §25.55(c)(4), (c)(5), (f)(4), and (f)(5) in the manner TPA recommends.

Require ERCOT provide written inspection reports

TPPA recommended the commission require ERCOT to provide a written report on its inspection to the utility as opposed to the verbal feedback currently required under proposed §25.55(d)(2)(A) and (g)(2)(A) to avoid confusion and provide a common knowledge base for the utility, ERCOT, and the commission.

Commission Response

The commission agrees that a written report better facilitates identifying and resolving deficiencies, and also helps establish that an entity is in compliance for record keeping purposes. The commission modifies the rule language accordingly.

Site specific plans

TPPA commented that, due to the uniqueness of each power plant in both design and location, the commission should require only general weather preparedness measures confirmed via affidavits submitted by each generation entity and TSP. Consequently, each generation entity and TSP would be responsible for developing site-specific plans that comply with the intent of the rule without forcing all facilities into a potentially problematic uniform solution.

Commission Response

The rule is structured to provide flexibility to entities in implementing the required weather preparedness measures. The declarations of preparedness required in the rule will enable each generation entity or TSP to detail how such preparations were performed. PURA §35.0021 requires the commission to implement rules related to weather emergency preparedness "according to reliability standards adopted by the commission." PURA §38.075 similarly requires ERCOT to inspect the facilities of certain regulated entities for compliance with such reliability standards. The commission therefore declines to revise the rule as recommended by TPPA because such a modification would be contrary to express statutory language.

Question 1

The proposal requested that TSPs provide information related to wind-loading design criteria for the 345 kV network.

Sharyland stated that it utilizes NESC and ANSI industry standards based on load zone in conjunction with relevant IEEE updates.

AEP similarly responded that it currently designs its transmission stations and lines to meet or exceed the loadings adopted by the current NESC and ANSI. AEP stated that "the design wind loading ranges from 90 mph on the inland portion of the system increasing with potential exposure to hurricane force winds up to 140 mph."

Oncor stated it also relies on NESC standards in designing its transmission structures which generally require operation "in 3-second gusts of high wind speeds: 90 mph in almost all of its service territory" with the exception of a slightly higher standard along coastlines due to hurricane risks. Oncor noted that NESC standards also specify horizontal clearance requirements in different wind conditions.

Commission Response

The commission appreciates the information shared by parties that responded to Question 1.

Question 2

The proposal requested comments on whether the proposed rule appropriately defines "repeated or major weather-related forced interruptions of service"?

Commission Response

Comments and commission responses to this question are summarized and addressed with comments to §25.55(b)(5)-(b)(7) below.

§25.55(a) - Application

Proposed §25.55(a) lists the entities to which the weatherization preparedness standards apply.

LCRA expressed support for proposed language requiring a new resource to meet the requirements of this section prior to its commercial operations date. However, LCRA recommended that the commission consider identifying more stringent criteria for all new generation resources.

Commission Response

The commission declines to create different standards for existing resources and new resources, because it is inappropriate to require entities competing in a single market to meet separate standards. The adopted rule requires both new and existing resources to perform reliably in weather emergency conditions.

Visra noted that proposed §25.55(a) excludes a resource that submits an ERCOT-approved Notice of Suspension of Operations (NSO). TCPA and Visra noted that ERCOT does not technically approve NSOs. TCPA also commented that the exemption for generation resources with an ERCOT-approved NSO under proposed §25.55(a)(1) for the summer or winter season is flawed. TCPA provided draft language consistent with its recommendations.

TPPA recommended proposed §25.55(a)(1) be revised to specify that a generation resource with an ERCOT-approved NSO for the summer or winter season is not required to comply with "the applicable season-specific requirements" of the proposed rule.

Visra further noted that, in reviewing an NSO, ERCOT may determine that a resource is necessary for reliability and may negotiate a Reliability Must Run (RMR) agreement with the entity as a last resort after evaluating whether viable alternatives to an RMR exist. Visra stated that over the course of the negotiation period, a generator is required to be available only for a Reliability Unit Commitment (RUC), during which only certain operating costs are recoverable for resources utilized under the RUC. Visra argued that resources available for a RUC and pending a NSO review by ERCOT should not be required to comply with weatherization standards as the recoverable operating costs under a RUC do not include costs required to implement the Phase II weatherization standards under the proposed rule. Visra recommended that a generation resource only be required to comply with weather preparedness standards "when it remains in service for the relevant season (through a seasonal mothball), returns to service (on the date indicated in its NSO), or after it begins the term of an RMR agreement negotiated with ERCOT." Visra provided draft language consistent with its recommendations.

Commission Response

The adopted rule creates a preparedness standard for all TSPs and resources. It is unnecessary for the rule to specify that a resource with an ERCOT-approved NSO is not required to comply with "the applicable season-specific requirements" as NSOs are specific to when an NSO is approved. Further, if a resource expects to return to service during the summer or winter season, including via an RMR agreement, it should be prepared to operate reliably. A resource with an ERCOT-approved NSO that has a return to service date outside the summer or winter seasons is not required to comply with weather preparation requirements until the next winter or summer season. As such, the commission declines TCPA's, TPPA's and Visra's recommendations.

Constellation noted that the rule is silent on a burden of proof or an evidentiary standard to demonstrate that the failure was not weather related and recommended amending the rule to provide notice and appeals process and provided draft language consistent with its recommendations.

Commission Response

The commission declines to include a burden of proof or evidentiary standard to determine whether a potential major or repeated weather-related forced interruption of service is weather related and, therefore, requires contracting with a qualified professional engineer. The requirement to contract with a qualified professional engineer is not a punitive measure or the result of an enforcement action. Entities subject to the rule are encouraged to work with ERCOT and provide any information that may assist ERCOT in determining whether notice of a major or repeated weather-related forced interruption of service should be issued, triggering the requirement to contract with an engineer. However, if there is uncertainty or disagreement over whether a failure is weather-related, an appeals process of this determination is not necessary or efficient. An assessment by an independent engineer is an appropriate means of assessing the cause of the failure.

If an interruption of service may have been weather-related, the resiliency goals of this rule are best served by obtaining an independent root-cause analysis of the failure. If the failure was weather-related, the entity may need to implement additional weather preparation requirements to comply with the preparation standard required by this rule. If the failure was not weather-related, the root-cause analysis may still help determine how to prevent future interruptions of service.

Constellation noted that there are circumstances, such as acts of God or reductions of load for the safety of personnel and equipment, that may constitute a forced interruption but should not be considered a "major weather-related forced interruption of service" or an occurrence of a "repeated weather-related forced interruption of service." Constellation recommend a provision be added to proposed §25.55(a) or proposed (b)(5) and (b)(6) exempting such circumstances from meeting the criteria for repeated or major weather-related forced interruptions of service. Constellation provided draft language consistent with its recommendation.

Commission Response

The commission declines to adopt Constellation's proposed language. Interruptions of service that meet the adopted definitions of repeated and major weather-related forced interruptions of service will be reviewed as required in an independent assessment by a qualified professional engineer under §25.55(e) and (h).

Proposed §25.55(a)(2) - Application; new generation resource and transmission facilities

Proposed §25.55(a)(2) delineates the new resources and transmission facilities that are required to comply with §25.55.

OCSC recommended including load-side resources, including Large Flexible Loads, in the proposed rule, specifically for weatherization and inspection requirements. OCSC alternatively recommended including load-side resources in a future rulemaking involving §25.53, relating to Electric Service Emergency Operations Plans, if the commission declines to implement the recommendation in the current rulemaking.

TPPA recommended requiring that load resources providing ancillary services to comply with weather preparedness measures and that the commission include "load resources providing ancillary services" to the definition of "resource" under proposed §25.55(b)(8).

Commission Response

Imposing weather preparedness requirements on load resources is beyond the scope of this rulemaking, because the proposal for publication did not provide notice of the possibility of imposing requirements on these entities. Load-side resource requirements may be taken up in a future rulemaking project.

The commission also modifies §25.55(a)(2) to clarify the applicability of this rule to a new or repowered resource or transmission facility.

Sharyland commented that standards such as those created by NESC, IEEE and ANSI would provide clarity and consistency in the industry while avoiding unintended consequences and recommended such standards be incorporated into §25.55(a)(2).

Commission Response

The adopted rule does not explicitly adopt the standards proposed by Sharyland in the rule as the weather preparedness requirements work symbiotically with other industry standards.

Proposed §25.55(b) - Definitions

Proposed §25.55(b) contains the definitions applicable within the rule.

"Transmission capability"

TPPA recommended the commission define the term "transmission capability" which is currently undefined in commission rules, the ERCOT Nodal Protocols, and by NERC. TPPA asserted that defining such a term would "improve compliance and clarify which events will trigger the TSP independent assessment."

Commission Response

"Transmission capability" is not referenced in the definition of "major weather-related forced interruptions of service" in the adopted rule. As such, TPPA's recommendation is unnecessary.

TNMP recommended deleting the current definition of "weather critical component" and instead provided separate definitions of "cold weather critical component" and "hot weather critical component" to better address the distinct weather risks posed by each type of weather emergency.

Oncor commented that the proposed definitions of "major weather-related forced interruptions of service" under §25.55(b)(5), "repeated weather-related forced interruptions of service" under §25.55(b)(6), and "weather emergency" under §25.55(b)(11) are overly broad and could be construed as

strict liability standards, regardless of causation or level of preparedness, and therefore the definitions impose a performance standard, rather than a preparedness standard as required by statute and acknowledged by the commission.

Commission Response

The adopted definitions for "weather critical component," "major weather-related forced interruption of service," and "weather emergency" have been amended to specify the type of conditions and components captured by this rule. Specifically, the commission clarifies that under the rule "an interruption of service" must be the result of an event designated as a "weather emergency," as defined under adopted §25.55(b)(11), by an ERCOT-issued notice and accordingly revises the definition of "weather critical component" under adopted §25.55(b)(10) to provide more objective criteria in relation to a trip, derate, or failure to start. The commission also splits the definition of "major weather-related forced interruption of service" into two different definitions, adopted as §25.55(b)(5) and (b)(6), applicable to resources and transmission facilities, respectively.

However, in response to Oncor's concerns that the definitions of repeated and major weather-related forced interruption of service impose performance requirements, the commission agrees. These definitions are relevant to the requirement that a TSP that experiences major or repeated failures must hire an independent engineer to provide an independent review. This is separate from the temperature-based preparation requirements of this rule. However, this should not be construed as strict liability, because these performance issues are not violations of the rule subjecting the TSP to enforcement. These provisions merely provide an additional layer of assurance that major or repeated weather failures are properly addressed.

Proposed §25.55(b)(5) - Major weather-related forced interruption of service and proposed § 25.55(b)(6) - Repeated weather-related forced interruption of service

Proposed §25.55(b)(5) and (b)(6) define "major weather-related forced interruption of service" as "the loss of 7,500 Megawatt-hours (MWh) of generation service or transmission capability occurring as a result of a weather emergency" and "repeated weather-related forced interruption of service" as "three or more of any combination of the following occurrences as a result of a weather emergency within any three-year period: a failure to start, a forced outage, or a deration of more than fifty percent of the nameplate capacity of a generation resource or a transmission facility."

TEC stated that the proposed definitions are ambiguous. TEC explained that a single definition is more appropriate because corrective action tied to the size of an outage based on megawatt-hours introduces ambiguity due to the different capacities of facilities managed by a utility.

Commission Response

The commission disagrees with TEC that the definitions of "major weather-related forced interruption of service" and "repeated weather-related forced interruption of service" should be combined. The objective of these definitions is to differentiate between a large singular event, "major weather-related forced interruption of service," and multiple smaller event which could be indicative of a larger problem, "repeated forced interruption of service." To combine these definitions, would be contrary to their purpose in the rule.

AEP argued that the proposed definitions should be revised to "more accurately to address the failure of weather critical components in a transmission facility."

Both NRG and Vistra recommended revising the proposed definitions to apply exclusively to outages caused by the weather emergency. Vistra contended that unrelated events causing forced outages and derates are "outside the scope of what a generator can prepare for."

Constellation expressed concern that the rule as written would treat any failure occurring during a weather emergency as being "weather-related" and instead recommended modifying the definitions of "major weather-related forced interruption of service" and "repeated weather-related forced interruption of service" to specify a direct causal link between the weather emergency and the forced interruption of service.

Commission Response

In response to AEP's comments, and in acknowledgment of the differences between a resource and transmission facilities, the commission separates the definition of "major weather-related forced interruption of service" into two definitions applying to resources and TSPs separately. The commission agrees with Constellation NRG, and Vistra that repeated and major interruptions of service must be the result of the weather emergency to implicate the provisions of this rule. Accordingly, the definitions of "major weather-related forced interruption of service" of a resource and transmission facility under adopted §25.55(b)(5) and (b)(6), and "repeated weather-related forced interruption of service" under §25.55(b)(7) require an interruption of service be "as a result of a weather emergency."

NextEra recommended modifying the definition of "major and repeated weather-related forced interruptions of service" to treat generation resources and transmission facilities with different rated capabilities equitably.

Vistra recommended the terms "major weather-related forced interruption of service" under proposed §25.55(b)(5) and "repeated weather-related forced interruption of service" under proposed §25.55(b)(6) incorporate a twelve-hour duration requirement so that both proposed definitions "capture losses of capacity with similar cumulative impact." Vistra explained that a twelve-hour threshold would trigger the independent review of weather preparedness on a basis that recognizes "that repeated smaller interruptions of service may warrant the same policy treatment as one major interruption of service."

LCRA requested that the commission modify definitions in proposed §25.55(b)(5) and (b)(6) to clearly describe which forced interruptions of generation service will trigger proposed §25.55(e). LCRA noted that high temperature related HSL adjustments should not be counted as a "derate" and that the commission should include, in its final rule, that any derate required for compliance with environmental permits are not "weather-related" and would not count as a major or repeated weather-related forced interruption of service.

Commission Response

The commission acknowledges NextEra's concern that the proposed definitions for major and repeated weather-related forced interruptions of service could be refined to address generation resources and transmission facilities with different rated capabilities. The adopted definitions measure loss by percentage of the capacity reflected in a resource's seasonal net maximum sustainable rating or a transmission facility's rating, so that entities

of different rated capabilities are treated equitably. No further changes are needed.

Regarding Vistra's request to amend the definitions of "major weather-related forced interruptions of service" and "repeated weather-related forced interruptions of service" to include a 12-hour standard, the adoption definition of "major weather-related forced interruption of service of a resource" includes a 12-hour standard. For TSPs, the commission declines to include a 12-hour standard and instead defines it as a non-momentary outage. "Momentary interruption" is a defined term in §25.52(c)(5), relating to Reliability and Continuity of Service, that is already understood by TSPs. The commission declines to add a 12-hour standard for repeated interruptions, because this definition is intended to capture recurring instances of smaller events that could indicate a larger problem at a given system.

Regarding LCRA's concerns that derates unrelated to a weather emergency would count towards a "repeated weather-related forced interruption of service", the adopted definitions require that a derate be the result of a weather emergency. No further change is needed.

Enbridge expressed concern that the definition of "repeated weather-related forced interruption of service" imposes what are effectively performance requirements on weather resource-dependent resources during planned or expected periods of low wind or solar resources. Enbridge provided draft language consistent with its recommendation.

NextEra also requested that the weatherization standard in the proposed rule distinguish between the loss of generation due to weather related equipment failures and naturally occurring variability in production that renewable resources experience due to changes in wind speed and solar irradiance.

Commission Response

The commission disagrees with Enbridge's assertion that the definition of "repeated weather-related forced interruption of service" would include planned or expected periods of low wind or solar resources. Planned or expected periods of low non-dispatchable resources would have to occur during weather emergencies to be included in the adopted definition of "repeated weather-related forced interruption of service." Interruptions of service that meet the adopted definitions may be reviewed, as required in an assessment by a qualified professional engineer, under subsection (e) or (h), as applicable.

However, the commission acknowledges Enbridge's concerns regarding weather-dependent generation resources and revises the definitions in a manner that is more inclusive of such resources. Specifically, the commission revises the definition of a "major weather-related forced interruption of service of a generation resource" to refer to a failure to start or loss through a duration element of 12 or more hours as a result of a weather emergency. The commission further revises the definition of a "repeated weather-related forced interruption of service" to refer to "the failure of a resource to start" during separate weather emergencies and "the loss of 50% or more of the capacity reflected in a resource's seasonal net maximum sustainable rating for 30 minutes or more" during separate weather emergencies. The commission maintains that these revisions adequately address Enbridge's and NextEra's concerns regarding the impact of the adopted definitions on solar and wind resources, as the adopted definitions require a forced interruption of service as caused by a weather emergency.

Proposed §25.55(b)(5) - Major weather-related forced interruption of service

CenterPoint commented that, for a TSP, the definition of "major weather-related forced interruption of service" is ambiguous and requested the commission clarify the definition. CenterPoint stated that the definition should be narrowed only to "transmission losses occurring as a result of a weather emergency."

Commission Response

The commission agrees with CenterPoint that the proposed definition is ambiguous and modifies the language for "major weather-related forced interruption of service" to require a forced interruption of service be the result of a weather emergency.

AEP recommended revising the proposed definition of "major weather-related forced interruption of service" under proposed §25.55(b)(5) to identify forced outages of transmission facilities, caused by failure of weather critical components as a result of a weather emergency, that directly cause a limitation or restriction in the deliverability of generation services above a specified threshold."

Oncor commented that the definition of "major weather-related forced interruptions of service" under proposed §25.55(b)(5) should focus on resiliency and accordingly should "not constitute a major weather-related forced interruption of service without some connection to both diminished grid performance and a weather-related failure of a weather critical component." Oncor recommended the proposed definition explicitly require a forced outage to have a clear causal relationship with the direct restriction of generation deliverability.

TCPA commented that a "major weather-related forced interruption of service" should be "tied to a coincident risk" and not an interruption occurring in isolation without a system-wide impact. TCPA stated that, absent an emergency, loss of one plant cannot be a "major weather-related outage impacting the grid as a whole."

Commission Response

The adopted rule defines "major weather-related forced interruption of service" for TSPs and resources as resulting from weather emergencies, which are defined as involving a risk of load shed or direct reliability risk to the ERCOT system. This addresses the concerns of Oncor, AEP, and TCPA that interruptions of service that do not actually threaten reliability will not count as major interruptions of service.

Sharyland requested that the commission clarify the rationale for the use of 7,500 MWh, as from its perspective, the loss of 7,500 MWh of transmission capability may not necessarily be significant.

Enbridge and LCRA recommended that the commission clarify that the 7,500 MWh applies on a per event basis, rather than per season. LCRA requested clarifying the definition of "major weather-related forced interruption of service" to ensure that the definition is applied per unit.

TEC noted that the proposed definition of "major weather-related forced interruption of service" is unclear on whether the 7,500 MWh threshold "should be considered on a contiguous basis or an accumulation over time." TEC also indicated that higher capacity, more efficient plants would be burdened disproportionately by the rule as a perverse incentive would be created via the proposed production-based metric. If the commission includes a megawatt-hour threshold, TEC urged the commission to work

with utilities and ERCOT to determine whether the 7,500 MWh threshold is "a realistic and nondiscriminatory metric" that warrants being codified in commission rules.

NRG and Vistra requested that the 7,500 MWh trigger referenced in the "major weather-related forced interruption of service" be reconsidered. TCPA stated that the basis for the 7,500 MWh number used in the proposed definition is not explained and is ambiguous as to whether the standard is system-wide or unit-specific.

TPPA argued that the proposed definition of "major weather-related forced interruption of service" under proposed §25.55(b)(5) is overbroad as it would include any ancillary purchases or trades instead of just actual production capacity. To make the proposed definition more precise, TPPA recommended revising the definition to reference "net generation capacity" and include a duration element, specifically "within a one-week time period" in which a major interruption, or loss of 7,500 MWh, is experienced. TPPA noted that the 7,500 MWh standard for a transmission facility would be triggered on essentially any outage on a transmission line, switchyard, or bus, and trigger the independent assessment under the rule. TPPA stressed that the current definition, as applied to TSPs, would be cumbersome to comply with and does not meaningfully strengthen grid reliability for seasonal hot and cold weather.

CenterPoint objected to the 7,500 MWh term in the definition as, according to CenterPoint, "TSPs do not normally measure a loss of transmission capability in terms of megawatt hours." Instead, CenterPoint argued that TSPs measure such a loss by duration and concurred that minor or momentary interruptions of transmission capability do not meet the definition of a "major weather-related forced interruption of service." CenterPoint recommended that the commission adopt a duration measurement for "major weather-related forced interruption of service" that, "at a minimum, excludes momentary losses of transmission capability." CenterPoint recommended replacing the proposed definition "a non-momentary transmission service outage caused by damage to, or the inoperability of, a transmission facility as a result of a weather emergency."

OCSC objected to the definition of "major weather-related forced interruption of service" as too restrictive. Specifically, OCSC stated the definition does not allow for losses lesser or greater than 7,500 MWh and that, as proposed, the definition would require a loss of exactly 7,500 MWh. OCSC commented that the presumed intent was to define a "major weather-related forced interruption of service" as the loss of 7,500 MWh or greater. OCSC noted that 7,500 MWh or greater would result in an overly permissive definitions because it would exclude some of the state's largest power generation facilities. OCSC concluded that the threshold should be 2,500 MWh, rather than 7,500. OCSC recommended replacing the proposed definition with "the loss of 2,500 megawatt-hours or more of generation service or transmission capability occurring as a result of a weather emergency."

TCPA argued that the 7,500 MWh threshold would place additional pressure on "larger dispatchable baseload units" due to the studies, inspections, penalties, and weatherization requirements under the rule because larger resources with more units could trigger the threshold in a short period of time, while smaller resources may never trigger the threshold. TCPA recommended that if the proposed definition is intended to be unit-specific, then the definition should be scaled appropriately to more equitably apply the definition across small and large generation units.

Constellation, Vistra, and NRG agreed with TCPA's initial comments that the 7,500 MWh threshold would result in disparate treatment for generation resources of different sizes possessing a different number of units. Constellation recommended modifying the definition to prevent discriminatory treatment.

Vistra concluded the definition would create "an arbitrary distinction in its application to different resources" and therefore "would not ensure a robust review of weather-preparedness plans across the ERCOT fleet" for outages of similar duration.

TCPA also commented that if the threshold is based on a "system-wide loss of generation," as it proposes, then using a specific MW amount to calculate "loss" is only viable if the "available installed capacity in ERCOT remains stagnant." Since additional generation will be added or taken offline over time, TCPA accordingly proposed replacing the 7,500 MWh threshold with a percentage value rather than a whole number. TCPA recommended, specifically, "greater than 50% of available lost capacity for a period of 48 or more consecutive hours." NRG agreed with TCPA's proposed duration-based scale and recommended the adoption of a revised definition similar to TCPA's recommended rule language. Vistra proposed substantially similar language as well.

Constellation proposed scaling the trigger to the facility by a specified number of hours based on the type of facility plus the amount of time the generator has committed to come online under normal circumstances in its unit commitment.

Commission Response

The commission agrees that the rule could be clarified to specify the application of the 7,500 MWh figure. However, in consideration of commenters concerns with the figure, it is no longer a part of either definition regarding "major weather-related forced interruptions of service". Therefore, implementing Enbridge's, TCPA's, Constellation's, Vistra's, NRG's, OCSC's, Sharyland's, TEC's, TPPA's, and LCRA's recommendation is unnecessary.

The commission agrees with CenterPoint that the proposed definition of "major weather-related forced interruption of service" to be specific to TSPs, and splits the definition into two separate definitions respectively applicable to resources and transmission facilities.

Constellation also stated that these definitions should be limited to the summer and winter seasons and should be consistent with ERCOT protocols.

Commission Response

The commission disagrees with Constellation that the definition of "major weather-related forced interruption of service" must specify that they are limited to summer and winter. The language throughout the rule is limited to the winter and summer seasons, effectively limiting the application of the definitions themselves.

LCRA also requested that the rule clearly define that in determining if a "major weather-related forced interruption of service" has occurred, loss of generation be calculated based off the resource's seasonally adjusted high sustained limit (HSL). LCRA further proposed modifying proposed §25.55(b)(5) to create a new, separate definition applicable to generation resources and provided draft language consistent with its recommendation.

LCRA recommended that the commission focus this definition on the most critical times when weather-related failures are most likely to negatively impact electric consumers, such as during ERCOT-declared emergency conditions.

Commission Response

The commission disagrees with LCRA's recommendation to include reference to a resource's HSL in the definition of "major weather-related forced interruption of service of a resource" and instead includes language referring to a resource's seasonally adjusted net maximum sustainable rating to calculate loss of generation. Unlike the HSL, the seasonally adjusted net maximum sustainable rating is a value that a generation entity must report to ERCOT prior to the beginning of the summer and winter seasons and is reflective of a more typical operating range of a resource during that season and is not subject to frequent changes throughout a season.

The commission also notes that the revised definition is a separate definition applicable only to resources and requires emergency conditions determined by ERCOT issuing an Emergency Notice. As such, no further modifications are required.

APA and ACP recommended revising the proposed definition of "major weather-related forced interruption of service" to add "causing an outage or derate attributable to equipment failures that could have feasibly been prevented by following commonly accepted Good Utility Practices" to the end of the provision. APA and ACP maintained that the definition should not apply to equipment limitations outside of the reasonable control of the resource owner, and rather focus only on outages and derates caused by equipment failures that could have been prevented if good utility practices had been followed. APA and ACP accordingly recommended the commission specify a methodology or otherwise clarify "how the required analysis to calculate expected lost electricity production will be completed consistently and accurately."

AEP further recommended revising the definition by replacing "weather-related" with "weather emergency" to align with the defined term "weather emergency under proposed §25.55(b)(11). AEP provided draft language consistent with its recommendations.

Commission Response

The commission has split the definition of "major weather-related forced interruptions of service" into two separate definitions applicable to transmission facilities and resources, respectively. The commission maintains that the new definitions "major weather-related forced interruption of service of a transmission facility" and "major weather-related forced interruption of service of a resource" strike the appropriate balance of narrowing the definition while still appropriately specifying the entities that must implement weather preparedness standards.

The commission will not modify "major weather-related forced interruption of service of a transmission facility or resource" to state "major weather-emergency forced interruption of service of a transmission facility or resource" because "weather-related" is consistent with PURA §35.0021 and the adopted definitions specify weather emergency conditions are necessary, making the modification unnecessary.

Proposed §25.55(b)(6) - Repeated weather-related forced interruption of service

CenterPoint objected to the inclusion of language relating to "failure to start" and "a deration of more than fifty percent of the nameplate capacity" in the definition of "repeated weather-related forced interruption of service" under proposed §25.55(b)(6) as inapplicable to transmission facilities. LCRA recommended deleting "failed start" from the definition, because a persistent startup failure leading to a loss of generation capacity would be

captured by the term "forced outage" in the proposed definition of "repeated weather-related forced interruption of service" under §25.55(b)(6).

TEC argued that a derate materially differs in scale from a complete outage or a failure to start and accordingly recommended revising the proposed definition of "repeated weather-related forced interruption of service" under §25.55(b)(6) to remove derations as a trigger for an independent review under proposed §25.55(e) and (h). TEC also contended that outages at a TSP's switchyard or substation may not be able to quantify the megawatt-hour disruption directly caused by an outage or derate. TEC therefore recommended that repeat failures by a facility should be considered more relevant than the size of a single failure.

AEP commented that the proposed definition "repeated weather-related forced interruption of service" under §25.55(b)(6) is overly broad as it could be interpreted as construing a forced outage of "any three transmission elements anywhere on the TSPs system" a repeated forced interruption of service, regardless of the cause. AEP recommended revising the proposed definition to specify "that any of the combination of occurrences would occur at the same transmission facility, due to the failure or one or more weather critical components within that transmission facility, and the failure is a result of a weather emergency." AEP provided draft language consistent with its recommendations.

CenterPoint, LCRA and Oncor recommended amending the definition to explicitly state that it only applies to individual units as the proposed language lacks clarity.

CenterPoint elaborated that, if a forced outage occurred in different transmission facilities in consecutive years, such outages should not be within the proposed definition of "repeated weather-related forced interruption of service."

CenterPoint recommended replacing the proposed definition of "repeated weather-related forced interruption of service" with "three or more of any combination of the following occurrences as a result of a weather emergency within any three-year period involving the same generation resource or transmission facility: a failure to start, a forced outage, or a deration of more than fifty percent of the nameplate capacity of a generation resource; or a forced outage of a transmission facility."

Oncor recommended the commission explicitly specify in the proposed definition of "repeated weather-related forced interruption of service" that the threshold for meeting the proposed definition is discrete to each facility. Oncor also recommended the proposed definition exclude momentary interruptions and referred to §25.52(c)(5), relating to Reliability and Continuity of Service as support for its contention.

TEC and TPPA also recommended the commission revise the proposed definition of "repeated weather-related forced interruption of service" under §25.55(b)(6) to clarify that multiple outages during the same weather event are considered a single outage or occurrence. TEC explained the possibility for a facility to fail to start or sustain multiple short, forced outages as attempts are made to correct the issue. Accordingly, TEC and TPPA contended that a utility should not be penalized for any restoration efforts it undertakes. TEC provided draft language consistent with its recommendations for the proposed definition of "repeated weather-related forced interruption of service" under §25.55(b)(6).

TPPA also recommended that the proposed definition be limited to the failure of "the same or similar components" within a generation facility, due to the complicated nature of generation facilities and the fact that repeat interruptions can occur due to the failure of unrelated components.

For the same reasons stated in its recommendations to the proposed definition of "major weather-related forced interruption of service" §25.55(b)(5), APA and ACP recommended revising the proposed definition of "repeated weather-related forced interruption of service" to state "three or more of any combination of the following occurrences, attributable to equipment failures that could have feasibly been prevented by following commonly accepted Good Utility Practices, as a result of a weather emergency within any three-year period: a failure to start, a forced outage, or a deration of more than fifty percent of the expected capability of a resource or a transmission facility."

LCRA commented that the "three strikes" criteria included in the definition of "repeated weather-related forced interruption of service" only apply when the weather-related interruption results in an actual loss of generation service.

Similarly, TCPA argued that the "three strikes" provision is unrealistic, as a generator that starts 100 times but fails three times should not be treated the same as a generator that starts five times but fails three times. TCPA maintained that under the proposed definition a repeat weather-related failure should be based on the same component in accordance with statute, and that components that commonly break should not trigger the definition.

Commission Response

In response to multiple comments, the definition of "repeated weather-related forced interruption of service" has been changed to clarify that failures to start are during separate weather emergencies.

The proposed definition of "repeated weather-related forced interruption of service" is intended to capture repeated failures of the same resource or transmission facility. The weather preparedness requirements under the adopted rule are intended as preparation standards, not performance standards. Resources are required to prepare for summer and winter conditions. Interruptions of service that meet the adopted definitions may be reviewed as required in an assessment by a qualified professional engineer under §25.55(e) or (h), as applicable.

LCRA and TPPA recommended amending that the rule language to calculate any loss of generation based off the resource's seasonally adjusted HSL. LCRA further recommended that any derates required for compliance with environmental permits not be considered "weather-related" nor count toward a resource's "three strikes."

TCPA also recommended the commission provide criteria for the term "forced outage" as used in the proposed definitions including "a threshold of time and direct weather-related causation" as outages that coincidentally occur during a weather emergency event may not be related to the weather.

TPPA also recommended "that forced outages or derations that occur because of unforeseeable circumstances outside the reasonable control of the resource or transmission facility owner" as well as extensions of an already existing outage "not be counted toward the limited number of occurrences" under the proposed definition. TPPA provided draft language consistent with its recommendations.

Commission Response

The adopted definition of "repeated weather-related forced interruption of service" calculates loss of a resource based off the resource's seasonally adjusted net maximum sustainable rating and require loss as a result of a weather emergency. No modifications are needed for LCRA and TPPA's requests.

Further, LCRA recommended creating a new, separate definition for generation specific repeated weather-related interruptions of service and provided draft language consistent with its recommendation.

APA and ACP also recommended the commission specify a duration threshold in the proposed definition of "repeated weather-related forced interruption of service" so that "outages and derates of sufficient impact qualify as repeated weather-related forced interruptions of service" and that the definition should more clearly apply to energy storage resources."

Commission Response

The adopted definition of "repeated weather-related forced interruption of service" has specific requirements for loss of a resource that address LCRA's concerns.

Further, the adopted definition requires loss of a resource for "30 minutes or more;" this durational element addresses APA's and ACP's concern.

Constellation and TCPA recommended that the definition of "repeated weather-related forced interruption of service" focus on whether the interruptions are the result of the failure of the same critical weather component or the failure of the same resource or transmission facility. Constellation expressed that a failure to start of any duration should not be considered a forced interruption of service and recommended adding a reasonable minimum duration threshold. Constellation recommended the threshold be a failure to start "that results in an outage continuing for four or more hours beyond a resource's scheduled online time." TCPA asserted that a resource-level focus for the definition is flawed, as an interruption on that scale does not necessarily mean that an issue is "repeated."

Vistra requested clarification of what the phrase "failure to start" means, as used in the proposed definitions, in the context of a forced outage, particularly in relation to the 7,500 MWh threshold in the proposed definition of "major weather-related forced interruption of service."

Commission Response

Furthermore, the commission clarifies that a failure to start means when a resource that is offline and available for dispatch is given an instruction from ERCOT to turn on and is unable to successfully start up.

Vistra recommended revising the term to clarify "that the relation to weather is one of direct causality (to ensure that outages occurring during a weather event, but for some other, non-weather-related reason are excluded) and to input a relative duration threshold for failures to start, forced outages, and derations." Vistra maintained that brief derates or outages or delayed starts lasting minutes or hours should not trigger the definition and result in an entity incurring the cost of a full audit of the generation resource's weather preparedness. Vistra noted that such incidents are common at older generators, even in normal weather conditions.

TCPA also recommended that the proposed definition for "repeated weather-related forced interruption of service" require a failure to start to "result in an outage that goes twelve or more hours before the resource's scheduled online time" and that a brief interruption or "trip" should not be considered a forced outage under the definition if the resource can return to service.

Commission Response

There is no direct relationship between a failure to start and a forced outage other than being criteria for what constitutes a "repeated weather-related forced interruption of service". In context of this rule, a failure to start occurs as a result of a "weather emergency." No changes to the rule language are necessary.

TCPA recommended that a "repeated weather-related forced interruption of service" should only be deemed to exist if ERCOT has provided notice to a resource owner following each of the weather-related incidents counted toward the three that may trigger an audit.

Commission Response

Adopted §25.55(e) and (h) require ERCOT to provide a generation resource or TSP notice when a resource or TSP has a repeated or major weather-related forced interruption of service. The commission declines to make notice a requirement for a major or repeated weather-related forced interruption of service to exist, as that would be counter to the objective of this rulemaking project. An entity should be aware when they experience a major or repeated forced interruption of service.

NRG recommended that generation units be evaluated based on their actual generation capacity and not their nameplate generation capacity. They asserted that a unit's age and other factors can reduce its actual generation capacity to an amount less than its nameplate generation capacity.

NextEra recommended removing the reference to "nameplate capacity" within proposed §25.55(b)(6) and replacing it with the new term "expected capability". "Expected capability" is defined as "either the nameplate capacity rating for a non-intermittent renewable resource, or the nameplate capacity rating of an intermittent renewable resource, appropriately adjusted to reflect the expected production of the resource based on prevailing wind and solar irradiance conditions during the weather emergency period."

Commission Response

The commission declines to adopt NextEra's recommendation to include "expected capability" instead of "nameplate capacity." Instead, "repeated weather-related forced interruption of service" has been revised to replace "nameplate capacity" with "the capacity reflected in a resource's seasonal net maximum sustainable rating." Resource availability for non-dispatchable entities will be considered as a part of the after-event analysis.

Proposed §25.55(b)(9) - Transmission facility

Proposed §25.55(b)(9) defines transmission facility as a "transmission-voltage element inside the fence surrounding a TSP's high voltage switching station or substation."

Sharyland recommended revising the proposed definition of "transmission facility" to "A system comprised of multiple transmission elements and wholly-contained within a TSP's high-voltage switchyard or substation that is engineered, designed, constructed, operated and maintained to provide for (i)

the transmission of high-voltage electricity or (ii) the reduction of high-voltage electricity to a lower voltage."

LCRA recommended modifying the proposed definition of "transmission facility" to clarify that entities subject to this rule are responsible only for those facilities that they own and operate.

EDF, TCA, and ASC contended that the proposed definition of "transmission facility" under §25.55(b)(9) as "a transmission-voltage element inside the fence surrounding a TSP's high-voltage switching station or substation" is insufficient because transmission line operations extend beyond substation equipment. EDF, TCA, and ASC stressed that the "full capability and continuity of transmission line operations" at all levels is essential to reliability and continuity of electric service. EDF, TCA, and ASC indicated that "high temperature-driven transmission ampacity reductions would exacerbate transmission thermal and voltage limits that tighten transmission constraints, reducing deliverability and raising congestion costs when customer demand is highest." Accordingly, EDF, TCA, and ASC recommended transmission lines be accounted for in the proposed definition of "transmission facility".

TPPA suggested narrowing the proposed definition of "transmission facility" under §25.55(b)(9) in scope and provide a "meaningful voltage component." TPPA's proposed definition would result in the regulation of transformers referenced under proposed §25.55(f)(1)(A)(iii), (f)(2)(A)(i), and (f)(2)(A)(ii) to "focus on the transformers that are part of the bulk electric system." TPPA asserted its approach is more consistent with establishing a uniform policy approach to regulating the bulk electric system. TPPA commented that the commission's proposed definition of "transmission facility" under §25.55(b)(9) is unclear as it does not specify what infrastructure is contemplated and relies on industry jargon. TPPA recommended the proposed definition refer to specific voltage levels and mirror the ERCOT protocols. TPPA provided draft language consistent with its recommendations.

TPPA alternatively recommended revising the proposed definition of "transmission facility" under §25.55(b)(9) to more specifically indicate whether and to what extent transformers are included within the scope of the rule. TPPA requested the commission "consider the number of transformers at each level of the transmission system and the associated impact on staffing needs and crew hours needed to meet those requirements" if the commission insists on more discrete regulation of the transmission system.

Commission Response

The commission agrees with LCRA and amends the adopted definition of "transmission facility" to those owned and operated by the TSP as recommended by LCRA. This revision also partially addresses the concerns of Sharyland and TPPA. However, the commission disagrees with EDF, TCA and ASC's recommendation to include transmission lines in the definition of "transmission facility." Currently, transmission line construction standards, which are largely governed by NERC, NESC, IEEE and other national standards, are more precise about transmission line construction and maintenance to handle different weather conditions, including wind loading and ice loading. Considering the strict standards imposed on transmission line construction, extensive cost and logistical challenges to inspecting all transmission lines within the ERCOT region, the commission refuses to consider including transmission lines in the definition of transmission facility. The amended definition of "transmission facility"

is "a transmission-voltage element inside the fence surrounding a TSP's high-voltage switching station or substation owned or operated by the TSP."

Sharyland recommended amending proposed §25.55(b) to include a definition of "transmission element" defined as "Any component or individual piece of equipment, operating at a nominal voltage at or in excess of 60 kilovolts and located inside the fence of a TSP's high-voltage switching station or substation."

Commission Response

The commission has narrowed the definition of transmission facility to better identify a transmission-voltage element and maintains that the suggested language from Sharyland is too limiting.

Proposed §25.55(b)(10) - Weather critical component

Proposed §25.55(b)(10) defines weather critical component as "any component of a resource or transmission facility that is susceptible to fail during a weather emergency, the occurrence of which failure is likely to significantly hinder the ability of the resource or transmission facility to function as intended or, for a resource, is likely to lead to a trip, derate, or failure to start."

NRG and Vistra recommended revising the proposed definition of "weather critical component" under §25.55(b)(10) to clarify that the definition only captures those components that fail because of a weather emergency and not those that simply fail during a weather emergency. Vistra commented such a change is necessary to ensure the rule requirements are limited only to issues directly caused by a weather emergency, rather than issues that occur during, but are unrelated to, a weather emergency.

Oncor noted that the proposed definition of "weather critical component" under §25.55(b)(10) is too generic to sufficiently cover hot and cold weather critical components. Oncor recommended preserving the existing definition of "cold weather critical component" and suggested the adoption of a similar definition for "hot weather critical component." Oncor stated that, if the commission were to retain the proposed definition of "weather critical component" under §25.55(b)(10), then "weather critical component" should be revised to "either a cold weather critical component or a hot weather critical component, or both, as applicable."

CenterPoint recommended that the terms of temperature conditions, namely hot and cold weather, should be included in the proposed definition of "weather critical component" under §25.55(b)(10) as the weather emergency preparation measures under proposed §25.55(c) and (f) are based on hot and cold weather temperature conditions. CenterPoint recommended replacing the current proposed definition with "Any component of a resource or transmission facility that is susceptible to fail under the weather conditions described in §25.55(c)(1)(B) and (c)(2)(B) for resources and §25.55(f)(1)(B) and (f)(2)(B) for transmission facilities, the occurrence of which failure is likely to significantly hinder the ability of the resource or transmission facility to function as intended, or, for a resource, is likely to lead to a trip, derate, or failure to start."

Enbridge reiterated comments made about wind turbines during the Phase 1 rulemaking by GE Renewable North America, Vestas American Wind Technology, and Siemens Gamesa Renewable Energy. Specifically, that the cited companies neither offer hardware retrofit technology to prevent ice from forming on turbine blades or to remove ice build-up once it occurs, nor blade coatings to protect against ice. Therefore, Enbridge recommended the revision of the definition of "weather critical component" to focus on ensuring components function as designed

instead of protecting against potentially necessary operational interruptions, as icing is currently unavoidable in certain weather emergency conditions due to technological limitations. TSPA commented that the proposed definition of "weather critical component" under subsection §25.55(b)(10) fails to consider how solar facilities are constructed over multiple acres with multiple components. TSPA further commented that the failure of an individual component could result in a minimal deration with no impact on the operations of the overall facility. Accordingly, TSPA recommended the definition be revised to specify a "derate of more than five percent of the installed capacity."

Commission Response

The commission modifies the definition of weather critical component to specify that the component is susceptible to fail as a result of a weather emergency, addressing NRG and Vistra's concerns. However, the commission declines to bifurcate the definition into separate definitions for "hot" and "cold" components as recommended by Oncor and CenterPoint. Language in §25.55(c)(1)(A) and (f)(1)(A) specify the types of measures expected to be implemented to protect these components depending on the season and as appropriate for the resource or transmission facility. The commission disagrees with Enbridge that the definition of weather critical component should focus on components working as designed. The objective of this definition is to capture component which could lead to failure if it freezes or overheats, the definition will not be modified as Enbridge requested.

TPPA stated that the proposed definition of "weather critical component" is overly broad and recommended the narrowing of the definition. TPPA suggests that the definition only include components that could cause a "signification" deration be considered critical, which would be consistent with other language in the proposed definition. TPPA also recommended that the proposed definition of "weather critical component" under §25.55(b)(10) also include "failure to provide any ancillary service for which the resource is obligated to provide."

Commission Response

In response to TPPA, the commission agrees that the definition of weather critical component need be narrowed to only include components whose failure would cause a signification derate. The definition of "weather critical component" is modified to require that a derate be of more than 5% of the capacity represented in a resource's seasonal net maximum sustainable rating or a transmission facility's rating. This modification addresses TSPA's concern as well.

Sharyland expressed its belief that the intent of the proposed definition of "weather critical component" was to capture only emergencies caused by hot or cold temperature and recommended amending both definitions to reflect this consideration.

Commission Response

The commission maintains that the weather preparedness standards imposed by the adopted rule are limited to the summer and winter seasons. As such, the definition of "weather critical component" does not need to explicitly specify summer and winter seasons.

Proposed §25.55(b)(11) - Weather emergency

Proposed §25.55(b)(11) defines "weather emergency" as "a situation resulting from weather conditions that produces significant risk for a TSP that firm load must be shed or a situation for which

ERCOT provides advance notice to market participants involving weather-related risks to the ERCOT power region."

TCPA recommended limiting the weather conditions under the proposed definition of "weather emergency" to the summer and winter seasons to comply with SB 3. TCPA provided draft language consistent with its recommendation.

AEP recommended amending the proposed definition of "weather emergency" under §25.55(b)(11) to specifically ensure that the term explicitly correlates with cold or hot weather emergency conditions. AEP provided draft language consistent with its recommendations. Oncor noted the proposed definition of "weather emergency" under §25.55(b)(11) is overly broad and recommended the term be restricted to only hot or cold weather conditions and critical component failures associated with such conditions.

Commission Response

The definition of weather emergency has been modified to specify summer and winter weather events, as recommended by TCPA, AEP, and Oncor. The commission declines to adopt Oncor's specific recommendation to include critical component failures in the definition of "weather emergency" as it is unnecessarily restrictive and may potentially exclude certain weather events.

TCPA recommended revising the proposed definition of "weather emergency" under §25.55(b)(11) to clarify the type of notice and level of urgency of the advance notice ERCOT provides for weather emergencies. TCPA explained that ERCOT regularly provides multiple notices on a variety of matters and that "mere notice of weather conditions should not be considered indicative of a weather emergency," rather an Energy Emergency Alert (EEA) should be required under the proposed definition.

TPPA recommended the commission delete the language establishing a weather emergency when there is "significant risk for firm load shed," as this non-specific activation criterion is heavily subjective and fact-based." TPPA argued the definition of "weather emergency" should be limited to ERCOT issued notices regarding hot or cold weather risks, or grid reliability. TPPA provided draft language consistent with its recommendations.

Constellation and NRG noted that the proposed definition of "weather emergency" does not indicate what type of advance notice is issued or the level of urgency to the notification provided by ERCOT. Constellation stated that mere notice of any kind should not constitute a weather emergency, instead notice of an EEA or other emergency notice issued by ERCOT should be required.

CenterPoint encouraged the commission to include the "good utility practice" standard as defined under §25.5(57), relating to Definitions, in the proposed definition of "weather emergency." CenterPoint asserts that it is an objective standard historically used by the commission and would be helpful for assessing load shed risks. CenterPoint also commented that the phrase "a situation for which ERCOT provides advance notice to market participants involving weather-related risk to the ERCOT power region" is ambiguous. CenterPoint and instead recommended the proposed definition include language referencing "any temperature-based weather condition for which ERCOT issues an Emergency Notice" as constituting a weather emergency. CenterPoint recommended replacing the current proposed definition of "weather emergency" with: "A situation resulting from ambi-

ent temperature conditions, which (a) presents a significant risk, as determined by the TSP using good utility practice, that firm load must be shed or (b) causes ERCOT to issue an emergency notice to market participants that it is operating in an emergency condition pursuant to ERCOT Nodal Protocol Section 6.5.9.3.4."

NRG and APA and ACP requested that the definition of "weather emergency" be grounded in existing ERCOT emergency alert levels set out in ERCOT protocols section 6. As such, NRG recommended that "weather emergency" under the proposed rule be triggered by an ERCOT "emergency notice", Protocol 6.5.9.4, or an "energy emergency alert" declaration, Protocol 6.5.9.4. APA and ACP recommended revising the proposed definition of "weather emergency" to "a situation resulting from weather conditions that produces significant risk for a TSP that firm load must be shed or a situation resulting from weather conditions that causes ERCOT to declare an Energy Emergency Alert Level 3 in accordance with the ERCOT protocols." APA and ACP also requested clarification on the process for determining and communicating the occurrence of a weather emergency to ensure market participants are aware of when an outage or derate may qualify as a "major or repeated weather-related forced interruption of service."

Commission Response

The commission agrees with TCPA, TPPA, Constellation, NRG, CenterPoint, and APA and ACP that the definition of "weather emergency" under §25.55(b)(11) should include language referencing ERCOT Emergency Notices. The commission disagrees with TCPA's NRG's, and APA and ACP's specific recommendation and declines to tie the definition of "weather emergency" to ERCOT EEA notices as the threshold to trigger such events is too high of a standard for the purposes of this rule. The commission also disagrees with CenterPoint's recommendation regarding the inclusion of "good utility practice" because such a term would provide a spectrum of determinations by entities when a binary distinction is required. Tying the definition to ERCOT Emergency Notices creates an objective, independent basis for determining whether a "weather emergency" exists. In response to APA and ACP's specific request for a process to determine and communicate the occurrence of a "weather emergency", the revision tying ERCOT Emergency Notices to the definition should address this concern as such Notices are communicated to market participants and the general public in a manner that is already known.

TCPA recommended the definition of "weather emergency" exclude weather emergency events during which "a generator would not reasonably be expected to operate given the design capabilities of the resource." TCPA stressed this point is particularly important due to the potential costly measures that must be performed under the rule and the high administrative penalties associated with an entity's failure to comply.

Vistra commented the proposed definition of "weather emergency" under §25.55(b)(11) be limited only to emergencies that impact generation resources and not general weather events for which ERCOT provides an emergency notice. Specifically, Vistra noted the proposed definition appropriately limits the applicability of the definition for TSPs but does not do so for generation entities. Vistra accordingly recommended the phrase "generation resources in" the ERCOT power region be inserted in the proposed rule.

Commission Response

The commission declines to modify the definition of weather emergency to exclude emergency events during which a generator would not reasonably be expected to operate given its design capabilities, as recommended by TCPA. The definition of weather emergency serves to help identify which periods of time the rule focuses on and is a situational condition. It is not a specific status that applies to each facility. As such, modifying the definition of weather emergency based on the design capabilities of individual facilities is inappropriate.

The commission disagrees with Vistra that the definition of weather emergency needs to reference generation resources as it does TSPs. TSPs are the entity that implement load shed, but load shed could be necessary due to either the failures of TSPs or generation resources. If TSPs must shed load due to the weather-related failure of either type of entity, it is a weather emergency.

CenterPoint commented that the definition for a "weather emergency" should include the conditions for determining whether a "weather emergency" exists. CenterPoint recommended that the proposed definition of "weather emergency" specify objective standards for determining whether "temperature-based weather conditions produce a 'significant risk for a TSP that firm load must be shed.'"

TNMP suggested revising the definition of "weather emergency" to state that any load shed must be material and recommended the load shed risk be clarified as a shedding of 100 MWh or more.

TPPA contended that the proposed definition of "weather emergency" under §25.55(b)(11) is overbroad as it implicitly references hurricanes and tornadoes, which are not common or exclusive to summer and winter weather and therefore out of scope of the proposed rule.

Oncor noted that preparedness for other types of weather events, such as tornadoes, are outside of the scope of this rulemaking and such measures involve overall system design and capital improvements, not discrete facility preparedness as is considered under the rule.

EDF, TCA, and ASC recommended expanding the term "weather emergency" to include other weather events unrelated to cold or heat conditions such as "hurricanes, flooding from storms, coastal storm surges, tornadoes, and wildfires." EDF, TCA, and ASC emphasized the dangers wildfires pose to transmission lines and recommended the rule "expand TSP requirements to identify lines and substations in wildfire risk areas and the consequences for ERCOT system operation if the lines were shut down proactively or lost due to active wildfires."

LCRA noted that the proposed definition for "weather emergency" does not specify the types of weather conditions used as criteria and requested that the definition be revised to align with the intent for the weatherization preparedness measures to apply only to hot and cold weather emergencies.

Sharyland expressed that the intent of the proposed definitions of "weather critical component" and "weather emergency" was to capture only emergencies caused by hot or cold temperature and recommended amending both definitions to reflect this consideration.

Commission Response

In response to CenterPoint's request for objective standards to be included in the definition of "weather emergency," the commission maintains that the revision tying the definition to ER-

COT-issued Emergency Notices provides entities sufficient, objective criteria for determining whether a "weather emergency" exists.

The commission declines to implement TNMP's specific language regarding load shed risk of 100 MWh or more as this may inappropriately exclude weather emergencies that still represent a threat to grid reliability or health and safety of the general public. The revised language of "weather emergency" also specifically references summer or winter weather to address TPPA's and Oncor's concerns about hurricanes and tornadoes being implicated in the definition. For the same reasons, the commission declines to expand the definition of "weather emergency" as recommended by EDF, TCA, or ASC to weather events unrelated to heat or cold as such events are outside the scope of this rulemaking.

In response to LCRA's comment, the commission maintains that language in §25.55(c)(1), (c)(2), (f)(1), and (f)(2) limits the definition of "weather emergency" to seasonal "hot" or "cold" weather emergencies. This distinction, in addition to the revision referencing ERCOT-issued Emergency Notices, substantively addresses LCRA's concern.

In response to Sharyland's comment, the weather preparedness standards imposed by the adopted rule are limited to the summer and winter seasons. As such, the definition of "weather emergency" does not need to explicitly specify summer and winter seasons.

Proposed §25.55(b)(12) - Weather emergency preparation measures

Proposed §25.55(b)(12) defines weather emergency preparation measures as - "measures that a generation entity or TSP takes to support the function of a resource or transmission facility during a weather emergency."

LCRA noted that the proposed definition of "weather emergency preparation measures" under §25.55(b)(12) does not specify the types of weather conditions used as criteria and requested revision of the definition to align with the intent for the weatherization preparedness measures to apply only to hot and cold weather emergencies.

LCRA and TPPA recommended specifying in the definition of "weather emergency preparation measures" that such measures are those taken by a generation entity or TSP to support the function of facilities that it owns.

Commission Response

In response to LCRA's comment regarding weather condition criteria, the commission maintains that language in §25.55(c)(1), (c)(2), (f)(1), and (f)(2) limits the definition of "weather emergency preparation measures" to seasonal "hot" or "cold" weather emergencies. As such, the commission declines to amend the definition of "weather emergency preparation measures" to specifically refer to "hot and cold weather emergency measures."

The commission declines to modify the definition of weather emergency preparation measures to specify that such measures are those taken by an entity to support the function of facilities that it owns as it is necessary as recommended by LCRA and TPPA. This definition is establishing what is a weather emergency preparation measure, but it does not speak to which entity is required to conduct these measures. Further, specifying that an action is only a weather emergency preparation measure if conducted by the entity that owned the facility

would introduce unnecessary ambiguity over whether the work of contractors or other agents count as weather emergency preparation measures under the rule.

LCRA requested further clarification about whether the commission intended for summer and winter preparations to address weather conditions not tied to those seasons, including earthquakes, floods, hurricanes, and tornadoes.

Commission Response

The commission declines to amend the definition of weather emergency preparation measure to exclude other types of emergencies as it is unnecessary. The adopted definition of weather emergency, which is directly referenced in the definition of weather emergency preparation measures, has been modified to refer to summer and winter events.

Proposed §25.55(b)(13) - Winter season

Proposed §25.55(b)(13) defines "winter season as "December 1 to March 31 each year."

TCPA and Vistra recommended the proposed definition of "winter season" under §25.55(b)(13) incorporate the same definition from the ERCOT protocols for consistency, which define the winter months as December 1 to February 28. Vistra noted that the proposed definition includes the entire month of March which is inconsistent with the protocols and offered draft language replacing "March 31" with "February 28."

TPPA recommended the commission revise the definition to state "the season beginning December 1 of each year and ending March 31 of the following year" for clarity.

Commission Response

The commission agrees with TCPA and Vistra that the definition of "winter season" should be consistent with the ERCOT protocol definition of "Season or Seasonal," which defines February as a winter month and March as a spring month and modifies the rule accordingly. The commission also modifies the definition to clarify that the winter season extends from December 1 to February 28th "of the following year", as recommended by TPPA.

§25.55(c) -- Weather emergency preparedness reliability standards for a generation entity; §25.55(c)(1) -- Winter season preparations; and §25.55(c)(2) -- Summer season preparations

Combined comments

Proposed §25.55(c) contains the weather emergency preparedness reliability standards with which generation entities must comply. Proposed §25.55(c)(1) and (c)(2) contain season specific weather preparation requirements that generation entities must comply with by December 1 and June 1, respectively.

Vistra recommended that proposed §25.55(c)(1) and (c)(2) incorporate a reasonability standard and "not rely on 'assurances' from generation entities to achieve and maintain a preparedness standard beyond their reasonable control" as some preparedness measures may be affected by the weather event itself.

Additionally, Constellation took issue with the word "assurance" used throughout the paragraph as that phrasing would impose a performance standard.

Commission Response

The commission modifies the rule language to address Vistra's and Constellation's concerns by removing the term "assurance" from the requirements of adopted paragraphs

§25.55(c)(1) and (c)(2). These changes are specifically reflected in §25.55(c)(1)(A)(iv) and (v), (c)(2)(A)(ii), (iii), and (iv).

Subsections (c)(6) and (f)(4) of the existing rule respectively permitted a generation entity and TSP to submit a notice to the commission asserting good cause for noncompliance with specific weatherization requirements as part of winter weather readiness reports submitted to the commission.

TIEC and Vistra noted that there may be situations where compliance with the proposed weatherization standards would be technologically infeasible, cost prohibitive, or may accelerate a potential retirement decision for an existing unit, and recommended adding a good cause exception to proposed §25.55(c)(1) and (c)(2). Vistra elaborated and further requested the commission clarify that a generation entity is not required to update its weather preparedness measures under proposed §25.55(c)(1) and (c)(2) following an update by ERCOT to its historical weather study as that may adjust the standards for which a utility is required to prepare. Vistra accordingly recommended the rule permit a good cause exception to extend or waive the deadline on a case-by-case basis. Vistra provided draft language consistent with its recommendations.

TCPA recommended the revision of proposed §25.55(c)(1) to include a good cause exception as, in TCPA's view, there are "several circumstances in which weather-related forced interruptions should not be counted as a 'major' or 'repeated' forced interruption-triggering event." TCPA also requested that proposed §25.55(c)(1) exempt a resource that has a good cause exception or has nothing to update from the requirement to update its emergency preparedness measures.

Commission Response

Subsections (c)(6) and (f)(4) of the existing rule respectively permitted a generation entity and TSP to submit a notice to the commission asserting good cause for noncompliance with specific weatherization requirements as part of winter weather readiness reports. The commission declines to include a good cause exception allowing a generation entity or TSP to assert good cause for noncompliance with the provisions of this rule. The good cause exception was included in the existing rule because of the short time period between adoption of the requirements and the compliance deadline. The winter preparedness standards are substantially similar to those posed in 2021 and facilities are not required to comply with the summer preparedness standards until 2023. Therefore, a good cause exception process is unnecessary moving forward. Further, the commission does not agree with TCPA that circumstances where forced interruptions should not be considered 'major' or 'repeated' support the inclusion of a good cause exception to the weather preparedness standards in §25.55(c). These standards are separate from the requirements to contract with a professional engineer for major or repeated forced interruptions.

Proposed §25.55(c)(1)(A) and (c)(2)(A) - Weather emergency preparation measures reasonably expected to ensure sustained operations of cold and hot weather critical components for a generation entity.

Proposed §25.55(c)(1)(A) and (c)(2)(A) respectively require a generation resource to implement weather emergency preparation measures for each resource under its control that could reasonably be expected to ensure the sustained operation of all cold and hot weather critical components during winter and summer weather conditions.

TCPA commented that the "reasonably expected to ensure sustained operations" standard used in proposed §25.55(c)(1)(A) and (c)(2)(A) is contrary to the preparedness standard stipulated under SB 3 which is based on a historical weather study. TCPA recommended "sustained operations" be a preparedness standard, namely the "95th percentile minimum/maximum average 72-hour temperature" reported in ERCOT's historical weather study. TCPA also proposed the revision of §25.55(c)(1)(A) to clarify the winter weather emergency preparation measures are for "normal" winter weather conditions.

Commission Response

The commission declines to clarify that winter weather emergency preparation measures under §25.55(c)(1)(A) are for "normal" winter weather conditions, because it is unnecessary. This subparagraph enumerates a set of preparation measures that are required for each resource, as appropriate for the resource. The language requiring each entity to implement weather emergency preparation measures that would ensure the sustained operation of its generation resources through winter weather conditions serves to guide entities in determining whether each of those enumerated measures is required for each resource. They are not every measure for every resource, but only those appropriate based on the features of that resource. Whether we are talking about cold weather or very cold weather should not significantly alter this calculation. However, even if it does, the commission also declines to make the requested modification because by definition weather emergency preparation measures are preparation measures to support the function of a resource during a weather emergency.

TIEC recommended that the commission consider allowing generation entities to petition for tailored weatherization plans, including specific exemptions or modification to the general requirement under §25.55(c)(1)(A) and (c)(2)(A).

Commission Response

The commission declines to allow generation entities to petition for tailored weatherization plans. The specific requirements of §25.55(c)(1)(A) and (c)(2)(A) are weather preparedness measures to ensure the sustained operations of weather critical components "as appropriate for the resource." These broad requirements are intended to provide flexibility to entities in adopting the necessary weather preparedness measures. Therefore, it is unnecessary to permit entities to petition for tailored weatherization plans.

Enbridge recommended the commission revise §25.55(c)(1)(A) and (c)(1)(B) and §25.55(c)(2)(A) and (c)(2)(B) to maintain a preparation standard. Enbridge suggested reverting to the "intended to ensure the sustained operation" language from the existing rule as the phrase "reasonably expected to" establishes an infeasible performance standard that is not in the interest of grid reliability and public safety.

Commission Response

The commission declines to modify the language to require preparation measure "intended" to ensure the sustained operations of resources, because the commission is not well positioned to determine the intent behind different preparation measures. The commission disagrees with Enbridge that "reasonably expected to" creates a performance standard. If it is reasonable to expect the preparation measure to allow a generation entity to sustain operations in a weather emergency, the standard is met.

TEC commented that it interpreted proposed weatherization preparedness requirements under §25.55(c)(1)(A) relating to installation of certain equipment to be "temporary and seasonal in nature." TEC noted that, if intended to be permanent, such a requirement could impose significant costs to a resource owner. TEC also requested revision of the clauses to permit personnel to be used to complete the tasks required under proposed §25.55(c)(1)(A), rather than "automated 'systems.'" TEC provided redline edits of proposed §25.55(c)(1)(A) and (c)(2)(A) which replace the phrase "such measures include" with "may be implemented on a reasonable basis and where appropriate, may be implemented using either personnel or automated systems."

Constellation commended the commission for recognizing that the measures mentioned in this subparagraph may not be appropriate for a particular resource. However, TCPA and Constellation noted that the language recognizing what is "appropriate for the resource" was not uniformly placed throughout the subsection and in other areas a one-size-fits-all approach was present.

Commission Response

The commission agrees with TEC that the preparation measures identified in this rule can be implemented on a temporary and seasonal basis, as appropriate, under the proposed language. The commission also agrees with TEC that the preparation measures required by this rule may be implemented using either personnel or automated systems and modifies the rule accordingly. The commission makes similar modifications to the equivalent provisions under subsection (f).

Proposed §25.55(c)(1)(A)(i) - Cold weather critical components; installation and maintenance of wind breaks for a generation entity

Proposed §25.55(c)(1)(A)(i) requires the installation of adequate wind breaks for resources susceptible to outages or derates caused by wind, as appropriate for the resource.

TPPA requested the requirement of proposed §25.55(c)(1)(A)(i), relating to the installation of adequate wind breaks, be revised to require the inspection and maintenance of such preparation measures, "with installation only being required if the measures are not sufficient."

Commission Response

The commission clarifies that §25.55(c)(1)(A)(i) does not mandate a new installation every year if it is not appropriate for the resource. If reasonable preparations already exist as appropriate for the resource, then no further action is required beyond submitting the declarations of preparedness.

Proposed §25.55(c)(1)(A)(ii) - Cold weather critical components; installation and maintenance of insulation and enclosures (generation entity)

Proposed §25.55(c)(1)(A)(ii) requires the installation of insulation and enclosures for all cold weather critical components, as appropriate for the resource.

TPPA requested changing proposed §25.55(c)(1)(A)(ii), relating to the installation of adequate insulation and enclosures to require the inspection and maintenance of such preparation measures, "with installation only being required if the measures are not sufficient."

Commission Response

The commission clarifies that §25.55(c)(1)(A)(ii) does not mandate a new installation every year if it is not appropriate for the resource. If reasonable preparations already exist as appropriate for the resource, then no further action is required beyond submitting the declarations of preparedness.

TEC recommended revising the proposed §25.55(c)(1)(A)(ii) to permit the installation of insulation "or" enclosures, rather than require installation of both insulation "and" enclosures. TEC commented that cold weather preparedness by cooperatives in North and West Texas is location and facility specific and therefore adequate protection may not require both insulation and enclosures.

TCPA opposed the language in proposed §25.55(c)(1)(A)(ii) which requires the "Installation of insulation and enclosures for all cold weather critical components" as the provision does not account for the "necessity, feasibility, and costs" associated with such a requirement, as insulation and physical enclosures may not be necessary for all components. TCPA revised proposed §25.55(c)(1)(A)(ii) to read "Installation of protection for cold weather critical components."

Constellation and Vistra suggested flexibility for what protection may be necessary and removing the word "all" before "cold weather critical components" from proposed §25.55(c)(1)(A)(ii). Vistra further recommended replacing the word "and" with "or", allowing either insulation or enclosures to be installed.

Commission Response

Adopted §25.55(c)(1)(A)(ii) requires the installation and maintenance of insulation and enclosures for all cold weather critical components. Cold weather critical components should be protected from cold weather in an insulated enclosure.

The commission declines to remove the word "all" from §25.55(c)(1)(A)(ii) as it is the objective of this rule to protect all weather critical components. Regarding TCPA's argument that insulation and enclosures are not necessary for all cold weather components, the rule requires each of these preparation measures as appropriate for the resource. If a particular measure would not be reasonably expected to help ensure sustained operations, it is not required by the rule. However, each of these measures was included, because there is a presumption that they help ensure sustained operations through seasonal weather conditions.

Proposed §25.55(c)(1)(A)(iv) - Cold weather critical components; materials necessary for sustained operations of a resource

Proposed §25.55(c)(1)(A)(iv) requires a generation entity to arrange and provide for the availability and appropriate safekeeping of sufficient chemicals, auxiliary fuels, and other materials necessary for sustained operations of its resources during a winter weather emergency, as appropriate for the resource.

TPPA requested the commission clarify whether proposed §25.55(c)(1)(A)(iv) requires either an on-site stockpile or whether "supplier availability with a delivery guarantee or mutual aid agreements would be sufficient." TPPA noted that on-site stockpiles may be challenging for utilities to manage and would require monthly testing of oil freeze protection equipment from November 1 through March 31, yet require preparation measures be completed by December 1.

Commission Response

In response to TPPA's request for clarification, §25.55(c)(1)(A)(iv) does not necessarily require all materials to be on-site. Each of these preparation measures must be implemented in a fashion that could reasonably be expected to ensure the sustained operation of the critical weather component during winter weather conditions. The generation entity should use its best judgement to determine what qualifies as "available" and should be prepared to support its claim that its implementation decision meets that standard.

TCPA opposed the usage of the term "assurance" in proposed §25.55(c)(1)(A)(iv) and (c)(1)(A)(v) as overly broad and as requiring a performance standard, not a preparedness standard as required by SB 3. TCPA accordingly recommended "assurance for the availability" be replaced with "arrange for, and provide" in proposed §25.55(c)(1)(A)(iv) and "assurance of" be replaced with "plan for" in proposed §25.55(c)(1)(A)(v). TCPA also commented that due to outage availability and supply chain issues, generators may be prevented from implementing weatherization standards and therefore from complying with the proposed rule beginning in 2023 as required under proposed §25.55(c)(1)(B) and (c)(2)(B).

LCRA also noted the historic supply chain challenges, labor shortages, and other events and requested that the rule adopt a lens of reasonableness instead of absolute assurance. LCRA requested that all references to "assurance" be replaced with "reasonable assurance" for the same reasons it stated in its comments for proposed §25.55(c)(1)(A)(iv). LCRA noted that it is not possible to remove all heat and moisture from hot weather critical components if those components are heated beyond their design temperature tolerances. LCRA provided draft language consistent with its recommendations.

Commission Response

The commission revises proposed §25.55(c)(1)(A)(iv) and (c)(1)(A)(v) to clarify that the weather preparedness standards are not requirements to issue a guarantee to ERCOT or the commission, but instead are intended to ensure that entities are sufficiently prepared for hot and cold weather emergencies, as appropriate for the resource.

TPPA requested clarification on whether the proposed requirement that generation resources implement measures "reasonably expected to ensure sustained operations" represents a revision of the commission's compliance standard from an intention or design standard to a reasonability standard.

Commission Response

The adopted rule does not contain a different compliance standard from the existing rule. The proposed requirement to implement measures "that could reasonably be expected to ensure sustained operations" was modified from the existing requirement to implement measures "intended" to ensure sustained operations, to make it clear that compliance does not hinge on the mental state or intentions of the generation entity. Because this rule is a preparation standard, an entity is not required to implement preparation measures that guarantee sustained operations. It is required to implement preparation measures that are reasonably expected to sustain operations.

Proposed §25.55(c)(1)(A)(vi) - Cold weather critical components; freeze protection equipment maintained by a generation entity

Proposed §25.55(c)(1)(A)(vi) requires the maintenance of freeze protection equipment for all cold weather critical components, in-

cluding fuel delivery systems controlled by the generation entity and the testing or verifying the functionality of freeze protection equipment on a monthly basis during the winter season, as appropriate for the resource.

LCRA noted that it is not possible for a generation entity to test the effectiveness of its freeze protection until freezing conditions are experienced. LCRA recommended changing proposed §25.55(c)(1)(A)(vi) language to require "verifying the functionality of" freeze protection equipment.

APA and ACP similarly recommended proposed §25.55(c)(1)(A)(vi) to permit the testing of freeze protection equipment on a monthly "or OEM specified" basis and permit "remote testing when applicable."

Commission Response

The commission agrees with LCRA's proposed change and replaces the term "and testing of" with the phrase "and verifying the functionality of" for clarity. The commission agrees with APA and ACP that remote testing satisfies this requirement. The commission declines to permit entities from verifying the functionality of its cold weather critical components less frequently than monthly, as requested by APA and ACP, but the modification made to this provision should prevent this monthly requirement from being unduly burdensome.

TPPA stated that the requirement under proposed §25.55(c)(1)(A)(vi) requiring completion of monthly testing on protection equipment from November 1 through March 31 is impossible to comply with as three months of each period occur after the deadline of December 1. TPPA recommended revising the provision to require "annual testing prior to" December 1 in a manner that comports with the other rule preparation requirements.

TEC requested the commission revise the equipment maintenance and testing deadline of November 1 through March 31 prescribed under proposed §25.55(c)(1)(A)(vi) for the completion of requirements under proposed §25.55(c)(1) for winter preparedness. TEC noted that entities may experience problems completing these checks for months that have not yet occurred, as the biannual deadlines are on December 1 for winter preparedness. TEC requests the timelines be revised to ensure entities are only responsible for declaring preparedness actions already taken, as opposed to prospective preparedness actions.

Commission Response

The commission agrees that the proposed language appears to require entities to complete and attest to the completion of actions after the date the completion of these actions is required. The commission modifies the language of the rule to clarify that requirements with ongoing or monthly completion dates must be completed at the appropriate time. The commission makes this edit consistently throughout subsections (c) and (f) of this rule. With regard to the attestation requirements of this rule, the provisions in subsection (c) already align with this language by requiring the attestation of the completion of "all applicable activities." To prevent an entity from having to attest to the completion of future activities in subsection (f), the commission modifies the appropriate provisions to clarify that the entity must attest to the completion of all activities, except those activities required to be completed in the future.

Consistent with its recommendations for the definition of "winter season" under proposed §25.55(b)(11), TCPA recommended

proposed §25.55(c)(1)(A)(vi) be revised to replace "November" with "December" and "March 31" to "February 28."

Commission Response

Proposed §25.55(b)(11) has been modified to define the winter season as "December 1st to February 28". Proposed §25.55(c)(1)(A)(vi) has been modified to refer to the "winter season" and not specific dates, addressing the concern raised by TCPA here.

Proposed §25.55(c)(1)(A)(vii) - Monitoring of cold weather critical components for a generation entity

Proposed §25.55(c)(1)(A)(vii) requires the monitoring of all cold weather critical components, including circuitry that provides freeze protection or prevents instrument air moisture.

TPPA requested revising the requirement of proposed §25.55(c)(1)(A)(vii), relating to the installation and maintenance of monitoring systems to require the inspection and maintenance of such preparation measures, "with installation only being required if the measures are not sufficient."

Commission Response

The commission clarifies that §25.55(c)(1)(A)(vii) does not mandate a new installation every year if it is not appropriate for the resource. If reasonable preparations already exist as appropriate for the resource, then no further action is required beyond submitting the declarations of preparedness.

Consistent with its recommendations for proposed §25.55(c)(1)(A)(ii), TCPA recommended revising proposed §25.55(c)(1)(A)(vii) to state "establish monitoring systems, as practicable" in order to account for different forms of monitoring of cold weather critical components. TCPA recommended monitoring only requiring cold weather systems and striking the word "all" to permit flexibility for utilities in what those options may be.

LCRA recommended amending proposed §25.55(c)(1)(A)(vii) to require "installation or maintenance" of monitoring systems to clarify that monitoring systems need not be newly installed on an annual basis. LCRA also noted that some cold weather critical components may be monitored through procedures and not systems. Thus, LCRA recommends amending the language to include "monitoring procedures."

Commission Response

To clarify that monitoring is to be done as appropriate for the resource, proposed §25.55(c)(1)(A)(vii) has been modified to require "monitoring of all cold weather critical components." TCPA's and LCRA's recommended language is unnecessary as §25.55(c)(1)(A)(vii) allows for different forms of monitoring and does not require new installation. The commission declines to modify the rule to remove the word "all," because the monitoring of all cold weather critical components best supports the reliability goals of this rule.

Proposed §25.55(c)(1)(B), and (c)(2)(B) - Weather emergency preparation measures reasonably expected to ensure sustained operations of a resource

Proposed §25.55(c)(1)(B) and (c)(2)(B) require, beginning in 2023, a generation entity to implement weather emergency preparation measures that could reasonably be expected to ensure the sustained operation of each resource under the generation entities' control during the lesser of the minimum (in winter months) and greater of the maximum (in summer months)

ambient temperature at which the facility has experienced sustained operations or the 95th percentile minimum average 72-hour temperature reported in ERCOT's historical weather study for the weather zone in which each resource is located.

TCPA commented that SB 3 intended for "some statistical basis to be used in determining the weather preparation standard that resources should prepare to implement in 2023" and that the usage of the term "experienced sustained operations" renders ERCOT's statistical analysis unnecessary and is contrary to statute. TCPA accordingly recommended deleting the minimum and maximum ambient temperature standards from proposed §25.55(c)(1)(B) and (c)(2)(B).

Commission Response

As previously noted, the commission modifies the rule to remove the local ambient temperature standard for the winter months.

The commission disagrees with TCPA's analysis that the usage of the term "sustained operations" will "render ERCOT's statistical analysis unnecessary and is contrary to statute." Rather, it is the commission's intent that the summer ambient temperature standard provide for more localized data to be used to address local conditions. The ambient summer temperature standard accounts for higher temperatures localized to specific areas of the state. Because local conditions may differ within a weather zone, this standard is intended to consider those local conditions to the extent temperatures vary with those provided by the ERCOT historical weather study. Further, the ambient temperature standard only captures conditions during which a resource has previously sustained operations. For many resources, the temperature standard in the ERCOT weather study will still apply. For a resource for which the summer ambient temperature requirement does apply, the rule only requires that the resource has implemented preparation measures reasonably expected to allow it to match its prior performance.

OPUC recommended adding a reporting requirement to §25.55(c)(1)(A), (c)(1)(B), (c)(2)(A), and (c)(2)(B) to allow the commission to see the additional measures taken and which practices are common among generators and TDUs.

Commission Response

The commission declines to amend the rule to require a reporting requirement, as requested by OPUC, but notes that information regarding best practices may be included in the compliance reports ERCOT files with the commission for weather preparedness under adopted §25.55(c)(4), (c)(5), (f)(4), and (f)(5).

APA, ACP, LCRA, NextEra, NRG, TCPA, Sharyland and TPPA noted that certain information is missing from ERCOT's 2021 historical weather study, namely the "95th percentile maximum average 72-hour temperature" as used in proposed §25.55(c)(2)(B) and "the sustained heat or sustained cold temperature data for the Panhandle." Due to this lack of information, TPPA concluded that the rule only effectively requires preparation measures in relation to the maximum ambient temperature at which a resource or facility has experienced sustained operations. NRG recommended revising the language of proposed §25.55(c)(2)(B) to match the 168-hour figure reflected in the study or revising the study to incorporate a 72-hour maximum temperature figure. Because this information is needed for purchasing and maintenance decisions for this calendar year, LCRA requested the commission to consider allowing a limited good cause exception.

Commission Response

The commission has updated the historical ERCOT weather study available on the Interchange since the draft rule was filed. The commission refers commenters to the July 13, 2022, filing in Project Number 52691 which includes the missing information noted by commenters.

APA, ACP, and NextEra stated that the rule must preserve the ability of a generator to maintain and operate its generating equipment consistent with OEM design limits. APA, ACP, and NextEra therefore recommended that the rule should be revised to clarify that the new weather emergency preparedness rule does not create an obligation on the part of generation resources to operate beyond their OEM design limits. Enbridge supported APA's and ACP's recommended changes to proposed §25.55(c)(1)(B) and (c)(2)(B).

TSPA noted that proposed §25.55(c)(1)(B) and (c)(2)(B) require a generation entity to make additional investments over time which may either be cost prohibitive or violate a manufacturer's warranty. TSPA recommended amending proposed §25.55(c)(1)(B) and (c)(2)(B) to add "unless these requirements exceed the manufacturer's specified operating ranges for the weather critical component at risk. If the manufacturer's specified operating ranges are less than the requirements of this paragraph, then the generation entity must submit updated resource registration information to re-notify ERCOT of its existing operating limits" at the end of each provision.

Commission Response

The commission declines to modify the rule to explicitly reference OEM warranties or design limits. The standard for weather preparedness is "emergency preparation measures reasonably expected to ensure...sustained operation." A reasonableness standard does not require the rule to exhaustively define every possible scenario. Instead, it is a fact-dependent inquiry based on the capabilities of the resource or facility, and the surrounding environment's expected impact on generation or transmission. Operation of a renewable resource outside of an OEM warranty may therefore be unreasonable. However, the commission declines to consider OEM design limitations as a uniform justification for noncompliance with the temperature standards contained in this rule. This topic is discussed in greater detail in the general comments section above.

For the same reasons, the commission declines to adopt TSPA's recommendation to revise proposed §25.55(c)(1)(B) and (c)(2)(B).

SMEC noted that proposed §25.55(c)(1)(B) and (c)(2)(B) require implementing measures reasonably expected to ensure operation during minimum or maximum ambient temperature or the 95th percentile minimum average 72-hour temperature reported in ERCOT's historical weather study. SMEC recommended the commission clarify how the commission intends the ambient temperature standard to be defined because ambient temperatures can vary and what is considered a period of "sustained operations" will impact the calculation of the appropriate ambient temperature.

Commission Response

As previously noted, the commission has removed the local ambient temperature standard for the winter months.

The summer ambient temperature standard provides a more localized assessment of the temperatures for which resources need to prepare. Specifically, this provision requires a resource to be able to sustain operations at ambient temperatures that

it has previously been able to sustain operations - essentially, requiring the resource to match its past performance. The commission declines to include a specific time period for this requirement, as this is unnecessary for a preparation standard. A generation entity needs to implement weather preparation measures that allow it to operate its resource in the temperature ranges indicated by the ERCOT weather study, unless the past performance of the resource indicates it is capable of outperforming this range. In that instance, it must prepare to match its prior performance.

NRG recommended revising proposed §25.55(c)(1)(B) and (c)(2)(B) to clarify the weather emergency preparation standard a generation entity is required to meet. NRG recommended the ERCOT Historical Weather study as a better basis for the standard. However, NRG expressed its belief that temperature is not a sufficient measure of weather conditions alone and recommended that future revisions to the ERCOT historical weather study and potential revisions to the rule include wind speed and precipitations as factors into a "holistic weather severity metric".

Similarly, TPPA noted that utility performance in weather emergency conditions "is dependent on many aspects of weather outside temperature including humidity, atmospheric pressure, and wind chill, as well as resource and facility-specific factors including age, type, and location."

Commission Response

As previously noted, the commission has removed the local ambient temperature standard for the winter months.

The commission declines to adopt NRG's and TPPA's recommendations for §25.55 (c)(2)(B), and (f)(2)(B). Further, the commission declines to modify the rule to include a "holistic weather severity metric" or other aspects of weather beyond temperature at this time. The temperature requirements contained in this rule strike the proper balance between grid resiliency and implementation costs to TSPs and generation entities. As necessary, the possibility of wind speed, precipitation, or other weather variables can be considered by the commission in a future project.

For proposed §25.55(c)(1)(B) and (c)(2)(B) Vistra recommended using a single standard for both the summer and winter season that "incorporates the results of the ERCOT weather study, using the 95th percentile minimum (for winter) and maximum (for summer) average 72-hour temperatures as such a standard would be consistent with PURA §35.0021. However, Vistra recommended that the "99th percentile of the 72-hour minimum average daily temperature" be used for the cold weather standard to better encompass weather emergency events that utilities should prepare for.

Vistra opposed the alternative standard provided by the proposed rule regarding the minimum and maximum ambient temperatures "at which the resource has experienced sustained operations" as it would result in a difficult to apply and non-uniform standard. Vistra explained that the ambient temperature standard is not defined under commission rules or in an independent weather study and is therefore too imprecise and ambiguous "to result in a uniform level of preparedness" for weather emergency scenarios.

Vistra continued, stating the alternative standard would "effectively eliminate" the ERCOT weather study standard because the current language in proposed §25.55(c)(2)(B) would require the standard for which the lower temperature for winter and the

higher temperature for summer be used, and therefore the ambient temperature standard would always be used. TCPA and Vistra commented that "sustained operations" is also undefined and results in ambiguity in applying the ambient temperature standard. Vistra accordingly recommended deleting the ambient temperature and relying solely on the ERCOT weather study standard. Vistra provided draft language consistent with its recommendations.

Commission Response

The commission declines to adopt Vistra's recommendation to increase the 95th percentile standard for cold weather preparedness to the 99th percentile as it may lead to overly burdensome preparation requirements. Requiring preparation for the 95th percentile weather standard to include wind chill strikes an appropriate balance between ensuring resiliency and not imposing overly burdensome requirements.

The commission also disagrees with Vistra that the weather preparedness standards under the rule should rely only on the historical ERCOT weather study and not the ambient temperature standard for the summer months. The ambient temperature standard ensures that each generation entity prepares its resources to match past performance during the summer season, ensuring that the grid does not become less resilient over time.

Further, the commission disagrees with Vistra's claim that the goal should be a uniform level of preparedness. Different resources are exposed to different weather conditions, so each resource must be prepared to perform uniformly, relative to these conditions. The ambient temperature standard helps ensure that each resource is adequately prepared for summer weather emergencies.

The commission does eliminate the ambient temperature standard for the winter months under (c)(1)(B) and instead revises the 95th percentile 72-hour minimum average temperature standard reported in ERCOT's historical weather study to include wind chill temperatures. This revision is in consideration of how cold and hot weather impact resources and facilities in different ways, specifically the effect of wind chill on equipment during the winter months.

TSPA commented that the five-year update requirement for weather emergency preparedness under proposed §25.55(c)(1) and (c)(2) may result in the early retirement of marginally profitable solar, natural gas, and coal generation resources if the requirements increase over time based on the ERCOT historical weather study or ambient temperature standard.

Commission Response

The commission declines to modify the rule to remove the requirement that each entity updates its weather preparations, if necessary, to account for changes in ERCOT's updated weather study. If subsequent updates of the weather study by ERCOT present more weather emergency scenarios, then the reliability of the bulk electric system requires an increased level of preparation from TSPs and generation entities to sustain operations through those scenarios.

Proposed §25.55(c)(2)(A)(iii) - Hot weather critical components; Provision and storage of adequate water supplies by a generation entity

Proposed §25.55(c)(2)(A)(ii) requires generation entities to provide assurance of the availability of adequate water supplies for various generation needs.

TPPA noted that factors outside of a generation entity's control, such as a drought, may impact the adequate water supply requirement under proposed §25.55(c)(2)(A)(ii). TPPA recommended inserting "use of available and reasonable methods to maintain adequate water supplies" into the proposed clause to address this issue.

Commission Response

The commission declines to implement TPPA's recommended change to adopted §25.55(c)(2)(A)(ii) but modifies the rule to require that generation entities arrange and plan for the provision and storage of adequate water supplies. Generation entities are expected to implement preparedness measures reasonably expected to sustain operations through summer weather conditions, but the commission removes the requirement of assurance of adequate water supplies to emphasize that this is not a performance standard.

Vistra recommended adding "for the duration referenced in §25.55(c)(2)(B)" to the end of proposed §25.55(c)(2)(A)(ii) to clarify the requirement only applies to the ERCOT weather study standard under Vistra's revised version of proposed §25.55(c)(2)(B).

Commission Response

The commission declines to implement Vistra's recommended change to proposed §25.55(c)(2)(A)(ii) as the amount of "adequate" water supplies is determined by the generation entity through consideration of what is reasonable for the resource. Therefore, cross referencing to the 72-hour ambient temperature standard under §25.55(c)(2)(B) is unnecessary.

Proposed §25.55(c)(2)(A)(v) - Hot weather critical components; maintenance of air flow or cooling systems by a generation entity

Proposed §25.55(c)(2)(A)(v) requires a generation entity to maintain all hot weather critical components and test all components on a monthly basis during the summer season

APA and ACP recommended proposed §25.55(c)(2)(A)(v) permit remote testing by adding "or through remote testing when applicable" to the end of the provision.

TPPA also recommended that the term "testing" be clarified under proposed §25.55(c)(2)(A)(v) as it is unclear whether the term refers to a performance test related to efficiency, cleanliness, or pump flows and discharge pressures. TPPA noted that such a level of testing is not possible for every device on a power plant, and monthly testing would present considerable difficulty for utilities to accomplish and may cause uneven compliance due to the ambiguity inherent in the term. TPPA indicated that if such a level of testing is not intended by the commission, then the term should be clarified. TPPA provided examples such as specifying that "testing" can be performed through visual inspection if a monthly requirement is imposed.

Commission Response

The commission revises proposed §25.55(c)(2)(A)(v) by replacing the phrase "and testing" with "and verifying the functionality of" to better reflect the intention of the requirement and to address APA and ACP's recommendation regarding remote testing and TPPA's request for clarification. An entity may remotely verify the functionality of a component under §25.55(c)(2)(A)(v) if such remote verification is reasonable and appropriate for the resource.

TPPA stated that the requirement under proposed §25.55(c)(2)(A)(v), requiring completion of monthly testing on protection equipment from May 1 through September 30, respectively, is impossible to comply with as three months of each period occur after the deadline of June 1. TPPA recommended the provision be revised to require "annual testing prior to" June 1 in a manner that comports with the other rule preparation requirements.

TEC requested the commission revise the equipment maintenance and testing deadlines of May 1 through September 30 prescribed under proposed §25.55(c)(2)(A)(v), for the completion of requirements under proposed §25.55(c)(2), for winter preparedness. TEC requests the timelines be revised to ensure entities are only responsible for declaring preparedness actions already taken, as opposed to prospective preparedness actions.

Commission Response

As discussed in greater detail its response to comments under heading §25.55(c)(1)(A)(vi), the commission modifies the rule to clarify that entities need not complete or attest to the completion of requirements by June 1 that are not required to be completed until after that date. This modification addresses the concerns expressed by TPPA and TEC.

Proposed §25.55(c)(2)(A)(vi) - Monitoring of all hot weather critical components by a generation entity

Proposed §25.55(c)(2)(A)(vi) requires the installation of monitoring systems for all hot weather critical components, as appropriate for the resource.

Vistra recommended proposed §25.55(c)(2)(A)(vi) be revised to strike the word "all" and insert the phrase "as practicable and reasonable" to the end of the provision because, unlike cold weather critical components, "not all hot weather critical components are effectively monitored via electronic systems."

TPPA requested the commission clarify the term "monitoring system" as used in proposed §25.55(c)(2)(A)(vi) as generation facilities may have equipment that does not have real-time temperature indicators capable of being monitored from a control room. TPPA noted that the current language could be construed as requiring an engineering study to identify all weather-critical components and determine whether monitoring systems are available for all components and requested the commission clarify whether this interpretation was intended.

Commission Response

The commission modifies the rule to require the "monitoring" of all hot weather critical components instead of the "installation of monitoring systems." This modification addresses the concerns expressed by TPPA and Vistra regarding electronic monitoring systems for hot weather critical components.

§25.55(c)(1)(E) and (c)(2)(E), Weather critical component lists.

To more efficiently facilitate the inspection process for ERCOT, the commission has added new §25.55(c)(1)(E) and (c)(2)(E) which require generation entities to create lists of all cold and hot weather critical components to be reviewed by ERCOT and to update these lists annually or as necessary.

Proposed §25.55(c)(3) - Declaration of preparedness

Proposed §25.55(c)(3) delineates the requirements for a resource filing a declaration of preparedness,

TPPA requested the commission permit a generation entity to submit its declaration of preparedness under proposed §25.55(c)(3) confidentially and require ERCOT to maintain confidentiality for such declarations.

Commission Response

The commission agrees with TPPA regarding the confidentiality of utility's submitted declarations of preparedness. An entity may confidentially submit its declaration of weather preparedness under §25.55(c)(3) or (f)(3), as applicable, and ERCOT will maintain the confidentiality of such declarations. The commission revises the rule to require ERCOT to designate declarations of preparedness as Protected Information as defined in the ERCOT protocols.

Proposed §25.55(c)(3)(A)(iii) and (c)(3)(B)(iii) - Declaration of preparedness pertaining to minimum ambient temperature by a generation entity

Proposed §25.55(c)(3)(A)(iii) and (c)(3)(B)(iii) respectively requires a generation entity to provide within its declaration of preparedness the minimum and maximum ambient temperature at which each resource has experienced sustained operations.

Vistra stated that if the commission adopts its recommendation to strike the ambient temperature standard in the rule, then proposed §25.55(c)(3)(A)(iii) and (c)(3)(B)(iii) should be deleted as there would also be no reason to require generation entities to attest to that standard under "sustained operations." Vistra provided draft language consistent with its recommendations.

APA and ACP commented that proposed §25.55(c)(3)(A)(iii) and (c)(3)(B)(iii) lacks an explicit timeframe for determining the ambient temperature standard and that implying the 72-hour standard from the ERCOT historical weather study standard applies would be inappropriate as the provisions are discrete. APA and ACP noted the lack of an explicit timeframe could be interpreted as a "significantly shorter duration of time" applicable to the ambient temperature standard.

TEC commented that proposed §25.55(c)(3)(A)(iii) and (c)(3)(B)(iii) are administratively burdensome as entities may not currently be recording historical data in the manner the proposed rule indicates. Accordingly, TEC requested the ambient temperature requirements be future-oriented and recommended "with measurements beginning in 2023" be appended to the end of proposed §25.55(c)(3)(A)(iii) and (c)(3)(B)(iii).

Commission Response

The commission did not adopt Vistra's recommendation to remove the summer ambient temperature standard from the rule. Accordingly, the commission declines to adopt Vistra's recommendation to remove the requirement that the attestations include historical information on summer ambient temperatures from the rule as well. Further, the commission does not remove the requirement to report the minimum ambient temperature the resource or facility has sustained operation through, because this information is useful for data analysis purposes.

The commission disagrees with APA's and ACP's suggestions to revise proposed §25.55(c)(3)(A)(iii) and (c)(3)(B)(iii) to define sustained operations as a 72-hour period. "Sustained operations" is not a defined term in this rule because it is used throughout to imply the "reasonably expected" capability of a resource to operate during most weather conditions. With regard to the specific value that should be reported in an entity's declaration, an

entity should provide the minimum and maximum temperatures at which the resource has experienced sustained operations.

The commission disagrees with TEC that this requirement is administratively burdensome because some entities are not currently recording ambient temperature levels. The rule specifically allows the use of data available at the nearest weather station.

Proposed §25.55(c)(3)(A)(iv) - Declaration of preparedness pertaining to additional information required by the ERCOT protocols by a generation entity

Proposed §25.55(c)(3)(A)(iv) requires that a generation entity include any additional information required by the ERCOT protocols.

TPPA recommended the deletion of proposed §25.55(c)(3)(A)(iv), because such a requirement could make compliance more difficult, given that it would split the obligations for the declarations of weather preparedness between two regulatory bodies. TPPA recommended that the commission subsequently address any insufficiencies the declarations may have for ERCOT under the proposed rule via a notice and comment rulemaking.

LCRA noted that ERCOT protocols are subject to change frequently. Thus, LCRA requested that the rule be clarified as to which section of ERCOT protocols could potentially require the inclusion of additional information as a part of the generation entity's declaration of preparedness and a timeframe by which such protocols must be in effect to require the submission of additional information as a part of that season's declaration.

LCRA further recommended a requirement that ERCOT issue a market notice and make a timely filing at the commission notifying affected market participants of any such changes.

Commission Response

The commission declines to delete proposed §25.55(c)(3)(A)(iv) and disagrees with TPPA's conclusion that it would make compliance more difficult. Utilities have historically been obligated to comply with both commission rules and ERCOT protocols. In implementing weather preparedness measures, it is foreseeable that ERCOT may adopt additional filing or administrative requirements to facilitate the submission and review of hundreds of attestations. Therefore, §25.55(c)(3)(A)(iv) is necessary to permit flexibility in ERCOT's implementation of the rule and to certify that the regulated utilities have taken all necessary weatherization preparedness measures.

The commission also modifies §25.55(c)(3)(A)(iv) and (c)(3)(B)(iv) to clarify which version of the protocols an entity must consider when determining what information to include in its declarations of winter and summer weather preparedness.

Proposed §25.55(c)(3)(A)(v) - Declaration of preparedness pertaining to attestation of documents filed by a generation entity

Proposed §25.55(c)(3)(A)(v) requires a generation resource to include a notarized attestation sworn to by its highest-ranking representative, attesting to the completion of all applicable requirements and to the accuracy and veracity of the information provided by it.

TIEC and Vistra recommended broadening the provisions addressing who may sign a notarized attestation under this rule. Vistra recommended revising proposed §25.55(c)(3)(A)(v) and (c)(3)(B)(v), which respectively require a notarized attestation to

winter and summer preparedness, to permit a representative, official, or officer responsible for the generation resource's operations to sign the attestation. Vistra stated that such an individual responsible for the operations of the resource would be better suited to attest to the technical requirements of the rule than a chief executive officer who oversees a business' entire operations.

TIEC noted that many of its members own and operate a generation resource but are not primarily in the power generation business. Because of this, TIEC stated that many of its members' CEOs would not know details about on-site generation at specific facilities. TIEC expressed preference for broadening the provisions addressing who may execute the attestation to be consistent with compliance requirements under ERCOT Nodal Protocols and requested the commission consider allowing any officer or executive with authority to bind a generation entity to attest to the declaration of preparedness. In the alternative, TIEC requested that the commission create a process where generation entities can request pre-approval to have a different representative execute the attestations.

TCPA recommended the revision of proposed §25.55(c)(3) to conform to ERCOT protocols and, accordingly, the removal of the requirement for the highest ranking official to attest to winter and summer preparedness.

TPPA commented that proposed §25.55(c)(3)(A)(v) is ambiguous as applied to municipally owned utilities (MOUs), as it could reasonably be construed as requiring "the attestation of a utility general manager, a city mayor, or a city council acting as a whole." TPPA also stated that, for non-MOUs, the requirement could require the signature of a CEO of a corporate parent not located within Texas. Lastly, TPPA argued that the commission should permit the attestation to be "based on personal knowledge or by reliance on others with personal knowledge due to the broad nature of the attestation."

Commission Response

The commission declines to modify the requirement that the attestation be made by the highest-ranking representative, official, or officer with binding authority over the generation entity, as requested by Vistra, TIEC, TCPA, and TPPA. The highest-ranking individual must complete the attestation to ensure that generation entities prioritize weather preparedness and that the accountability for weather preparedness starts at the top. Regarding concern that this requirement is ambiguous for MOUs, the commission expects each entity to use its best judgment in identifying the highest-ranking individual appropriately. The commission clarifies that fulfilling this requirement does not require a vote from entities that are governed by elected boards or signoff from an elected official such as a mayor.

Proposed §25.55(c)(3)(C) - Declaration of preparedness pertaining to mothballed, outaged, decommissioned, new, or repowered resources

Proposed §25.55(c)(3)(C) requires a generation entity to submit the appropriate declaration of preparedness to ERCOT prior to returning a mothballed or decommissioned resource to service during the winter or summer season.

TPPA requested that the commission modify proposed §25.55(c)(3)(C), which requires a generator to submit a declaration of preparedness to ERCOT prior to returning a mothballed or decommissioned resource to service during the winter or summer. This would clarify that a generator is not required to

file the declaration and may resume operations when approved to do so by ERCOT if a weather emergency occurs. TPPA commented that the current language may prevent a mothballed or decommissioned resource from timely returning to serve the grid during a potential emergency.

Commission Response

In response to TPPA's comments regarding proposed §25.55(c)(3)(C), the commission maintains that the purpose of the rule is to ensure the preparedness of resources and transmission facilities for reliable operations during weather events. A generation entity that considers returning a mothballed resource to service must acknowledge that the resource must perform as reliably as any other resource and, therefore, is required to submit a declaration in the manner prescribed by the rule. The commission therefore declines to revise §25.55(c)(3)(C) in accordance with TPPA's recommendation.

Proposed §25.55(d) and (d)(1) - ERCOT inspection of resources

Proposed §25.55(d) contains requirements applicable to ERCOT in conducting inspections of resources and requires ERCOT to issue a written report to the commission regarding its inspections.

Vistra requested that the commission provide clarity on how the costs of ERCOT inspections would be recovered. Vistra recommended adding subsection §25.55(d)(3), which would provide for "the cost of ERCOT inspections to be recovered through ERCOT's system administration fee." Vistra provided draft language consistent with its recommendation.

Commission Response

The funding of inspection costs is outside the scope of this rule-making project. The commission declines at this time to specify the allocation of these costs.

TPPA recommended that the commission add language to proposed §25.55(d)(1) requiring ERCOT to publicly post the checklist used for inspection of generators and TSPs. LCRA supported TPPA's recommendation for proposed §25.55(d)(1).

Commission Response

The commission declines to revise §25.55(d)(1) to require ERCOT to publicly post its inspection checklist as it may reveal critical energy infrastructure information and may vary depending on the resource being inspected.

§25.55(d)(1) - ERCOT inspection of resources; initial requirements

Proposed §25.55(d)(1) contains initial requirements for ERCOT while conducting inspections of resources.

TCPA commented that the ERCOT inspection under §25.55(d)(1) should be limited to weather related issues, as the purpose of the rule is to determine a specific standard of weather emergency preparation. TCPA further stated that the term "other vulnerabilities" is overly broad and recommended that issues beyond a resource's control, such as fuel issues, should not be subject to inspection.

Commission Response

The commission declines to limit §25.55(d)(1), and by extension (g)(1), to inspection of weather-related issues, as this clarification is unnecessary. Subsection (d)(2) clarifies that ERCOT's inspection report is to specifically address whether the entity has

complied with the requirements of §25.55(c)(1) and (2) of this rule.

The commission also disagrees with TCPA that the phrase "other vulnerabilities" is overly broad. Both provisions require ERCOT to prioritize inspections based on factors including "other vulnerabilities related to weather emergency conditions." This language appropriately confines the scope of "other vulnerabilities." It is neither productive nor necessary to exhaustively list what such vulnerabilities are or to remove the requirement completely. Adopted §25.55(d)(1) and (g)(1) provide a non-exhaustive list of factors ERCOT may consider when prioritizing inspections.

The commission also declines to adopt specific language clarifying that only issues within the entity's control are subject to inspection. ERCOT will inspect each resource's level of compliance with the rule. If an entity believes it does not have control over something that is leading to compliance issues, that can be addressed during the determination of a reasonable cure period or, if necessary, as a part of an enforcement investigation.

TCPA recommended that any checklist developed by ERCOT be adopted through the stakeholder process and ERCOT protocols for transparency and industry input. TCPA provided draft language consistent with its recommendations. Vistra similarly recommended revising proposed §25.55(d)(1) to explicitly state that "ERCOT must establish in its protocols or other binding documents" the winter and summer inspection checklists.

Commission Response

The commission declines to implement Vistra's and TCPA's recommendation to revise §25.55(d)(1), and by extension §25.55(g)(1), to require ERCOT to establish its inspection checklists in its protocols or other binding documents. Inspection checklists are for the benefit of ERCOT inspectors and contractors. The lists will also provide information to the commission and the entity under review about the ERCOT-conducted inspections.

TPPA commented that the three-year ERCOT inspection cycle under proposed §25.55(d)(1) is too short and that the commission would benefit from more detailed inspections by ERCOT over a longer time frame. Specifically, TPPA recommended the adoption of a seven-year inspection cycle as such a timeframe would capture the intent of SB 3 for independent assessments for repeated or major failures.

Broad Reach recommended amending the rule to allow for an exception to the three-year inspection if there is a showing that selected resources in a fleet are identical in design and build. Broad Reach explained that such an exception would help save time and resources, and reduce the administrative burden on ERCOT, commission staff, and resource owners.

TEC stated that the three-year inspection cycle under proposed §25.55(d)(1) may be burdensome on ERCOT inspection teams due to the number of smaller units--such as energy storage facilities--expected to come online in the next few years, and that inspections will incur unnecessary charges on utilities. TEC recommended that the rule "include a minimum capacity threshold of 10 MW for any inspected resource, in addition to the current considerations around the impact on reliability and past history of major or repeated weather-related forced interruption[s] of service." TEC provided draft language that would revise proposed §25.55(d)(1) to limit the requirement to resources "with a nameplate capacity over 10 megawatts."

Commission Response

The commission declines to adopt TPPA's recommendation to increase ERCOT's inspection cycle from three years to seven years. A longer cycle does not necessarily result in a more detailed inspection of weather preparedness than can be accomplished within a three-year cycle. More frequent inspections better accomplish the objective of the rule.

The commission also declines to adopt Broad Reach's request to permit exceptions to the three-year inspection for the same reasons. Similarity in design or build of one resource to others in the fleet does not necessarily translate to identical weather preparation requirements. Geographic diversity may reasonably call for differences in weather preparation requirements. Similarly, different generation resources may have been maintained with different levels of diligence. Regardless of similarities between resources, it is important for ERCOT to perform inspections to ensure that preparedness measures have been undertaken for each resource.

The commission also declines to revise §25.55(d)(1) to limit inspection of resources exceeding a 10-megawatt nameplate capacity. Subsections (d)(1) and (g)(1) already include rule language authorizing ERCOT to prioritize inspections based on factors including "whether a resource is critical for electric grid reliability." The generating capacity of a resource may be a consideration in making this determination. Therefore, further limitations are unnecessary.

OPUC requested the modification of proposed §25.55(d)(1) to require ERCOT to consider the length of time since the generation resource or transmission facility was last inspected when prioritizing which entities to inspect.

Commission Response

The commission agrees with OPUC's recommendation to revise §25.55(d)(1) to require ERCOT to consider the most recent time a resource or transmission facility was inspected when prioritizing inspections. The commission amends each provision accordingly. PURA §35.0021 and §38.075 require ERCOT to prioritize inspection based on risk level; a greater period of time between inspections may represent a relevant risk factor for reliability.

Proposed §25.55(d)(1)(A) - Notice of ERCOT inspection (generation entity)

Proposed §25.55(d)(1)(A) requires ERCOT to provide to a generation entity a 48-hour notice of an inspection and requires the generation entity to grant access to its facility to ERCOT and commission staff, including contractors.

Broad Reach explained that its battery energy storage system facilities are in remote areas and largely unmanned on a daily basis. Broad Reach requested modifying the rule to require 72 hours of notice prior to an inspection in order for entities to have enough time to dispatch a technician to meet the inspector to facilitate the inspection.

TSPA recommended revising proposed §25.55(d)(1)(A) to give an entity a notice of inspection from 48 hours to five business days prior to an inspection, as some facilities may require more time because of security clearances, safety standards, and necessary training to access certain parts of a facility. TSPA argued that a notice of five business days permits more flexible scheduling and better provides for appropriate weatherization engineers to assist the ERCOT inspector.

TCPA recommended increasing the inspection notice under proposed §25.55(d)(1)(A) to two weeks as 48 hours is an insufficient timeframe to prepare for an inspection and conform to standard industry practice.

Commission Response

The commission agrees with Broad Reach, TSPA, and TCPA that the 48-hour notice period in the proposed rule is insufficient and adopts Broad Reach's recommendation to increase the notice requirement to 72 hours in §25.55(d)(1)(A). The commission also makes a conforming change to §25.55(g)(1)(A). The commission also revises §25.55(d)(1)(A) and (g)(1)(A) to respectively require entities to provide the inspection team all requirements for facility access within 24 hours of receiving the notice of inspection. This will allow time for the inspection team to obtain any specialized equipment prior to the inspection.

TPPA and LCRA recommended revising the requirement for ERCOT to provide advance notice of inspections under proposed §25.55(d)(1)(A) to "include the names of all ERCOT employees, Commission Staff, or designated contractors expected to conduct, oversee, or observe the inspection" to better ensure security of generation assets and that only those authorized individuals are performing inspections.

Commission Response

The commission agrees with TPPA and LCRA that advance notice of inspections provided by ERCOT under adopted §25.55(d)(1)(A) must, for security purposes, identify ERCOT employees, commission staff, or designated contractors participating in the inspection. The commission modifies the provision accordingly.

Proposed §25.55(d)(1)(B) - ERCOT inspection; requirements for a generating entity and inspection team

Proposed §25.55(d)(1)(B) specifies the extent of access a generation entity is required to provide to ERCOT and commission staff and prescribes the measures the inspection team may undertake as part of the inspection.

Constellation and TCPA expressed concern for the safety of commission staff and other employees in the inspection process and proposed language that would allow an entity to restrict access to certain areas of a resource or facility for safety reasons. NRG similarly noted that proposed §25.55(d)(1)(B) grants commission staff access to "any part of the facility" and recommended revising this language to account for portions of a facility that may be inaccessible to commission staff for safety reasons.

TEC recommended modifying proposed §25.55(d)(1)(A) and (d)(1)(B) to clarify that access to generation facilities by ERCOT inspection teams is not permitted when such access would violate any NERC or Texas Regional Entity, Inc. requirements, Nuclear Regulatory Commission regulations, or other pertinent federal regulatory rules or laws. TCPA recommended proposed §25.55(d)(1)(B) exclude control rooms and require ERCOT and commission staff to comply with all facility safety protocols. Constellation similarly recommended revising the rule to expressly state that ERCOT and commission staff must comply with all facility safety and security protocols.

Commission Response

The commission disagrees with Constellation, TCPA, TEC, and NRG that the rule should include language uniformly restricting the inspection team from certain areas of a resource or facility on

the basis of safety and security regulations. However, the commission generally agrees with commenters regarding safety and security measures and revises §25.55(d)(1)(B) and (g)(1)(B) to include a requirement that ERCOT, commission staff, and designated contactors must comply with all applicable safety and security regulations during the inspection.

TPPA commented on proposed §25.55(d)(1)(B), which requires that a utility's staff be available to answer questions by the ERCOT inspection team. TPPA requested clarification as to whether the provision requires a utility to ensure that all staff is available for questions or only that a representative for utility staff be available for questions.

Commission Response

In response to TPPA's request for clarification, under the adopted rule an entity must have representative staff available on site for questions from the inspection team but is not required to have all of an entity's staff be available on site. However, the representative staff selected to answer questions must have sufficient knowledge of the resource and the weather preparedness measures implemented to be able to respond with authority to the inspection team's questions.

NRG further noted that §25.55(d)(1)(B) allows commission staff to "take photographs or video recordings of any part of [a] facility" and requested that the rule expressly make confidential and exempt from disclosure any documents, photographs, or video recordings collected or generated by commission staff during or related to an inspection.

APA and ACP, Constellation, TCPA, and TPPA similarly recommended proposed §25.55(d)(1)(B) include confidentiality protections for photographs, video recordings, and interviews with facility personnel to protect commercially sensitive information and facility personnel's privacy. TPPA alternatively recommended revising the provisions to permit the personnel of the utility take the appropriate photographs or videos and send them to ERCOT employees and commission staff after an internal safety and security review. Constellation and TCPA specifically recommended that the rule be revised to prevent photographing and video recording of control rooms.

Commission Response

The commission agrees with NRG, APA and ACP, Constellation, TCPA, and TPPA that documents, photographs, and video recordings produced during the inspection or are otherwise related to the inspection should be treated as confidential information under applicable state laws or regulations. The commission revises §25.55(d)(1)(B) and (g)(1)(B) in accordance with these recommendations. The commission notes that the retention and disposal of confidential records is governed by the procedures of the Central Records division as approved by the Texas State Library and Archives Commission. The commission declines to adopt TPPA's alternative proposal for confidential information.

The commission agrees with Constellation and TCPA that photographs and videos of the control room should be explicitly prohibited in the rule and revises §25.55(d)(1)(B) and (g)(1)(B) accordingly.

OPUC noted that the requirement of a minimum 48-hour notice is appropriate under most circumstances but requested adding an additional subparagraph to allow for inspections without notice when an entity has been the subject of two or more repeated forced outages or other weather-related failures within the last calendar year.

Commission Response

The commission declines to adopt OPUC's recommendation to add provisions to the rule permitting ERCOT to inspect a resource or transmission facility without notice. Prior notice is essential to provide adequate time for entities to have the necessary employees available to the inspection team and to provide safe and efficient access to equipment and records. Some facilities are unmanned or may have minimal staff present or available. Seventy-two hours is a relatively short period of time that would generally be insufficient to make meaningful changes to an entity's preparation. Therefore, the language as proposed strikes an appropriate balance between granting enough time to provide the necessary records and safe access to equipment and the features of a no-notice inspection.

Proposed §25.55(d)(2) and (d)(2)(A) - ERCOT inspection report of a generation entity

Proposed §25.55(d)(2) and (d)(2)(A) delineate requirements applicable to ERCOT when providing a generation entity with its inspection report and requirements related to curing of identified deficiencies in the inspection report.

TPPA recommended revising proposed §25.55(d)(2)(A) to explicitly require the ERCOT inspection report be "written" to ensure consistency and accountability.

Commission Response

The commission agrees with TPPA that §25.55(d)(2)(A) should specify that the ERCOT inspection report be written and amends the provision accordingly.

TCPA recommended revising proposed §25.55(d)(2)(A) to require the inspection report be "detailed" and that the inspection report "must also provide meaningful information on which resource has been assessed."

Commission Response

The commission declines to revise §25.55(d)(2)(A) as recommended by TCPA to specifically require the ERCOT inspection report to be "detailed" and maintains that existing rule language already requires the report to provide sufficient information on the assessed resource or facility.

Proposed §25.55(d)(2)(B) - ERCOT inspection report; deficiency cure period for a generation entity

Proposed §25.55(d)(2)(B) requires ERCOT to provide the generation entity subject to inspection a reasonable period to cure the identified deficiencies if one or more requirements of the rule have not been complied with.

Constellation noted that rule language of proposed §25.55(d)(2)(B) did not contain a good cause exception and requested it for older resources that may mothball or retire because they are unable to meet certain standards.

Commission Response

The commission declines to add a good cause exception to this provision for reasons discussed above in responses to general comments and elsewhere. Under PURA and the adopted rule, all resources that intend to operate in the winter and summer seasons must be prepared to operate reliably.

TPPA recommended reference to a "final" cure period in proposed §25.55(d)(2)(B) be omitted from the provisions. TPPA instead recommended that proposed §25.55(d)(2)(B) allow for a "revised" cure period "if the generation entity can adequately

provide documentation supporting the request." TPPA also requested that the provisions include language that states that an entity may appeal the "revised" cure period to the commission itself. TPPA further recommended that proposed §25.55(d)(2)(B) explicitly prohibit commission staff that "would be involved in any enforcement action stemming from weather preparation inspections from participating in the setting of a 'revised' cure period" as it would inappropriately mix the commission's policymaking and enforcement functions.

Commission Response

The commission disagrees with TPPA and declines to implement a means of appealing a cure period to the commission or a prohibition on commission enforcement staff from weighing in on the cure period, because these changes are unnecessary.

The "final" cure period determination by ERCOT does not "bind" the commission in the manner TPPA states. For purposes of whether the commission "shall impose an administrative penalty" under PURA for failure to remedy a violation in a reasonable amount of time, the commission has the authority to determine whether the cure period provided by ERCOT was reasonable, as provided by §22.246(g). Accordingly, an additional means of appeal would unnecessarily complicate and lengthen the process for implementing weather preparedness measures. However, to prevent confusion, the commission does modify the rule to replace "final" with "revised" in both subsections (d) and (g).

Finally, because the commission ultimately determines whether the cure period was reasonable, it is unnecessary to prohibit commission enforcement staff from being involved in setting the deadlines for a cure period. This restriction would imply a conflict of interest where none exists and would make inefficient use of commission resources.

TSPA requested that the commission specify what constitutes a "reasonable period" of time to cure deficiencies under proposed §25.55(d)(2)(B) due to the high penalties associated with a failure to comply with the weatherization standards provided by the proposed rule. TPPA similarly recommended that proposed §25.55(d)(2)(B) include "a firm timeline for when the 'revised' cure period must be established" and specifically proposed "requiring a response within five business days from the receipt of the request for a modified cure period" from the generation entity to expedite the curing of deficiencies.

Commission Response

The commission declines to revise §25.55(d)(2)(B) to specify what a "reasonable period" of time is to cure the deficiencies identified by the ERCOT inspection report as recommended by TSPA. What constitutes a "reasonable period" to cure is a fact-specific determination that will vary between inspections as each resource and transmission facility is different and may require a variety of measures that differ in the amount of time required to implement such measures. Accordingly, the nature of the inspection does not lend itself to defining by rule the "reasonable period" to cure. Under the adopted rule such a determination will be left to the discretion of ERCOT and will afford the entity the opportunity to provide input on what that reasonable timeframe should be. For the same reasons, the commission declines to adopt TPPA's recommendation to require a response from ERCOT within five business days from the receipt of the request for a modified cure period.

Proposed §25.55(d)(2)(D) - ERCOT inspection report; enforcement investigation of a generation entity

Proposed §25.55(d)(2)(D) states that a generation entity that does not remedy a violation during the cure period will be reported by ERCOT to commission staff and will be subject to enforcement investigation. This subparagraph also specifies that a violation of the rule is a Class A violation with a maximum penalty of \$1,000,000 per violation, per day.

TEC and Vistra recommended modifying proposed §25.55(d)(2)(D) to state that a violation "may be determined to be" a Class A violation as it is possible that a violation of §25.55 may not be a violation of PURA §35.0021, while violations of PURA §35.0021 are violations of §25.8. Vistra explained that PURA §35.0021 is concerned around actual weather preparedness standards and therefore a technical or procedural violation, such as a late submission, may not be appropriate for a Class A violation.

TEC argued that an entity should be provided an opportunity to provide evidence and rebut the allegation. Accordingly, TEC provided redline edits to proposed §25.55(d)(2)(D) indicating that such a violation "may" be a Class A violation.

Commission Response

The commission disagrees with TEC's and Vistra's recommendation that violations of this rule "may" be Class A violations. SB 3 requires any violation associated with weather preparedness to carry a potential administrative penalty ceiling of \$1,000,000 per day, per violation. Due to the size of the potential penalty and severity associated with the violation, weather preparedness violations are appropriately classified as Class A violations, which are the highest tier of violations under commission rules. Accordingly, all weather preparedness violations are Class A violations under §25.8, relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers, and beyond the scope of this rulemaking.

However, ERCOT reporting a deficiency is not by default a determination that an entity has violated the rule. Under the adopted rule, an ERCOT referral is a trigger for an enforcement investigation by commission staff. During the investigation and subsequent litigation or settlement process, an entity has every right to provide evidence and information that would mitigate either the finding of a violation or the amount of any recommended penalty. Ultimately, it will be the commission, not ERCOT or the commission staff, that determines whether a violation has occurred.

TPPA argued that the rule is unclear as to when an entity is in violation of the rules under proposed §25.55(d)(2)(D) and, therefore, potentially liable for a \$1 million penalty. TPPA stated that the proposed rule covers a sequence of behaviors but is not clear at what point in the sequence an entity is in violation. TPPA requested clarification on this point.

Commission Response

The commission disagrees with TPPA that proposed §25.55(d)(2)(D) is ambiguous. Under PURA §35.0021(g) the commission "shall impose an administrative penalty on an entity, including a municipally owned utility or an electric cooperative, that violates [this rule] and does not remedy that violation within a reasonable period of time." Accordingly, §25.55(g)(2)(D) serves to alert generation entities that if ERCOT notifies commission staff that a generation entity has not remedied a violation, commission staff will initiate an enforcement investigation. However, to answer TPPA's question directly about when a violation occurs, a violation occurs when any entity subject to this rule fails to comply with any provision of

this rule - just like with any other rule. The issue of when the commission has discretionary authority to issue penalties for violations of this rule and when it is required to issue penalties is discussed at length in the final order in Project Number 52312 and is directly addressed by the §22.246(g)(5)(C).

Final determinations as to whether a violation has occurred, whether that violation was remedied in a reasonable amount of time, and whether a penalty is appropriate, are made by the commission in accordance with all due process requirements owed to the entity under investigation.

Proposed §25.55(e) - Weather-related failures by a generation entity to provide service

Proposed §25.55(e) requires a generation entity with a resource that experiences repeated or major weather-related forced interruptions of service to contract with a qualified professional engineer to assess its weather emergency preparation measures, plans, procedures, and operations.

Constellation requested revising proposed §25.55(e) so that it does not apply to an outage of a wind resource due to freezing of turbines because their freezing does not require any special level of engineering expertise and there are no practical engineering solutions that would prevent their freezing.

Commission response

The commission maintains that all generation resources and transmission facilities must utilize a qualified professional engineer to address major or repeat weather-related forced interruptions of service. The assessment by the qualified professional engineer is intended to be a uniform requirement for the assessed entity, ERCOT, and the commission to understand the capabilities of the resource or facility to enhance its ability to operate through most winter or summer weather emergency conditions. The commission therefore declines to adopt Constellation's recommendation to exempt wind resources from a potential qualified professional engineer assessment under §25.55(e).

TCPA and Vistra recommended that proposed §25.55(e) include a requirement for ERCOT "to provide notice to a resource owner after each weather-related incident that is counted toward the three in which an audit is required" and that the provision incorporate an appeal process when there is disagreement between the resource and the ERCOT inspection team. TCPA also recommended that ERCOT be required to send a notice to a resource owner when an audit has been triggered, and specifying "which incidences were triggering events, and outlining the process by which a resource owner may appeal such a finding if it disagrees with the triggering events."

Commission Response

The commission disagrees with TCPA and Vistra that §25.55(e) should include an appeal process for the assessment by a qualified professional engineer. An appeal process would unnecessarily delay the assessment when a reasonable basis exists for performing the assessment. The commission has refined the definitions of repeated and major weather-related forced interruptions of service to specify additional relevant criteria for those terms. The commission agrees that §25.55(e) should include a notice provision and has revised §25.55(h) to require ERCOT to notify a generation resource and commission staff of a repeated or major weather-related forced interruption of service.

Constellation, TCPA, TSPA, and Vistra recommended deleting the language excluding an engineer that has performed an assessment of an entity from performing future assessments because repeat assessments are not an indication of bias and because of the potentially limited availability of skilled engineers that are eligible to perform the assessment. Vistra elaborated, stating the limitation as proposed is "unnecessarily restrictive given the limited pool of qualified professional engineers with the relevant expertise and also exceeds the statutory requirement" that only requires a professional engineer not be an employee of the generation entity. Vistra provided draft language consistent with its recommendations.

TPPA commented that proposed §25.55(e), which prohibits a qualified professional engineer that has participated in previous assessments, is overbroad. Accordingly, TPPA recommended revising proposed §25.55(e) to specifically apply the prohibition on future assessments to the identified engineer. TPPA also noted that proposed §25.55(e) does not include a timeframe for the report to be submitted to the commission and ERCOT and proposed adding a nine-month deadline beginning from the repeated or major weather-related forced interruption that prompted the independent assessment.

TSPA commented that an owner or operator of a generation facility "has every incentive to comply with weatherization requirements, given the very high potential administrative penalties and the cost of being short in the ERCOT market when conditions are tight" and that an engineer who understands modern solar facilities may sometimes be unavailable. TSPA commented that a third-party engineer unfamiliar with a solar resource may make recommendations the generator strenuously disagrees with. TSPA stressed that an engineer employed by the generation entity is generally best suited to assess the resource due to experience with the relevant technology and facility. TSPA provided draft language consistent with its recommendation as well as alternative language if the commission chooses to retain the third-party requirement.

Broad Reach noted that there are only a limited number of professional engineers that possess energy storage knowledge and experience, particularly relative to the new battery storage technologies Broad Reach's fleet utilizes. Accordingly, Broad Reach stated that the requirement to use a professional engineer that has not participated in previous assessments for the resource in the last five years would represent a significant burden for Broad Reach. Broad Reach further noted that the exception provided in the rule for this requirement does not provide enough guidance on what constitutes a "qualified engineer" which can cause confusion. As such, Broad Reach recommended striking the requirement and exception language from the rule.

Commission Response

The commission disagrees with Constellation, TCPA, TSPA, Vistra, and Broad Reach and declines to remove the prohibition on a qualified professional engineer from performing a repeat assessment within a five-year period under §25.55(e). A resource or transmission facility must be independently reviewed by fresh eyes after repeat failures of the resource to ensure any chronic issues are accurately identified. An entity may provide documentation for an exception to the prohibition when there is a dearth of independent qualified professionals. Further, the prohibition does not disqualify entire engineering firms. To address commenter's concerns on timing, the commission revises §25.55(e) to require a generation entity to submit the qualified professional engineer's assessment to the commission and ERCOT within 15

calendar days of receiving the assessment to clearly delineate the timeframe for submission.

Proposed §25.55(f), (f)(1), and (f)(2) - Weather emergency preparedness reliability standards for a TSP

Proposed §25.55(f) contains the weather emergency reliability standards TSPs must maintain to comply with §25.55. Proposed §25.55(f)(1) contains winter-specific weather preparedness measures that a TSP must comply with by December 1 of each year. Proposed §25.55(f)(2) contains summer-specific weatherization preparedness measures that a TSP must comply with by June 1 of each year.

AEP recommended that proposed §25.55(f)(1) be retitled to "weather emergency preparation measures for a TSP" to align with the requirement that TSP's implement winter and summer season "preparation measures."

Commission Response

The commission declines to retitle §25.55(f)(1) as requested by AEP, because it is unnecessary.

TNMP noted that proposed §25.55(f)(2) as currently written would require a TSP to "complete" preparations listed for summer operations by June 1 each year, but some of the preparations would have to be ongoing. TNMP recommended changing this language to require these operations be "initiated" by that date.

AEP and CenterPoint noted that proposed §25.55(f)(1) and (f)(2) require winter and summer season weather preparedness measures to be complete prior to the start of the season but some measures are executed on an ongoing basis. AEP and CenterPoint recommended proposed §25.55(f)(1) and (f)(2) be revised to replace the word "complete" with the word "implement" as the new rule requires winter and summer season weather preparedness measures on an ongoing basis.

Sharyland requested that the commission clarify the intent of the requirement to maintain weatherization preparedness measures throughout the summer and winter seasons, under §25.55(f)(1) and (f)(2) as the rule does not specify how often a TSP must perform these tasks.

Commission Response

The commission declines to modify the word "complete," as requested by AEP, CenterPoint, and TNMP. Instead, the commission modifies the rule to clarify that any ongoing requirements must be completed at the appropriate time.

In response to Sharyland's comment, the requirement to "maintain" the enumerated weather preparations measures means to take additional actions, as appropriate, to ensure that the level of weather preparedness does not decline over the course of the winter or summer season.

TNMP recommended replacing "facilities" and "facility" with "cold weather critical components" in §25.55(f)(2) or "components" to more accurately reflect the equipment to which temperature parameters will apply.

Commission Response

The commission declines to narrow the language of §25.55(f)(2) to only require entities to implement measures to ensure the sustained operation of cold weather components. A TSP needs to prepare for its entire facility to sustain operations and identifying components that are vulnerable during the relevant season is a

part of that preparation. However, TSPs should adopt a holistic approach to seasonal preparations.

Proposed §25.55(f)(1)(A) and (f)(2)(A) - Weather emergency preparation measures reasonably expected to ensure sustained operations of cold and hot weather critical components (TSP)

Proposed §25.55(f)(1)(A) and (f)(2)(A) respectively require a TSP to implement weather emergency preparation measures that could reasonably be expected to ensure the sustained operation of all cold and hot weather critical components during winter and summer weather conditions. The provisions indicate that, where appropriate, such measures may be implemented using either personnel or automated systems and provides a non-exhaustive list of measures, as appropriate for the facility.

TPPA noted that proposed subparagraph §25.55(f)(1)(A) would require the implementation of measures that are "reasonably expected" to ensure sustained operations. TPPA requested clarification as to whether the commission has revised its compliance standard from an intention or design standard to a reasonability standard, or whether the term "reasonably expected" should be read as synonymous with an intention or design standard.

Commission Response:

In response to TPPA's comments regarding §25.55(f)(1)(A), the commission's intent is to provide generation resources and transmission facilities with flexibility while still maintaining a preparedness standard for grid reliability. This rule does not contain a design standard. The commission's intended standard is one of reasonableness in carrying out preparations for the winter and summer seasons.

CenterPoint commented that the mixed use of the terms "monthly basis" and "regular basis" under proposed §25.55(f)(2)(A) is ambiguous and that the term "regular basis" be used because inspection best practice for hot weather critical components is dependent on "various conditions and factors that cannot be adequately accounted for in a rule."

Commission Response

The commission disagrees with CenterPoint's recommendation to modify §25.55(f)(2)(A) by replacing "monthly basis" with "regular basis" and maintains that the use of those terms is not ambiguous. The term "regular basis" is intended to provide flexibility in implementation for certain requirements while the term "monthly basis" is more stringent to ensure an appropriate level of maintained preparedness throughout the applicable seasons. As the usage of those terms is deliberate, the commission declines to alter the provisions in which those terms appear.

SMEC noted that proposed §25.55(f)(1)(A) would require that a TSP "maintain these measures throughout the winter season." SMEC recommends that the commission provide clarification that the verification of proper oil quality may be maintained by a TSP prior to the winter season, and recommended language to provide that clarity. Sharyland restated its previous comments and requests that the commission clarify how often a TSP is to verify acceptable oil quality.

Commission Response

Winter preparations must be completed by December 1st and maintained, as appropriate for the implementation measure, throughout the season. If this can be accomplished prior to the start of the season, it meets the requirement.

Consistent with its recommendation for the proposed definition of "transmission facility" under §25.55(b)(9), EDF, TCA, and ASC recommended proposed §25.55(f)(2)(A) related to transformer readiness be expanded to account for the age, condition, and remaining lifespan of a transformer, not just the readiness of its cooling equipment. EDF, TCA, and ASC further recommended the commission revise proposed §25.55(f)(2)(A) to direct TSPs to report on their individual readiness and planning for replacement of failed transformers with spares in the event of high heat or load level, or terrorist attack.

Commission Response

In response to EDF, TCA and ASC, the rule gives TSP's the flexibility to make reasonable adjustments based on the specifics of their equipment and facilities. TSPs are expected to have spare transformers as part of good utility practice. Currently, it is not necessary to have a specific spare transformer requirement as part of this rule.

TPPA recommended the commission revise proposed §25.55(f)(2)(A) to require the implementation of measures that are "reasonably expected" to ensure sustained operations. TPPA also requested clarification as to whether the commission has revised its compliance standard from an intention or design standard to a reasonability standard, or whether the term "reasonably expected" should be read as synonymous with an intention or design standard.

Commission Response

In response to TPPA's comments regarding the rule's compliance standard, the commission's intent is to provide generation resources and transmission facilities flexibility while still maintaining a preparedness standard for grid reliability. This rule does not contain a design standard but requires a utility to implement weatherization preparedness measures "that could reasonably be expected to ensure the sustained operation," as "appropriate for the facility" in accordance with the temperature standards prescribed by the rule.

Consistent with changes made in §25.55(c), §25.55(f) is modified with new (f)(1)(E) and (f)(2)(E) which require TSPs beginning in 2023, to create a list of all hot and cold weather critical components prior to the beginning of their appropriate season.

Proposed §25.55(f)(1)(A)(i) - Cold weather critical components; systems and subsystems (TSP)

Proposed §25.55(f)(1)(A)(i) requires a TSP to confirm the operability of all systems and subsystems containing all cold weather critical components, as appropriate for the facility.

TEC commented that proposed §25.55(f)(1)(A)(i) relating to confirmation of operability of systems and subsystems containing all cold weather critical components is vague as it imposes a strict liability requirement. Specifically, TEC contended that a TSP would be deemed noncompliant if it "did not identify or recognize a part of its system as vulnerable to cold or hot temperatures and such part unexpectedly fails during a weather emergency." TEC accordingly recommended proposed §25.55(f)(1)(A)(i) be modified to not include a strict liability standard as the imposed requirements and threat of enforcement action would only incur unnecessary over-investment and increased costs to ratepayers.

Commission Response

The commission disagrees that the requirement to confirm the operability of systems and subsystems containing cold weather

equipment is vague or imposes a strict liability requirement. The requirement is phrased broadly, because the commission cannot by rule identify each component for each type of facility for which the operability must be confirmed. The commission acknowledges TEC's concerns regarding the ambiguity of proposed §25.55(f)(1)(A)(i), the subjectivity inherent in the rule is necessary as the commission cannot specifically identify what components are critical on every TSP's system. The commission also does not agree that the rule imposes strict liability. Confirming the operability of a component requires diligently checking to make sure the component performs its function during preparations. It does not impose a performance standard. If a component does fail, that failure may prompt an investigation into what measures were taken to confirm its operability, but the failure itself is not a violation of this rule.

§25.55(f)(2)(A)(i) - Emergency weather preparation measures; inspecting transformer cooling systems

TEC requested the commission clarify its references to "coolers" under proposed §25.55(f)(2)(A)(i) which requires TSPs to inspect and clean transformer coolers regularly during the summer. TNMP noted that "cooler" is not a recognized term for the transformer cooling systems it employs. TNMP and Oncor recommended changing the term to "cooling systems."

Commission Response

Regarding TEC's concern regarding coolers, §25.55(f)(2)(A)(i) states that the measures to be implemented are those that are "reasonably expected to ensure the sustained operation" of weather critical components. The TSP has the flexibility to determine the cooling equipment necessary to maintain sustained operation of its transformers and have them cleaned on a regular basis "as appropriate for the facility." The commission agrees with TNMP and Oncor regarding the use of terms consistent with industry usage and will reference "cooling systems" instead of "cooler" in the adopted rule language.

AEP recommended proposed §25.55(f)(2)(A)(i) be revised to permit transformer cooler inspections be performed on a "regular" basis and not a "monthly basis." AEP recommended removing the May 1 through September 30 timeframe in proposed §25.55(f)(2)(A)(i) and (f)(2)(A)(ii). AEP provided draft language consistent with its recommendations.

Commission Response

The commission disagrees with AEP's recommendation to modify proposed §25.55(f)(2)(A)(i) by replacing "monthly basis" with "regular basis." The commission modifies the language to replace the references to months with "during the summer season" to maintain consistency in the language of the rule.

Proposed §25.55(f)(1)(A)(ii) - Cold weather critical components; sulfur hexafluoride (TSP)

Proposed §25.55(f)(1)(A)(ii) requires a TSP to confirm certain measures relating to sulfur hexafluoride gas in breakers, metering, and other electrical equipment and to assure functionality, as appropriate for the facility.

TEC noted that the annual inspection and maintenance requirement for breaker heaters in proposed §25.55(f)(1)(A)(ii) may contradict manufacturer recommended installation and maintenance procedures and therefore result in a loss of warranty coverage and reduced service life of certain components. TEC recommended the requirement for annual maintenance to be replaced with "an annual verification and attestation confirming

that all heater breakers and supporting circuitry have been tested in accordance with the manufacturer's recommended maintenance schedule." TEC provided redline edits for proposed §25.55(f)(1)(A)(ii) regarding the same.

TEC also recommended proposed §25.55(f)(1)(A)(iii)(I) be deleted from the rule as it requires TSPs to inspect heaters in control cabinets "without regard as to whether there are any cold weather critical components in the control cabinets" and therefore provides no meaningful return for ratepayers.

TEC requested the commission clarify whether the phrase "verification of proper oil quality" in proposed §25.55(f)(1)(A)(iii)(V) is equivalent or additional to a TSP's regular review of oil test data, and if the requirement is equivalent to a TSP's regular review, whether the rule requires the TSP to conduct its regular review by December 1 of each year.

Commission Response

In response to TEC's concern regarding the maintenance requirement of breaker heaters, §25.55(f)(1)(A) states that these measures must be implemented "as appropriate for the facility." Changing the requirement in §25.55(f)(1)(A)(ii) from a testing standard to verification of functionality gives the intended flexibility to the TSP. The requirement under proposed §25.55(f)(1)(A)(iii)(I) should likewise be interpreted as to what is appropriate for the facility to confirm the operability of power transformers and auto transformers during winter weather conditions. Regarding TEC's concern regarding the verification of oil quality under proposed §25.55(f)(1)(A)(iii)(V), the rule's reference to "verification" is not necessarily equivalent to this review of test data. The proper method of verification will vary according to what is appropriate for the facility.

TNMP noted that "cooler" is not a recognized term for the transformer cooling systems it employs. TNMP and Oncor recommended changing the term to "cooling systems." Similar to its recommendation for proposed §25.55(f)(2)(A)(i), Oncor further recommended proposed §25.55(f)(2)(A)(ii) to be revised to specify "cleaning or clearing transformer cooler systems" to fully encompass the activities that may be necessary to perform on transformer cooling systems.

Commission Response

The commission agrees with TNMP and Oncor and will reference "cooling systems" instead of "cooler" in the adopted rule language. The commission declines to modify the rule to refer to the clearing of transformer cooler systems, as requested by Oncor. If additional measures, such as clearing of transformer cooler systems, is appropriate for a facility, this rule does not prevent these additional preparation measures from being implemented.

SMEC noted that its current process for cleaning transformer coolers is in the spring, in anticipation of the summer season, and that SMEC does not usually clean transformer coolers when the equipment is energized. Thus, SMEC requested that §25.55(f)(2)(A)(ii) be amended to permit service providers to clean their equipment prior to the summer season and suggested language that reflects that change.

Commission Response

In response to SMEC's request that the rule permit TSPs clean their equipment prior to the appropriate season, the rule makes no requirement or prohibition on specific maintenance practices outside of the seasons in question.

TNMP noted that the requirement to clean transformer coolers on a regular basis during the summer is not consistent with most TSP transformer cooling systems. TNMP recommended changing this language to require a TSP "maintain" the transformer cooling system so that it operates as intended during the summer season.

Commission Response

Responding to TNMP's request to modify rule language to "maintain" transformer cooling systems, the requirements of §25.55(f)(2)(A)(ii) are to be carried out "as appropriate for the facility" and thus the TSP may interpret the requirement in a way to "ensure the sustained operation" of transmission facilities.

Sharyland noted that cleaning transformer coolers would require an outage and Sharyland only cleans that equipment when inspections show it is necessary. Sharyland recommended modifying proposed §25.55(f)(2)(A)(ii), to replace "on a regular basis during the summer season" with "during the summer season consistent with good utility practice."

Commission Response

In response to Sharyland's concern that cleaning transformers would require outages, §25.55(f)(2)(A) is intended to be implemented to ensure sustained operation, not cause more interruptions of service. TSPs are to implement the rule "as appropriate for the facility" to ensure sustained operation during the summer weather season.

TPPA noted that proposed §25.55(f)(2)(A)(i) and (f)(2)(A)(ii), which require a TSP to clean transformer coolers on a regular basis during the summer season by June 1, are duplicative as the proposed rule "already requires both generation entities and TSPs to maintain the specified measures throughout the summer and winter seasons, so requiring annual testing and cleaning would not preclude maintenance during the winter or summer seasons."

Commission Response

The commission declines to revise §25.55(f)(2)(A)(i) and (f)(2)(A)(ii) as recommended by TPPA as there may be testing and cleaning requirements that do not entirely overlap with ongoing maintenance requirements. Therefore, the rule should address all three requirements.

Proposed §25.55(f)(1)(A)(iii) - Cold weather critical components; transformers (TSP)

Proposed §25.55(f)(1)(A)(iii) requires a TSP to confirm the operability of power transformers and auto transformers in winter weather emergencies by implementing certain measures, as appropriate for the facility.

Oncor recommended that the verification requirement for oil quality under §25.55(f)(1)(A)(iii)(e) be removed as "moisture and dissolved gas levels of oil for cold weather critical components do not appreciably vary" based on cold (or hot) weather conditions. Oncor alternatively recommended the requirement be changed to an annual testing requirement specific to seasonal weather conditions to "better align with industry standards and operational experience."

Commission Response

In response to Oncor's comment regarding the verification of proper oil quality to ensure preparedness for winter weather conditions under proposed §25.55(f)(1)(A)(iii)(v), if the annual testing recommended by Oncor is sufficient to ensure

operability of power transformers and auto transformers in winter weather emergencies then such testing will satisfy the preparation requirement. The commission notes that proposed §25.55(f)(1)(A)(iii)(v) is adopted as §25.55(f)(1)(A)(iii)(e).

Proposed §25.55(f)(2)(A)(iii) - Hot weather critical components; cooling fans and control pumps (TSP)

Proposed §25.55(f)(2)(A)(iii) requires a TSP to verify the proper functioning of cooling fans and pump controls, as appropriate for the facility.

Sharyland recommended modifying proposed §25.55(f)(2)(A)(iii) to read "verifying proper functioning of cooling fans and pump controls."

Commission Response

The commission agrees with Sharyland's revision to §25.55(f)(2)(A)(iii) as it more clearly captures the intent of the requirement and modifies the rule accordingly.

Proposed §25.55(f)(2)(A)(iv) - Hot weather critical components; availability of materials for sustained operations (TSP)

Proposed §25.55(f)(2)(A)(iv) requires a TSP to arrange and provide for the availability of sufficient chemicals, coolants, and other materials necessary for sustained operations during a summer weather emergency, as appropriate for the facility.

TPPA requested the commission clarify whether proposed §25.55(f)(2)(A)(iv) regarding the availability of sufficient materials necessary for sustained operation, require either an on-site stockpile or whether "supplier availability with a delivery guarantee or mutual aid agreements would be sufficient." TPPA noted that on-site stockpiles may be challenging for utilities to manage and would require monthly testing of oil freeze protection equipment from November 1 through March 31, yet require preparation measures be completed by December 1.

Commission Response

For proposed §25.55(f)(2)(A)(iv), the commission clarifies that there is not a requirement for on-site stockpiling. The generation entity will use its best judgement to determine what qualifies as "available".

Proposed §25.55(f)(2)(A)(v) - Hot weather critical components; protection of materials for sustained operations (TSP)

Proposed §25.55(f)(2)(A)(v) requires a TSP to confirm that sufficient chemicals, coolants, and other materials necessary for sustained operations during a summer weather emergency are protected from heat and drought, as appropriate for the facility.

Oncor recommended proposed §25.55(f)(2)(A)(v) be clarified to explicitly state the intent of the provision, which is to confirm a TSP retains sufficient materials that protect facilities "from adverse effects from heat and drought."

Commission Response

The commission declines to adopt Oncor's recommended change to §25.55(f)(2)(A)(v) as the revision is not necessary due to adopted subsection (f)(2) specifying the preparations are for the summer season.

Proposed §25.55(f)(1)(B) and (f)(2)(B) - Weather emergency preparation measures reasonably expected to ensure sustained operations of transmission facilities (TSP)

Proposed §25.55(f)(1)(B) requires, beginning in 2023, a TSP to implement weather emergency preparation measures that could

reasonably be expected to ensure the sustained operation of the TSP's transmission facilities during the lesser of the minimum ambient temperature at which the facility has experienced sustained operations or the 95th percentile minimum average 72-hour temperature reported in ERCOT's historical weather study for the weather zone in which the facility is located. Proposed §25.55(f)(2)(B) requires, beginning in 2023, a TSP to implement weather emergency preparation measures that could reasonably be expected to ensure the sustained operation of the TSP's transmission facilities during the greater of the maximum ambient temperature at which the facility has experienced sustained operations or the 95th percentile maximum average 72-hour temperature reported in ERCOT's historical weather study for the weather zone in which the facility is located.

TNMP recommended replacing "facilities" and "facility" with "cold weather critical components" or "components" in proposed §25.55(f)(1)(B) to more accurately reflect the equipment to which temperature parameters will apply.

Commission Response

The commission declines to implement the changes recommended by TNMP for §25.55(f)(1)(B), as (f)(1)(A) already makes clear what actions are required and for what components to ensure the sustained operation of transmission facilities. Therefore, the rule is sufficiently clear in identifying what equipment is being referred to.

OPUC recommended adding a reporting provision to §25.55(f)(1)(B) and (f)(2)(B) to allow the commission to see the additional measures taken and which practices are common among TSPs.

Commission Response

The commission agrees with OPUC that the commission should have access to the preparation measures implemented by TSPs but declines to add a reporting provision. Information regarding best practices may be included in the compliance reports ERCOT files with the commission for summer and winter weather preparedness under adopted paragraphs §25.55(f)(4) and (f)(5).

SMEC recommended proposed §25.55(f)(1)(B) and (f)(2)(B) be revised to clarify the relevant timeframe for and what constitutes "sustained operations" under those provisions because ambient temperatures can vary and what is considered a period of sustained operations will impact the calculation of the appropriate ambient temperature.

Commission Response

As previously noted, the commission modifies the rule to remove the local ambient temperature standard for the winter months.

The commission disagrees with SMEC's recommendation to revise §25.55(f)(1)(B) and (f)(2)(B) to define sustained operations. "Sustained operations" is not a defined term in this rule because it is used throughout to imply the "reasonably expected" capability of a resource or facility to operate during the maximum ambient temperature standard or the ERCOT historical weather study standard. Defining the term could result in an interpretation requiring performance from resources or facilities rather than requiring preparation activities from entities. With regard to the specific value that should be reported in an entity's declaration, an entity should provide the maximum temperature at which the resource is known to have operated for more than a momentary amount of time with the understanding that the intent of this provision is to provide ERCOT and the commission with additional

data by which it plans for reliable operations of the bulk power system.

Oncor commented that proposed §25.55(f)(1)(B) and (f)(2)(B) are ambiguous in "how facility ambient temperature measurements may be collected" as the provisions could be interpreted as permitting measurements to be taken "either at the facility itself or at an appropriate measurement location within the weather zone in which the facility is located." Oncor also cautioned that historical weather data may be increasingly unavailable as facilities with on-site temperature measurement equipment diminish in number the further back in time the data is required for. Oncor provided draft language consistent with its recommendations. Oncor further recommended that proposed §25.55(f)(1)(B) and (f)(2)(B), proposed §25.55(f)(3)(A)(iii) and (f)(3)(B)(iii), and proposed §25.55(i) "establish a reasonable time period in which the historical analysis of minimum or maximum ambient temperatures must be analyzed" to prevent ambiguity in the compiling of data sets for past ambient temperatures based on a TSP's own measurements and ERCOT's historical weather study.

AEP and CenterPoint recommended the commission adopt a uniform standard for TSPs to rely on and recommended using only the "minimum and maximum ambient temperature reported by ERCOT, respectively, for the prior five years in the ERCOT weather zone in which the transmission facility is located." AEP recommended proposed §25.55(f)(1)(B) and (f)(2)(B) be revised to eliminate the "minimum ambient temperature at which the facility has experienced sustained operations" standard as AEP does not have historical temperature data for each of its facilities, and instead would rely on the "nearest National Weather Service" station data.

CenterPoint recommended the sections applying to TSPs regarding historical temperatures should be harmonized to avoid ambiguity with regard to the location the ambient temperature is to be measured. CenterPoint proposed that, if a TSP "has access to consistent weather station data going back beyond five years, the TSP should have the option to include such data in its report and analysis." CenterPoint provided redline edits for proposed §25.55(f)(1)(B) and (f)(2)(B) in accordance with its recommendations.

Commission Response

In response to Oncor's, AEP's, and CenterPoint's concern regarding the ambient temperature standard, the commission notes that the intention of the rule is to account for how the maximum temperature during the summer season at specific locations that may vary inside the larger geographic areas represented by the weather zones used in the historical ERCOT weather study. For the same reasons, the commission maintains that the ambient temperature is not ambiguous. It is also not necessarily true that the ambient temperature standard will always be used during the summer season, unless it genuinely is the case that the ambient temperature is higher than what is recorded by the historical ERCOT weather study. If local ambient temperature data is unavailable, an entity may use temperature data from the nearest National Weather Service station.

Sharyland noted that the current ERCOT historical weather study does not include 95th percentile maximum average 72-hour temperature referred in §25.55(f)(1)(B) and (f)(2)(B) and restated its general comments.

Commission Response

In response to Sharyland's comments, the commission has updated the historical ERCOT weather study available on the Interchange since the draft rule was filed. The commission refers commenters to the July 13, 2022, filing in Project Number 52691 which includes the missing information noted by commenters.

TNMP recommended replacing "facilities" and "facility" with "hot weather critical components" or "components" in proposed §25.55(f)(2)(B) to more accurately reflect the equipment to which temperature parameters will apply.

Commission Response

The commission declines to implement the changes recommended by TNMP for §25.55(f)(2)(B). The language of §25.55(f)(2)(A) already makes clear what actions are required and for what components to ensure the sustained operation of transmission facilities. Therefore, the rule is sufficiently clear in identifying what equipment is being referred to.

Proposed §25.55(f)(3), (f)(4), and (f)(5) - Declaration of preparedness

Proposed §25.55(f)(3) contains requirements for a TSP in drafting its declaration of preparedness. Proposed §25.55(f)(4) and (f)(5) require ERCOT to file with the commission compliance reports addressing whether a TSP has submitted its required declarations regarding winter and summer weather preparedness on or before December 20 and June 20, respectively, of each year.

Oncor recommended the term "control" be omitted from proposed §25.55(f)(3)(A)(i) and (f)(3)(B)(i), and proposed (f)(4) and (f)(5), because the term is undefined and not a common industry term. Oncor suggested that reporting and weatherization requirements should be based on facility ownership rather than "control" to better align with the ERCOT protocols and NERC reliability standards. Oncor provided draft language consistent with its recommendations. AEP similarly requested the commission replace the phrase "under the TSP's control" with "owned by the TSP" in proposed §25.55(f)(4) and (f)(5), which require ERCOT to file with the commission its compliance reports on TSP weather preparedness.

Commission Response

The commission agrees with Oncor and AEP that the term "control" as used in §25.55(f)(3), (f)(4), and (f)(5) is ambiguous and replaces it with the phrase "maintained by the TSP." The commission also revises proposed §25.55(f)(4) to replace the generic term "facility" with the more specific term "switchyards" in addition to transmission substations maintained by the TSP.

TEC requested that TSPs be required only to implement measures conforming to ERCOT's weather study data, as opposed to identify weather data for each facility. Accordingly, TEC opposed the requirement that a TSP identify each facility under proposed §25.55(f)(3)(A)(i), (f)(3)(A)(iii), (f)(3)(B)(i), and (f)(3)(B)(iii). TEC proposed as an alternative that a TSP be permitted to summarize the activities taken for the facilities it controls that are appropriate for the weather zone the facility is located within. TEC specifically requested that TSPs not be required to list the temperatures recorded at nearby weather stations in their declarations and, consequently, for proposed §25.55(f)(3)(A)(iii) and (f)(3)(B)(iii) be deleted as it is unclear and burdensome.

Consistent with its comments for proposed §25.55(f)(1)(B) and (f)(2)(B), AEP recommended proposed §25.55(f)(3)(A)(iii) and (f)(3)(B)(iii) be revised to eliminate the historical ambient temper-

ature standard and rely solely on the historical weather data provided by ERCOT. AEP provided draft language consistent with its recommendations.

Commission Response

As previously noted, the commission modifies the rule to remove the local ambient temperature standard for the winter months.

The commission declines to implement TEC's proposed alternative to the ambient temperature standard. Specific local data is superior to data from the weather zone in general for the summer season. National Weather Service stations record historical weather conditions. Therefore, the requirement to list such data in a weather preparedness declaration is not overly burdensome. This requirement ensures an entity is prepared for local temperature conditions that may vary even within the same weather zone. The commission declines to implement AEP's recommendation to eliminate the historical ambient temperature standard for the summer season and rely only on the historical weather data from ERCOT's study for the same reasons.

TPPA recommended proposed §25.55(f)(3)(A)(iv) be deleted as the provisions require a utility to submit any additional information required by the ERCOT protocols. TPPA explained that such a requirement could make compliance more difficult as it would split the obligations for the declarations of weather preparedness between two regulatory bodies. TPPA recommended the commission subsequently address any insufficiencies the declarations may have for ERCOT under the proposed rule via a notice and comment rulemaking.

Commission Response

The commission declines to delete proposed §25.55(f)(3)(A)(iv). Market entities have historically been obligated to comply with both commission rules and the ERCOT protocols. The provision requiring additional information designated in the ERCOT protocols ensures that all weather preparation requirements are summarized in the declaration of preparedness. ERCOT may adopt additional filing or administrative requirements to facilitate the submission and review of hundreds of attestations of compliance with the adopted rule. However, the commission has modified these provisions to specify the date of the ERCOT protocols that apply to each declaration, to facilitate compliance with this requirement.

TEC requested that weather preparedness standards be established on a forward-looking basis, because historical ambient weather data may not be available for each facility. Accordingly, TEC recommended proposed §25.55(c)(3)(A)(iii), (c)(3)(B)(iii), (f)(3)(A)(iii), and (f)(3)(B)(iii) be revised by appending "with measurements beginning in 2023" to the end of each provision.

Commission Response

The commission disagrees that the rule should be revised to make the weather preparedness requirements forward-looking in the manner TEC recommends. If ambient temperature data is unavailable, data can be obtained at the nearest weather station.

AEP recommended the numbering for proposed §25.55(f)(3)(B)(iii) and (f)(3)(B)(iv) be revised to be (f)(3)(B)(iv), and (f)(3)(B)(v), respectively, and also change the term "generation entity" to "TSP" in the corrected version of proposed §25.55(f)(3)(B)(v).

Commission Response

The commission agrees with TEC that proposed §25.55(f)(3)(B)(v) should be revised to properly refer to a "TSP" and not a "generation entity".

Reiterating its comments for §25.55(c)(6), TEC and TPPA requested the good cause exception for §25.55(f)(4) be retained.

Commission Response

The commission declines to retain the explicit good cause exception process under the existing version of the rule as recommended by TEC and TPPA because justification for it no longer exists. Specifically, the short notice of the previous version of the rule necessitated a good cause exception procedure. Almost a year has passed since adoption of phase I of §25.55 and a generation entity or TSP will have until June 2023 to prepare for summer ambient temperature standards and December 2023 to prepare for winter ambient temperature standards. Additionally, affected entities will have one year from the date of adoption of future ERCOT historical weather studies to implement any new weather preparation measures that may be needed to meet new temperature standards. Moreover, weather preparedness is based on measures that could reasonably be expected to ensure sustained operation, "as appropriate for the entity." Therefore, an explicit good cause exception process is not required in the adopted rule.

Proposed §25.55(g) and (g)(1) - ERCOT inspection of transmission facilities (TSP)

Proposed §25.55(g) and (g)(1) contain the requirements applicable to ERCOT to inspect transmission facilities and require ERCOT to issue a report to the commission regarding its inspections.

TPPA stated that it interprets §25.55(g) to "require ERCOT to select at least 10% of TSP facilities that will undergo regular inspections on a three-year cycle, with up to 90% not receiving regular inspections" and that the section should be revised to account for a longer inspection cycle that allows for more facilities to be reviewed. TPPA explained that since TSPs would incur a charge of \$3,000 for each facility inspected, the proposed rule and fee structure would burden a small amount of TSPs with "significant recurring costs that would ultimately be collected from customers." Consistent with its recommendations for proposed §25.55(d)(1) and (g)(1), TPPA recommended the commission require ERCOT to inspect 30% of facilities on a seven-year cycle.

Commission Response

The commission disagrees with TPPA's recommendation to alter the three-year inspection cycle of 10% of substations or switchyards providing transmission service to a seven-year cycle for 30% of such facilities. Under the adopted rule, selection for inspection is based on risk to the reliability of the transmission system, emphasizing substations or switchyards that are most critical to the secure operation of the ERCOT transmission system. The inspection cycle frequency ensures more frequent rotation of facilities to be inspected based on their inherent risk to reliable operations.

OPUC requested that proposed §25.55(d)(1) and (g)(1) be amended to require ERCOT to consider the length of time since the generation resource or transmission facility was last inspected when prioritizing which resources and facilities to inspect.

Commission Response

The commission agrees with OPUC's recommendation to revise §25.55(d)(1) and (g)(1) to require ERCOT to consider the most recent time a resource or transmission facility was inspected when prioritizing inspections and amends each provision accordingly. PURA §35.0021 and §38.075 require ERCOT to prioritize inspection based on risk level; a greater period of time between inspections may represent a relevant risk factor for reliability.

CenterPoint recommended the phrase "has experienced a forced outage or other failure related to weather emergency conditions" in proposed §25.55(g)(1) be replaced with "has experienced a major weather-related forced interruption of service or repeated weather-related forced interruption of service" because the term "major weather-related forced interruption of service" is a defined term under proposed §25.55(b)(5) but "forced outage" and "failure related to weather emergency conditions" are not. Oncor similarly recommended proposed §25.55(g)(1) be revised to "tie in the factors on which ERCOT bases its inspection priorities to the defined terms within the rule." Specifically, Oncor suggested replacing "forced outage" with "major weather-related interruption of service" and also replacing "other failure related to weather" with "a repeated weather-related forced interruption of service."

Commission Response

The commission declines to revise §25.55(g)(1), and by extension §25.55(d)(1), by replacing "forced outage" and "other failure related to weather" with the defined terms "major weather-related interruptions of service" and "repeat weather-related forced interruption of service" as CenterPoint and Oncor recommend. Major and repeated weather-related forced interruption of service are key terms used in determining whether an independent assessment by a qualified professional engineer is warranted under the rule. In contrast, the purpose of the ERCOT inspection is preventative. Limiting inspection to only major or repeated weather-related forced interruptions of service would not benefit reliability as much as a more inclusive list of parameters and would not fulfill the purpose of the inspections to mitigate weather-related failures to provide service.

TPPA recommended the commission add language to proposed §25.55(g)(1) requiring ERCOT to publicly post the checklist used for inspection of generators and TSPs, respectively.

Commission Response

The commission declines to require ERCOT to publicly post its inspection checklist as recommended by TPPA. Doing so may inadvertently reveal critical energy infrastructure information. Moreover, the checklist may reasonably vary depending on the facility being inspected.

OPUC reiterated its previous comment that the requirement of a minimum 48-hour notice is appropriate under most circumstances but requested adding an additional subparagraph to §25.55(g)(1) to allow for inspections without notice when an entity has been the subject of two or more repeated forced outages or other weather-related failures within the last calendar year.

Commission Response

The commission declines to implement OPUC's recommendation for a no-notice inspection. TSPs and generation entities need time to prepare safety procedures, personnel, equipment, and records for the inspection team.

Proposed §25.55(g)(1)(A) - Notice of ERCOT inspection (TSP)

Proposed §25.55(g)(1)(A) requires ERCOT to provide a TSP entity 48-hour notice of an inspection and requires the generation entity to grant access to its facility to ERCOT and commission staff, including contractors.

TPPA recommended the requirement for ERCOT to provide advance notice of inspections under proposed §25.55(g)(1)(A) be revised to "include the names of all ERCOT employees, commission staff, or designated contractors expected to conduct oversee, or observe the inspection" to better ensure security of transmission facilities and only those authorized individuals are performing inspections.

Commission Response

The commission agrees with TPPA that the advanced notice of inspections provided by ERCOT under §25.55(g)(1)(A) must identify ERCOT employees, commission staff, or designated contractors participating in the inspection for security purposes and modifies the provision accordingly.

Proposed §25.55(g)(1)(B) - ERCOT inspection criteria (TSP)

Proposed §25.55(g)(1)(B) specifies the extent of access a TSP is required to provide to ERCOT and commission staff and prescribes the measures the inspection team may undertake as part of the inspection.

AEP noted that under proposed §25.55(g)(1)(B), which requires a TSP to provide access to records associated with weather preparation measures during an ERCOT inspection, a TSP's records may not always be "readily accessible or in a format conducive to providing to an inspector during the onsite inspection." AEP accordingly recommended the provision be revised to permit, if necessary, a TSP to provide access to the identified records after the inspection is completed.

Commission Response

The commission declines to adopt AEP's recommendation for §25.55(g)(1)(B) to permit a TSP to provide records to the inspection team after the inspection has occurred. The advance notice of an inspection should afford the utility adequate time to gather and provide the required records.

TPPA requested the commission clarify proposed §25.55(g)(1)(B) and classify all photographs or video recordings taken during an ERCOT inspection of a facility as confidential.

Commission Response

The commission agrees with TPPA that documents, photographs, and video recordings produced during the inspection or otherwise related to the inspection should be treated as confidential. The commission revises §25.55(g)(1)(B) in accordance with these recommendations. The commission notes that the retention and disposal of confidential records is governed by the procedures of the Central Records division, as approved by the Texas State Library and Archives Commission.

Proposed §25.55(g)(2) and (g)(2)(A) - ERCOT inspection report (TSP)

Proposed §25.55(g)(2) and (g)(2)(A) delineate requirements applicable to ERCOT when providing a TSP with its inspection report and requirements related to curing of identified deficiencies in the inspection report.

TPPA recommended that proposed §25.55(g)(2)(A) be revised to explicitly require the ERCOT inspection report be "written" to ensure consistency and accountability.

Commission Response

The commission agrees with TPPA that §25.55(g)(2)(A) should specify that the ERCOT inspection report be written and amends the provision accordingly.

TCPA recommended that proposed §25.55(g)(2)(A) be revised to require the inspection report be "detailed" and that the inspection report "must also provide meaningful information on which resource has been assessed."

Commission Response

The commission declines to revise §25.55(g)(2)(A) as recommended by TCPA to specifically require the ERCOT inspection report to be "detailed". The rule requires the report to provide sufficient information on the assessed resource or facility.

Proposed §25.55(g)(2)(B) - ERCOT inspection report; cure period (TSP)

Proposed §25.55(g)(2)(B) requires ERCOT to provide the TSP subject to inspection a reasonable period to cure the identified deficiencies if ERCOT finds that the TSP has not complied with one or more requirements of the rule.

TPPA recommended reference to a "final" cure period in proposed §25.55(g)(2)(B) be omitted from the provisions. TPPA instead recommended that proposed §25.55(g)(2)(B) allow for a "revised" cure period "if the TSP can adequately provide documentation supporting the request." TPPA also requested the provisions include language that states that an entity may appeal the "revised" cure period to the commission itself. TPPA further recommended proposed §25.55(g)(2)(B) explicitly prohibit commission staff that "would be involved in any enforcement action stemming from weather preparation inspections from participating in the setting of a 'revised' cure period" as it would inappropriately mix the commission's policymaking and enforcement functions.

Commission Response

The commission disagrees with TPPA and declines to implement a means of appealing a cure period to the commission or a prohibition on commission enforcement staff from weighing in on the cure period, because these changes are unnecessary.

The "final" cure period determination by ERCOT does not "bind" the commission in the manner TPPA states. For purposes of whether the commission "shall impose an administrative penalty" under PURA for failure to remedy a violation in a reasonable amount of time, the commission has the authority to determine whether the cure period provided by ERCOT was reasonable, as provided by §22.246(g). Accordingly, an additional means of appeal would unnecessarily complicate and lengthen the process for implementing weather preparedness measures. However, to prevent confusion, the commission does modify the rule to replace "final" with "revised" in both subsections (d) and (g).

Finally, because the commission ultimately determines whether the cure period was reasonable, it is unnecessary to prohibit commission enforcement staff from being involved in setting the deadlines for a cure period. This restriction would imply a conflict of interest where none exists and would make inefficient use of commission resources.

TSPA requested the commission specify what constitutes a "reasonable period" of time to cure deficiencies under proposed §25.55(g)(2)(B) due to the high penalties associated with a failure to comply with the weatherization standards provided

by the proposed rule. TPPA similarly recommended proposed §25.55(g)(2)(B) include "a firm timeline for when the 'revised' cure period must be established" and specifically recommended "requiring a response within five business days from the receipt of the request for a modified cure period" from the TSP to expedite the curing of deficiencies.

Commission Response

The commission declines to revise §25.55(g)(2)(B) to specify what a "reasonable period" of time is to cure the deficiencies identified by the ERCOT inspection report as recommended by TSPA. A "reasonable period" to cure is a fact-specific determination that will vary among inspections. Each resource and transmission facility is different and may require a variety of measures that differ in the amount of time required to implement such measures. Accordingly, the nature of the inspection does not lend itself to defining the "reasonable period" to cure. Under the adopted rule such a determination will be left to the discretion of the inspection team and will afford the entity the opportunity to provide input on what timeframe is reasonable. For the same reasons, the commission declines to adopt TPPA's recommendation to require a response from ERCOT within five business days from the receipt of the request for a modified cure period.

Proposed §25.55(g)(2)(D) - ERCOT inspection report; violation (TSP)

Proposed §25.55(g)(2)(D) states that a TSP that does not remedy a violation in a reasonable period of time will be reported by ERCOT to commission staff and will be subject to enforcement investigation. This subparagraph also specifies that a violation of the rule is a Class A violation with a maximum penalty of \$1,000,000 per violation, per day.

TPPA argued that the rule is unclear as to when an entity is in violation of the rules under proposed §25.55(g)(2)(D) and, therefore, potentially liable for a \$1 million penalty. TPPA stated that the proposed rule covers a sequence of behaviors but is not clear at what point in the sequence an entity is in violation. TPPA requested clarification on this point.

Commission Response

The commission disagrees with TPPA that proposed §25.55(g)(2)(D) is ambiguous. Under PURA §38.075(d) the commission "shall impose an administrative penalty on an entity, including a municipally owned utility or an electric cooperative, that violates [this rule] and does not remedy that violation within a reasonable period of time." Accordingly, §25.55(g)(2)(D) serves to alert TSPs that if ERCOT notifies commission staff that a TSP has not remedied a violation within the cure period provided, commission staff will initiate an enforcement investigation. However, to directly answer TPPA's question about when a violation occurs, a violation occurs when any entity subject to this rule fails to comply with any provision of this rule - just like with any other rule. The issue of when the commission has discretionary authority to issue penalties for violations of this rule and when it is required to issue penalties is discussed at length in the final order in Project Number 52312 and is directly addressed by the §22.246(g)(5)(C).

However, the commission also clarifies that the final determinations as to whether a violation has occurred, whether that violation was remedied in a reasonable amount of time, and whether a penalty is appropriate are made by the commission with full due process given to the entity under investigation.

Proposed §25.55(h) -- Weather-related failures by a TSP to provide service

Proposed §25.55(h) states that a TSP with a transmission facility that experiences repeated or major weather-related forced interruptions of service must contract with a qualified professional engineer to assess its weather emergency preparation measures, plans, procedures, and operations.

TNMP suggested clarifying proposed §25.55(h) to clearly state that the repeated interruptions must be to the same transmission facility.

Commission Response

Proposed §25.55(h) states that "A TSP with a transmission facility that experiences repeated or major weather-related forced interruptions of service must...." The use of the term "a transmission facility" and not "transmission facilities" is indicative of the same facility being subject to repeated or major weather-related forced interruptions of service. Accordingly, the commission declines to revise §25.55(h) as TNMP recommends.

AEP recommended the term "weather-related" be replaced with the term "weather emergency" in proposed §25.55(h) to remain consistent with the definition of "weather emergency" under proposed §25.55(b)(11).

Commission Response

The defined terms in §25.55(h) are used correctly in the rule as proposed. The definitions of major weather-related forced interruption of service and repeated weather-related forced interruption of service both incorporate the defined term weather emergency. The commission accordingly declines to adopt AEP's recommendation to replace the term "weather-related" with the term "weather emergency" in §25.55(h) as it would not serve to clarify the rule language.

CenterPoint recommended that the costs incurred to hire a professional engineer and costs related to the required assessment and action plan under proposed §25.55(h) be explicitly specified in the rule as recoverable in a base rate proceeding. Specifically, CenterPoint advised that such costs should not be included in a cost-of-service study, but rather be recorded as a regulatory asset for recovery in a utilities' next base rate proceeding.

Commission Response

CenterPoint's recommendations to make costs associated with compliance with the rule recoverable as a regulatory asset are beyond the scope of this rulemaking. Therefore, no revision is necessary.

TPPA reiterated its comments from proposed §25.55(e) and recommended proposed §25.55(h) be revised to specifically apply the prohibition on future assessments to the identified engineer. TPPA also noted that proposed §25.55(h) does not include a timeframe for the report to be submitted to the commission and ERCOT and proposed adding a nine-month deadline beginning from the repeated or major weather-related forced interruption that prompted the independent assessment.

Commission Response

The commission modifies the rule to require a TSP to submit the qualified professional engineer's assessment to the commission and ERCOT within 15 calendar days of receiving the assessment but declines to adopt TPPA's other recommendations. These decisions are consistent with the commission's treatment of TPPA's

equivalent recommendations for subsection (e) and made for the same reasons described there.

The commission also declines to require the report be submitted nine months after the interruption of service that initiated the assessment because, as noted by commenters, there may be staffing constraints and other issues that necessitate delaying the assessment. Furthermore, the rule already requires entities to perform the assessment in a reasonable timeframe as §25.55(e) and (h) requires ERCOT to refer non-compliant entities to commission staff for investigation. The commission also has revised §25.55(h) to require ERCOT to notify a TSP and commission staff of a repeated or major weather-related forced interruption of service.

Proposed §25.55(i) - ERCOT historical weather study

Proposed §25.55(i) contains the requirements ERCOT must follow in creating the ERCOT historical weather study.

AEP recommended that proposed §25.55(i) be revised to require ERCOT to notify a TSP when the historical weather study is filed with the commission due to the one-year deadline to update preparation measures following ERCOT's filing of an updated weather study.

Commission Response

The commission declines to adopt AEP's recommendation to require ERCOT to notify an entity when it files its historical weather study with the commission. Any interested party may subscribe to Project Number 52691 on the commission's Interchange where ERCOT's historical weather studies are submitted to receive automatic updates when there is a new filing in the project.

Sierra Club expressed concern that the requirement under the proposed rule to update weather preparation standards one year after ERCOT produces a weather study would mean "true winter preparedness" would not be required until roughly five years from now and recommended a shorter, three-year, timeline.

Sierra Club also expressed concern that ERCOT's weather study is based on weather data looking backward in weather zones and stated that the proposed rule does not go far enough to assure grid reliance and resiliency due to changing trends in climate conditions.

Commission Response

The commission disagrees with Sierra Club's conclusion that weather preparedness will be postponed until 2026. An updated study was filed by ERCOT in Project Number 52691 on the commission's Interchange for use by entities until the next study is published. The adopted rule requires entities to adhere to ambient temperature standards for the summer season as early as June 1, 2023.

In response to Sierra Club's other comments, the commission notes that the historical weather study filed with the commission by ERCOT includes 99th percentile minimum and maximum temperature data and that the study must take into consideration weather predictions produced by the office of the state climatologist as required by SB 3. In addition, the commission has revised §25.55(c)(1)(B) and (f)(1)(B) to remove the ambient temperature requirement for the winters seasons and instead include wind chill as part of the 95th percentile minimum average 72-hour temperature reported in ERCOT's historical weather study to cover a greater range of minimum temperatures.

TPPA commented that proposed §25.55(i), which requires ERCOT to provide a historical weather study in association with weather predictions from the state climatologist, is not in compliance with SB 3. TPPA accordingly recommended the ERCOT weather study requirement under proposed §25.55(i) be deleted and that the commission should "consider directly engaging with the climatologist in a separate proceeding and filling any knowledge gaps with qualified power plant and TSP engineers to determine the sufficiency of the rule requirements to address weather predictions made by the climatologist" so that the proposed rule provides clearer, future-oriented standards and more accurately complies with SB 3.

Commission Response

The commission disagrees with TPPA that the historical weather study from ERCOT is not in compliance with SB 3 and declines to delete ERCOT's historical weather study from the rule. ERCOT has and will continue to work with the state climatologist in producing its historical weather study referenced in the rule. ERCOT's historical weather studies are submitted on the Interchange under Project Number 52691.

TPPA opposed allowing the five-year ERCOT weather study under proposed §25.55(i) to become binding immediately upon ERCOT's filing of the report with the commission. Specifically, TPPA stated that there would be lag time prior to implementation of the report's recommendations that may exceed the one-year timeframe from the date of ERCOT's filings to update weather preparation measures. Additionally, TPPA opposed the immediate binding effect of ERCOT filing its report as "inconsistent with the notice-and-comment rulemaking provisions of the Administrative Procedure Act (APA) and recommend[ed] that the commission instead affirmatively adopt, reject, or amend this report consistent with statutory requirements."

Commission Response

The commission declines to modify the rule to extend the amount of time before updated ERCOT weather studies become effective. The one-year period should be sufficient to make any modifications required to prepare for an updated temperature standard. Any change in the ERCOT weather study correlates to measurable changes in the conditions faced by facilities and resources located in the ERCOT power region, and efficiently implementing additional preparation measures is essential for the resiliency of the grid.

The commission also disagrees that the APA requires the weather study to go through the full rulemaking process, because it is not a rule. Under the APA, a rule is "a state agency statement of general applicability." ERCOT is not a state agency, and thus the weather report - similar to its protocols and operating guides - is not subject to the APA.

TPPA requested the rule "provide clearer guidelines for the findings and calculation of the weather-related requirements. The rule should require statistical percentiles to be based on intervals no longer than 24 hours that span concurrent days in one-year increments." TPPA explained that defining a maximum interval size and requiring annual data would prevent "cherry-picking data during a certain season" or assuming the seasonal temperature occurred the entire year. Lastly, TPPA recommended proposed §25.55(i) be revised to require ERCOT to issue a market notice and solicit stakeholder comments prior to filing its weather report with the commission.

Commission Response

The 72-hour average wind chill temperature metric represents an appropriate balance between the conditions observed in 2011 and 2021, specifically the 48-hour duration of the 2011 winter storm and the 120-hour duration of the 2021 winter storm. The commission accordingly declines to adopt TPPA's recommendation for a 24-hour interval to be utilized in the context of measuring temperature. However, ERCOT has analyzed in its 2022 study and is allowed to analyze in the future other average sustained temperature durations to provide meaningful context of how different analyses would render different standards.

Further, the commission refrains from adding a requirement in the rule compelling ERCOT to automatically issue a market notice and request comment from stakeholders prior to filing its historical weather study at this time. Interested commenters have several years before ERCOT conducts its next weather study to recommend process changes to the commission and ERCOT regarding the study, but how ERCOT interacts with stakeholders while developing its study is beyond the scope of this rulemaking project.

EDF, TCA, and ASC noted the 95th percentile of minimum and maximum temperature standard based on the ERCOT weather study is flawed as historic weather conditions are not necessarily predictive of current and future weather conditions. EDF, TCA, and ASC also argued the rule allows for "potential manipulation of historic weather data to bias temperature ranges downward" if too long a historical timeframe is used. EDF, TCA, and ASC accordingly recommended the ERCOT historical study not permit the use of full-year data before 1996, as prior to 1996 there were significantly less 100-degree days in each region of Texas. EDF, TCA, and ASC further recommended that high temperature events after 1995 be supplemented with event-specific data for at least the worst five weather events in each category from the historical record preceding 1996.

EDF, TCA, and ASC also opposed the 72-hour average temperature metric in the ERCOT weather study standard as notable weather events have historically lasted longer than 72 hours and argued that sustained load for so long a duration may stress transmission and generation utilities beyond any impact of temperature alone. EDF, TCA, and ASC recommended the commission seek written expert advice from meteorologists and transmission and generation asset specialists about whether the 72-hour average temperature metric is appropriate and clarify whether metrics based on sustained temperature, episodic temperature, or load may better serve as benchmarks to prepare critical grid assets to perform under weather emergency temperatures.

Commission Response

In response to EDF, TCA, and ASC's comments regarding the lack of predictive capability and other flaws of the historical ERCOT weather study, §25.55(i)(2) permits ERCOT to "add additional parameters to the historical weather study." Additionally, ERCOT is required to consider the weather predictions of the state climatologist in preparing the historical weather study under §25.55(i)(3). These provisions ensure that ERCOT may choose whichever window of time it considers to be appropriate to ensure that any studies it produces are not distorted by past data and may choose to analyze different weather parameters based the climatologist's analysis. The commission disagrees with EDF, TCA, and ASC that the 72-hour temperature metric in the historical ERCOT weather study standard is insufficient as it encompasses a span of time that is sufficiently small to capture consistent high or low temperatures while not distorting the aver-

age with a longer period of time. For example, Winter Storm Uri was a 120-hour event with the coldest days being February 14, 15, and 16, of 2021, with consistent temperatures below freezing. Conversely, the 2011 Winter Storm was a 48-hour event. A shorter span of time may risk the coldest period of Winter Storm Uri, namely the morning of February 16, being taken as representative of the weather event, and conversely, a longer period may inaccurately represent the most severe period of the 2011 winter storm. Since the intent of the historical weather study is to encapsulate the 95th percentile average of weather events, a 72-hour timeframe is appropriate.

Andrew Dessler opposed the requirements in the proposed rule that generation entities and TSPs must only consider historical temperatures to determine weatherization preparedness. Mr. Dessler elaborated that utilizing solely the historical record under proposed §25.55(c)(2)(B) will result in "a systemic underestimate" of future temperatures. Mr. Dessler concluded, based on his computer simulations for the 1950-2026 period from 21 different climate models, that there is a 45% chance of exceeding the 95th percentile temperature within Texas in the next five years. Accordingly, Mr. Dessler urged the commission to revise the proposed rule, specifically proposed §25.55(c)(2)(B) to reflect his findings. Mr. Dessler further recommended ERCOT incorporate the latest changing climate estimates into ERCOT's readiness metrics for generation entities and TSPs. Mr. Dessler stated his recommendations are necessary to preserve citizen safety, economic health of the state, and preserve Texas electrical infrastructure. Sierra Club agreed with Mr. Dessler.

Commission Response

The commission disagrees with Mr. Dessler as ERCOT is instructed to consider weather predictions by the state climatologist when preparing its historical study. Further, adopted §25.55(i)(2) includes: "ERCOT may add additional parameters to the historical weather study." This language, along with the requirement that ERCOT must take into consideration weather predictions by the state climatologist in §25.55(i)(3), will enable ERCOT to produce studies that are not distorted by data from the past. Additionally, the local summer ambient temperature standard requirement ensures that local temperature patterns that are more severe than those projected in the ERCOT weather study are taken into account when reasonable preparation measures are being determined.

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.

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.55

The repeal 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; §14.002, which provides the Public Utility 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 §35.0021, which requires the commission to adopt rules that require each provider of electric generation service in the ERCOT power re-

gion to implement measures to prepare the provider's generation assets to provide adequate electric generation service during a weather emergency; and §38.075, which requires the commission to adopt rules to require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare its facilities to maintain service quality and reliability during a weather emergency.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 35.0021, and 38.075.

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 September 30, 2022.

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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Proposal publication date: June 10, 2022

For further information, please call: (512) 936-7322



16 TAC §25.55

The new section 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; §14.002, which provides the Public Utility 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 §35.0021, which requires the commission to adopt rules that require each provider of electric generation service in the ERCOT power region to implement measures to prepare the provider's generation assets to provide adequate electric generation service during a weather emergency; and §38.075, which requires the commission to adopt rules to require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare its facilities to maintain service quality and reliability during a weather emergency.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 35.0021, and 38.075.

§25.55. *Weather Emergency Preparedness.*

(a) Application. This section applies to the Electric Reliability Council of Texas, Inc. (ERCOT) and to generation entities and transmission service providers (TSPs) in the ERCOT power region.

(1) A generation resource with an ERCOT-approved notice of suspension of operations for the summer season or winter season is not required to comply with this section until the return to service date identified in its notice of change of generation resource designation required under the ERCOT protocols.

(2) A new or repowered resource scheduled to begin commercial operations during the summer season or winter season or a

transmission facility scheduled for initial energization during the summer season or winter season must meet the requirements of this section prior to either the commissioning date established in the ERCOT interconnection process for generation resources or initial energization for transmission facilities, as applicable.

(b) Definitions. In this section, the following definitions apply unless the context indicates otherwise.

(1) Energy storage resource--An energy storage system registered with ERCOT as an energy storage resource for the purpose of providing energy or ancillary services to the ERCOT grid and associated facilities controlled by the generation entity that are behind the system's point of interconnection, necessary for the operation of the system, and not part of a manufacturing process that is separate from the generation of electricity.

(2) Generation entity--An ERCOT-registered resource entity acting on behalf of an ERCOT-registered generation resource or energy storage resource.

(3) Generation resource--A generator registered with ERCOT as a generation resource and capable of providing energy or ancillary services to the ERCOT grid, as well as associated facilities controlled by the generation entity that are behind the generator's point of interconnection, necessary for the operation of the generator, and not part of a manufacturing process that is separate from the generation of electricity.

(4) Inspection--Activities that ERCOT employees, commission staff, and designated contractors engage in to determine whether a generation entity is in compliance with all or parts of subsection (c) of this section or whether a TSP is in compliance with all or parts of subsection (f) of this section. An inspection may include site visits, assessments of procedures, interviews, and review of information provided by a generation entity or TSP in response to a request by ERCOT, including review of evaluations conducted by the generation entity or TSP or its contractor.

(5) Major weather-related forced interruption of service of a resource -

(A) The failure of a resource to start, following one or more attempts, for 12 or more continuous hours as a result of a weather emergency; or

(B) The loss of 50% or more of the capacity reflected in a resource's seasonal net maximum sustainable rating for 12 or more continuous hours as a result of a weather emergency.

(6) Major weather-related forced interruption of service of a transmission facility--A non-momentary transmission service outage caused by damage to, or the inoperability of, a transmission facility as a result of a weather emergency.

(7) Repeated weather-related forced interruption of service--Three or more of any combination of the following occurrences as a result of separate weather emergencies within any three-year period:

(A) The failure of a resource to start;

(B) The loss of 50% or more of the capacity reflected in a resource's seasonal net maximum sustainable rating for 30 minutes or more; or

(C) The loss or derate of 50% or more of a transmission facility's rating.

(8) Resource--A generation resource or energy storage resource.

(9) Summer season--June 1 to September 30 each year.

(10) Transmission facility--A transmission-voltage element inside the fence surrounding a TSP's high-voltage switching station or substation owned or operated by the TSP.

(11) Weather critical component--Any component of a resource or transmission facility that is susceptible to fail as a result of a weather emergency, the occurrence of which failure is likely to significantly hinder the ability of the resource or transmission facility to function as intended or, for a resource, is likely to lead to a trip, derate of more than five percent of the capacity represented in the resource's seasonal net maximum sustainable rating or of the transmission facility's rating, or failure to start.

(12) Weather emergency--A situation resulting from a summer or winter weather event that produces significant risk for a TSP that firm load must be shed or a situation for which ERCOT issues an Emergency Notice to market participants involving an operating condition in which the safety or reliability of the ERCOT system is compromised or threatened by summer or winter weather.

(13) Weather emergency preparation measures--Measures that a generation entity or TSP takes to support the function of a resource or transmission facility during a weather emergency.

(14) Winter season--December 1 to February 28 of the following year.

(c) Weather emergency preparedness reliability standards for a generation entity.

(1) Winter season preparations. By December 1 each year, a generation entity must complete the following winter weather emergency preparation measures for each resource under its control. A generation entity must maintain these measures throughout the winter season and complete any ongoing or monthly requirements at the appropriate time. If necessary to come into compliance, a generation entity must update its winter weather emergency preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section.

(A) Implement weather emergency preparation measures that could reasonably be expected to ensure the sustained operation of all cold weather critical components during winter weather conditions. Where appropriate, such measures may be implemented using either personnel or automated systems. Such measures include, as appropriate for the resource:

(i) Installation and maintenance of adequate wind breaks for resources susceptible to outages or derates caused by wind;

(ii) Installation and maintenance of insulation and enclosures for all cold weather critical components;

(iii) Inspection of existing thermal insulation and associated forms of water-proofing for damage or degradation, and repair of damaged or degraded insulation and associated forms of water-proofing;

(iv) Arrange and provide for the availability and appropriate safekeeping of sufficient chemicals, auxiliary fuels, and other materials necessary for sustained operations during a winter weather emergency;

(v) Plan for and maintain the operability of instrument air moisture prevention systems;

(vi) Maintenance of freeze protection equipment for all cold weather critical components, including fuel delivery systems controlled by the generation entity, and testing or verifying the func-

tionality of freeze protection equipment prior to and on a monthly basis during the winter season; and

(vii) Monitoring of all cold weather critical components, including circuitry that provides freeze protection or prevents instrument air moisture;

(B) Beginning in 2023, implement weather emergency preparation measures by December 1 each year, in addition to the weather emergency preparation measures required by subparagraph (A) of this paragraph, that could reasonably be expected to ensure sustained operation of the resource at the 95th percentile minimum average 72-hour wind chill temperature reported in ERCOT's historical weather study, required under subsection (i) of this section, for the weather zone in which the resource is located.

(C) Review the adequacy of staffing plans to be used during a winter weather emergency and revise the staffing plans, as appropriate.

(D) Train relevant operational personnel on winter weather preparations and operations.

(E) Beginning in 2023, create a list of all cold weather critical components, review the list at least annually prior to the beginning of the winter season, and update the list as necessary.

(2) Summer season preparations. By June 1 each year, a generation entity must complete the following summer weather emergency preparation measures for each resource under its control. A generation entity must maintain these measures throughout the summer season and complete any ongoing or monthly requirements at the appropriate time. If necessary to come into compliance, a generation entity must update its summer weather emergency preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section.

(A) Implement weather emergency preparation measures that could reasonably be expected to ensure the sustained operation of all hot weather critical components during summer weather conditions. Where appropriate, such measures may be implemented using either personnel or automated systems. Such measures include, as appropriate for the resource:

(i) Identification of regulatory and legal limitations of cooling capacity, water withdrawal, maximum discharge temperatures, and rights for additional water supply;

(ii) Arrange and plan for the provision and storage of adequate water supplies for cooling towers, reservoirs, heat exchangers, and adequate cooling capacity of the water supplies used in the cooling towers, reservoirs, and heat exchangers;

(iii) Arrange and plan for the provision and storage of availability and appropriate safekeeping of adequate equipment to remove heat and moisture from all hot weather critical components;

(iv) Arrange and provide for the availability of sufficient chemicals, coolants, auxiliary fuels, and other materials necessary for sustained operations during a summer weather emergency;

(v) Maintenance of all hot weather critical components, including air flow or cooling systems, and verifying the functionality of all components prior to and on a monthly basis during the summer season; and

(vi) Monitoring of all hot weather critical components.

(B) Beginning in 2023, implement weather emergency preparation measures by June 1 each year, in addition to the weather

emergency preparation measures required by subparagraph (A) of this paragraph, that could reasonably be expected to ensure sustained operation of the resource during the greater of the maximum ambient temperature at which the resource has experienced sustained operations or the 95th percentile maximum average 72-hour temperature reported in ERCOT's historical weather study, required under subsection (i) of this section, for the weather zone in which the resource is located.

(C) Review the adequacy of staffing plans to be used during a summer weather emergency and revise the staffing plans, as appropriate.

(D) Train relevant operational personnel on summer weather preparations and operations.

(E) Beginning in 2023, create a list of all hot weather critical components, review the list at least annually prior to the beginning of the winter season, and update the list as necessary.

(3) Declaration of preparedness. A generation entity must submit to ERCOT, on a form prescribed by ERCOT, the following declarations of weather preparedness:

(A) No earlier than November 1 and no later than December 1 of each year, a generation entity must submit a declaration of winter weather preparedness for the upcoming winter season that:

(i) Identifies every resource under the entity's control for which the declaration is being submitted;

(ii) Summarizes all activities engaged in by the generation entity to complete the requirements of paragraph (1) of this subsection;

(iii) Provides the minimum ambient temperature at which each resource has experienced sustained operations, as measured at the resource site or the weather station nearest to the resource site;

(iv) Includes any additional information required by the ERCOT protocols in effect as of October 1 of the year in which the declaration is submitted; and

(v) Includes a notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the completion of all applicable activities described in paragraph (1) of this subsection, and to the accuracy and veracity of the information described in subparagraph (A) of this paragraph.

(B) No earlier than May 1 and no later than June 1 of each year, a generation entity must submit a declaration of summer weather preparedness for the upcoming summer season that at a minimum:

(i) Identifies every resource under the generation entity's control for which the declaration is being submitted;

(ii) Summarizes all activities engaged in by the generation entity to complete the requirements of paragraph (2) of this subsection;

(iii) Provides the maximum ambient temperature at which each resource has experienced sustained operations, as measured at the resource site or the weather station nearest to the resource site;

(iv) Includes any additional information required by the ERCOT protocols in effect as of April 1 of the year in which the declaration is submitted; and

(v) Includes a notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the com-

pletion of all applicable activities described in paragraph (2) of this subsection, and to the accuracy and veracity of the information described in this subparagraph.

(C) A generation entity must submit the appropriate declaration of preparedness to ERCOT prior to returning a mothballed, outaged, or decommissioned resource to service during the winter or summer season. For any new or repowered resource, a generation entity must submit the appropriate declaration of preparedness prior to the resource commissioning date established in the ERCOT interconnection process for resources.

(4) No later than December 20 of each year, ERCOT must file with the commission a compliance report that addresses whether each generation entity has submitted the declaration of winter weather preparedness required by paragraph (3)(A) of this subsection for each resource under the generation entity's control.

(5) No later than June 20 of each year, ERCOT must file with the commission a compliance report that addresses whether each generation entity has submitted the declaration of summer weather preparedness required by paragraph (3)(B) of this subsection for each resource under the generation entity's control.

(6) ERCOT will treat declarations of preparedness and associated information submitted by a generation entity as Protected Information as defined by the ERCOT protocols

(d) ERCOT inspection of resources.

(1) ERCOT must conduct inspections of resources and may prioritize inspections based on factors such as whether a resource is critical for electric grid reliability; the length of time since the resource was last inspected; has experienced a forced outage, forced derate, or failure to start related to weather emergency conditions; or has other vulnerabilities related to weather emergency conditions. ERCOT must determine, in consultation with commission staff, the number, extent, and content of inspections, provided that every resource interconnected to the ERCOT power region must be inspected at least once every three years. ERCOT must develop, in consultation with commission staff, a winter weather inspection checklist and a summer weather inspection checklist for use during resource inspections. Inspections may be conducted by ERCOT's employees or contractors.

(A) ERCOT must provide each generation entity at least 72 hours' written notice of an inspection unless otherwise agreed by the generation entity and ERCOT. The written notice must identify each ERCOT employee, commission staff member, or designated contractor participating in the inspection. Within 24 hours of receiving notice of inspection, a generation entity must provide ERCOT, commission staff, and designated contractors all generation entity requirements for facility access. Upon provision of the required written notice, a generation entity must grant access to its facility to ERCOT and to commission staff, including an employee of a contractor designated by ERCOT or the commission to conduct, oversee, or observe the inspection.

(B) During the inspection, a generation entity must provide ERCOT, commission staff, or designated contractors access to any part of the facility upon request. ERCOT, commission staff, and designated contractors must comply with all applicable safety and security regulations, including those maintained by the generation entity, during the inspection. A generation entity must provide access to inspection, maintenance, and other records associated with weather emergency preparation measures and must make the generation entity's staff available to answer questions. A generation entity may escort ERCOT, commission staff, and designated contractors at all times during an inspection. During the inspection, ERCOT, commission staff, or des-

ignated contractors may take photographs or video recordings of any part of the facility except control rooms and may conduct interviews of facility personnel designated by the generation entity. Documents, photographs, and video recordings collected or generated by ERCOT, commission staff, or designated contractors during or related to the inspection will be treated as confidential information under applicable state or federal laws and regulations.

(2) ERCOT inspection report.

(A) ERCOT must provide a written report on its inspection of a resource to the generation entity. The written inspection report must address whether the generation entity has complied with the requirements in subsection (c)(1) or (2) of this section.

(B) If the generation entity has not complied with a requirement in subsection (c)(1) or (2) of this section, ERCOT must provide the generation entity a reasonable period to cure the identified deficiencies.

(i) The cure period determined by ERCOT must consider what weather emergency preparation measures the generation entity may be reasonably expected to have taken before ERCOT's inspection, the reliability risk of the resource's noncompliance, and the complexity of the measures needed to cure the deficiency.

(ii) The generation entity may request ERCOT provide a longer period to cure the identified deficiencies. The request must be accompanied by documentation that supports the request.

(iii) ERCOT, in consultation with commission staff, will determine the revised cure period after considering a request for a longer period to cure the identified deficiencies.

(C) ERCOT must report to commission staff any generation entity that does not remedy the deficiencies identified under subparagraph (A) of this paragraph within the cure period determined by ERCOT under subparagraph (B) of this paragraph.

(D) A generation entity reported by ERCOT to commission staff under subparagraph (C) of this paragraph will be subject to enforcement investigation under §22.246 of this title (relating to Administrative Penalties). A violation of this section is a Class A violation under §25.8(b)(3)(A) of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers) and may be subject to a penalty not to exceed \$1,000,000 per violation per day.

(e) Weather-related failures by a generation entity to provide service. ERCOT must notify a generation entity and commission staff of the generation entity's repeated or major weather-related forced interruption of service. Upon notification from ERCOT, the generation entity must contract with a qualified professional engineer to assess its weather emergency preparation measures, plans, procedures, and operations. The qualified professional engineer must not be an employee of the generation entity or its affiliate. The qualified professional engineer must not have participated in previous assessments for the resource for at least five years, unless the generation entity provides documentation that no other qualified professional engineers are reasonably available for engagement. The qualified professional engineer must conduct a root cause analysis of the failure and develop a corrective action plan to address any weather-related causes of the failure. The generation entity must submit the qualified professional engineer's assessment to the commission and ERCOT within 15 calendar days of receiving the assessment. A generation entity to which this subsection applies may be subject to additional inspections by ERCOT. ERCOT must refer to commission staff for investigation any generation entity that does not comply with a provision of this subsection.

(f) Weather emergency preparedness reliability standards for a TSP.

(1) Winter season preparations. By December 1 each year, a TSP must complete the following winter weather preparation measures for its transmission facilities. A TSP must maintain these measures throughout the winter season and complete any ongoing requirements at the appropriate time. If necessary to come into compliance, a TSP must update its winter weather preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section.

(A) Implement weather emergency preparation measures that could reasonably be expected to ensure the sustained operation of all cold weather critical components during winter weather conditions. Where appropriate, such measures may be implemented using either personnel or automated systems. Such measures include, as appropriate for the facility:

(i) Confirmation of the operability of all systems and subsystems containing all cold weather critical components;

(ii) Confirmation that the sulfur hexafluoride gas in breakers and metering and other electrical equipment is at the correct pressure and temperature to operate safely during winter weather emergencies, and perform annual maintenance that tests sulfur hexafluoride breaker heaters and supporting circuitry to assure that they are functional; and

(iii) Confirmation of the operability of power transformers and auto transformers in winter weather emergencies by:

(I) Inspecting heaters in the control cabinets;

(II) Verification that main tank oil levels are appropriate for actual oil temperature;

(III) Inspecting bushing oil levels;

(IV) Inspecting the nitrogen pressure, if necessary; and

(V) Verification of proper oil quality such that moisture and dissolved gases are within acceptable ranges for winter weather conditions.

(B) Beginning in 2023, implement weather emergency preparation measures by December 1 each year, in addition to the weather emergency preparation measures required by subparagraph (A) of this paragraph, that could reasonably be expected to ensure the sustained operation of the TSP's transmission facilities at the 95th percentile minimum average 72-hour wind chill temperature reported in ERCOT's historical weather study, required under subsection (i) of this section, for the weather zone in which the facility is located.

(C) Review the adequacy of staffing plans to be used during a winter weather emergency and revise the staffing plans, as appropriate.

(D) Train relevant operational personnel on winter weather preparations and operations.

(E) Beginning in 2023, create a list of all cold weather critical components, review the list at least annually prior to the beginning of the winter season, and update the list as necessary.

(2) Summer season preparations. By June 1 each year, a TSP must complete the following summer weather preparation measures for its transmission facilities. A TSP must maintain these measures throughout the summer season and complete any ongoing, monthly, or regular requirements at the appropriate time. If necessary

to come into compliance, a TSP must update its summer weather preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section.

(A) Implement weather emergency preparation measures that could reasonably be expected to ensure the sustained operation of all hot weather critical components during summer weather conditions. Where appropriate, such measures may be implemented using either personnel or automated systems. Such measures include, as appropriate for the facility:

(i) Inspecting transformer cooling systems prior to and on a monthly basis during the summer season;

(ii) Cleaning transformer cooling systems prior to and on a regular basis during the summer season;

(iii) Verifying proper functioning of cooling fans and pump controls;

(iv) Arrange and provide for the availability of sufficient chemicals, coolants, and other materials necessary for sustained operations during a summer weather emergency; and

(v) Confirmation that sufficient chemicals, coolants, and other materials necessary for sustained operations during a summer weather emergency are protected from heat and drought.

(B) Beginning in 2023, implement weather emergency preparation measures by June 1 each year, in addition to the weather emergency preparation measures required by subparagraph (A) of this paragraph on, that could reasonably be expected to ensure the sustained operation of the TSP's transmission facilities during the greater of the maximum ambient temperature at which the facility has experienced sustained operations or the 95th percentile maximum average 72-hour temperature reported in ERCOT's historical weather study, required under subsection (i) of this section, for the weather zone in which the facility is located.

(C) Review the adequacy of staffing plans to be used during a summer weather emergency and revise the staffing plans, as appropriate.

(D) Train relevant operational personnel on summer weather preparations and operations.

(E) Beginning in 2023, create a list of all hot weather critical components, review the list at least annually prior to the beginning of the winter season, and update the list as necessary.

(3) Declaration of preparedness. A TSP must submit to ERCOT, on a form prescribed by ERCOT, the following declarations of weather preparedness:

(A) No earlier than November 1 and no later than December 1 of each year, a TSP must submit a declaration of winter weather preparedness for the upcoming winter season that:

(i) Identifies each transmission substation or switchyard maintained by the TSP for which the declaration is being submitted;

(ii) Summarizes all activities engaged in by the TSP to complete the requirements of paragraph (1) of this subsection for the upcoming winter season,

(iii) Provides the minimum ambient temperature at which each transmission facility has experienced sustained operations, as measured at the substation or switchyard or the weather station nearest to the substation or switchyard;

(iv) Includes any additional information required by the ERCOT protocols in effect as of October 1 of the year in which the declaration is submitted; and

(v) Includes a notarized attestation sworn to by the TSP's highest-ranking representative, official, or officer with binding authority over the TSP, attesting to the completion of all activities described in paragraph (1) of this subsection, except activities required to be completed after December 1, and to the accuracy and veracity of the information described in subparagraph (A) of this paragraph.

(B) No earlier than May 1 and no later than June 1 of each year, a TSP must submit a declaration of summer weather preparedness for the upcoming summer season that at a minimum:

(i) Identifies each transmission substation or switchyard maintained by the TSP for which the declaration is being submitted;

(ii) Summarizes all activities engaged in by the TSP to complete the requirements of paragraph (2) of this subsection;

(iii) Provides maximum ambient temperature at which each transmission facility has experienced sustained operations, as measured at the substation or switchyard or the weather station nearest to the substation or switchyard;

(iv) Includes any additional information required by the ERCOT protocols in effect as of April 1 of the year in which the declaration is submitted; and

(v) Includes a notarized attestation sworn to by the TSP's highest-ranking representative, official, or officer with binding authority over the TSP attesting to the completion of all activities described in paragraph (2) of this subsection, except activities required to be completed after June 1, and to the accuracy and veracity of the information described in subparagraph (B) of this paragraph.

(4) No later than December 20 of each year, ERCOT must file with the commission a compliance report that addresses whether each TSP has submitted the declaration of winter weather preparedness required by paragraph (3)(A) of this subsection for each transmission substation or switchyard maintained by the TSP.

(5) No later than June 20 of each year, ERCOT must file with the commission a compliance report that addresses whether each TSP has submitted the declaration of summer weather preparedness required by paragraph (3)(B) of this subsection for each transmission substation or switchyard maintained by the TSP.

(6) ERCOT will treat declarations of preparedness and associated information submitted by a TSP as Protected Information as defined by the ERCOT protocols.

(g) ERCOT inspections of transmission facilities.

(1) ERCOT must conduct inspections of transmission facilities and may prioritize inspections based on factors such as the length of time since the transmission facility was last inspected; whether a transmission facility is critical for electric grid reliability; has experienced a forced outage or other failure related to weather emergency conditions; or has other vulnerabilities related to weather emergency conditions. ERCOT must determine, in consultation with commission staff, the number, extent, and content of inspections, as well as develop a risk-based methodology for selecting at least ten percent of substations or switchyards providing transmission service to be inspected at least once every three years. ERCOT must develop, in consultation with commission staff, a winter weather inspection checklist and a summer weather inspection checklist for use during

facility inspections. Inspections may be conducted by ERCOT's employees or contractors.

(A) ERCOT must provide each TSP at least 72 hours' written notice of an inspection unless otherwise agreed by the TSP and ERCOT. The written notice must identify each ERCOT employee, commission staff member, or designated contractor participating in the inspection. Within 24 hours of receiving notice of inspection, a TSP must provide ERCOT, commission staff, and designated contractors all TSP requirements for facility access. Upon provision of the required written notice, a TSP must grant access to its facility to ERCOT and commission staff, including an employee of a contractor designated by ERCOT or the commission to conduct, oversee, or observe the inspection.

(B) During the inspection, a TSP must provide ERCOT, commission staff, and designated contractors access to any part of the facility upon request. ERCOT, commission staff, and designated contractors must comply with all applicable safety and security regulations, including those maintained by the TSP, during the inspection. A TSP must provide access to inspection, maintenance, and other records associated with weather preparation measures, and must make the TSP's staff available to answer questions. A TSP may escort ERCOT, commission staff, and designated contractors at all times during an inspection. During the inspection, ERCOT, commission staff, and designated contractors may take photographs and video recordings of any part of the facility except control rooms and may conduct interviews of facility personnel designated by the TSP. Documents, photographs, and video recordings collected or generated by ERCOT, commission staff, or designated contractors during or related to the inspection will be treated as confidential information under applicable state or federal laws and regulations.

(2) ERCOT inspection report.

(A) ERCOT must provide a written report on its inspection of a transmission system or facility to the TSP. The written inspection report must address whether the TSP has complied with the requirements in subsection(f)(1) or (2) of this section.

(B) If the TSP has not complied with a requirement in subsection (f)(1) or (2) of this section, ERCOT must provide the TSP a reasonable period to cure the identified deficiencies.

(i) The cure period determined by ERCOT must consider what weather emergency preparation measures the TSP may be reasonably expected to have taken before ERCOT's inspection, the reliability risk of the TSP's noncompliance, and the complexity of the measures needed to cure the deficiency.

(ii) The TSP may request ERCOT provide a longer period to cure the identified deficiencies. The request must be accompanied by documentation that supports the request.

(iii) ERCOT, in consultation with commission staff, will determine the revised cure period after considering a request for a longer period to cure the identified deficiencies.

(C) ERCOT must report to commission staff any TSP that does not remedy the deficiencies identified under subparagraph (A) of this paragraph within the cure period determined by ERCOT under subparagraph (B) of this paragraph.

(D) A TSP reported by ERCOT to commission staff under subparagraph (C) of this paragraph will be subject to enforcement investigation under §22.246 of this title. A violation of this section is a Class A violation under §25.8(b)(3)(A) of this title and may be subject to a penalty not to exceed \$1,000,000 per violation per day.

(h) Weather-related failures by a TSP to provide service. ERCOT must notify a TSP and commission staff of the TSP's repeated or major-weather related forced interruption of service. Upon notification from ERCOT, the TSP must contract with a qualified professional engineer to assess its weather emergency preparation measures, plans, procedures, and operations. The qualified professional engineer must not be an employee of the TSP or its affiliate. The qualified professional engineer must not have participated in previous assessments for this facility for at least five years, unless the TSP provides documentation that no other qualified professional engineers are reasonably available for engagement. The qualified professional engineer must conduct a root cause analysis of the failure and develop a corrective action plan to address any weather-related causes of the failure. The TSP must submit the qualified professional engineer's assessment to the commission and ERCOT within 15 calendar days of receiving the assessment. A TSP to which this subsection applies may be subject to additional inspections by ERCOT. ERCOT must refer to commission staff for investigation any TSP that violates this subsection.

(i) ERCOT historical weather study. ERCOT must study historical weather data across each weather zone classified in the ERCOT protocols. ERCOT must file with the commission a report summarizing the results of the study at least once every five years, beginning no later than November 1, 2026.

(1) At a minimum, ERCOT must calculate the 90th, 95th, and 99th percentiles of:

(A) the daily minimum temperature in each weather zone;

(B) the daily maximum temperature in each weather zone;

(C) the maximum sustained wind speed in each weather zone;

(D) the minimum average 72-hour temperature in each weather zone;

(E) the maximum average 72-hour temperature in each weather zone; and

(F) the minimum average wind chill in each weather zone.

(2) ERCOT may add additional parameters to the historical weather study.

(3) ERCOT must take into consideration weather predictions produced by the office of the state climatologist when preparing the historical weather study.

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 September 30, 2022.

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Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7322



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER E. EVENTS AT A TEMPORARY LOCATION

16 TAC §33.73

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts an amendment to rule §33.73, related to General Provisions for events at temporary locations without changes to the text as published in the August 12, 2022, *Texas Register* (47 TexReg 4791). The rule will not be republished.

The amendment to §33.73(i) removes references to statutes that have been repealed by the Texas Legislature.

No public comments were received.

The amended rule is adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The adopted amended rule does not otherwise impact any other current rules or statutes.

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 September 27, 2022.

TRD-202203893

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

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Proposal publication date: August 12, 2022

For further information, please call: (512) 206-3451



16 TAC §33.78

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended rule §33.78, related to the Non-profit Events Temporary Location without changes to the text as published in the August 12, 2022, *Texas Register* (47 TexReg 4792). The rule will not be republished.

The amendment adds back in to commission rules a provision that was inadvertently omitted during recent rule revisions. The amendment represents the long-standing practice of the agency and is not a policy change to those who stage such events.

Placing it in this rule increases transparency into this long-standing practice.

No public comments were received.

The amended rule is adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The amended rule does not otherwise impact any other current rules or statutes.

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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Shana Horton

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For further information, please call: (512) 206-3451



SUBCHAPTER F. LICENSE AND PERMIT ACTION

16 TAC §33.94

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended rule §33.94, relating to Reporting License or Permit Changes without changes to the text as published in the August 12, 2022, *Texas Register* (47 TexReg 4794). The rule will not be republished.

The amendments to §33.94 ensure the commission's ability to request any information it needs to determine whether a reportable change has occurred; updates language to accommodate use of the agency's new online portal for reporting changes; and uses the active voice in sections requiring license or permit holder compliance to support enforcement of them.

No public comments were received.

The amended rule is adopted as part of the regular four-year review cycle prescribed by Government Code §2001.039 and pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The adopted amended rule does not otherwise impact any other current rules or statutes.

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

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For further information, please call: (512) 206-3451



CHAPTER 41. AUDITING

SUBCHAPTER D. SALES OF ALCOHOLIC BEVERAGES NOT IN REGULAR COURSE OF BUSINESS

16 TAC §41.48

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeal of 16 Texas Administrative Code §41.48 as part of a consolidation of two of its rules without changes to the text as published in the August 12, 2022, *Texas Register* (47 TexReg 4798). The rule will not be republished.

The repeal of §41.48 removes reporting requirements that are duplicative of other rules or obsolete due to the implementation of a new online portal for reporting.

No public comments were received.

The repeal is adopted pursuant to the commission's general powers and duties under §5.31 of the Code and the required regular four-year review cycle prescribed by Government Code §2001.039.

The adopted repeal does not impact any other current rules or statutes.

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 September 27, 2022.

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Shana Horton

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For further information, please call: (512) 206-3451



CHAPTER 45. MARKETING PRACTICES SUBCHAPTER F. ADVERTISING AND PROMOTION

16 TAC §45.117

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts an amendment to rule §45.117, related to Gifts and Advertising Specialties without changes to the text as published in the August 12, 2022, *Texas Register* (47 TexReg 4799). The rule will not be republished.

The amendment authorizes holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits to furnish signs promoting their beverages to retailers without a specific dollar value limitation, bringing the rule relating to providing signs for liquor in line with the rule for malt beverages.

No public comments were received.

The amended rule is adopted pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The adopted amended rule does not otherwise impact any other current rules or statutes.

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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Shana Horton

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For further information, please call: (512) 206-3451



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPTIONAL EXTENDED YEAR PROGRAM

19 TAC §105.1001

The Texas Education Agency adopts an amendment to §105.1001, concerning the optional extended year program. The amendment is adopted without changes to the proposed text as published in the August 5, 2022 issue of the *Texas Register* (47 TexReg 4609) and will not be republished. The adopted amendment implements House Bill (HB) 3, 86th Texas Legislature, 2019, by removing an outdated provision related to the school finance system.

REASONED JUSTIFICATION: Texas Education Code (TEC), §29.082, authorizes the commissioner of education to adopt rules for the administration of an extended year program provided by school districts and open-enrollment charter schools for certain eligible students.

The adopted amendment eliminates former subsection (f), which referenced Option 4 wealth equalization agreements under TEC, Chapter 41. Because of changes to the school finance system by HB 3, 86th Texas Legislature, 2019, districts no longer exercise Option 4 agreements. Removing the outdated provision aligns the rule with current practice and eliminates concerns of duplicate funding.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 5, 2022, and ended September 5, 2022. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §29.082, which authorizes an optional extended year program to allow a school district to apply to the Texas Education Agency for funding of an extended year program for a period not to exceed 30 instructional days for students in Kindergarten-Grade 11 who are identified as likely not to be

promoted to the next grade level for the succeeding school year or for students in Grade 12 who are identified as likely not to graduate from high school before the beginning of the succeeding school year. TEC, §29.082(b), authorizes the commissioner of education to adopt rules for the administration of an optional extended year program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §29.082.

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 September 28, 2022.

TRD-202203909

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 18, 2022

Proposal publication date: August 5, 2022

For further information, please call: (512) 475-1497



CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §127.761, §127.764

The State Board of Education (SBOE) adopts the repeal of §127.761 and §127.764, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education. The repeals are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2675) and will not be republished. The adopted repeals remove the TEKS for two career and technical education (CTE) courses that will be superseded by 19 TAC §127.788 and §127.791 beginning with the 2023-2024 school year.

REASONED JUSTIFICATION: The TEKS for courses associated with 17 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training, health science, and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. At the November 2021 SBOE meeting, the board approved for second reading and final adoption proposed new TEKS for these courses.

Due to the structure of Chapter 130, there were not enough sections to add the new CTE courses under consideration in their original subchapters. To accommodate the addition of new and future courses, the CTE TEKS in Chapter 130 are being moved to existing Chapter 127, which has been renamed "Texas Essen-

tial Knowledge and Skills for Career Development and Career and Technical Education."

The adopted repeals remove the TEKS for CTE courses that will be superseded by §127.788 and §127.791 beginning with the 2023-2024 school year.

At the June 17, 2022 SBOE meeting, the SBOE approved the repeals with an effective date of August 1, 2022. However, the new courses in §127.788 and §127.791 have an effective date of August 1, 2023. To ensure the current TEKS for the two courses would not be repealed before the new TEKS are implemented, the SBOE took action at its September 2, 2022 meeting to specify an August 1, 2023 effective date for the repeal of §127.761 and §127.764.

The SBOE approved the repeals for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date is necessary in order for the repeals to take effect at the same time that the new TEKS for the two courses are implemented. The effective date is August 1, 2023.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 September 26, 2022.

TRD-202203879

Cristina De La Fuente-Valadez
Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2023

Proposal publication date: May 6, 2022

For further information, please call: (512) 475-1497



CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance. The amendment is adopted without changes to the proposed text as published in the June 24, 2022 issue of the *Texas Register* (47 TexReg 3618) and will not be republished; however, the handbook adopted by reference in the rule includes changes at adoption. The amendment adopts by reference the *2022-2023 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

REASONED JUSTIFICATION: TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook for the 2022-2023 school year. The adopted handbook is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2022-2023 Student Attendance Accounting Handbook* include the following.

Section 2, Audit requirements

Texas Education Code (TEC), Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §44.008, authorizes the commissioner of education to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language was revised to state that students detail reports, campus detail reports and district summary reports show that total days present includes in-person, remote synchronous, and remote asynchronous instruction.

Language was revised to show that student detail reports must contain total contact hours for all career and technical education codes (V1-V3) by grade and a campus total for all grades.

Language was revised to state that reconciliation of teacher's roster information and attendance accounting records should take place on the same day for all campuses within a local educational agency (LEA).

Section 3, General Attendance Requirements

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes implement reporting requirements for attendance and funding.

Language was added to state that Code 9 applies to a student who is enrolled in a virtual learning program but not in membership. This code applies to students who are attending a virtual program under Senate Bill (SB) 15, 87th Texas Legislature, Second Called Session, 2021, and are not eligible to participate in the program.

Language was revised to add a row to the funding eligibility chart that if a student is scheduled for and provided instruction through a remote program but does not meet the eligibility requirements for the program, the student is not eligible to generate average daily attendance (ADA) but is eligible for certain FSP allotment funding and should be reported with ADA eligibility code of 9.

Language was revised to state that the number of days of participation for any student in any special program cannot exceed the number of days present (in-person, remote synchronous, and remote asynchronous) for the same reporting period for the same instructional track.

Language was revised to show age eligibility for a student with a disability who graduated by meeting the requirements of 19 TAC §89.1070(b)(2); (3)(A), (B), or (C); or (4)(A), (B), or (C), as determined by the student's admission, review, and dismissal (ARD) committee and who is still in need of special education services. (This student may be served through age 21 inclusive.)

Language was revised to show ineligibility of a student with disabilities who has graduated with a high school diploma under 19 TAC §89.1070(b)(1) or (f)(1) or no longer meets the eligibility to receive services to generate ADA

Language was revised to show that a student with a disability who graduated by meeting the requirements of 19 TAC §89.1070(b)(2); (3)(A), (B), or (C); or (4)(A), (B), or (C), as determined by the student's ARD committee and who is still in need of special education services may be served through age 21 inclusive.

Language was revised to state that school district may provide instruction to a student who has already graduated with a regular high school diploma. However, unless the student is returning to school after graduating under 19 TAC §89.1070(b)(2); (3)(A), (B), or (C); or (4)(A), (B), or (C), as determined by an ARD committee, the student is not eligible for funding and must be recorded with an ADA eligibility code of 0, 4, or 5, as applicable.

Language was revised to state a district can be reported to the Division of Compliance and Inquiry at TEA at (512) 463-3544 if it fails to provide required information within 10 working days regarding student records in cases of transfers.

Language was revised to state the student's entry date is the first day the student is physically present during the official attendance accounting period on a particular campus at the attendance taking time (Section 3.6.2, Time of Day for Attendance Taking). A student's reentry date is the first day the student is physically present during the official attendance accounting period at the attendance taking time after having been withdrawn from the same campus.

Language was revised to state that information on the school district's responsibilities toward homeless students can be found on

the Texas Education for Homeless Children and Youth Program web page and by contacting a district's McKinney-Vento liaison or TEA's technical support number at 1-800-446-3142.

Language was revised to state that a student shall be provisionally enrolled if they have begun the required immunization series. A homeless student or a student who is in foster care shall be admitted temporarily for 30 days if acceptable evidence of vaccination is not available. The school shall promptly refer the student to the appropriate health provider to obtain the required vaccines.

Language was revised to state that a school district must not withdraw a student who is temporarily absent due to illness, hospitalization, or treatment for a mental health or substance abuse condition.

Language was revised to state that, once withdrawn, a student in Grades 7-12 must be reported as a school leaver on the 40203 School Leaver Extension and could be considered a dropout according to the C162 Leaver Reason Code table of the Texas Student Data System (TSDS) Public Education Information Management System (PEIMS) Web-Enabled Data Standards.

Language was revised to state that for a student transferring to a different Texas high school, information must be sent regarding each end-of-course assessment and the date the performance was met for State of Texas Assessments of Academic Readiness (STAAR®) and College Board College Entrance Examination Board campus code and ACT high school code (optional).

Language was revised to state that the districts must consider the best practices for truancy prevention measures found in 19 TAC §129.1045.

The condition that allows a student to be considered present for FSP purposes while participating in a mentorship program as part of an advanced measure for the Distinguished Achievement Program is deleted.

Language was revised to state that a student is considered present for FSP if the student is being treated for a mental health or substance abuse condition in an outpatient day treatment program by a licensed health care professional. The student must not be withdrawn, and schools must enter into a written agreement with the outpatient day treatment provider to facilitate the student's schoolwork and for attendance records.

Language was deleted to remove the requirements for the 2021-2022 school year from the low attendance day waivers.

Language was added to provide guidance for low attendance waivers for remote conferencing and state that on days where the attendance was at least five percentage points below the overall average attendance rate for the district or the applicable campus for the prior year, the district may apply for a waiver to have the day excluded from ADA and FSP funding calculations. A waiver may be submitted in the TEA automated system and guidance is provided on the required documentation to be submitted with the waiver request.

Language was revised to show that sections on staff development waivers and dual credit course waivers were renumbered.

Language was revised to state that if the TEA grants a waiver for missed school day or a low-attendance day, districts must report the day with a calendar-waiver-event-type code (E1570).

Language was revised to state that if a student attends additional instructional days, the school in which the student is enrolled

is held accountable to the 180-day requirement, regardless of whether the student is attending the additional instructional days at a different campus.

Language was revised to state that if the district is registered with TEA to operate a year-round program and has one or more tracks ending later than the June 15, 2022, the district still must submit its initial TSDS PEIMS Summer submission data by that due date. The district may delay resubmission until August 17, 2023. Corrections made after August 17, 2023, will be handled by the State Funding Division.

Language was revised to show emergent bilingual/English learner in the example regarding prekindergarten programs.

Language was revised in an example on 21-year-old special education student to state that since this student graduated by meeting the requirements in his individualized education program (IEP) and is receiving a full day of service as required by the ARD committee, his ADA eligibility code is 1 - Eligible for Full-Day Attendance.

In response to public comments, Section 3.3.5 was modified at adoption to read, "the student's entry date is the first day the student is physically or virtually present during the official attendance accounting period on a particular campus at the attendance taking time."

In response to public comments, Section 3.6.3 was modified at adoption to include a medical facility as an acceptable document provider.

In response to public comment, Section 3 was modified at adoption to include calendar requirements for full-time virtual campuses with a county-district-campus number.

Section 4, Special Education

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for special education to account for attendance and funding.

Language was revised to state that a district must make special education available for a student who has received a regular high school diploma under 19 TAC §89.1070(b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C).

Language was revised to state that the individualized family services plan or ARD committee determines the special education services and documents the frequency, location, and duration of those services that impact contact hours and weighted funding described within this section for a child or eligible student.

Language was revised to state that a student with a disability who has an IEP in place from a previous in-state school district and who enrolls in a new school district during the summer is not considered a transfer student.

Language was added to state that a student with a disability who has an IEP in place from a previous in- or out-of-state school district and who enrolls in a new school district during the summer is not considered a transfer student for the purposes of 19 TAC §89.1050(i) or 34 CFR §300.323(c) or (f). For these students, the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during

the summer to revise the student's IEP for implementation on the first day of class of the new school year.

Language was revised to show Information Specific to TSDS PEIMS 41163 Student Special Education Program Association Extension under no instructional setting (speech therapy).

Language was revised to state that examples of special education and related services provided to a student in the general education instructional setting include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications or accommodations, special materials or equipment, consultation with the student and his or her general classroom teacher(s) or other general or special education service providers, staff development, and reduction of ratio of students to instructional staff members.

Language was revised to state that LEAs are required to document the details of the specially designed instruction that is being provided in the student's IEP, and this documentation should describe the direct, indirect, consultive, or other support services that constitute special education service being provided to the student by certified special education personnel.

Language was revised to state that for code 50 and code 60, a residential nonpublic school student should be reported with an ADA eligibility code of 0 - Enrolled, Not in Membership.

Language was revised in the coding chart for services for students with disabilities - Exceptions to the norm to show students graduated by meeting requirements of 19 TAC §89.1070(b)(2); (3)(A), (B), or (C); or (4)(A), (B), or (C) and returned under 19 TAC §89.1070(i) - graduation type codes 04-06, 18-20, 35, 54-56.

Language was revised to show that the term "emergent bilingual student" replaces the term "limited English proficient student" and also reflects a change to the term "English learner."

Language was revised to provide an example for dyslexia instruction.

Section 5, Career and Technical Education (CTE)

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for CTE to account for attendance and funding.

Language was revised to state that students in Grades 6-12 are eligible to be served in CTE programs or approved CTE innovative course that grants high school credit.

Language was revised to state that students enrolled in TEA-designated P-TECH campuses will generate \$50 for each student in ADA, and campuses should report the students using the TSDS PEIMS P-TECH-INDICATOR-CODE (E1612). Students coded with the indicator 1 in PEIMS submission 3 will be funded. Students enrolled on campuses that have an active agreement with the NTN will generate \$50 for each student in ADA and Campuses report using the PEIMS NEW-TECH-INDICATOR-CODE (E1647).

Language was revised to state that a student enrolled in a CTE course for the entire semester must be reported on the TSDS PEIMS 40110 Student Section Association to be reported for CTE contact hours on the TSDS PEIMS 42401 Special Pro-

grams Reporting Period Attendance Extension record for student attendance and weighted funding.

Language was revised to reiterate that an LEA can place a student in a disciplinary setting for five consecutive days and still claim CTE contact hours for the five days and that the student can earn graduation credit, even though CTE instruction by a certified CTE teacher is not provided.

Language was revised to state that CTE courses must have a corresponding CTE code (V1, V2, or V3), based on the course service ID which is used to calculate contact hours for attendance accounting purposes and the LEA personnel must use the chart provided in Section 5 to determine CTE code for each CTE course.

Language was revised to state that each CTE course must be reviewed separately to determine the average minutes per day students attend that course in a 10-school day period and three contact hours is the maximum a district may claim for a single course.

Language was revised to state that each course is assigned a separate code. CTE codes cannot be combined due to varying course weights because of tiered funding.

Language was revised to state that LEAs must determine the CTE V-code to assign to a student's CTE course separately based on the CTE course's average minutes per day over a 10-school day period and multiply the number of eligible days present for each student in each CTE course code by the corresponding V-code.

Language was revised to use the term "CTE V code" and the term "LEA" in multiple examples provided in Section 5.

Language was revised to state that students in Grades 7-12 are eligible for CTE contact hours when enrolled in a CTE Texas Essential Knowledge and Skills course for high school credit.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language was revised to state that in TSDS PEIMS, the terms "emergent bilingual (EB)," a term that replaces "of limited English proficiency" per SB 2066, 87th Texas Legislature, Regular Session, 2021, and "English learner (EL)" are bridged as EB/EL.

Language was added to state that within Section 6 of the handbook, the term "parent" includes the parent or legal guardian of the student in accordance with TEC, §29.052, and the term "district" includes all school districts, open-enrollment charter schools, and districts of innovation.

Language was revised to state that parents may request a correction on the home language survey (HLS) only if the child has not yet been assessed for English proficiency and corrections are made within two calendar weeks of the child's enrollment date. The district must assess the student for English language proficiency using the state-approved assessment.

Language was revised to state that parental approval for bilingual or ESL programs may be obtained in writing with the par-

ent's signature and date on the notification form, through a documented phone conversation, or by email.

Language was revised to show that the district personnel shall obtain the student's records from the sending district, including HLS and supporting language proficiency assessment committee (LPAC) documentation within the first four calendar weeks of a student's transfer.

Language was revised to state that a student must have a language other than English indicated on the HLS and be identified as an emergent bilingual student to be eligible for participation in the bilingual or ESL education program.

Language was revised to state that students who have met reclassification criteria (English-proficient students) but are continuing in a one-way dual language immersion, a transitional bilingual education, or an ESL program are not eligible for bilingual education allotment (BEA) funding.

Language was revised to state that the district may only count the student for the BEA after parental approval has been obtained and all necessary documentation has been received.

Language was added to state that an ESL program must be provided in prekindergarten through Grade 12, regardless of the number of identified EB students and the grade levels and primary language classifications of the EB students.

Language was revised to state that a district will be eligible for the BEA if an emergent bilingual student is served in a bilingual education program model per the requirements in 19 TAC §89.1210(c). The four state-approved bilingual education program models include: transitional bilingual education early exit, transitional bilingual education late exit, dual language immersion one-way, and dual language immersion two-way.

Language was revised to state that an emergent bilingual student is served in an ESL program model per the requirements in 19 TAC 89.1210(f), including instruction delivered by appropriately certified teacher(s). The two state-approved ESL program models include the ESL pull-out and ESL content-based models.

Language was revised to clarify teacher certification requirements and duties for teachers in bilingual and ESL programs.

Language was revised to state that districts must identify students participating in a bilingual education program, an ESL program, or an alternative language program and that the campus and district summary report must include the total eligible bilingual/ESL days present.

Language was revised to state that for students in disciplinary settings, after five consecutive days without participation in the bilingual or ESL education program, district personnel should remove the student's days from special programs reporting.

Language was revised to state that the Emergent Bilingual Student/English learner Reclassification Criteria Chart can be located on the TEA Bilingual and English as a Second Language Education Programs web page.

Language was revised to state that if a student is classified as English proficient at the end of the school year, the first day of the following school year is the effective date of change unless the student continues to participate in a two-way dual language immersion program.

Language was revised to state that a reclassified student will be monitored for an additional two years and that the Emergent

Bilingual Indicator Codes of 3 and 4 are used to reflect the third and fourth years of monitoring.

Language was revised to state that the original HLS must be retained, that districts must not administer another HLS, and that a parent signature is required on the HLS for students in prekindergarten through Grade8.

Language was revised to state that documentation impacting the emergent bilingual student must include any designated supports provided, linguistic accommodations, the date of reclassification by the LPAC, and parental notification of the reclassification.

Language was revised to state that the appropriate LPAC members should verify the Student Detail Report to ensure that a student's coding is correct.

Language was revised to provide the link for frequently asked questions for LPAC and EB/EL students located on the TEA Bilingual and English as Second Language Education Programs web page.

Section 7, Prekindergarten (Pre-K)

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for prekindergarten to account for attendance and funding.

Language was revised to that homeless student must be verified annually for pre-registration of prekindergarten students.

Section 8, Gifted and Talented

In response to public comments, Section 8 was modified at adoption to include LEA program area contact information.

Section 9, Pregnancy-Related Services (PRS)

TEC, Chapter 48, including §48.104, authorizes funding for students who are pregnant under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for PRS to account for attendance and funding.

Language was revised to state that a student who is pregnant should be coded with an at-risk indicator code on the 40100 Student Extension and 40110 Student Program Extension.

Language was revised to state that a student who has been confined to the home by a medical practitioner during their prenatal or postpartum period may be allowed to return to campus and remain coded PRS to receive temporary, limited support services.

Language was revised to state that for a PRS student who only receives the normal six weeks of compensatory education home instruction (CEHI), no medical release is required to return to campus for testing during this period because a medical practitioner's note is not required. A medical release is required only during the prenatal and extended postpartum periods.

Language was revised to state that documentation from a licensed medical practitioner is required when the prenatal or extended postpartum CEHI student returns to campus to receive temporary, limited support services or take required state assessments.

Language was revised to state that the Life Skills Program for Student Parents will not be funded for the 2022-2023 school year.

Section 10, Alternative Education Programs (AEPs) and Disciplinary Removals

TEC, Chapter 48, specifically §48.270., establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language was revised to note that open-enrollment charter schools are subject to fewer provisions of TEC, Chapter 37.

Language was revised to state that conduct identified in the student code of conduct adopted under TEC, §37.001, constitutes conduct for which a student may be suspended. A student in a grade level below Grade 3 or who is homeless may not be given out-of-school suspension unless conduct that relates to TEC, §37.005, occurs.

Section 11, Nontraditional Programs

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language was revised to show changes in the college credit charge for the dual credit row under other consideration to state that if a student has already earned high school credit for a course, the student may not earn credit for that course again unless explicitly permitted in the Texas Essential Knowledge and Skills for the course.

Language was revised to state that during the 2022-2023 school year, a college may allow students to enroll in a college course with alternative measures without meeting the assessment score criteria.

Language was revised to state that goals for the Optional Flexible School Day Program (OFSDP) are to target students who must work to support their family and help those students recover credit lost due to failure to meet attendance requirements.

Language was revised to state that districts must not charge tuition for participation in an OFSDP, including for participation in classes offered during the summer recess.

Language was revised to state that student eligibility in any grade level for the OFSDP applies to students if they are at risk of dropping out, attending an approved innovative campus plan, attending a community-based drop out recovery plan, or not meeting attendance requirements resulting in loss of credit.

Language was revised to state that there must be an agreement of participation for an OFSDP signed by the student if over the age of 18 or by parents or persons in place of parents for students below the age of 18.

Language was revised to show that OFSDP requires a teacher to record instructional minutes on any given day and the teacher must verify and sign the attendance records.

Language was revised to state that minutes accumulate through the OFSDP and the regular attendance program on the same day.

Language was revised to state that eligible students who are enrolled in Texas public schools can enroll in approved online dropout recovery programs and that these students are eligible to generate funding.

Language was revised to state that, for an eligible OFSDP student completing OFSDP courses for credit recovery through an online dropout recovery education program, funding is limited to the attendance necessary for the student to recover class credit.

Language was revised to state that districts may provide 71,400 minutes for not-at-risk students and 75,600 for at risk students for the OFSDP.

Section 12, Virtual, Remote, and Electronic Instruction

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN under the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for the TXVSN to account for other permissible remote instruction to account for attendance and funding.

Language was revised to state that information about the TXVSN is provided on the TEA Texas Virtual School Network Online Schools Program webpage.

Language was revised to state that for remote conferencing, supporting documentation submitted with the waiver must also be submitted for each student on a case-by-case basis but must not contain identifiable information. This documentation must be retained by the LEA locally for audit purposes.

Language was revised to state that a remote conferencing student is not eligible to generate attendance on state standardized assessment days.

Language was revised to state that when submitting a waiver under the 'other' category in TEAL for remote conferencing regular students, one or both eligibility requirements must be cited in item 3 of the General Waivers section. For remote conferencing, funding for days extended beyond the 20 days may be claimed beginning on the date the waiver is approved.

Language was revised to state that when submitting a waiver under the "other" category in TEAL, for remote conferencing special education students, one or both requirements must be cited in item 3 of the General Waivers section. For remote conferencing, funding for days extended beyond the 20 days may be claimed beginning on the date the waiver is approved.

Language was revised to state that for regular education students, a waiver for remote education can be submitted using the "other" category in TEAL, and the waiver must cite one of the applicable requirements.

In response to public comments, Section 12.3.1 was modified at adoption to indicate the effective date of approved waivers.

Section 13, Appendix: Average Daily Attendance (ADA) and Funding

Language was revised to state that students reported in TSDS PEIMS submission 3 with indicator E1650 and a dyslexia services code of 01, 02, or 03 are counted.

Language was revised to show the weights allotted to approved CTE courses in Grades7-12.

Language was revised to state that course service ID and the days eligible, days taught, and the contact hour multiplier (V1-V3) reported in TSDS PEIMS submission 3 will be used to derive contact hours and CTE full-time equivalents (FTEs).

Language was revised to state that each CTE course must be reviewed to determine the average minutes per day, over a ten-school-day period, that students attend the course and that three contact hours is the maximum an LEA may claim for a single course.

Language was revised to state that the CTE FTEs are assigned to Tier Categories (Tier 1, 2, or 3) in TSDS PEIMS based on course level assignments and service ID and that tiered funding for the CTE FTEs is based on the applicable weight for each Tier Category.

Language was revised to state that P-TECH campuses must be designated by TEA and listed on the Texas Education Standards website, and a list of the submission codes to be used by campuses while reporting in the TSDS PEIMS are to be included.

A non-substantive technical edit was made at adoption to remove redundant State Compensatory Education funding calculations.

Glossary

Language was revised in the glossary to state that the ARD committee is a team established by membership requirements under 19 TAC §89.1050 at each school district or special education shared services arrangement that meets to determine eligibility based on a full and individual evaluation report and to develop an IEP for the child, if applicable.

Language was revised to state the at-risk students include students in charter schools designated as a dropout recovery schools and students, regardless of age, who are in adult education programs provided under high school diploma and industry certified charter school programs.

Language was revised to state that bilingual/ESL eligible days is a term used to describe the days that students participating in a bilingual education or ESL program were in attendance. This includes students participating in a standard bilingual education or ESL program.

Language was revised to state that sections 3 and 4 of the handbook provide coding requirements for early education students.

Language was revised to state that a gifted/talented student is a child or youth who performs at or shows the potential for performing at a remarkably high level of accomplishment when compared to others of the same age, experience, or environment and who exhibits high-performance capability in an intellectual, creative, or artistic area; possesses an unusual capacity for leadership; or excels in a specific academic field.

Language was revised to state that an IEP should include frequency, location, and duration of special education and related services the student is to receive to determine the instructional setting code.

Language was revised to delete TEA telephone numbers.

Language was added to state that contact information for TEA divisions and areas can be found on the TEA website at <https://tea.texas.gov/about-tea/contact-us/tea-divisions-and-areas>.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 24, 2022, and ended July 25, 2022. Following is a summary of the public comments received and agency responses.

Section 3, General Attendance

Comment: An attendance/PEIMS/enrollment specialist commented that the agency should include a student's reentry date as the first day the student is physically or virtually present.

Response: The agency agrees. The language in the adopted Student Attendance Accounting Handbook (SAAH) has been revised to read, "The student's entry date is the first day the student is physically or virtually present during the official attendance accounting period on a particular campus at the attendance taking time."

Comment: An attendance/PEIMS/enrollment specialist commented that the phrase "by the family" should be removed from Section 3.6.3 of the SAAH to include caregivers who are not family.

Response: The agency agrees that documentation may be provided by someone other than a student's family. The SAAH has been updated at adoption to include a medical facility as an acceptable document provider.

Comment: A parent commented that the proposed changes were not adequate because the attendance code allows for false absences that cannot be resolved in the records of students with perfect attendance.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: A parent raised concern that fatigue in children can lead to mood instabilities, and longer school days can make participating in other activities difficult. The commenter stated that the state and the parent's local independent school district (ISD) failed to consider the psychological aspect when revising the school schedule.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: A Texas teacher suggested that the minutes be reduced to 60,000 a year, which would be four hours a day, fifty weeks a year, as this would give teachers more preparation time and students an opportunity to pursue other interests.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: A PEIMS coordinator commented that there were no requirements stated in the SAAH for virtual campuses with their own county-district number.

Response: The agency agrees. The SAAH has been revised at adoption to include calendar requirements for full-time virtual campuses with a county-district-campus number.

Comment: A representative of the Texas Public Charter Schools Association requested that rule language be made clearer by selecting and defining a desired term that indicates the term "district" as being inclusive of charter schools and that the agency use this term consistently throughout the handbook.

Response: The agency agrees that the suggested changes are valid. The changes will appear in the 2023-2024 proposed version of the SAAH.

Section 5, Career and Technical Education (CTE)

Comment: Superintendents from Bremond ISD and Chico ISD, a principal, two PEIMS coordinators, a program director, an administrator, and four CTE directors asked for clarification for how a four-day school week should meet the 450 minutes requirement.

Response: The agency provides the following clarification. TEA's CTE program area will offer a waiver to local education agencies offering a four-day school week.

Section 8, Gifted and Talented

Comment: A representative of the Texas Association for the Gifted and Talented requested that the phone, email, name, and title of the district personnel for the gifted and talented be included in the SAAH.

Response: The agency agrees. The SAAH has been revised at adoption to add the contact information listed in the comment.

Comment: A district coordinator commented that it would be beneficial for the email address of the gifted and talented district contacts to be added and searchable in AskTED.

Response: This comment is outside the scope of the proposed rulemaking.

Section 12, Virtual, Remote, and Electronic Instruction

Comment: A director of special education raised concern over the lengthy waiver process that involves local board approval, TEAL submission, and the commissioner's approval of the waiver and asked for clarification on effective dates.

Response: The agency agrees that clarification related to effective dates is needed, and the SAAH has been updated at adoption to reflect the effective date of approved waivers.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner of education shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter 48; TEC, §25.081, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which provides purposes for which a school district shall excuse a student from attending school; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC,

§29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under the TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, which states that average daily attendance is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section. Subsections (m-1) and (m-2) address virtual or remote instruction-related funding; TEC, §48.102, which states that for each student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied by 2.41; TEC, §48.105, which states that for each student in average daily attendance in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a Pathways

in Technology Early College High School (P-TECH) school under TEC, §29.556; or a campus that is a member of the New Tech Network (NTN) and that focuses on project-based learning and work-based education; TEC, §48.108, which states that for each student in average daily attendance in Kindergarten-Grade 3, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC, §48.109, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in average daily attendance are eligible for funding under this section. If the state funds exceed amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for other programs; and TEC, §48.270, which states that when, in the opinion of the agency's director of school audits, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35), 25.081, 25.0812, 25.087, 29.0822, 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, 48.108, 48.109, and 48.270.

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 September 28, 2022.

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Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.28

Introduction. The Board adopts amendments to §213.28, relating to Licensure of Individuals with Criminal History, without changes to the proposed text published in the August 19, 2022, edition of the *Texas Register* (47 TexReg 4929) and will not be republished.

Reasoned Justification. The amendments are necessary to implement the statutory requirements of House Bill (HB) 1899, enacted by the 86th Texas Legislature, effective September 1, 2019. HB 1899 added Subchapter B to the Occupations Code Chapter 108. Subchapter B applies to health care professionals, including nurses under the Occupations Code Chapter 301.

Pursuant to HB 1899, the Board is required to deny or revoke the license of an individual who: (1) is required to register as a sex offender under the Code of Criminal Procedure Chapter 62; (2) has been previously convicted of or placed on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force; or (3) has been previously convicted of or placed on deferred adjudication community supervision for the commission of an offense under the Penal Code §§22.011, 22.02, 22.021, or 22.04, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections, committed in the course of providing services within the scope of the individual's license and in which the victim of the offense was a patient of the individual. SB 1899 also simultaneously amended the Code of Criminal Procedure Article 42.0175 to require affirmative findings to be included in criminal judgments regarding whether an individual is required to register as a sex offender under Chapter 62; whether an individual used force or threat of force in the commission of the offense; and whether the victim of the offense was a patient of the individual and the offense was committed in the course of providing services within the scope of the individual's license. HB 1899 also requires agencies like the Board to be notified of these disqualifying events by criminal trial courts and parole panels.

How the Section Will Function.

Adopted §213.28 (c) contains the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines). The adopted amendments to the Guidelines include a paragraph that references the requirements of the Occupations Code Chapter 108. Specifically, the adopted paragraph states that, in accordance with the Occupations Code Chapter 108, Subchapter B, the Board is required to deny or revoke, as applicable, the license of an individual who: (A) is required to register as a sex offender under the Code of Criminal Procedure Chapter 62; (B) has been previously convicted of or placed on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force; or (C) has been previously convicted of or placed on deferred adjudication community supervision for the commission of an offense: (i) under the Penal Code §§22.011, 22.02, 22.021, or 22.04 or an offense under the laws of another state or federal law that is equivalent to an offense under one of these sections; (ii) committed when the individual held a license as a health care professional in this state or another state and in the course of providing services within the scope of the individual's license; and (iii) in which the victim of the offense was a patient of the individual. Further, the adopted paragraph states that an individual's eligibility for reapplication or reinstatement of licensure will be governed by the Occupations Code Chapter 108, Subchapter B. These adopted provisions are consistent with the statutory requirements of Chapter 108.

The adopted amendments to §213.28(k) add a paragraph to subsection (k) that also references the requirements in the Occupations Code Chapter 108. Specifically, the adopted paragraph states that, pursuant to the Occupations Code Chapter 108, Subchapter B, the Board is required to deny or revoke, as applicable, the license of an individual who is required to register as a sex offender under the Code of Criminal Procedure Chapter 62; has been previously convicted of or placed on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force; or has been previously convicted of or placed on deferred adjudication community supervision for the commission of an offense (i) under the Penal Code §§22.011, 22.02, 22.021, or 22.04 or an offense under the laws of another state or federal law that is equivalent to an offense under one of these sections; (ii) committed when the individual held a license as a health care professional in this state or another state and in the course of providing services within the scope of the individual's license; and (iii) in which the victim of the offense was a patient of the individual. Further, the adopted paragraph states that an individual's eligibility for reapplication or reinstatement of licensure is governed by the Occupations Code Chapter 108, Subchapter B. These adopted provisions are also consistent with the statutory requirements of Chapter 108.

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, which permits the Board to regulate the practice of professional nursing and vocational nursing and establish standards of professional conduct for licensees; the Occupations Code Chapter 108, Subchapter B, which sets forth the requirements for licensure denial and revocation for certain criminal history; and the Occupations Code §53.025, which requires the Board to issue guidelines stating the reasons a particular crime is considered to relate to a nursing license and any other criterion that affects the licensing decisions of the Board.

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 September 28, 2022.

TRD-202203912

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: October 18, 2022

Proposal publication date: August 19, 2022

For further information, please call: (512) 305-6822

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 331. LIDDA SERVICE COORDINATION

26 TAC §331.17

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §331.17, concerning Minimum Qualifications. The amendment to §331.17 is adopted without changes to the proposed text as published in the July 22, 2022, issue of the *Texas Register* (47 TexReg 4252). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §331.17 is necessary to change minimum qualifications for service coordinators. Local intellectual and developmental disability authorities (LIDDAs) across Texas are reporting workforce challenges, particularly among service coordinators, who previously needed at least a bachelor's degree in a human services-related field of study, unless they met specific requirements in addition to having a high school diploma. Expanding the hiring qualifications for service coordinators will increase the pool of skilled applicants who may not have advanced degrees but are qualified to monitor services for people with intellectual and developmental disabilities based on previous unpaid or paid experiences. Expanding qualification requirements could have long-term positive effects for a vulnerable population that relies on LIDDA service coordinators to assist them in securing the services they need and achieving their desired outcomes and best quality of life.

HHSC also modified outdated references to mental retardation authority (MRA) with the current organizational title of local intellectual and developmental disability authority (LIDDA).

COMMENTS

The 31-day comment period ended on August 22, 2022.

During this period, HHSC received comments regarding the proposed rules from six commenters: Community Healthcore, Texoma Community Center, Integral Care, Helen Farabee Centers, Disability Rights Texas, and Texas Council of Community Centers.

A summary of comments relating to the rules and HHSC's responses follows.

Comment: Four commenters voiced support for the amendment and did not request changes to the rule language.

Response: HHSC appreciates the support for the rule amendment.

Comment: A commenter requested that HHSC consider expanding the hiring qualifications for habilitation coordinators and enhanced community coordinators as well as service coordinators.

Response: HHSC declines to make changes to the rule in response to this comment as it is outside the scope of this rule project. This rule does not address hiring qualifications for habilitation coordinators or enhanced community coordinators.

Comment: A commenter objected to the proposed amendment. The commenter stated that experience is not as beneficial as education for the role of service coordinator and requested that service coordinators with a bachelor's degree receive a higher rate of pay.

Response: HHSC declines to make changes to the rule in response to this comment. The choice to increase the rate of pay for service coordinators with a bachelor's degree would be the decision of each LIDDA and not HHSC. HHSC notes that §331.17(c) currently allows LIDDAs to require additional education or experience for their service coordinators.

Comment: A commenter recommended HHSC maintain the requirement that a bachelor's or advanced degree be in a social, behavioral, or human service field, and include the list of related fields. The commenter noted that individuals with a degree in an unrelated field without relevant disability experience may not be a good candidate for service coordination.

Response: HHSC declines to make changes to the rule in response to this comment. The purpose of the rule amendment is to provide more flexibility to address workforce challenges. LIDDAs may determine that additional experience is needed for an applicant with a bachelor's or advanced degree in an unrelated field. Per §331.17(c), LIDDAs may require additional education or experience for their service coordinators.

Comment: A commenter recommended adding "child development" to the list of related fields in §331.17(b)(2) since children also receive service coordination, and a degree in child development would be equally as qualifying as a degree in gerontology, which is included in the list of related fields.

Response: HHSC declines to make changes to the rule in response to this comment, because the list in §331.17(b)(2) is not exclusive of other fields of study related to social, behavioral, human, or health services.

Comment: A commenter recommended adding a requirement to §331.17(b)(3), for service coordinators with only a high school diploma and two years of paid or unpaid experience with individuals with intellectual or developmental disabilities, to "demonstrate skills and abilities through competency-based training and required observation and enhanced oversight."

Response: HHSC declines to make changes to the rule in response to this comment. As stated in 40 Texas Administrative Code (TAC) §2.315(h)(5)(A)(ii), LIDDAs must have a policy in place to address competency for all LIDDA staff who meet the health, safety, and support needs of individuals with intellectual and developmental disabilities, including service coordinators. Training responsibilities for service coordinators are located in 26 TAC §331.19 and are outside the scope of this rule project. HHSC has also recently developed an online competency-based training available to all service coordinators.

STATUTORY AUTHORITY

The amendment 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 by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program; and Texas Health & Safety Code §533A.0355(a), which provides that the Executive Commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

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 September 26, 2022.

TRD-202203880

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 16, 2022
Proposal publication date: July 22, 2022
For further information, please call: (512) 438-5609



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS

28 TAC §7.215

The Commissioner of Insurance adopts new 28 TAC §7.215, concerning group capital calculation filing requirements for certain insurance holding company systems. The new section is adopted with a nonsubstantive change to the proposed text published in the August 19, 2022, issue of the *Texas Register* (47 TexReg 4963). The change revises an incomplete statutory reference in §7.215(k). The rule will be republished.

REASONED JUSTIFICATION. The new section is based on National Association of Insurance Commissioners (NAIC) model regulations requiring the ultimate controlling person of an insurer in an insurance holding company system to file with the insurer's lead state regulator a group capital calculation concurrently with the insurer's registration. Section 7.215 will (1) help the Texas Department of Insurance (TDI or the department) identify and quantify risks in certain holding company systems by increasing the transparency of those systems, (2) align TDI's rules with anticipated updates to the NAIC's accreditation requirements, and (3) meet conditions established in the covered agreements between the United States and its counterparts in the European Union and United Kingdom.

New §7.215 is derived from the NAIC Insurance Holding Company System Model Regulation (#450), with elements of its Insurance Holding Company System Model Regulatory Act (#440). The group capital calculation quantifies an insurance holding company system's key financial information--including financial information about noninsurance entities in the system--at the worldwide-undertaking level. The NAIC models establish the formula, format, and reporting criteria for the group capital calculation. That filing provides regulators with another tool for group-wide supervision.

Section 7.215 requires an insurer to file a group capital calculation only if the entity is either (1) subject to the covered agreements, or (2) required by the United States Federal Reserve Board to perform a group capital assessment that cannot be shared with the department. Under the new rule, the Commissioner may, after considering certain criteria, require other insurers to file a group capital calculation. The Commissioner may also determine the form of the group capital calculation filing and extend the filing deadline. Finally, the new rule also establishes exemptions from the filing requirement.

The text of subsection (k) as proposed is changed to insert the word "Chapter" in a reference to Insurance Code Chapter 823, Subchapter B.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received a written comment from one commenter, USAA, in support of the proposal with changes. No commenters spoke at a public hearing on the proposal held on August 31, 2022. One commenter, American Insurance Group, filed a card at the hearing in support of the proposal.

Comment on §7.215

Comment. A commenter states that it recognizes that the group capital calculation is to be kept confidential; it proposes additional confidentiality language for the rule and asks the department to confirm its intent to keep the group capital calculation results confidential. The commenter also asks the department to minimize burdensome duplicative supervisory and regulatory requirements and preserve the filing exemption for similarly situated groups subject to the United States Federal Reserve Board's anticipated group capital assessment filing requirement.

Agency Response. The department appreciates the commenter's discussion of confidentiality and duplicative regulatory requirements but declines to change the proposed rule text. Insurance Code §823.011 establishes the confidentiality protection for the group capital calculation results. That protection is bolstered by 28 TAC §7.209(q), which recognizes that supplemental information filed with the registration statement is confidential under §823.011. The department will assert those protections consistent with that statute and regulation as is its practice. Further, the department does not have authority to provide confidentiality protections beyond those in statute. Thus, the additional text proposed by the commenter is unnecessary. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976); Tex. Att'y. Gen. Op. No. JM-0830 (1987) at 2 ("It is well-established that a governmental body cannot close information by agency rule."). With regard to the commenter's concerns about duplicative regulatory requirements and preservation of an exemption for similarly situated groups subject to the United States Federal Reserve Board's anticipated group capital assessment requirements, the proposed rule text addresses those concerns. Once the United States Federal Reserve Board requires the commenter to make the federal group capital assessment filing and that filing is made available to the department, the commenter will meet the criteria for the exemption and avoid duplicative regulatory requirements.

STATUTORY AUTHORITY. The Commissioner adopts new §7.215 under Insurance Code §§823.012(a), 823.052(c)(13), and 36.001.

Insurance Code §823.012(a) provides that the Commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement Insurance Code Chapter 823, including the conducting of business and proceedings under Insurance Code Chapter 823.

Insurance Code §823.052(c)(13) authorizes the Commissioner to require by rule any other information to be included in the registration statement in addition to the items specifically listed in §823.052.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of the department under the Insurance Code and other laws of this state.

§7.215. *Group Capital Calculation.*

(a) The ultimate controlling person of an insurer in an insurance holding company system for which Texas is the lead state and that is described by paragraphs (1) or (2) of this subsection must annually file a group capital calculation report:

(1) an insurance holding company system that is subject to a covered agreement, defined by Insurance Code Chapter 493, Subchapter C, concerning Credit for Reinsurance; or

(2) an insurance holding company system that is required by the United States Federal Reserve Board to perform a group capital assessment, unless the Federal Reserve Board shares that group capital assessment with the Texas Department of Insurance and under terms of an information sharing agreement.

(b) Except as provided by subsection (e) of this section, the Commissioner may require the ultimate controlling person of an insurer in an insurance holding company system for which Texas is the lead state and that is not subject to subsection (a) of this section to annually file a group capital calculation. In exercising this discretion, the Commissioner will consider the following factors:

(1) whether any insurer in the insurance holding company system is in a risk-based capital action-level event described by §7.402 of this title (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs) or a similar standard for a non-U.S. insurer;

(2) whether any insurer in the insurance holding company system meets one or more of the standards of an insurer found to be in hazardous financial condition under §8.3 of this title (relating to Hazardous Conditions and Remedy of Hazardous Conditions);

(3) whether the Commissioner finds that any insurer in the insurance holding company system otherwise exhibits qualities of a troubled insurer on the basis of any unique circumstances, including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests;

(4) whether the insurance holding company system's annual direct written and unaffiliated assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, exceeded \$1,000,000,000 in its last filed financial statement;

(5) whether the insurance holding company system has any insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(6) whether the insurance holding company system has any banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

(7) whether the insurance holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group; and

(8) whether any of the non-insurers in the insurance holding company system pose a material financial risk to the insurer's ability to honor policyholder obligations.

(c) The group capital calculation filing must be made concurrently with the registration statement, unless given an extension by the Commissioner on the basis of reasonable grounds shown. The person submitting the group capital calculation must confirm that it was completed in accordance with the latest version of the Group Capital Calculation Instructions published by the National Association of In-

surance Commissioners (NAIC) and available on the NAIC website. The Commissioner may allow a controlling person who is not the ultimate controlling person to file the group capital calculation.

(d) The Commissioner may accept an annual limited group capital filing in lieu of the group capital calculation described in subsection (c) of this section if the factors listed in subsection (b)(4) - (8) of this section are present.

(e) The ultimate controlling person of an insurer in an insurance holding company system for which Texas is the insurer's lead state is exempt from filing a group capital calculation if the insurance holding company system meets any of the following criteria:

(1) an insurance holding company system that has in its holding company structure only one insurer that:

(A) writes business in Texas only; and

(B) assumes no business from any other insurer;

(2) an insurance holding company system whose non-U.S. group-wide supervisor is located in a reciprocal jurisdiction under Insurance Code Chapter 493, Subchapter C, that recognizes the U.S. state regulatory approach to group supervision and group capital;

(3) an insurance holding company system whose non-U.S. jurisdiction provides confirmation by a competent regulatory authority in that jurisdiction that information about the insurer and any parent, subsidiary, or affiliated entity, if applicable, will be provided in accordance with a memorandum of understanding or similar document; or

(4) an insurance holding company system:

(A) that provides information to its lead state commissioner and that meets the requirements for accreditation under the NAIC financial standards and accreditation program, directly or indirectly, through the group-wide supervisor, who has determined the information is satisfactory to allow the lead state to comply with group supervision requirements; and

(B) whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction under Insurance Code Chapter 493, Subchapter C, recognizes and accepts the group capital calculation as the worldwide group capital assessment for U.S. insurance groups that operate in that jurisdiction. A non-U.S. jurisdiction is considered to recognize and accept the group capital calculation if:

(i) the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital by providing confirmation by a competent regulatory authority in that jurisdiction that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program:

(I) will be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state; and

(II) will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

(ii) where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction notifies in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard.

(f) Notwithstanding subsection (e) of this section, the Commissioner, after consultation with other supervisors or officials, may require the group capital calculation filing for the U.S. operations of a

non-U.S.-based insurance holding company system for which Texas is the lead state if the Commissioner finds the filing appropriate for prudential oversight and solvency monitoring purposes.

(g) The Commissioner may consult a list of non-U.S. jurisdictions that recognize and accept the group capital calculation published through the NAIC Committee Process (NAIC List) to determine whether the ultimate controlling person of an insurer is exempt under subsection (e)(4) of this section.

(h) The Commissioner may recommend to the NAIC that a non-U.S. jurisdiction where no U.S. insurance groups operate be included on the NAIC List if that jurisdiction provides to the Commissioner confirmation under subsection (e)(4) of this section.

(i) If the Commissioner's determination under subsection (e)(4) of this section differs from the NAIC List, the Commissioner will provide thoroughly documented justification for the determination to the NAIC and other states.

(j) If the Commissioner determines that a non-U.S. jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the Commissioner may recommend to the NAIC that the non-U.S. jurisdiction be removed from the NAIC List.

(k) Nothing in this section precludes an insurer from voluntarily providing the Commissioner with information related to Insurance Code Chapter 823, Subchapter B, concerning Registration.

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 September 26, 2022.

TRD-202203877

James Person

General Counsel

Texas Department of Insurance

Effective date: October 16, 2022

Proposal publication date: August 19, 2022

For further information, please call: (512) 676-6587



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.101

The Comptroller of Public Accounts adopts amendments to §3.101, concerning cigarette tax and stamping activities, without changes to the proposed text as published in the August 26, 2022, issue of the *Texas Register* (47 TexReg 5073). The rule will not be republished.

The comptroller adopts amendments to implement Senate Bill 248, 87th Legislature, 2021. Senate Bill 248 allows a person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer to store the cigarettes exclusively in an interstate warehouse.

The comptroller adds subsection (a)(2) to define "cigar." The comptroller takes this definition from Tax Code, §155.001 (Definitions). The comptroller renumbers all relevant paragraphs in this subsection after each new definition. The comptroller amends the definition of "first sale" in renumbered paragraph (6) to specify that sales to an interstate warehouse and interstate warehouse transactions do not constitute a first sale. The comptroller adds new paragraphs (8) and (9), defining the terms interstate warehouse and interstate warehouse transaction. The comptroller takes these definitions from Tax Code §154.001 (Definitions).

The comptroller also amends renumbered paragraph (13) to specifically state that an "interstate warehouse" is not a wholesaler.

The comptroller did not receive any comments regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §154.001 (Definitions).

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 October 3, 2022.

TRD-202203971

Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Effective date: October 23, 2022

Proposal publication date: August 26, 2022

For further information, please call: (512) 475-2220



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §380.9504

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9504 without changes to the proposed text as published in the July 29, 2022, issue of the *Texas Register* (47 TexReg 4431). The amended rule will not be republished.

SUMMARY OF CHANGES

The amended §380.9504, concerning Rules and Consequences for Youth on Parole, adds a definition of the term *Possession* and clarifies that possession does not require that the item be on or about the youth's person; modifies the definition of *Possession of a Weapon* to include selling or attempting to purchase a weapon; modifies the definition of *Use of Unauthorized Substances* to include the use of paraphernalia such as that used to deliver or make any prohibited substance; adds *Failure to Report an Arrest or Citation* as a parole rule violation; adds *Photos, Videos, or Social Media Posts with Weapon, Ammunition, or Unauthorized Substance* as a parole rule violation; adds *Possessing, Selling, or Attempting to Purchase Ammunition* as a parole rule violation; adds *Unauthorized Absence* as a parole rule violation; revises the wording of the violation *Use of Unauthorized Substances* to clarify that it includes, possessing, ingesting, inhaling, or otherwise consuming the substance or related paraphernalia; removes the reference requiring youth to be underage to commit the violation of possession or use of tobacco due to recent law changes increasing the age to 21, thereby making all youth under TJJJ jurisdiction too young to possess or use tobacco; adds a statement that, when assigning consequences, staff should use evidence-based interventions that relate to the youth's risk, needs, and responsivity when appropriate; removes *Escape* from the list of parole rule violations; clarifies that two violations contain the element that the youth intentionally *or* knowingly (rather than intentionally *and* knowingly) engaged in the prohibited conduct; and removes a reference to whether a verbal reprimand is considered a less severe disciplinary consequence for purposes of parole revocation.

PUBLIC COMMENTS

TJJJ did not receive any public comments on the proposed rule-making action.

STATUTORY AUTHORITY

The amended section is adopted under Human Resources Code §242.003, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

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

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

Filed with the Office of the Secretary of State on September 28, 2022.

TRD-202203916

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Effective date: October 18, 2022

Proposal publication date: July 29, 2022

For further information, please call: (512) 490-7278



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

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 24, Substantive Rules Applicable to Water and Sewer Service Providers, in accordance with Texas Government Code §2001.039, Agency Review of Existing Rules. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.texas.gov. Project Number 54041 is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by Texas Government Code §2001.039(e), this review is to assess whether the reasons for adopting or readopting a rule continue to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 24 continue to exist. In addition, the commission welcomes comments on any modifications interested persons believe would improve the rules.

If it is determined during this review that any section of Chapter 24 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. Thus, this notice of intention to review Chapter 24 has no effect on the sections as they currently exist.

Interested persons may file comments on the review of Chapter 24 electronically through the interchange on the commission's website or may submit comments to the filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by November 14, 2022. **When filing comments, interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon.** All comments should refer to Project Number 54041.

The notice of intention to review Chapter 24 is proposed for publication under Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction and Texas Government Code §2001.039 (West 2018 and Supp. 2021), which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Government Code §2001.039; Texas Water Code §13.041.

TRD-202203926

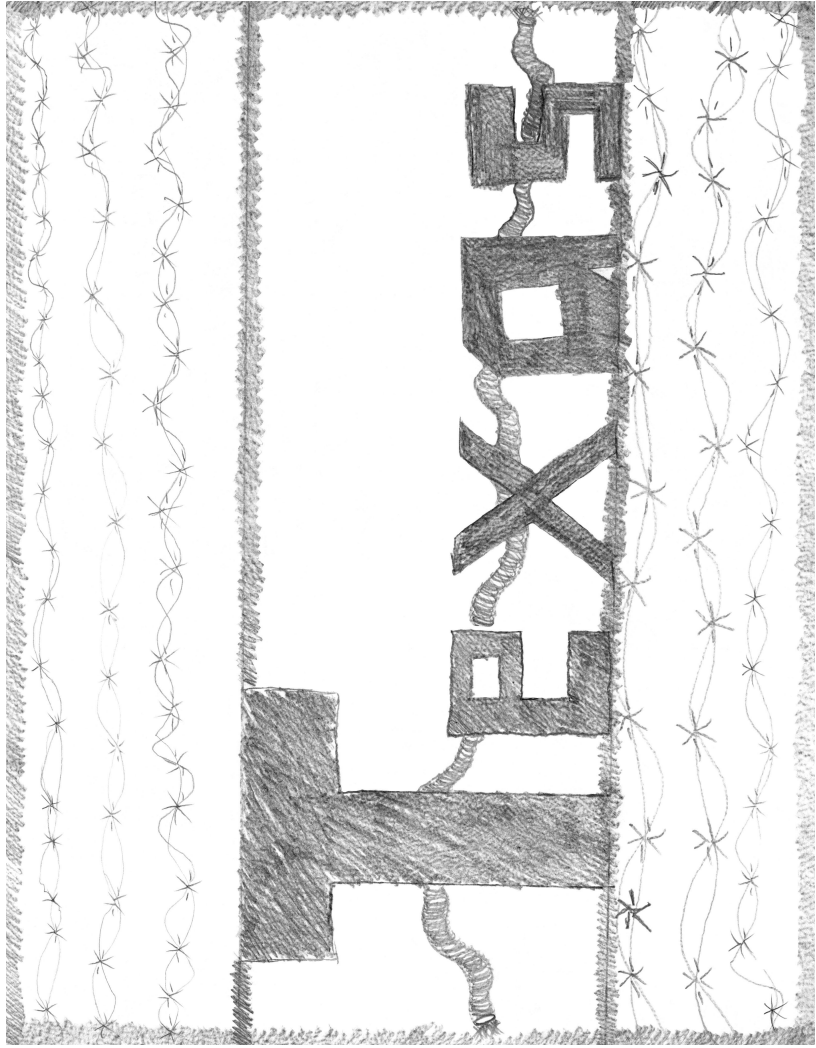
Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: September 29, 2022





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.107(f)(1)(B)(i)

Number of ESI IDs	Required Value of Letter of Credit
< 20,000	\$500,000
≥ 20,000 and < 50,000	\$1,000,000
≥ 50,000 and < 300,000	\$1,500,000
≥ 300,000	\$3,000,000



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 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. Austin Equipment Company, LC*; Cause No. D-1-GN-21-002574, in the 201st Judicial District Court, Travis County, Texas.

Background: Defendant Austin Equipment Company, LC ("the Company") operated a quarry and rock-crushing business from at least December 2, 2005, to October 2021. The Company was located on a leased 264-acre site ("Site") in Jarrell, Texas, and in the Edwards Aquifer Recharge Zone. The State filed a civil enforcement suit on behalf of the Texas Commission on Environmental Quality ("TCEQ"), under the Texas Water Code and related regulations, against Defendant for violating an administrative order and Edwards Aquifer rules. Specifically, the Company failed to remain in compliance with the TCEQ Agreed Order and the required water pollution abatement plan and the conditions at the Site were causing potential contamination to the Edwards Aquifer.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award to the State of \$140,000 in civil penalties, \$60,000 in attorney's fees, and post-judgment interest of 5% per annum.

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 Roel Torres, 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: roel.torres@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202203915
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: September 28, 2022

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 10/10/22 - 10/16/22 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/10/22 - 10/16/22 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 10/01/22 - 10/31/22 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 10/01/22 - 10/31/22 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-202203978
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 4, 2022

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 **November 15, 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 **November 15, 2022**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforce-

ment 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: AIRTRONICS, INCORPORATED; DOCKET NUMBER: 2022-0150-PWS-E; IDENTIFIER: RN111397592; LOCATION: Katy, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Bar V Holdings LLC; DOCKET NUMBER: 2022-1128-WR-E; IDENTIFIER: RN106486749; LOCATION: McGregor, McLennan County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §30.5 and TWC, §11.081 and §11.121, by failing to obtain prior authorization prior to diverting, storing, importing, and using state water, or beginning construction of any work designed for the storage, taking or diversion of water; PENALTY: \$875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Buffalo Gap; DOCKET NUMBER: 2022-0809-PWS-E; IDENTIFIER: RN101224798; LOCATION: Buffalo Gap, Taylor County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 total trihalomethanes, based on the locational running annual average; PENALTY: \$1,437; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Concho Valley Crushing, LLC; DOCKET NUMBER: 2021-1172-MLM-E; IDENTIFIER: RN107238438; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to label or clearly mark containers used to store used oil with the words "Used Oil"; 30 TAC §335.4(1) and TWC, §26.121(a)(1), by failing to not cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste (ISW) in such a manner so as to cause the discharge or imminent threat of discharge of ISW into or adjacent to any water in the state; and 30 TAC §342.25(d), by failing to renew aggregate production operation APO registration annually as regulated activities continue; PENALTY: \$26,475; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: EASTMAN CHEMICAL COMPANY; DOCKET NUMBER: 2022-0523-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County; TYPE OF FACILITY: organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 1329, Special Conditions Number 1, Federal Operating Permit Number O1974, General Terms and Conditions and Special Terms

and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$8,550; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,275; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Integrity Delaware LLC; DOCKET NUMBER: 2022-1073-WQ-E; IDENTIFIER: RN104136536; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(7) COMPANY: John K. Sheffield; DOCKET NUMBER: 2022-1072-OSI-E; IDENTIFIER: RN105376818; LOCATION: Woodville, Tyler County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: KELLEY SAND AND EXCAVATION, INCORPORATED; DOCKET NUMBER: 2022-0877-WQ-E; IDENTIFIER: RN102609328; LOCATION: Valley View, Cooke County; TYPE OF FACILITY: ready-mixed concrete plant; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121(a)(1), and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge facility wastewater and stormwater associated with industrial activities from ready-mixed concrete plants, concrete products plants, and their associated facilities; PENALTY: \$12,602; ENFORCEMENT COORDINATOR: Laura Draper, (254) 761-3012; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Kenneth Wayne Butts; DOCKET NUMBER: 2021-1380-OSS-E; IDENTIFIER: RN103294708; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.61(4) and Texas Health and Safety Code (THSC), §366.051(c), by failing to obtain documentation that the owner, or owner's agent, has authorization to construct prior to constructing, altering, repairing, extending, or operating an OSSF; and 30 TAC §285.61(6) and THSC, §366.004, by failing to construct an OSSF that meets the minimum criteria required by applicable rules and regulations; PENALTY: \$510; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: MIDWAY WATER UTILITIES, INCORPORATED; DOCKET NUMBER: 2022-0769-PWS-E; IDENTIFIER: RN105247597; LOCATION: Gordonville, Grayson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Timbercrest Partners, LLC; DOCKET NUMBER: 2022-0670-MWD-E; IDENTIFIER: RN102916632; LOCATION: Spring, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System

Permit Number WQ0014912001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$6,375; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: TJ Properties, L.C. aka TJ Properties, LLC; DOCKET NUMBER: 2022-0113-PWS-E; IDENTIFIER: RN109484139; LOCATION: Pecos, Reeves County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3), (A)(i) and (ii)(III), and (B)(v), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: \$810; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

TRD-202203985

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: October 5, 2022



Enforcement Orders

An agreed order was adopted regarding SADDLE MOUNTAIN WATER COOPERATIVE, INC., Docket No. 2020-1387-PWS-E on October 4, 2022 assessing \$3,100 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North Alamo Water Supply Corporation, Docket No. 2021-0013-MWD-E on October 4, 2022 assessing \$6,562 in administrative penalties with \$1,312 deferred. Information concerning any aspect of this order 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.

An agreed order was adopted regarding Eco Services Operations Corp., Docket No. 2021-0205-AIR-E on October 4, 2022 assessing \$5,969 in administrative penalties with \$1,193 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 Targa Midstream Services LLC, Docket No. 2021-0399-AIR-E on October 4, 2022 assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 Smokers' Express Wine & Spirits, LLC dba Snappys Express Mart, Docket No. 2021-1023-PST-E on October 4, 2022 assessing \$5,100 in administrative penalties with \$1,020 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Runaway Bay, Docket No. 2021-1305-PWS-E on October 4, 2022 assessing \$1,215 in administrative penalties with \$243 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, 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 Twin Oaks Mobile Home Park, LLC, Docket No. 2021-1408-PWS-E on October 4, 2022 assessing \$1,312 in administrative penalties with \$1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAM RAYBURN WATER, INC., Docket No. 2021-1460-PWS-E on October 4, 2022 assessing \$842 in administrative penalties with \$168 deferred. Information concerning any aspect of this order may be obtained by contacting Epi-fanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Paint Rock, Docket No. 2021-1602-PWS-E on October 4, 2022 assessing \$1,388 in administrative penalties with \$277 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 City of Spearman, Docket No. 2022-0011-PST-E on October 4, 2022 assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AA ADAM'S INC dba Quickway Food Store 2, Docket No. 2022-0012-PST-E on October 4, 2022 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE FALLS ENTERPRISES, INC. dba The Falls Drive In, Docket No. 2022-0074-PST-E on October 4, 2022 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SUPER GOLDEN EAGLE BEER BARN CORP dba Super Handy 4, Docket No. 2022-0188-PST-E on October 4, 2022 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Janet Rivera, 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 SSS ABBASI INC dba Shopper Stop, Docket No. 2022-0224-PST-E on October 4, 2022 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Adolfo Trevino Inc. dba El Vaquero Pit Stop, Docket No. 2022-0269-PST-E on October 4, 2022 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SANGAM INVESTMENTS INC. dba Vega Truck Stop, Docket No. 2022-0290-PST-E on October 4, 2022 assessing \$3,306 in administrative penalties with \$661 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.

TRD-202203986

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 5, 2022



Enforcement Orders

An agreed order was adopted regarding City of Opdyke West, Docket No. 2019-0815-MWD-E on October 5, 2022 assessing \$10,125 in administrative penalties with \$2,025 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Raymond W. Blair, Jr. dba Last Resort Properties, Docket No. 2019-1359-PWS-E on October 5, 2022 assessing \$910 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting, Docket No. 2019-1607-AIR-E on October 5, 2022 assessing \$13,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding HEAVENIN, INC., Docket No. 2020-0481-PST-E on October 5, 2022 assessing \$10,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Misty James, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Noe Olivas Magallanes dba NM Trucking, Docket No. 2020-0798-MSW-E on October 5, 2022 assessing \$6,562 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Jeremy Davis, Docket No. 2021-0316-PST-E on October 5, 2022 assessing \$6,666 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hudson, Docket No. 2021-0433-MWD-E on October 5, 2022 assessing \$8,250 in administrative penalties with \$1,650 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 KB FOUNDATION OF TEXAS, Docket No. 2021-0804-MWD-E on October 5, 2022 assessing \$37,050 in administrative penalties with \$7,410 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Peaceful Lane Village, LLC, Docket No. 2021-0857-PWS-E on October 5, 2022 assessing \$21,437 in administrative penalties with \$4,287 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ranger, Docket No. 2021-1256-PWS-E on October 5, 2022 assessing \$1,651 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Port Lavaca, Docket No. 2021-1304-PWS-E on October 5, 2022 assessing \$3,625 in administrative penalties with \$3,625 deferred. Information concerning any aspect of this order may be obtained by contacting Ecko Beggs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Roscoe, Docket No. 2021-1615-PWS-E on October 5, 2022 assessing \$6,615 in administrative penalties. 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.

An agreed order was adopted regarding HFOTCO LLC, Docket No. 2022-0047-AIR-E on October 5, 2022 assessing \$3,563 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Burkburnett, Docket No. 2022-0073-PWS-E on October 5, 2022 assessing \$11,000 in administrative penalties with \$11,000 deferred. Information concerning any aspect of this order may be obtained by contacting Tayler Mckenzie, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Rotan, Docket No. 2022-0098-PWS-E on October 5, 2022 assessing \$8,763 in administrative penalties with \$1,752 deferred. Information concerning any aspect of this order may be obtained by contacting Tayler Mckenzie, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202203991

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 5, 2022



Notice of District Petition

Notice issued September 28, 2022

TCEQ Internal Control No. D-08172022-029; Splendora Acquisitions, Ltd., a Texas limited partnership, (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 221 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 and Article III, §52 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 to be included in the proposed District; (2) there is one lienholder, VeraBank, National Association, a national banking association, on the property to be included in the proposed District and information provided indicates that the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 814.768 acres located within Montgomery County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, enterprises, road facilities, and park and recreational facilities as shall be consonant with all of the purposes for which the proposed 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 Petitioners that the cost of said project will be approximately \$176,400,000 (\$93,900,000 for water, wastewater, and drainage plus \$66,770,000 for roads plus \$15,730,000 for recreation).

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-202203917
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 29, 2022



Notice of District Petition

Notice issued September 28, 2022

TCEQ Internal Control No. D-05022022-003; N9 Capital Celina Preston, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Buck Creek Municipal Utility District of Grayson 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 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 to be included in the proposed District; (3) the proposed District will contain approximately 368 acres located within Grayson County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of "any city". The petition further states the general nature of the work proposed to be done by the District at the present time is to 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; to collect, transport, process, dispose of and control domestic, and commercial wastes; to gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and to 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 District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition, to which reference is made for a more detailed description. According to the 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 \$47,855,000 including (\$31,735,000 for water, wastewater, and drainage plus \$16,120,000 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 no-

tice. 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-202203918

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 29, 2022



Notice of District Petition

Notice issued September 29, 2022

TCEQ Internal Control No. D-06292022-064; ATX Elgin Dev, LLC, a Texas limited liability company and SVAG Investments LLC, a Texas limited liability company, its Manager (Petitioner) filed a petition for creation of Briarwood Municipal Utility District (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 is one lienholder, Moody National Bank, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 205.433 acres located within Travis County, Texas; and (4) all of the of the land within the proposed District is within the corporate limits of the City of Elgin, Texas. By Resolution No. 2022-06-07-49, passed and adopted on June 7, 2022, the City of Elgin, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states the general nature of the work proposed to be done by the District, as contemplated at the present time, is (a) the design, construction, acquisition, maintenance, and operation of an adequate and efficient water works and sanitary sewer system for domestic and

commercial purposes; (b) the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters; (c) the construction and financing of road improvements; (d) the development and maintenance of recreational facilities, and such other construction, acquisition, improvement; and (e) maintenance and operation of such additional facilities, systems, plants, and enterprises as are consistent with all of 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 Petitioners that the cost of said project will be approximately \$35,800,000 including (\$27,350,000 for water, wastewater, and drainage plus \$7,210,000 for roads plus \$1,240,000 for parks and recreational facilities).

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-202203919

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 29, 2022



Notice of District Petition

Notice issued September 29, 2022

TCEQ Internal Control No. D-04262022-038; Mirasol Springs, LLC, a Texas limited liability company (Petitioner) filed a petition for creation

of Mirasol Springs Municipal Utility District (District) of Hays and Travis Counties 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 to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 1,400.809 acres located within Hays and Travis Counties, Texas; and (4) all of the land within the proposed District is within Hays and Travis Counties, Texas, and no portion of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will design, construct, acquire, improve, extend, finance, and issue bonds: (1) to maintain, operate, and convey an adequate and efficient water works and sanitary sewer system for domestic and commercial purposes; (2) to maintain, operate, and convey works, improvements, facilities, plants, equipment, and appliance helpful or necessary to provide more adequate drainage for the District, and to control, abate, and amend local storm waters or other harmful excesses of waters; (3) for maintenance, operation, and conveyance of park and recreational facilities; (4) for conveyance of roads and improvements in aid of roads; and (5) to maintain, operate, and convey such additional facilities, systems, plants, and enterprises as may be consistent with any or all 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 that the cost of said project will be approximately \$59,740,000 (\$35,315,000 for water, wastewater, and drainage, plus \$22,415,000 for roads, plus \$2,010,000 for recreation).

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-202203920

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 29, 2022



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, 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 **November 15, 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 November 15, 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: CBM61078 ENTERPRISES INC dba Pony Express; DOCKET NUMBER: 2020-1206-PST-E; TCEQ ID NUMBER: RN101871572; LOCATION: 1208 West Panola Street, Carthage, Panola County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Hermilo Pena dba Penas Exxon; DOCKET NUMBER: 2020-0231-PST-E; TCEQ ID NUMBER: RN101874717; LOCATION: 5585 State Highway 44, Banquete, Nueces County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system and a convenience store; RULES VIOLATED: 30 TAC §334.602(a) and TCEQ Agreed Order Docket Number 2017-0730-PST-E, Ordering Provision Number 2.d.iii., by failing

to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C; 30 TAC §334.7(d)(1)(A), (d)(1)(B), and (d)(3), and TCEQ Agreed Order Docket Number 2017-0730-PST-E, Ordering Provision Number 2.a.ii., by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and TWC, §26.3475(d), 30 TAC §334.49(a), (c)(2)(C), and (c)(4)(C) and §334.51(c)(1), and TCEQ Agreed Order Docket Number 2017-0730-PST-E, Ordering Provision Number 2.d.iv., by failing to maintain corrosion protection for the temporarily out-of-service UST system and also, failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$43,856; STAFF ATTORNEY: Benjamin Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

TRD-202203976

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: October 4, 2022



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 **November 15, 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 November 15, 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: Jose Isaias Roque and Jose Conejo; DOCKET NUMBER: 2022-0071-MLM-E; TCEQ ID NUMBER: RN111330445; LOCATION: 22965 North Addison, San Antonio, Bexar; TYPE OF FACILITY: unauthorized municipal waste disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; and 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by causing suffering, allowing, or permitting outdoor burning within the State of Texas; PENALTY: \$10,144; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: WPL Investments III, L.L.C. dba Pine Ridge Mobile Home Park; DOCKET NUMBER: 2019-0877-MSW-E; TCEQ ID NUMBER: RN107125288; LOCATION: corner of Keith Road and Callahan Lane, Lumberton, Hardin County; TYPE OF FACILITY: mobile home park; RULES VIOLATED: 30 TAC §330.15(a), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste (MSW); and 30 TAC §330.103(a), by failing to collect MSW containing putrescibles at least once weekly to prevent the propagation and attraction of vectors and the creation of public health nuisances; PENALTY: \$2,165; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202203977

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: October 4, 2022



Notice of Public Meeting for TPDES Permit for Industrial Wastewater Amendment: Permit No. WQ0005283000

APPLICATION. Steel Dynamics Southwest, LLC, 8534 Highway 89, Sinton, Texas 78387, which operates the Sinton Mill, an iron and steel manufacturing and coil coating facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment without renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005283000 to remove the domestic sewage treatment facility (domestic sewage is routed to the City of Sinton main WWTF), to reduce daily average flow from 1.56 MGD to 1.2 MGD, to incorporate a constructed wetland into the final effluent discharge pathway, to move Outfall 001 and add new Outfall 101, and to add a second paint and galvanizing line to the plant. The draft permit authorizes the discharge of treated process wastewater, utility wastewater, and previously monitored effluent (PME; treated wastewater via Outfall 101 and coil coating process wastewater via Outfall 201) at a daily average flow not to exceed 1,200,000 gallons per day via Outfall 001, and industrial storm water on an intermittent and flow variable basis via Outfalls 002, 003, and 004.

The facility is located at 8534 Highway 89, northeast of the City of Sinton, in San Patricio County, Texas 78387. 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=-97.49638%2C28.056111&level=12>

The effluent is discharged via pipe to a constructed wetland (not a water in the state) to Outfall 001 to Ditch 3, thence Ditch 4; or when the

constructed wetland is undergoing maintenance the discharge route is via pipe directly to Outfall 001 to Ditch 3, thence to Ditch 4; via Outfall 002 to Ditch 1, thence to Ditch 4; and via Outfalls 003 and 004 to Ditch 3, thence to Ditch 4, thence all outfalls to Chiltipin Creek; thence to Chiltipin Creek Tidal, thence to Aransas River Tidal, thence to Aransas River Tidal in Segment No. 2003 of the San Antonio-Nueces Coastal Basin. The unclassified receiving water uses are minimal aquatic life use for the Ditches (1, 3, and 4), limited aquatic life use for Chiltipin Creek, and high aquatic life use for Chiltipin Creek Tidal. The designated uses for Segment No. 2003 are primary contact recreation and high aquatic life use.

In accordance with Title 30 Texas Administrative Code Section 307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), 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. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Chiltipin Creek Tidal, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ executive director reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

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:

Thursday, November 17, 2022 at 7:00 p.m.

San Patricio County Fairgrounds & Event Center

Civic Center Building

219 W 5th St.

Sinton, Texas 78387

INFORMATION. Members of the public 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 www.tceq.texas.gov/goto/comment. 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 website at <https://www.tceq.texas.gov>.

The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at Sinton Public Library, 100 North Pirate Boulevard, Sinton, Texas. Further information may also be obtained from Steel Dynamics Southwest, LLC at the address stated above or by calling Mr. Jon Ritter, Environmental Engineer, at (361) 424-6315.

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.

Issued: October 05, 2022

TRD-202203987

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 5, 2022



Notice of Water Quality Application

The following notices were issued on September 30, 2022:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE NOTICE BEING PUBLISHED IN THE *TEXAS REGISTER*.

INFORMATION SECTION

Jack A. Fusco Energy Center, LLC and Calpine Operating Services Company, Inc., which operates Jack A. Fusco Energy Center, a combined cycle natural gas-fired steam electric generating facility, has applied for a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004258000 to authorize the re-location of Outfall 001. The draft permit authorizes the discharge of cooling tower blowdown and previously monitored effluents (PMEs) (water treatment wastes, wastewater from the internal cooling coils of the inlet air chiller, heat recovery steam generator (HRSG) blowdown, and low volume waste sources) at a daily average flow not to exceed 1,500,000 gallons per day (gpd) via Outfall 001 (Phase I), and cooling tower blowdown and PMEs (water treatment wastes, wastewater from the internal cooling coils of the inlet air chiller, HRSG blowdown, and low volume waste sources) at a daily average flow not to exceed 3,000,000 gpd via Outfall 001 (Phase II). The facility is located at 3440 Lockwood Road, near the City of Richmond, Fort Bend County, Texas 77469.

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Texas Water Utilities, L.P., has applied to the TCEQ for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0015440001 to authorize a reduced daily average flow in Interim I Phase from 200,000 gallons per day to 60,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day in the Final Phase. The facility will be approximately 0.8 mile east and 1.4 miles north of the intersection of Farm-to-Market Road 2100 and Plum Grove Road, near the City of New Caney, in Harris County, Texas 77357. The minor amendment will reduce flow volume in the permit from 200,000 gallons per day to 60,000 gallons per day.

TRD-202203936

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 30, 2022



Notice of Water Quality Application

The following notice was issued on October 4, 2022:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE NOTICE BEING PUBLISHED IN THE *TEXAS REGISTER*.

INFORMATION SECTION

Golden Eagle Development, LLC, which owns the decommissioned Monticello Steam Electric Station, a steam-electric power generation station, has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0001528000 to authorize the removal of the once-through cooling water from Outfall 001 and the removal of Internal Outfalls 101 and 301. The draft permit authorizes the discharge of previously monitored effluent (low-volume wastes and stormwater via internal Outfall 101, ash transport water and metal cleaning wastes via internal Outfall 201, and stormwater via internal Outfall 401) at an intermittent and flow-variable basis via Outfall 001. The facility is located on the east shore of Monticello Reservoir along Farm-to-Market Road 127, approximately eight miles southwest of the City of Mount Pleasant, in Titus County, Texas 75456.

TRD-202203980

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 4, 2022



Notice of Water Rights Application

Notice Issued October 04, 2022

APPLICATION NO. 13833; Lower Colorado River Authority (LCRA), P.O. Box 220, Austin, Texas 78767, Applicant, seeks a temporary water use permit, for a period of up to three years, to authorize the existing gate at Lane City Dam to be in the up or closed position at times during the period from October 16 to March 14 while rehabilitation work is performed at and adjacent to Lane City Dam on the Colorado River, Colorado River Basin in Wharton County. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on April 6, 2022. Additional information and fees were received on June 7 and June 9, 2022. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 16, 2022.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, maintaining the water level of the pool of Lane City Dam with LCRA firm water supplies. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by October 24, 2022. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by October 24, 2022. The Executive Director may approve the application unless a written request for a contested case hearing is filed by October 24, 2022.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRTP 13833 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202203979

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 4, 2022

◆ ◆ ◆

Texas Health and Human Services Commission

Correction of Error

The Texas Health and Human Services Commission adopted amendments to 26 TAC §550.108 in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6588). Due to an error by the Texas Register, the effective date of the rulemaking was published incorrectly. The correct effective date is October 11, 2022.

TRD-202203983

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Public Hearings for Home Health Supplies in Pharmacy

Public Notice: Value-Based Agreements for home health supplies, equipment, and appliances through the Pharmacy Benefit

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 22-0007 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to allow certain home health supplies, equipment and appliances to be added to the pharmacy formulary. If the item is available in Texas Medicaid as a medical benefit, pharmacies will be reimbursed the same rates other providers are paid as listed in the Texas Medicaid fee schedule for medical benefits.

Some home health supplies, equipment, and appliances are only available through the pharmacy benefit with a prescription. This means the product will never be assigned a HCPCS code and will not have a reimbursement rate listed in the fee schedule for medical benefits. The amendment would apply the existing pharmacy reimbursement methodology listed in the Texas State Plan to home health supplies, equipment, and appliances covered under the pharmacy benefit when there is no corresponding rate under the medical benefit. This allows Texas to consider coverage of these products, improving access to care.

The amendment also incorporates language authorizing the state to negotiate supplemental and value-based purchasing arrangements with manufacturers of these products improving cost-effectiveness with the goal of improving health outcomes for Medicaid beneficiaries. The requested effective date for the proposed amendment is October 1, 2022.

The proposed amendment is estimated to have no fiscal impact. The amendment shifts utilization of current benefits from medical to pharmacy. Additionally, the amendment allows Texas to negotiate supplemental rebate agreements and value-based rebate agreements. Both rebate agreements generate revenue and do not increase federal expenses.

To obtain copies of the proposed amendment, interested parties may contact Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-2264; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-202203931

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: September 30, 2022

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Department of State Health Services

Order Placing Methoxetamine into Schedule I and Maintaining Serdexmethylphenidate in Schedule IV

The Drug Enforcement Agency (DEA) issued a final rule placing 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one (Other names: methoxetamine; MXE) including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation into schedule I of the Controlled Substances Act. The final rule was published in the June 6, 2022, edition of the *Federal Register*, Volume 87, Number 108, pages 34166-34169 and was effective July 6, 2022. This action was based on the following:

(1) Methoxetamine has a high potential for abuse that is comparable to other scheduled substances such as the ethylamine analog of phencyclidine (PCE; schedule I), the thiophene analog of phencyclidine (TCP; schedule I), phencyclidine (PCP; schedule II), and ketamine (schedule III);

(2) Methoxetamine has no currently accepted medical use in treatment in the United States;

(3) There is a lack of accepted safety for use of methoxetamine under medical supervision;

(4) Placement of methoxetamine in schedule I enables the United States to meet its obligations under the 1971 Convention on Psychotropic Substances.

The DEA issued a final rule adopting without change, an interim final rule published in the *Federal Register* on May 7, 2021, placing serdexmethylphenidate, including its salts, isomers, and salts of isomers, in schedule IV of the Controlled Substances Act. The final rule was published in the June 24, 2022, edition of the *Federal Register*, Volume 87, Number 121, pages 37733-37735 and was effective July 25, 2022.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register. In the capacity as Commissioner of the Texas Department of State Health Services, John

Hellerstedt, M.D., does hereby order that methoxetamine be placed in schedule I, and serdexmethylphenidate be maintained in schedule IV.

-Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

- (1) α -Ethyltryptamine (Other names: etryptamine; Monase; α -ethyl-1*H*-indole-3-ethanamine; 3-(2-aminobutyl) indole; α -ET; AET);
- (2) 4-Bromo-2,5-dimethoxyamphetamine (Other names: 4-bromo-2,5-dimethoxy- α -methylphenethylamine; 4-bromo-2,5-DMA);
- (3) 4-Bromo-2,5-dimethoxyphenethylamine (Other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; α -desmethyl DOB);
- (4) 2,5-Dimethoxyamphetamine (Other names: 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA);
- (5) 2,5-Dimethoxy-4-ethylamphetamine (Other name: DOET);
- (6) 2,5-Dimethoxy-4-(*n*)-propylthiophenethylamine, (Other name: 2C-T-7);
- (7) 4-Methoxyamphetamine (Other names: 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine; PMA);
- (8) 5-Methoxy-3,4-methylenedioxyamphetamine (Other name: MMDA);
- (9) 4-Methyl-2,5-dimethoxyamphetamine (Other names: 4-methyl-2,5-dimethoxy- α -methyl-phenethylamine; "DOM"; "STP");
- (10) 3,4-Methylenedioxyamphetamine (Other names: MDA; Love Drug);
- (11) 3,4-Methylenedioxymethamphetamine (Other names: MDMA; MDM; Ecstasy; XTC);
- (12) 3,4-Methylenedioxy-*N*-ethylamphetamine (Other names: *N*-ethyl- α -methyl-3,4(methylenedioxy)phenethylamine; *N*-ethyl MDA; MDE; MDEA);
- (13) *N*-Hydroxy-3,4-methylenedioxyamphetamine (Other name: *N*-hydroxy MDA);
- (14) 3,4,5-Trimethoxyamphetamine (Other name: TMA);
- (15) 5-Methoxy-*N,N*-dimethyltryptamine (Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);

- (16) α -Methyltryptamine (Other name: AMT),;
- (17) Bufotenine (Other names: 3- β -Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; *N,N*-dimethylserotonin; 5-hydroxy-*N,N*-dimethyltryptamine; mappine);
- (18) Diethyltryptamine (Other names: *N,N*-Diethyltryptamine; DET);
- (19) Dimethyltryptamine (Other name: DMT);
- (20) 5-Methoxy-*N,N*-diisopropyltryptamine, (Other name: 5-MeO-DIPT);
- (21) Ibogaine (Other names: 7-Ethyl-6,6- β -7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5*H*-pyrido[1',2':1,2] azepino [5,4-b] indole; *Tabernanthe iboga*);
- (22) Lysergic acid diethylamide;
- (23) Marihuana, the term marihuana does not include hemp, as defined in Title 5, Agriculture Code, Chapter 121;
- (24) Mescaline;
- (25) Parahexyl (Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo[b,d]pyran; Synhexyl);
- (26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora williamsii* *Lemaire*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;
- (27) *N*-ethyl-3-piperidyl benzilate;
- (28) *N*-methyl-3-piperidyl benzilate;
- (29) Psilocybin;
- (30) Psilocyn;
- (31) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (*cannabis* plant), except for tetrahydrocannabinols in hemp (as defined under Section 297A(1) of the Agricultural Marketing Act of 1946), as well as synthetic equivalents of the substances contained in the *cannabis* plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:
 - 1 *cis* or *trans* tetrahydrocannabinol, and their optical isomers;
 - 6 *cis* or *trans* tetrahydrocannabinol, and their optical isomers;
 - 3,4 *cis* or *trans* tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

- (32) Ethylamine analog of phencyclidine (Other names: *N*-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; *N*-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE);
- (33) Pyrrolidine analog of phencyclidine (Other names: 1-(1 phenylcyclohexyl)-pyrrolidine; PCPy; PHP; rolicyclidine);
- (34) Thiophene analog of phencyclidine (Other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP);
- (35) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (Other name: TCPy);
- (36) 4-Methylmethcathinone (Other names: 4-methyl-*N*-methylcathinone; mephedrone);
- (37) 3,4-Methylenedioxyprovalerone (Other name: MDPV);
- (38) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other name: 2C-E);
- (39) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other name: 2C-D);
- (40) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-C);
- (41) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-I);
- (42) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-2);
- (43) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-4);
- (44) 2-(2,5-Dimethoxyphenyl)ethanamine (Other name: 2C-H);
- (45) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other name: 2C-N);
- (46) 2-(2,5-Dimethoxy-4-(*n*)-propylphenyl)ethanamine (Other name: 2C-P);
- (47) 3,4-Methylenedioxy-*N*-methylcathinone (Other name: Methylone);
- (48) (1-Pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144; 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole);
- (49) [1-(5-Fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144; 5-F-UR-144; XLR11; (5-flouro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole);
- (50) *N*-(1-Adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (Other names: APINACA; AKB48);
- (51) Quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate, (Other names: PB-22; QUPIC);

- (52) Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate, (Other names: 5-fluoro-PB-22; 5F-PB-22);
- (53) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other name: AB-FUBINACA);
- (54) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: ADB-PINACA);
- (55) 2-(4-Iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2CI-NBOMe; 25I; Cimbi-5);
- (56) 2-(4-Chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);
- (57) 2-(4-Bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);
- (58) Marijuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus *Cannabis*, other than separated resin (whether crude or purified) obtained from the plant;
- (59) 4-Methyl-*N*-ethylcathinone (Other name: 4-MEC);
- (60) 4-Methyl- α -pyrrolidinopropiophenone (Other name: 4-MePPP);
- (61) α -Pyrrolidinopentiophenone (Other name: [α]-PVP);
- (62) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)butan-1-one (Other names: butylone; bk-MBDB);
- (63) 2-(Methylamino)-1-phenylpentan-1-one (Other name: pentedrone);
- (64) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)pentan-1-one (Other names: pentylone; bk-MBDP);
- (65) 4-Fluoro-*N*-methylcathinone (Other names: 4-FMC; flephedrone);
- (66) 3-Fluoro-*N*-methylcathinone (Other name: 3-FMC);
- (67) 1-(Naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (Other name: naphyrone);
- (68) α -Pyrrolidinobutiophenone (Other name: α -PBP);
- (69) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other name: AB-CHMINACA);
- (70) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: AB-PINACA);
- (71) [1-(5-Fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (Other name: THJ-2201);
- (72) 1-Methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (Other name: MPTP);

- (73) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other names: MAB-CHMINACA; ABD-CHMINACA);
- (74) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB; 5F-MDMB-PINACA);
- (75) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other name: 5F-AMB);
- (76) *N*-(Adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other names: 5F-APINACA; 5F-AKB48);
- (77) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other name: ADB-FUBINACA);
- (78) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA; MMB-CHMINACA);
- (79) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: MDMB-FUBINACA);
- (80) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB; MMB-FUBINACA; AMB-FUBINACA);
- (81) Naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201);
- (82) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);
- (83) 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);
- (84) Methyl 2-(1-(Cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);
- (85) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-*b*]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);
- (86) 1-(1,3-Benzodioxol-5-yl)-2-(ethylamino)pentan-1-one (Other names: *N*-ethylpentylone; ephylone);
- (87) Methyl 2-(1-(4-fluorobutyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 4F-MDMB-BINACA; 4F-MDMB-BUTINACA);
- (88) 1-(4-Methoxyphenyl)-*N*-methylpropan-2-amine (Other names: *p*-methoxymethamphetamine; PMMA);
- (89) Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);
- (90) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-MDMB-PICA; 5F-MDMB-2201);

- (91) *N*-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-fluorobenzyl));
- (92) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);
- (93) (1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);
- (94) *N*-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);
- (95) α -Pyrrolidinohexanophenone (Other names: α -PHP; α -pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);
- (96) 4-Methyl- α -ethylaminopentiophenone (Other names: 4-MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);
- (97) 4'-Methyl- α -pyrrolidinohexiophenone (Other names: MPHP; 4'-methyl- α -pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);
- (98) α -Pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one);
- (99) 4'-Chloro- α -pyrrolidinovalerophenone (Other names: 4-chloro- α -PVP; 4'-chloro- α -pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one); and
- *(100) 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one (Other names: methoxetamine; MXE).

-Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine [(+)-norpseudoephedrine];
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenfluramine;
- (5) Fenproporex;

- (6) Mazindol;
- (7) Mefenorex;
- (8) Modafinil;
- (9) Pemoline (including organometallic complexes and their chelates);
- (10) Phentermine;
- (11) Pipradrol;
- *(12) Serdexmethylphenidate;
- (13) Sibutramine;
- (14) Solriamfetol ((R)-2-amino-3-phenylpropyl carbamate) (Other names: benzenepropanol; β-amino-carbamate (ester));
- and
- (15) SPA [1-dimethylamino-1,2-diphenylethane].

Changes are marked with an asterisk (*)

TRD-202203992
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: October 5, 2022



Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for US Fidelity Insurance Company, a domestic fire and/or casualty insurance company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the Texas Register publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202203988
 Justin Beam
 Chief Clerk
 Texas Department of Insurance
 Filed: October 5, 2022



Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated § 13.064, the Office of Public Utility Counsel (OPUC) will conduct its annual public hearing in person, virtually and via toll free conference call on:

October 27th from 1:00 - 3:00 p.m.

Attend in person:

One AISD Building
 241 Pine Street
 Abilene, Texas 79604

or

Join via Microsoft Teams Live Event Meeting:

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F1%2Fmeetup-join%2F19%3Ameeting_Y2FjZjk-wNmItNzJhOS00YTBmLTg1MDYtMDM3MWQ1MjBmNz-dm%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%25228ab1207e-27c0-403f-92a7-fff564f962dd%2522%252c%2522Oid%2522%253a%2522e8914302-f6bd-478c-839a-16628438cb7f%2522%257d%26CT%3D1663012354483%26OR%3DOutlook-Body%26CID%3D87AE1A88-084D-4668-85D3-2FDB79B034E5%26anon%3Dtrue&type=meetup-join&deeplinkId=c2f3df99-4789-4ee4-8f2f-8362ef682f58&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true

or

Join via Toll-Free Conference Call:

Toll-Free Conference Bridge (877) 226-9790, Passcode: 7098100

OPUC represents residential and small commercial consumers, as a class, in the electric, water, wastewater, and telecommunications utility industries in Texas. OPUC primarily represents these consumers before the Public Utility Commission of Texas, State Office of Administrative Hearings, state courts and Electric Reliability Council of Texas.

The hearing is open to the public. All interested persons are invited to attend and provide input on OPUC's priorities, functions, and effectiveness.

For additional information, please contact Matthew Cooksey, Government Relations Specialist, at P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 or 1 (877) 839-0363 or email: opuc_customer@opuc.texas.gov.

TRD-202203974

Chris Ekoh

Interim Chief Executive and Public Counsel

Office of Public Utility Counsel

Filed: October 3, 2022



Sam Houston State University

Notice of Intent to Seek Consulting Services

In compliance with the provisions of Texas Government Code, Chapter 2254, Sul Ross State University's Borderlands Research Institute (the "University") in Alpine, Texas, solicits a Request for Qualifications ("RFQ") for a communications consultant for the Institute. The University has made a fact finding that consulting services are necessary as the University does not have in-house personnel to perform this service. Pursuant to Texas Government Code 2254.029(b) notice is given that the University intends to award the contract for the solicited consulting services to Lydia Saldana, 6109 Whitman Avenue, Fort Worth, Texas 76133 unless an offer of better value is received.

Selection criteria will be based on the best value which will be determined by the University, and cover such areas as license, procedural approach to scope of work, management experience, qualifications of consultants, references from other institutions of Higher Education, and how well the proposer followed the RFQ instructions.

Sul Ross State University, in accordance with applicable federal and state law (including Title VII) and institutional values, prohibits discrimination or harassment on the basis of race, creed, ancestry, marital status, citizenship, color, national origin, sex, religion, age, disability, veteran's status, sexual orientation, or gender identity. All personnel

actions, including recruitment, employment, training, upgrading, promotion, demotion, termination, and salary administration are reviewed to ensure Equal Employment Opportunity (EEO) compliance.

The closing date for receipt of offers is November 14, 2022. The date of award is anticipated to be on or before November 16, 2022.

Sam Houston State University contact for inquires is:

William H. Tidwell

Director of Procurement

P.O. Box 2028

Huntsville, Texas 77341-2028

Phone: (936) 294-1904

Email: william.tidwell@sulross.edu

TRD-202203993

Julie Rumbelow

Senior Administrative & Publication Coordinator

Sam Houston State University

Filed: October 5, 2022



Texas Department of Transportation

Correction of Error

The Texas Department of Transportation adopted the repeal of 43 TAC §§21.921 - 21.930 in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6634). Due to an error by the Texas Register, 43 TAC §21.926 was omitted from the list of sections being repealed. The correct list of sections being repealed is 43 TAC §§21.921 - 21.930.

TRD-202203982



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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