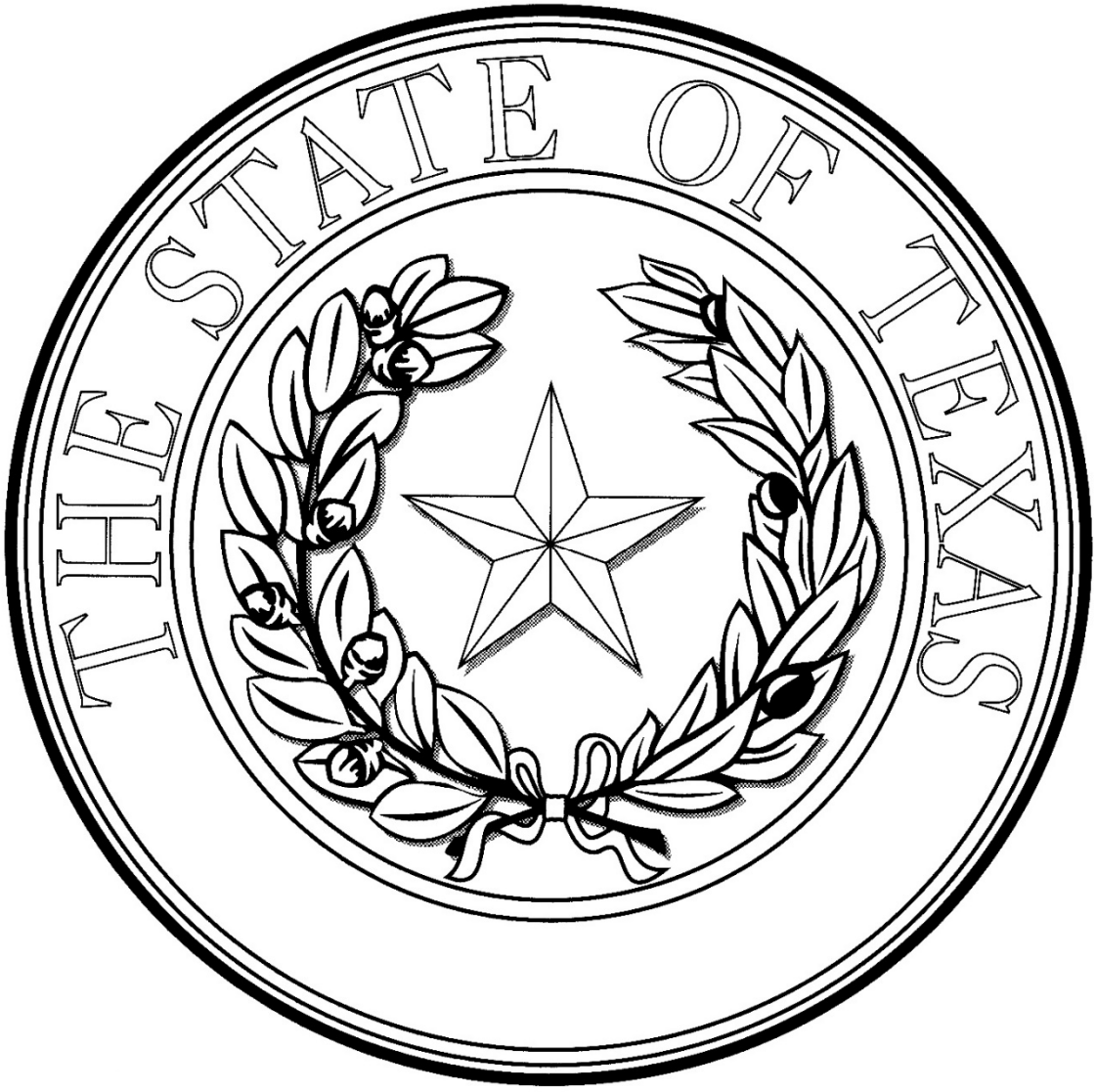
TEXAS REGISTER

Volume 48 Number 16 *April 21, 2023* *Pages 2017 - 2160*



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Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $340.00 ($502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register,* 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

In This Issue

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 April 5, 2023

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2024, David E. Schwartz of Bellaire, Texas (replacing Andrew M. "Andy" Kahan of Houston, who resigned).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2024, Hector L. Villarreal of Alice, Texas (Mr. Villarreal is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2025, Lee Ann Breading of Denton, Texas (Judge Breading is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2025, Abigail C. "Abby" Brookshire of Arlington, Texas (Ms. Brookshire is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2025, Elizabeth L. "Libby" Hamilton of Austin, Texas (Ms. Hamilton is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2025, Joan Huffman of Houston, Texas (Senator Huffman is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2025, Emmitt R. Jackson, Jr. of Argyle, Texas (Chief Jackson is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2025, Andrew Murr of Junction, Texas (replacing James E. White, Ph.D. of Hillister, whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2025, Brandi L. Reed of Amarillo, Texas (Ms. Reed is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2025, Erleigh N. Wiley of Forney, Texas (Ms. Wiley is being reappointed).

Designating Debra D. Seefeld of Montgomery as presiding officer of the Texas State Board of Public Accountancy for a term to expire at the pleasure of the Governor. Ms. Seefeld is replacing Manuel "Manny" Cavazos, IV of Austin as presiding officer.

Appointments for April 11, 2023

Appointed to the Podiatric Medical Examiners Advisory Board for a term to expire February 1, 2029, Beil "Cory" Brown, D.P.M. of Abilene, Texas (Dr. Brown is being reappointed).

Appointed to the Podiatric Medical Examiners Advisory Board for a term to expire February 1, 2029, Maria "Yvette" Hernandez of Rio Grande City, Texas (Ms. Hernandez is being reappointed).

Appointed to the Podiatric Medical Examiners Advisory Board for a term to expire February 1, 2029, Travis A. Motley, D.P.M. of Colleyville, Texas (Dr. Motley is being reappointed).

Designating Steven C. Golla, D.V.M. of New Braunfels as presiding officer of the State Board of Veterinary Medical Examiners for a term to expire at the pleasure of the Governor. Dr. Golla is replacing Keith A. Pardue of Austin as presiding officer.

Appointments for April 12, 2023

Appointed to the Family Practice Residency Advisory Committee for a term to expire August 29, 2025, Alicia M. Cantrell of Houston, Texas (replacing Parrish "Todd" Dorton of Waco, whose term expired).

Designating Richard C. "Rick" Rhodes of Austin as presiding officer of the Texas Workforce Investment Council for a term to expire at the pleasure of the Governor. Mr. Rhodes is replacing Mark A. Dunn of Austin as presiding officer.

Greg Abbott, Governor

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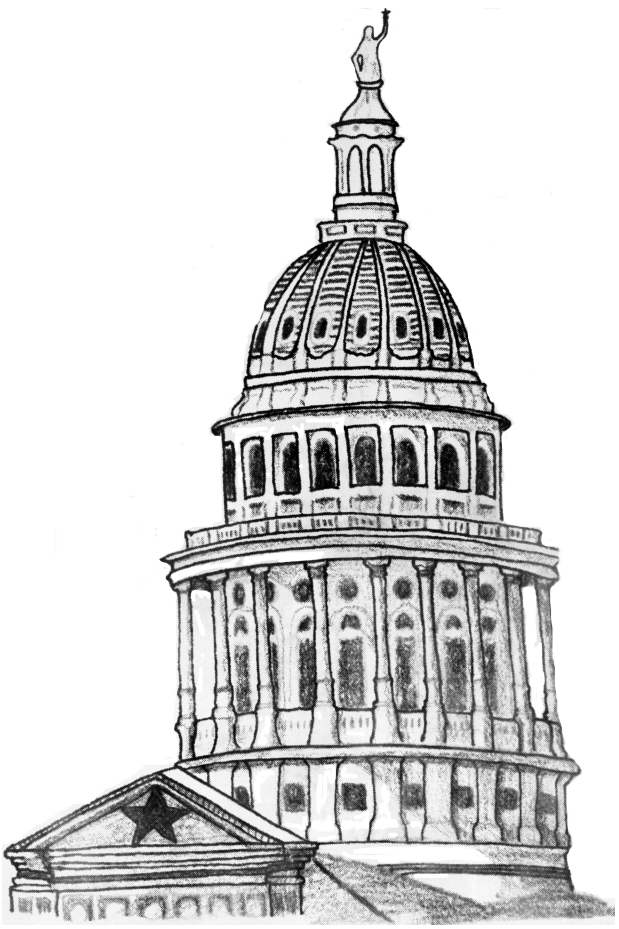

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, 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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE PLAN FOR EDUCATING ENGLISH LANGUAGE LEARNERS

19 TAC §§89.1201, 89.1203, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1226 - 89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, 89.1265

The Texas Education Agency (TEA) proposes amendments to §§89.1201, 89.1203, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1226 - 89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, and 89.1265, concerning the state plan for educating English learners. The proposed amendments would align terminology with Senate Bill (SB) 2066, 87th Texas Legislature, Regular Session, 2021, and clarify policies and procedures for the education of emergent bilingual students and related program implementation.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with Texas Education Code (TEC), Chapter 29, Subchapter B, Bilingual Education and Special Language Programs, the commissioner has exercised rulemaking authority to establish rules to guide the implementation of bilingual education and special language programs. The commissioner's rules in Chapter 89, Subchapter BB, establish the policy that every student in the state who has a primary language other than English and who is identified as an emergent bilingual student must be provided a full opportunity to participate in a bilingual education or an English as a second language (ESL) program. These rules outline the requirements of the bilingual education and ESL programs, including program content and design, home language survey, the language proficiency assessment committee (LPAC), testing and classification, facilities, parental authority and responsibility, staffing and staff development, required summer school programs, and evaluation.

The proposed amendments to Chapter 89, Subchapter BB, would implement SB 2066, 87th Texas Legislature, Regular Session, 2021, by updating the term "English learner" to "emergent bilingual student" throughout the rules. The amendments would also provide clarification and make technical edits. In addition, the following changes would be made.

Section 89.1201, Policy, would be amended to more clearly identify the academic and linguistic progress expected of emergent bilingual students and the methods by which that progress is achieved.

Section 89.1203, Definitions, would be amended by adding new definitions and expanding others to ensure consistency, accuracy, and clarity for school districts.

Section 89.1205, Required Bilingual Education and English as a Second Language Programs, would be amended to include updated terminology in alignment with SB 2066.

Section 89.1207, Bilingual Education Exceptions and English as a Second Language Waivers, would be amended to include updated terminology in alignment with SB 2066.

Section 89.1210, Program Content and Design, would be amended to include updated terminology in alignment with SB 2066 and to provide clarity related to approved program models.

Section 89.1215, Home Language Survey, would be amended to confirm that the original home language survey shall serve as the only survey that should be kept in a student's permanent record and transferred to any subsequent district in which the student enrolls. This section would also include an additional question to ensure a holistic understanding of a child's first language. The proposed amendment would clarify the process for a parent to request a correction to the home language survey.

Section 89.1220, Language Proficiency Assessment Committee, would be amended to include alternative meeting methods as well as allow for the use of electronic signatures. Subsection (g) would explicitly state when and for whom the LPAC should review all pertinent information. Subsection (k) would include more details to support LPAC decisions regarding reconsideration for program participation after reclassification. These changes would incorporate stakeholder feedback from school districts and align with terminology used in SB 2066.

Section 89.1226, Testing and Classification of Students, would be amended to update language and emphasize access to multiple programs for dual-identified students. Subsection (b) would clarify that the state-approved English language proficiency test must be administered within four calendar weeks of initial enrollment. Subsection (i) would change how a student can be reclassified as English proficient by requiring a composite proficiency rating in the areas of listening, speaking, reading, and writing rather than a proficiency rating in each of the four language domains. Subsection (k) would clarify that an emergent bilingual student may still be able to be reclassified if there are designated supports for non-linguistic purposes recommended by a committee other than the LPAC. In addition, further clarification would be added regarding the individualized reclassification process for an emergent bilingual student with a severe cognitive disability. These changes would address clarification requested

by school districts and align the section with the agency's policies on special education and assessment.

Section 89.1227, Minimum Requirements for Dual Language Immersion Program Model, would be amended to use the term "partner language" and to include the development of the program's language allocation plan. Clarification would be provided on the inclusion of former emergent bilingual students who have reclassified as English proficient for the duration of the program. Additionally, the amendment would specify that emergent bilingual students' access to dual language programs must not be restricted based on linguistic or academic measures in the partner language or English. These changes would incorporate stakeholder feedback from school districts.

Section 89.1228, Two-Way Dual Language Immersion Program Model Implementation, would be amended to include a statement about access not being restricted for emergent bilingual students or non-emergent bilingual students based on linguistic or achievement measures in the partner language or English. The proposed amendment would also clarify the district's commitment to program continuity. These changes would incorporate stakeholder feedback from school districts.

Section 89.1229, General Standards for Recognition of Dual Language Immersion Program Models, would be amended to update language reflective of the Results Driven Accountability system.

Section 89.1230, Eligible Students with Disabilities, would be amended to more clearly explain the roles of the LPAC and the admission, review, and dismissal committee in the identification and monitoring of dual-identified students in an effort to align processes across the state.

Section 89.1233, Participation of English Proficient Students, would be amended to use the new term "non-emergent bilingual" for students who have never been identified as emergent bilingual students and clarify that non-emergent bilingual students may not make up more than 40% of the total bilingual education program students districtwide.

Section 89.1235, Facilities, would be amended to align with terminology of SB 2066.

Section 89.1240, Parental Authority and Responsibility, would be amended to include updated terminology in alignment with SB 2066 and to provide explicit procedures for parental approvals, program changes, and parental denials.

Section 89.1245, Staffing and Staff Development, would be amended to clarify the use of Bilingual Education Allotment funds for salary supplements.

Section 89.1250, Required Summer School Programs, would be amended to include updated terminology in alignment with SB 2066.

Section 89.1265, Evaluation, would be amended to include updated terminology in alignment with SB 2066. The section title would also be amended to provide clarity on the contents of the section.

FISCAL IMPACT: Jennifer Alexander, deputy commissioner and special populations and monitoring, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations to clarify policies and procedures for the education of emergent bilingual students and related program implementation. Some of the changes include additional definitions; a new question required to be included in the home language survey; procedures for parental approvals, program changes, and parental denial of services; and overall updated terminology in alignment with SB 2066.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Alexander 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 ensuring that rule language is based on current law and providing school districts with clarifications related to policy and program implementation, further ensuring an equal educational opportunity for emergent bilingual students. 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 April 21, 2023, and ends May 22, 2023. 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 April 21, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Com-

missioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §29.053, which establishes the requirement of bilingual programs at elementary grades, and other special language programs such as English as a second language; TEC, §29.055, which requires bilingual programs and other special language programs to consider students' learning experiences and incorporate cultural aspects of the students' backgrounds; TEC, §29.058, which allows the participation of students who are not identified as emergent bilingual students to participate in a bilingual program; however, the percentage of non-emergent bilingual students may not exceed 40% of the number of students enrolled in the program; TEC, §29.060, which requires school districts to offer a bilingual education or special language program that is voluntary for emergent bilingual students entering Kindergarten or Grade 1; TEC, §29.062, which requires school districts comply with state policy in areas including: program content and design, program coverage, identification procedures, classification procedures, staffing, learning and testing materials, reclassification and the activities of the language proficiency assessment committees; and TEC, §29.063, which requires the establishment of a language proficiency assessment committee.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.053, 29.055, 29.058, 29.060, 29.062, and 29.063.

§89.1201. Policy.

(a) It is the policy of the state that every student in the state who has a primary language other than English and who is identified as an emergent bilingual student [~~English learner~~] shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in [~~the~~] Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in [~~the~~] TEC, §1.002(a), each school district shall:

(1) identify emergent bilingual students [~~English learners~~] based on criteria established by the state;

(2) provide bilingual education and ESL programs, as integral parts of the general program as described in [~~the~~] TEC, §4.002;

(3) seek appropriately certified teaching personnel to ensure that emergent bilingual students [~~English learners~~] are afforded full opportunity to master the essential knowledge and skills required by the state; and

(4) assess for academic achievement and linguistic progress [~~for essential knowledge and skills~~] in accordance with [~~the~~] TEC, Chapter 29, to ensure accountability for emergent bilingual students [~~English learners~~] and the schools that serve them.

(b) The goal of bilingual education programs shall be to enable emergent bilingual students to develop primary language literacy and academic skills through the integrated use of content-based language and instructional methods [~~English learners~~] to become proficient in listening, speaking, reading, and writing in the English language [~~through the development of literacy and academic skills in the primary language and English~~]. Such programs shall include [~~emphasize~~] the mastery of grade level reading and [~~English~~] language arts, [~~skills, as well as~~] mathematics, science, and social studies knowledge and skills [~~,~~] as integral parts of the academic goals for all students to enable emergent bilingual students [~~English learners~~] to participate equitably in school.

(c) The goal of ESL programs shall be to enable emergent bilingual students [~~English learners~~] to become proficient in listening, speaking, reading, and writing in the English language through the integrated use of content-based [~~second~~] language instructional [~~acquisition~~] methods. The ESL program shall include [~~emphasize~~] the mastery of grade level English reading and language arts, [~~skills, as well as~~] mathematics, science, and social studies knowledge and skills [~~,~~] as integral parts of the academic goals for all students to enable emergent bilingual students [~~English learners~~] to participate equitably in school.

(d) Bilingual education and ESL programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the specific language needs of emergent bilingual students [~~English learners~~]. The basic curriculum content of the programs shall be based on the Texas Essential Knowledge and Skills and the English language proficiency standards required by the state.

§89.1203. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Alternative language program--A temporary instructional plan that meets the affective, linguistic, and cognitive needs of emergent bilingual students and equips the teacher under a bilingual education exception or English as a second language (ESL) waiver described in §89.1207 of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers) to align closely to the required bilingual or ESL program through the comprehensive professional development plan.

(2) [~~(1)~~] Bilingual education allotment--An adjusted basic funding allotment provided for each school district based on student average daily attendance in a bilingual education or an ESL [~~English as a second language (ESL)~~] program in accordance with Texas Education Code (TEC), §48.105 [~~§42.153~~].

(3) Certified bilingual education teacher--A teacher appropriately certified in bilingual education as well as for the grade level and content area.

(4) [~~(2)~~] Certified English as a second language teacher--A teacher appropriately certified in ESL as well as for the grade level and content area. The term "certified English as a second language teacher" as used in this subchapter is synonymous with the term "professional transitional language educator" used in TEC, §29.063.

(5) Content-based language instruction--An integrated approach to language instruction in which language is developed within the context of content delivery that is linguistically sustaining and is used across all programs for emergent bilingual students.

(6) [~~(3)~~] Dual language immersion (DLI) program--A state-approved bilingual program model in accordance with TEC, §29.066.

(7) [~~(4)~~] Dual-language instruction--An educational approach that focuses on the use of English and the student's primary language for instructional purposes.

(8) Emergent bilingual--A student identified by the language proficiency assessment committee (LPAC) who is in the process of acquiring English and has another language as the student's primary or home language. This term is interchangeable with English learner as used in federal regulations and replaces the term "limited English proficient student" formerly used in TEC, Chapter 29, Subchapter B.

(9) [~~(5)~~] English as a second language program--A special language program in accordance with TEC, Chapter 29, Subchapter B. Another related term for an ESL program is "English as an additional language program."

(10) [~~(6)~~] English language proficiency standards (ELPS)--Standards to be published along with the Texas Essential Knowledge and Skills for each subject in the required curriculum outlined in Chapter 74 of this title (relating to Curriculum Requirements), including foundation and enrichment areas, ELPS, and college and career readiness standards.

(11) English proficient student--A former emergent bilingual student who has met reclassification as English proficient by the LPAC.

[~~(7) English learner (EL)--A student who is in the process of acquiring English and has another language as the student's primary or home language. The terms English language learner (ELL) and English learner are used interchangeably and are synonymous with limited English proficient (LEP) student, as used in TEC, Chapter 29, Subchapter B.~~]

(12) [~~(8)~~] Exit--The point when a student is no longer classified as an emergent bilingual student [~~LEP/EL~~] (i.e., the student is reclassified) and the student ends [~~, no longer requires~~] bilingual or ESL program participation with parental approval and based on the recommendation of the LPAC [~~services, and is classified as non-LEP/English proficient (EP) in the Texas Student Data System Public Education Information Management System (TSDS PEIMS)~~]. The term "exit" as used in this subchapter is synonymous with the description in TEC, Chapter 29, of "transferring out" of bilingual or special language programming. For the purpose of meeting the goals of a DLI program, the LPAC may recommend continued program participation beyond reclassification.

(13) Language allocation plan--A strategically developed and clearly communicated plan for a DLI program model that defines the percentage of language of instruction for each content area and grade level.

(14) Language proficiency assessment committee--A designated group of committee members as described in §89.1220 of this title (relating to Language Proficiency Assessment Committee) that ensures the appropriate identification, placement, assessment, services, reclassification, and monitoring of emergent bilingual students. The LPAC also meets in conjunction with all other committees related to programs and services for which an emergent bilingual student qualifies.

(15) Non-emergent bilingual student--A student who has not been classified as an emergent bilingual student by the LPAC.

(16) Paired teaching--A teaching partnership permissible in a DLI program model when half the content area instruction is in the partner language and half is in English (50/50 language allocation). One teacher provides content area instruction in the partner language while the second teacher provides content area instruction delivered in English. The teacher instructing in the partner language must hold bilingual education certification while the teacher instructing in English may hold either bilingual education or ESL certification.

(17) Parent--The parent or legal guardian of the student in accordance with TEC, §29.052(2).

(18) Partner language--The designated language of instruction other than English within a DLI program. The partner language may or may not be the primary language of a DLI program student.

(19) Prekindergarten--Students enrolled in a 3- or 4-year-old prekindergarten program as well as 3- or 4-year-old students enrolled in an early education setting.

(20) Primary language--The language an emergent bilingual student is exposed to prior to entering school and uses mainly to communicate at home and school, also known as mother tongue, first language, native language, home language, or heritage language.

(21) [~~(9)~~] Reclassification--The process by which the LPAC [~~language proficiency assessment committee~~] determines that an emergent bilingual student [~~English learner~~] has met the appropriate criteria to be classified as English proficient, [~~non-LEP/EP~~] and the student enters year 1 of monitoring as indicated in the Texas Student Data System Public Education Information Management System [~~is coded as such in TSDS PEIMS~~].

(22) [~~(10)~~] School district--A [~~For the purposes of this subchapter, the definition of a school district includes a~~] local education agency, an open-enrollment charter school, or [~~and~~] a district of innovation.

[~~(11) Prekindergarten--For purposes of this subchapter, prekindergarten describes students enrolled in a 3- or 4-year-old prekindergarten program, as well as 3- or 4-year-old students enrolled in an early education setting.~~]

[~~(12) Alternative language program--A program that meets the affective, linguistic, and cognitive needs of ELs and equips the teacher under a bilingual education or ESL waiver described in §89.1207 of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers) through the comprehensive professional development plan.~~]

[~~(13) Parent--The term "parent" as used in this subchapter includes the parent or legal guardian of the student in accordance with TEC, §29.052.~~]

§89.1205. Required Bilingual Education and English as a Second Language Programs.

(a) Each school district that has an enrollment of 20 or more students identified as emergent bilingual students [~~English learners~~] in any language classification in the same grade level district-wide shall offer a bilingual education program as described in subsection (b) of this section for the emergent bilingual students [~~English learners~~] in prekindergarten through the elementary grades with that language classification. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.

(b) A school district required to provide a bilingual education program as described in subsection (a) of this section shall offer dual-language instruction (English and primary language) in prekindergarten through the elementary grades, using one of the four bilingual program models described in §89.1210 of this title (relating to Program Content and Design).

(c) All emergent bilingual students [~~English learners~~] for whom a school district is not required to offer a bilingual education program shall be provided an English as a second language (ESL) program as described in subsection (d) of this section, regardless of the students' grade levels and primary language, and regardless of the number of such students, except in cases where a district exercises the option described in subsection (g) of this section.

(d) A school district required to provide an ESL program as described in subsection (c) of this section shall provide an ESL program using one of the two models described in §89.1210 of this title.

(e) School districts may join with other school districts to provide bilingual education or ESL programs.

(f) In addition to the required bilingual and/or ESL programs, school districts are authorized to establish a bilingual education program even if they have an enrollment of fewer than 20 students identified as emergent bilingual students [~~English learners~~] in any language classification in the same grade level district-wide and are not required to do so under subsection (a) of this section. Under this authorization, school districts shall adhere to all program requirements as described in §§89.1210 of this title, 89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model), 89.1228 of this title (relating to Two-Way Dual Language Immersion Program Model Implementation), and 89.1229 of this title (relating to General Standards for Recognition of Dual Language Immersion Program Models).

(g) In addition to the required bilingual and/or ESL programs, school districts are authorized to establish a bilingual education program at grade levels in which the bilingual education program is not required under subsection (a) of this section. Under this authorization, school districts shall adhere to all program requirements as described in §§89.1210, 89.1227, 89.1228, and 89.1229 of this title.

§89.1207. Bilingual Education Exceptions and English as a Second Language Waivers.

(a) Bilingual education program.

(1) Exceptions. A school district that is unable to provide a bilingual education program as required by §89.1205(a) of this title (relating to Required Bilingual Education and English as a Second Language Programs) because of an insufficient number of appropriately certified teachers shall request from the commissioner of education an exception to the bilingual education program and the approval of a temporary [~~an~~] alternative language program as defined in §89.1203(1) [~~§89.1203(12)~~] of this title (relating to Definitions) that aligns as closely as possible to the required bilingual program. Emergent bilingual students [~~English learners~~] with parental approval for program participation [~~services~~] under a bilingual education exception will be included in the bilingual education allotment designated for an alternative language program. The approval of an exception to the bilingual education program shall be valid only during the school year for which it was granted. A request for a bilingual education program exception must be submitted by November 1 and shall include:

(A) a statement of the reasons the school district is unable to provide a sufficient number of appropriately certified teachers to offer the bilingual education program with supporting documentation as described in Texas Education Code (TEC), §29.054(b)(1), (2), and (3);

(B) a description of the alternative language program and methods to meet the affective, linguistic, and cognitive needs of the emergent bilingual students [~~English learners~~], including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title (relating to Curriculum Requirements) to include foundation and enrichment areas, English language proficiency standards (ELPS), and college and career readiness standards (CCRS);

(C) an assurance that appropriately certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure effective early literacy development and that the linguistic and academic needs of emergent bilingual students [~~the English learners~~] with beginning and intermediate levels of English proficiency are served on a priority basis;

(D) an assurance that the school district will implement a comprehensive professional development plan that:

(i) is ongoing and targets the development of the knowledge, skills, and competencies needed to serve the needs of emergent bilingual students [~~English learners~~];

(ii) includes the teachers who are not certified or not appropriately certified who are assigned to implement the temporary [~~proposed~~] alternative language program that aligns closely to the required bilingual program; and

(iii) may include additional teachers who work with emergent bilingual students [~~English learners~~];

(E) an assurance that at least 10% of the total bilingual education allotment shall be used to fund the comprehensive professional development plan required under subparagraph (D) of this paragraph when applying for a bilingual education exception, an English as a second language (ESL) [~~ESL~~] waiver, or both;

(F) an assurance that the school district will take actions to ensure that the program required under §89.1205(a) of this title will be provided the subsequent year, including its plans for recruiting an adequate number of appropriately certified teachers to eliminate the need for subsequent exceptions and measurable targets for the subsequent year as required by TEC, §29.054(b)(4); and

(G) an assurance that the school district shall satisfy the additional reporting requirements described in §89.1265(c) of this title (relating to Program Evaluation).

(2) Documentation. A school district submitting a bilingual education exception shall maintain written records of all documents supporting the submission and assurances listed in paragraph (1) of this subsection, including:

(A) a description of the proposed alternative language program designed to meet the affective, linguistic, and cognitive needs of the emergent bilingual students [~~English learners~~];

(B) the number of teachers for whom a bilingual education exception is needed by grade level and per campus;

(C) a copy of the school district's comprehensive professional development plan; and

(D) a copy of the bilingual allotment budget documenting that a minimum of 10% of the funds were used to fund the comprehensive professional development plan.

(3) Approval of exceptions. Bilingual education program exceptions will be granted by the commissioner if the requesting school district:

(A) meets or exceeds the state average for emergent bilingual student [~~English learner~~] performance on the required state assessments;

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(F) of this subsection submitted the previous year and approved by the Texas Education Agency (TEA); or

(C) reduces by 25% the number of teachers under exception for bilingual programs when compared to the number of exceptions granted the previous year.

(4) Denial of exceptions. A school district denied a bilingual education program exception must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.

(5) Appeals. A school district denied a bilingual education program exception may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.

(6) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under TEC [~~the Texas Education Code (TEC)~~], §39.057, if a school district is denied a bilingual education program exception for more than three consecutive years.

(7) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under [~~the~~] TEC, §39.102.

(b) ESL [~~English as a second language (ESL)~~] program.

(1) Waivers. A school district that is unable to provide an ESL program as required by §89.1205(c) of this title because of an insufficient number of appropriately certified teachers shall request from the commissioner a waiver of the certification requirements for each teacher who will provide instruction in ESL for emergent bilingual students [~~English learners~~] and the approval of a temporary [~~an~~] alternative language program as defined in §89.1203(1) [~~§89.1203(12)~~] of this title that aligns closely to the required ESL program. Emergent bilingual students [~~English learners~~] with parental approval for program participation [~~services~~] under an ESL waiver will be included in the bilingual education allotment designated for an alternative language program. The approval of a waiver of certification requirements shall be valid only during the school year for which it was granted. A request for an ESL program waiver must be submitted by November 1 and shall include:

(A) a statement of the reasons the school district is unable to provide a sufficient number of appropriately certified teachers to offer the ESL program as described in TEC, §29.054(b)(1), (2), and (3);

(B) a description of the alternative language program, including the manner in which the teachers in the ESL program will meet the affective, linguistic, and cognitive needs of the emergent bilingual students [~~English learners~~], including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title to include foundation and enrichment areas, ELPS, and CCRS;

(C) an assurance that appropriately certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus and, if needed, secondary campuses, to ensure that the linguistic and academic needs of the emergent bilingual students [~~English learners~~] with beginning and intermediate [~~the lower~~] levels of English proficiency are served on a priority basis;

(D) an assurance that the school district shall implement a comprehensive professional development plan that:

(i) is ongoing and targets the development of the knowledge, skills, and competencies needed to serve the needs of emergent bilingual students [~~English learners~~];

(ii) includes the teachers who are not certified or not appropriately certified who are assigned to implement the proposed alternative language program; and

(iii) may include additional teachers who work with emergent bilingual students [~~English learners~~];

(E) an assurance that at least 10% of the total bilingual education allotment shall be used to fund the comprehensive professional development plan required under subparagraph (D) of this paragraph when applying for a bilingual education exception, an ESL waiver, or both;

(F) an assurance that the school district will take actions to ensure that the program required under §89.1205(c) of this title will be provided the subsequent year, including its plans for recruiting an adequate number of appropriately certified teachers to eliminate the need for subsequent waivers as required by TEC, §29.054(b)(4); and

(G) an assurance that the school district shall satisfy the additional reporting requirements described in §89.1265(c) of this title.

(2) Documentation. A school district submitting an ESL waiver shall maintain written records of all documents supporting the submission and assurances listed in paragraph (1) of this subsection, including:

(A) a description of the proposed alternative language program designed to meet the affective, linguistic, and cognitive needs of the emergent bilingual students [~~English learners~~];

(B) the name and teaching assignment, per campus, of each teacher who is assigned to implement the ESL program and is under a waiver and the estimated date for the completion of the ESL supplemental certification, which must be completed by the end of the school year for which the waiver was requested;

(C) a copy of the school district's comprehensive professional development plan;

(D) a copy of the bilingual allotment budget documenting that a minimum of 10% of the funds were used to fund the comprehensive professional development plan; and

(E) a description of the actions taken to recruit an adequate number of appropriately certified teachers.

(3) Approval of waivers. ESL waivers will be granted by the commissioner if the requesting school district:

(A) meets or exceeds the state average for emergent bilingual student [~~English learner~~] performance on the required state assessments; or

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(G) of this subsection submitted the previous year and approved by [~~the~~] TEA.

(4) Denial of waivers. A school district denied an ESL program waiver must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.

(5) Appeals. A school district denied an ESL waiver may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.

(6) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under [~~the~~] TEC, §39.057, if a school district is denied an ESL waiver for more than three consecutive years.

(7) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under [~~the~~] TEC, §39.102.

§89.1210. Program Content and Design.

(a) Each school district required to offer a bilingual education or English as a second language (ESL) program shall provide each

emergent bilingual student [~~English learner~~] the opportunity to be enrolled in the required program at his or her grade level. Each student's level of proficiency shall be designated by the language proficiency assessment committee (LPAC) in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The school district shall accommodate the instruction, pacing, and materials to ensure that emergent bilingual students [~~English learners~~] have a full opportunity to master the essential knowledge and skills of the required curriculum, which includes the Texas Essential Knowledge and Skills (TEKS) and English language proficiency standards (ELPS). Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their primary language or in English for each content area.

(1) A bilingual education program of instruction established by a school district shall be a full-time program of dual-language instruction (English and primary language) that provides for learning academic and literacy [~~basic~~] skills in the primary language of the students enrolled in the program and for carefully structured and sequenced mastery of English language skills under Texas Education Code (TEC), §29.055(a).

(2) An ESL program of instruction established by a school district shall be a program of intensive instruction in English in which ESL teachers recognize and address language differences in accordance with TEC, §29.055(a).

(b) The bilingual education program and ESL program shall be integral parts of the general educational program required under Chapter 74 of this title (relating to Curriculum Requirements) to include foundation and enrichment areas, ELPS, and college and career readiness standards. In bilingual education programs, school districts shall purchase instructional materials in both program languages with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes in accordance with TEC, §31.029(a). Instructional materials for bilingual education programs on the list adopted by the commissioner of education, as provided by TEC, §31.0231, may be used as curriculum tools to enhance the learning process. The school district shall provide for ongoing coordination between the bilingual/ESL program and the general educational program. The bilingual education and ESL programs shall address the affective, linguistic, and cognitive needs of emergent bilingual students [~~English learners~~] as follows.

(1) Affective.

(A) Emergent bilingual students [~~English learners~~] in a bilingual program shall be provided instruction using content-based [~~second~~] language instructional [~~acquisition~~] methods and/or their primary language to acclimate students to the [~~introduce basic concepts of the~~] school environment [~~,~~] and to develop academic language skills [~~content instruction both in their primary language and in English~~], which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to consider the students' learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).

(B) Emergent bilingual students [~~English learners~~] in an ESL program shall be provided instruction using content-based [~~second~~] language instructional [~~acquisition~~] methods in English to acclimate students to [~~introduce basic concepts of~~] the school environment and to develop academic language skills, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to incorporate the students' primary languages and learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).

(2) Linguistic.

(A) Emergent bilingual students [~~English learners~~] in a bilingual program shall be provided targeted and intentional academic language [~~intensive~~] instruction to develop proficiency in [~~the skills of~~] listening, speaking, reading, and writing in both English and [~~in~~] their primary language [~~and in English, provided through the ELPS~~]. The instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects, providing individualized linguistically accommodated content instruction commensurate with the students' language proficiency levels.

(B) Emergent bilingual students [~~English learners~~] in an ESL program shall be provided targeted and intentional academic language [~~intensive~~] instruction to develop proficiency in listening, speaking, reading, and writing in the English language [~~, provided through the ELPS~~]. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects, providing individualized linguistically accommodated content instruction commensurate with the students' language proficiency levels. The ELPS student expectations are provided for English development in conjunction with the TEKS.

(3) Cognitive.

(A) Emergent bilingual students [~~English learners~~] in a bilingual program shall be provided instruction in reading and language arts, mathematics, science, and social studies in both [~~in~~] their primary language and [~~in~~] English, using content-based [~~second~~] language instructional [~~acquisition~~] methods in either their primary language, [~~in~~] English, or [~~in~~] both, depending on the [~~specific~~] program model(s) implemented by the district. The content area instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.

(B) Emergent bilingual students [~~English learners~~] in an ESL program shall be provided instruction in English in reading and language arts, mathematics, science, and social studies using content-based [~~second~~] language instructional [~~acquisition~~] methods. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.

(c) The bilingual education program shall be implemented through at least one of the following program models.

(1) Transitional bilingual/early exit is a bilingual program model in which students identified as emergent bilingual students [~~English learners~~] are served in both English and the students' primary [~~another~~] language and are prepared to meet reclassification criteria to be successful in English [~~English-only~~] instruction with no second language acquisition supports not earlier than two or later than five years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(1), for the assigned grade level and content area. The goal of early-exit transitional bilingual education is for program participants to use their primary language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' primary language and [~~along with instruction in~~] English using content-based language instruction methods [~~that targets second language development through academic content~~].

(2) Transitional bilingual/late exit is a bilingual program model in which students identified as emergent bilingual students

[~~English learners~~] are served in both English and the students' primary [~~another~~] language and are prepared to meet reclassification criteria to be successful in English [~~English-only~~] instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(2), for the assigned grade level and content area. The goal of late-exit transitional bilingual education is for program participants to use their primary language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' primary language and [~~along with instruction in~~] English through content-based language instruction [~~that targets second language development through academic content~~].

(3) Dual language immersion/one-way is a bilingual/biliteracy program model in which students identified as emergent bilingual students [~~English learners~~] are served in both English and the program's partner [~~another~~] language and are prepared to meet reclassification criteria in order to be successful in English [~~English-only~~] instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in the partner language and [~~a language other than~~] English [~~in this program model~~] is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction [~~Instruction~~] provided in English [~~in this program model~~] may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of one-way dual language immersion is for program participants to attain bilingualism and biliteracy [~~full proficiency~~] in [~~another language as well as~~] English and the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English as well as the students' primary language [~~as well as English~~], with at least half of the instruction delivered in the students' primary language for the duration of the program.

(4) Dual language immersion/two-way is a bilingual/biliteracy program model in which students identified as emergent bilingual students [~~English learners~~] are integrated with non-emergent bilingual students [~~proficient in English~~] and are served in both English and the program's partner [~~another~~] language and are prepared to meet reclassification criteria in order to be successful in English [~~English-only~~] instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in [~~a language other than~~] English and the partner language [~~in this program model~~] is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061 [~~, for the assigned grade level and content area~~]. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction [~~Instruction~~] provided in English [~~in this program model~~] may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061 [~~, for the assigned grade level and content area~~]. The goal of two-way dual language immersion is for program participants to attain bilingualism and biliteracy [~~full proficiency~~] in [~~another language and as well as~~] English as well as the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English and the partner [~~another~~] language with at least half of the instruction delivered in the partner [~~non-English program~~] language for the duration of the program.

(d) The ESL program shall be implemented through one of the following program models.

(1) An ESL/content-based program model is an English acquisition program that serves students identified as emergent bilingual students [~~English learners~~] through English instruction provided by a teacher appropriately certified in ESL under TEC, §29.061(c), using content-based language instruction methods in reading and [~~through English~~] language arts [~~and reading~~], mathematics, science, and social studies. The goal of content-based ESL is for emergent bilingual students [~~English learners~~] to attain full proficiency in English in order to participate equitably in school. [~~This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading, mathematics, science, and social studies.~~]

(2) An ESL/pull-out program model is an English acquisition program that serves students identified as emergent bilingual students [~~English learners~~] through English instruction using content-based language instruction methods provided by an appropriately certified ESL teacher under [~~the~~] TEC, §29.061(c), through English reading and language arts in a pull-out or inclusionary delivery setting [~~and reading~~]. The goal of ESL pull-out is for emergent bilingual students [~~English learners~~] to attain full proficiency in English in order to participate equitably in school. [~~This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading. Instruction shall be provided by the ESL teacher in a pull-out or inclusionary delivery model.~~]

(e) Except in the courses specified in subsection (f) of this section, content-based [~~second~~] language instructional [~~acquisition~~] methods, which may involve the use of the students' primary language, may be provided in any of the courses or electives required for promotion or graduation to assist students identified as emergent bilingual students [~~the English learners~~] to master the essential knowledge and skills for the required subject(s). The use of content-based [~~second~~] language instruction [~~acquisition methods~~] shall not impede the awarding of credit toward meeting promotion or graduation requirements.

(f) In subjects such as art, music, and physical education, emergent bilingual students [~~English learners~~] shall participate with their non-emergent bilingual [~~English-speaking~~] peers in general education classes provided in the subjects. As noted in TEC, §29.055(d), elective courses included in the curriculum may be taught in a partner language [~~other than English~~]. The school district shall ensure that emergent bilingual students enrolled in bilingual education and ESL programs have a meaningful opportunity to participate with non-emergent bilingual peers [~~other students~~] in all extracurricular activities.

(g) The required bilingual education or ESL program shall be provided to every emergent bilingual student [~~English learner~~] with parental approval until such time that the student meets reclassification criteria as described in §89.1226(i) of this title (relating to Testing and Classification of Students) or graduates from high school. Parental approval is required when the LPAC recommends continued dual language immersion program participation beyond reclassification.

§89.1215. Home Language Survey.

(a) For each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through Grade 12, the Texas Education Agency (TEA)-developed home language survey shall be administered. This home language survey will serve as the original and only home language survey throughout the student's educational experience in Texas public schools. [~~School districts shall administer only one home language survey to each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through Grade 12.~~] School districts shall require that the survey be signed by the student's parent for each student in prekindergarten through Grade 8 or by the student in Grades 9-12 as permitted under

[~~the~~] Texas Education Code, §29.056(a)(1). It is the school district's responsibility to ensure that the student's parent understands the language used in the survey and its implications. The original copy of the survey shall be kept in the student's permanent record and transferred to any subsequent Texas public school districts in which the student enrolls.

(b) The TEA-developed home language survey shall be administered [~~provided~~] in English and a language that the parents can understand [~~, Spanish, and Vietnamese; for students of other language groups, the home language survey shall be translated into the primary language whenever possible~~]. The home language survey shall include [~~elicit one language answer to each of~~] the following questions.

(1) "What language(s) is/are [~~language is~~] used in the child's home for communication, regardless of the language(s) used by the child [~~most of the time~~]?"

(2) "What language(s) is/are used by [~~language does~~] the child for communication [~~use most of the time~~]?"

(3) "If the child had a previous home setting, what language(s) was/were used for communication in that home setting? If no previous home setting, answer Not Applicable (N/A)."

(c) If any [~~the~~] response on the home language survey indicates that a language other than English is or was used for communication, the student shall be tested in accordance with §89.1226 of this title (relating to Testing and Classification of Students).

(d) For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the original home language survey and language proficiency assessment committee documentation as described in §89.1220(l) of this title (relating to Language Proficiency Assessment Committee), as applicable. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the student's original home language survey shall be made.

(e) If a parent determines an error was made when completing the original home language survey, the parent may request a correction only if:

(1) the student has not yet been assessed for English proficiency; and

(2) corrections are made within two calendar weeks of the student's initial enrollment date in Texas public schools.

§89.1220. Language Proficiency Assessment Committee.

(a) School districts shall by local board policy establish and operate one or more [~~a~~] language proficiency assessment committees (LPACs) [~~committee~~]. The school district shall have on file a policy and procedures for the selection, appointment, and orientation [~~training~~] of members of the LPAC(s) [~~language proficiency assessment committee(s)~~].

(b) The LPAC [~~language proficiency assessment committee~~] shall include an appropriately certified bilingual educator (for students served through a bilingual education program), an appropriately certified English as a second language (ESL) educator (for students served through an ESL program), a parent of an emergent bilingual student [~~English learner~~] participating in a bilingual or ESL program, and a campus administrator in accordance with Texas Education Code (TEC), §29.063.

(c) In addition to the three required members of the LPAC [~~language proficiency assessment committee~~], the school district may add other trained members to the committee.

(d) No parent serving on the LPAC [~~language proficiency assessment committee~~] shall be an employee of the school district.

(e) A school district shall establish and operate a sufficient number of LPACs [~~language proficiency assessment committees~~] to enable them to discharge their duties within four weeks of the enrollment of an emergent bilingual student [~~English learners~~].

(f) All members of the LPAC [~~language proficiency assessment committee~~], including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The school district shall be responsible for the orientation [~~and training~~] of all members of the LPAC, including the parents [~~, of the language proficiency assessment committee~~]. The LPAC may use alternative meeting methods, such as phone or video conferencing and the use of electronic signatures that adhere to district policy.

(g) Upon a student's [~~their~~] initial enrollment in Texas public schools, a student's transfer from a previous Texas public school district, and at the end of each school year, the LPAC [~~language proficiency assessment committee~~] shall review all pertinent information on all potential and identified emergent bilingual students, including emergent bilingual students with a parental denial of program participation, [~~English learners identified~~] in accordance with §89.1226 of this title (relating to Testing and Classification of Students) . [~~and shall:~~]

(1) For students initially enrolling in Texas public schools, the LPAC shall:

(A) designate the language proficiency level of each emergent bilingual student in accordance with the guidelines issued pursuant to §89.1226(b)-(f) of this title;

(B) designate, subject to parental approval, the initial instructional placement of each emergent bilingual student in the required bilingual or ESL program without restricting access due to scheduling, staffing, or class size constraints; and

(C) facilitate the participation of emergent bilingual students in other special programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.

(2) For transferring students previously enrolled in a Texas public school district, the LPAC shall:

(A) review permanent record and LPAC documentation from the previous Texas school district to determine if the student has been identified as an emergent bilingual student based on the original home language survey and initial identification process;

(B) determine the continuation of the required bilingual or ESL program participation with parental approval for students previously identified as emergent bilingual or determine the need for monitoring of students who have previously met reclassification and are in their first two years of monitoring;

(C) review linguistic progress and academic achievement data of each emergent bilingual student to inform instructional practices; and

(D) facilitate the participation of emergent bilingual students in other special programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.

(3) At the end of the school year, for all identified emergent bilingual students, including emergent bilingual students with a parental denial of program participation, the LPAC shall:

(A) review language proficiency progress in English and, to the extent possible, the primary language of each emergent bilingual student;

(B) review academic achievement data in English and, to the extent possible, the primary language of each emergent bilingual student;

(C) reclassify eligible emergent bilingual students as English proficient in accordance with the criteria described in §89.1226(i) of this title;

(D) determine exit from program of reclassified English proficient students, pending parental approval, or continuation of program participation for reclassified students participating in a dual language immersion one-way or two-way program model, according to the goals of the program; and

(E) prepare parental reports on student progress for all identified emergent bilingual students to be provided to parents within the first 30 calendar days after the beginning of the next school year, which include data on linguistic and academic progress, benefits of bilingual or ESL program participation, and the criteria for reclassification as English proficient.

[(1) designate the language proficiency level of each English learner in accordance with the guidelines issued pursuant to §89.1226(b)-(f) of this title;]

[(2) designate the level of academic achievement of each English learner;]

[(3) designate, subject to parental approval, the initial instructional placement of each English learner in the required program;]

[(4) facilitate the participation of English learners in other special programs for which they are eligible while ensuring full access to the language program services required under the TEC, §29.053; and]

[(5) reclassify students, at the end of the school year only, as English proficient in accordance with the criteria described in §89.1226(i) of this title.]

(h) The LPAC [language proficiency assessment committee] shall give written notice to the student's parent, informing the parent [advising] that the student has been identified [classified] as an emergent bilingual student [English learner] and requesting approval to place the student in the required bilingual education or ESL program not later than the 10th calendar day after the date of the student's classification in accordance with TEC, §29.056. The notice shall include information about the benefits of the bilingual education or ESL program for which the student has been recommended and that it is an integral part of the school program.

(i) Before the administration of the state criterion-referenced test each year, the LPAC [language proficiency assessment committee] shall determine the appropriate assessment option for each emergent bilingual student [English learner] as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments).

(j) Pending completion of the identification process, receipt of LPAC documentation for transferring students, or parental approval of an identified emergent bilingual student's placement [English learner's entry] into the bilingual education or ESL program recommended by the LPAC [language proficiency assessment committee], the school district shall place the student in the recommended program. Only emergent bilingual students [English learners] with parental approval for program participation [who are receiving services] will be included in the bilingual education allotment.

(k) The LPAC [language proficiency assessment committee] shall monitor the academic progress of each student, including any student who previously had a parental denial of program participation, who has met criteria for reclassification in accordance with TEC, §29.056(g), for the first two years after reclassification. If the student earns a failing grade in a subject in the foundation curriculum under TEC, §28.002(a)(1), during any grading period in the first two school years after the student is reclassified, the LPAC [language proficiency assessment committee] shall determine, based on the student's second language acquisition needs, whether the student may require targeted [intensive] instruction or, after careful consideration of multiple linguistic and academic data points, should be reconsidered for placement [reenrolled] in a bilingual education or ESL program. In accordance with TEC, §29.0561, the LPAC [language proficiency assessment committee] shall review the student's performance and consider, at a minimum, the following:

(1) the total amount of time the student was enrolled in a bilingual education or ESL program;

(2) the student's grades each grading period in each subject in the foundation curriculum under TEC, §28.002(a)(1);

(3) the student's performance on each assessment instrument administered under TEC, §39.023(a) or (c);

(4) the number of credits the student has earned toward high school graduation, if applicable; and

(5) any disciplinary actions taken against the student under TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management).

(l) The student's permanent record shall contain documentation of all actions impacting the emergent bilingual student [English learner].

(1) Documentation shall include:

(A) the original home language survey;

(B) [(A)] the identification of the student as an emergent bilingual student [English learner];

(C) [(B)] the designation of the student's level of language proficiency;

(D) [(C)] the recommendation of program placement;

(E) [(D)] parental approval or denial of [entry or] placement into the program;

(F) [(E)] the date [dates] of [entry into, and] placement in [within,] the program;

(G) [(F)] assessment information as outlined in Chapter 101, Subchapter AA, of this title;

(H) [(G)] additional instructional linguistic accommodations [interventions] provided to address the specific language needs of the student;

(I) [(H)] the date of reclassification and the date of exit from the program with parental approval; and

(J) [(I)] the results of monitoring for academic success, including students formerly classified as emergent bilingual students [English learners], as required under [the] TEC, §29.063(c)(4) . [; and]

[(J) the home language survey.]

(2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.

(m) A school district may place a student in or exit a student from [~~in~~] a program without written approval of the student's parent if:

(1) the student is 18 years of age or has had the disabilities of minority removed;

(2) the parent provides approval through a phone conversation or e-mail that is documented in writing and retained; or

(3) an adult who the school district recognizes as standing in parental relation to the student provides written approval. This may include a foster parent or employee of a state or local governmental agency with temporary possession or control of the student.

§89.1226. Testing and Classification of Students.

(a) The single state-approved English language proficiency test for identification of emergent bilingual students [~~English learners~~] described in subsection (c) of this section shall be used as part of the standardized, statewide identification process.

(b) Within four calendar weeks of initial enrollment in a Texas public school, a student with a language other than English indicated on the home language survey shall be administered the state-approved English language proficiency test for identification as described in subsection (c) of this section and shall be identified as emergent bilingual [~~English learners~~] and placed into the required bilingual education or English as a second language (ESL) [~~ESL~~] program in accordance with the criteria listed in subsection (f) of this section.

(c) To identify emergent bilingual students [~~For identifying English learners~~], school districts shall administer to each student who has a language other than English as identified on the home language survey:

(1) in prekindergarten through Grade 1, the listening and speaking components of the state-approved English language proficiency test for identification; and

(2) in Grades 2-12, the listening, speaking, reading, and writing components of the state-approved English language proficiency test for identification.

(d) School districts that provide a bilingual education program at the elementary grades shall administer a language proficiency test in the primary language of the student who is eligible to be served in the bilingual education program. If the primary language of the student is Spanish, the school district shall administer the Spanish version of the state-approved language proficiency test for identification. If a state-approved language proficiency test for identification is not available in the primary language of the student, the school district shall determine the student's level of proficiency using informal oral language assessment measures.

(e) All [~~of the~~] language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in the language proficiency testing requirements of the test publisher.

(f) For placement [~~entry~~] into a bilingual education or ESL program, a student shall be identified as emergent bilingual [~~an English learner~~] using the following criteria.

(1) In prekindergarten through Grade 1, the student's score(s) from the listening and/or speaking components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.

(2) In Grades 2-12, the student's score(s) from the listening, speaking, reading, and/or writing components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.

(g) A student shall be identified as emergent bilingual [~~an English learner~~] if the student's beginning English language skills interfere with the completion of [~~ability in English is so limited that~~] the English language proficiency assessment described in subsection (c) of this section [~~cannot be administered~~].

(h) The language proficiency assessment committee (LPAC), in conjunction with the admission, review, and dismissal (ARD) committee, shall identify a student as emergent bilingual [~~an English learner~~] if the student's [~~ability in English is so limited or the student's~~] disabilities interfere with the completion of [~~are so severe that~~] the English language proficiency assessment described in subsection (c) of this section [~~cannot be administered~~]. The decision for placement [~~entry~~] into a bilingual education or ESL program shall be determined by the LPAC, [~~language proficiency assessment committee~~] in conjunction with the ARD committee, in accordance with §89.1220(f) of this title (relating to Language Proficiency Assessment Committee), ensuring access to both the bilingual education or ESL program and the special education and related services needed to provide a free, appropriate public education as identified in the student's individualized education program.

(i) An emergent bilingual student [~~English learner~~] may be reclassified as English proficient only at the end of the school year in which a student routinely demonstrates readiness for reclassification as English proficient and the ability to successfully participate in grade level content instruction that is delivered with no second language acquisition supports [~~would be able to participate equally in a general education, all-English instructional program~~]. This determination shall be based upon all of the following:

(1) a composite proficiency rating, which includes ratings in the areas of listening, speaking, reading, and writing, on the state-approved English language proficiency test for reclassification that is designated for indicating English proficiency [~~in each the four language domains (listening, speaking, reading, and writing)~~];

(2) passing standard met on the reading assessment instrument under [~~the~~] Texas Education Code (TEC), §39.023(a), or, for students at grade levels not assessed by the aforementioned reading assessment instrument, a score at or above the 40th percentile on both the English reading and the English language arts sections of the state-approved norm-referenced standardized achievement instrument; and

(3) the results of a subjective teacher evaluation using the state's standardized rubric.

(j) An emergent bilingual student [~~English learner~~] may not be reclassified as English proficient in prekindergarten or Kindergarten [~~kindergarten~~]. A school district must ensure that emergent bilingual students [~~English learners~~] are prepared to meet academic standards required by [~~the~~] TEC, §28.0211.

(k) An emergent bilingual student [~~English learner~~] may not be reclassified as English proficient if the LPAC [~~language proficiency assessment committee~~] has recommended designated supports or accommodations on the state reading assessment instrument based on the student's second language acquisition needs. Designated supports or accommodations for non-linguistic purposes that are recommended for student use by any other committee, including the ARD committee for students served in special education, do not prevent the student from being eligible to reclassify.

(l) For emergent bilingual students [~~English learners~~] who are also eligible for special education services, the standardized process for emergent bilingual student [~~English learner~~] reclassification is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress

and make recommendations for reclassification must be made in all instances by the LPAC, [~~language proficiency assessment committee~~] in conjunction with the ARD committee, in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the LPAC, [~~language proficiency assessment committee~~] in conjunction with the ARD committee, shall determine participation and designated support or accommodation decisions on state criterion-referenced and English language proficiency assessments [~~implement assessment procedures~~] that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.

(m) For an emergent bilingual student [~~English learner~~] with a significant cognitive disability, the LPAC, [~~language proficiency assessment committee~~] in conjunction with the ARD committee, may determine that the state's criterion-referenced and English language proficiency assessments used [~~assessment~~] for reclassification are [~~is~~] not appropriate because of the nature of the student's disabling condition. In these cases, the LPAC, [~~language proficiency assessment committee~~] in conjunction with the ARD committee, may recommend that the student take the state's alternate criterion-referenced and alternate English language proficiency assessments. Additionally, the LPAC, in conjunction with the ARD committee, may utilize the individualized reclassification process to [~~assessment,~~] determine [~~an~~] appropriate performance standard requirements [~~requirement~~] for the state standardized reading assessment and English language proficiency assessment [~~reclassification~~] by language domain under subsection (i)(1) of this section [~~,~~] and utilize the results of a subjective teacher evaluation using the state's standardized alternate rubric.

(n) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification and [~~,~~] reclassification [~~, and placement~~] of students and approved by [~~the~~] TEA must be re-normed at least every eight years.

§89.1227. Minimum Requirements for Dual Language Immersion Program Model.

(a) A dual language immersion (DLI) program model, one-way or two-way, shall address all curriculum requirements specified in Chapter 74, Subchapter A, of this title (relating to Required Curriculum) to include foundation and enrichment areas in both English and the program's partner language, the English language proficiency standards, and college and career readiness standards.

(b) A DLI [~~dual language immersion~~] program model shall be a full-time program of academic instruction in the program's partner language and English for all program participants, emphasizing the participation of identified emergent bilingual students. Access to the DLI program shall not be restricted based on race, creed, color, religious affiliation, age, or disability [~~and another language~~].

(c) A DLI [~~dual language immersion~~] program model shall provide equitable, authentic resources in English and the program's partner language to ensure development of bilingualism and biliteracy [~~and the additional program language whenever possible~~].

(d) The district shall develop a language allocation plan that ensures a [~~A~~] minimum of 50% of content area instructional time is [~~shall be~~] provided in the program's partner language [~~other than English~~] for the duration of the program.

(e) Program implementation [~~Implementation~~] shall:

(1) begin at prekindergarten, Kindergarten, or Grade 1 [~~or kindergarten~~], as applicable, according to the district's earliest grade level provided;

(2) continue without interruption incrementally through the elementary grades; [~~and~~]

(3) consider expansion to middle school and high school whenever possible; and [~~,~~]

(4) include participation of former emergent bilingual students who have reclassified as English proficient for the duration of the program.

(f) A DLI [~~dual language immersion~~] program model shall be developmentally appropriate and based on current best practices identified in research. Particularly, emergent bilingual students shall not be restricted access to the DLI program model, one-way or two-way, based on any linguistic or academic achievement measures in the program's partner language or English.

§89.1228. Two-Way Dual Language Immersion Program Model Implementation.

(a) Student enrollment in a two-way dual language immersion (DLI) program model is optional for non-emergent bilingual [~~English proficient~~] students in accordance with §89.1233(a) of this title (relating to Participation of Non-Emergent Bilingual [~~English Proficient~~] Students).

(b) A two-way DLI [~~dual language immersion~~] program model shall fully disclose candidate selection criteria and ensure that access to the program is not based on race, creed, color, religious affiliation, age, or disability. Additionally, identified emergent bilingual students and non-emergent bilingual students shall not be restricted access to the two-way DLI program model based on any linguistic or academic achievement measures in the program's partner language or English.

(c) A school district implementing a two-way DLI [~~dual language immersion~~] program model shall develop a policy on enrollment and continuation for students in this program model. The policy shall address:

(1) equitable access, including the program's intention to maintain a ratio of 50% emergent bilingual students to 50% non-emergent bilingual students and have no more than two-thirds speakers of the partner language to one-third speakers of English in each classroom;

[~~(1) eligibility criteria;~~]

(2) program goals and benefits [~~purpose~~];

(3) the district's commitment to providing equitable access to services for emergent bilingual students and to ensuring continuity of program for all program participants [~~English learners~~];

(4) the program's language allocation plan for the grade levels in which the program will be implemented;

(5) support of program goals as stated in §89.1210 of this title (relating to Program Content and Design); and

(6) expectations for students and parents.

(d) A school district implementing a two-way DLI [~~dual language immersion~~] program model shall obtain written parental approval as follows.

(1) For emergent bilingual students [~~English learners~~], written parental approval is obtained in accordance with §89.1240 of this title (relating to Parental Authority and Responsibility).

(2) For non-emergent bilingual [~~English proficient~~] students, written parental approval is obtained through a school district-developed process.

(e) A school district implementing a two-way DLI [~~dual language immersion~~] program model shall determine the appropriate assessment option for program participants as follows.

(1) For emergent bilingual students [~~English learners~~], the language proficiency assessment committee (LPAC) shall convene before the administration of the state criterion-referenced test each year to determine the appropriate assessment option for each emergent bilingual student [~~English learner~~] in accordance with §89.1220(i) of this title (relating to Language Proficiency Assessment Committee).

(2) For non-emergent bilingual [~~English proficient~~] students, the appropriate assessment option for the administration of the state criterion-referenced test each year is determined by the LPAC or through a school district-developed process.

§89.1229. General Standards for Recognition of Dual Language Immersion Program Models.

(a) School recognition. A school district may recognize one or more of its schools that implement an exceptional dual language immersion (DLI) program model if the school meets all of the following criteria.

(1) The school must meet the minimum requirements stated in §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model).

(2) The school must receive an acceptable performance rating in the state accountability system.

(3) The school must not be identified for any stage of intervention for the district's bilingual and/or English as a second language program under the state's accountability [~~performance-based monitoring~~] system.

(b) Student recognition. A student participating in a (DLI) [~~dual language immersion~~] program model or any other state-approved bilingual or English as a second language [~~ESL~~] program model may be recognized by the program and its local school district board of trustees by earning a performance acknowledgement in accordance with §74.14 of this title (relating to Performance Acknowledgments).

§89.1230. Eligible Students with Disabilities.

(a) For students with disabilities, school [~~School~~] districts shall utilize the state's criteria for identification of emergent bilingual students as described in §89.1226(f) of this title (relating to Testing and Classification of Students) [~~implement assessment procedures that differentiate between language proficiency and disabling conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services)~~] and shall establish placement procedures that ensure that the placement recommendation by the language proficiency assessment committee (LPAC), in conjunction with the admission, review, and dismissal (ARD) committee, in a bilingual education or English as a second language program is not refused based on the student's disabling condition [~~solely because the student has a disability~~].

(b) LPAC [~~Language proficiency assessment committee~~] members shall meet in conjunction with ARD [~~admission, review, and dismissal~~] committee members to review progress and provide recommendations regarding [~~with regard to~~] the educational needs of each emergent bilingual student [~~English learner~~] who also qualifies for services in the school district's special education program.

§89.1233. Participation of Non-Emergent Bilingual [~~English Proficient~~] Students.

(a) School districts shall fulfill their obligation to provide access to the required bilingual program [~~services~~] to emergent bilingual students [~~English learners~~] in accordance with Texas Education Code (TEC), §29.053.

(b) School districts may enroll non-emergent bilingual [~~English proficient~~] students in the bilingual education program or the ESL [~~English as a second language~~] program in accordance with TEC, §29.058.

(c) The number of participating non-emergent bilingual [~~English proficient~~] students shall not exceed 40% of the number of students enrolled in the bilingual education program district-wide in accordance with TEC, §29.058.

§89.1235. Facilities.

Bilingual education and English as a second language (ESL) programs shall be located in the public schools of the school district with equitable access to all educational resources rather than in separate facilities. In order to provide the required bilingual education or ESL programs, school districts may concentrate the programs at a limited number of facilities within the school district. Recent immigrant emergent bilingual students [~~English learners~~] shall not remain enrolled in newcomer centers for longer than two years.

§89.1240. Parental Authority and Responsibility.

(a) The parent shall be notified in English and the parent's primary language that their child has been identified [~~classified~~] as an emergent bilingual student [~~English learner~~] and recommended for placement in the required bilingual education or English as a second language (ESL) program using the Texas Education Agency (TEA)-developed identification and placement letter. The parent shall be provided information describing the bilingual education or ESL program recommended, its benefits and goals [~~to the student~~], and its being an integral part of the school program to ensure that the parent understands the purposes and content of the program and their parental rights. Procedures for parental approval include the following.

(1) The [~~entry or~~] placement of a student in the bilingual education or ESL program must be approved in writing by the student's parent, or through allowable alternatives described in §89.1220(m) of this title (relating to Language Proficiency Assessment Committee), in order to have the student included in the bilingual education allotment.

(2) The parent's approval shall be considered valid for the student's continued participation in the required bilingual education or ESL program until the student meets the reclassification criteria described in §89.1226(i) of this title (relating to Testing and Classification of Students), the student graduates from high school, or a change occurs in program placement. A change between bilingual education and ESL program placement requires new parental approval using the TEA-developed change in placement letter.

(3) If a parent denies program placement at any point, the TEA-developed denial letter shall be used to ensure parents are informed of the implications of program denial, including understanding that the child will continue to be identified as an emergent bilingual student and will continue to be assessed annually using the Texas English Language Proficiency Assessment System (TELPAS) until reclassification criteria have been met.

(b) The school district shall use the TEA-developed letter to give written notification to the student's parent of the student's reclassification as English proficient and acquire written approval for his or her exit from the bilingual education or ESL program [~~and acquire written approval~~] as required under [~~the~~] Texas Education Code, §29.056(a). Students meeting reclassification criteria who have been recommended for exit by the language proficiency assessment committee (LPAC) [~~requirements~~] may only exit [~~continue in~~] the bilingual education or ESL program with parental approval. Parental approval is also required

for students participating in a dual language immersion program who have met reclassification criteria and for whom the LPAC has recommended continued program participation as an English proficient student.

(c) The parent of a student enrolled in a school district that is required to offer bilingual education or ESL programs may appeal to the commissioner of education if the school district fails to comply with the law or the rules. Appeals shall be filed in accordance with Chapter 157 of this title (relating to Hearings and Appeals).

§89.1245. Staffing and Staff Development.

(a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual education and English as a second language (ESL) programs in accordance with [~~the~~] Texas Education Code (TEC), §29.061, concerning bilingual education and ESL program teachers. School districts that are unable to secure a sufficient number of appropriately certified bilingual education and/or ESL teachers to provide the required programs may request activation of the appropriate permits in accordance with Chapter 230 of this title (relating to Professional Educator Preparation and Certification).

(b) School districts that are unable to employ a sufficient number of teachers, including part-time teachers, who meet the requirements of subsection (a) of this section for the bilingual education and ESL programs shall apply on or before November 1 for an exception to the bilingual education program as provided in §89.1207(a) of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers) or a waiver of the certification requirements in the ESL program as provided in §89.1207(b) of this title as needed.

(c) Teachers assigned to the bilingual education program and/or ESL program may receive salary supplements through bilingual education allotment funds as authorized by [~~the~~] TEC, §48.105 [~~§42.153~~].

(d) School districts may compensate teachers and aides assigned to bilingual education and ESL programs for participation in professional development designed to increase their skills or lead to bilingual education or ESL certification.

(e) The commissioner of education shall encourage school districts to cooperate with colleges and universities to provide training for teachers assigned to the bilingual education and/or ESL programs.

(f) The Texas Education Agency shall develop, in collaboration with education service centers, resources for implementing bilingual education and ESL training programs. The materials shall provide a framework for:

(1) developmentally appropriate bilingual education programs for early childhood through the elementary grades;

(2) affectively, linguistically, and cognitively appropriate instruction in bilingual education and ESL programs in accordance with §89.1210(b)(1)-(3) of this title (relating to Program Content and Design); and

(3) developmentally appropriate programs for emergent bilingual students [~~English learners~~] identified with multiple needs and/or exceptionalities.

§89.1250. Required Summer School Programs.

Summer school programs that are provided under [~~the~~] Texas Education Code (TEC), §29.060, for emergent bilingual students [~~English learners~~] who will be eligible for admission to Kindergarten [~~kindergarten~~] or Grade 1 at the beginning of the next school year shall be implemented in accordance with this section.

(1) Purpose of summer school programs.

(A) Emergent bilingual students [~~English learners~~] shall have an opportunity to receive special instruction designed to prepare them to be successful in Kindergarten [~~kindergarten~~] and Grade 1.

(B) Instruction shall focus on language development and essential knowledge and skills appropriate to the level of the student, including instruction in English and the primary or partner language according to the program model.

(C) The program shall address the affective, linguistic, and cognitive needs of the emergent bilingual students [~~English learners~~] in accordance with §89.1210(b) of this title (relating to Program Content and Design).

(2) Establishment of, and eligibility for, the program.

(A) Each school district required to offer a bilingual or English as a second language (ESL) program in accordance with [~~the~~] TEC, §29.053, shall offer the summer program.

(B) To be eligible for enrollment:

(i) a student must be eligible for admission to Kindergarten [~~kindergarten~~] or to Grade 1 at the beginning of the next school year and must be identified as an emergent bilingual student [~~English learner~~]; and

(ii) a parent must have approved placement of the emergent bilingual student [~~English learner~~] in the required bilingual or ESL program following the procedures described in §89.1220(g) of this title (relating to Language Proficiency Assessment Committee) and §89.1226(b)-(f) of this title (relating to Testing and Classification of Students) prior to participation in the summer school program.

(3) Operation of the program.

(A) Enrollment is optional.

(B) The program shall be operated on a one-half day basis, a minimum of three hours each day, for eight weeks or the equivalent of 120 hours of instruction.

(C) The student/teacher ratio for the program districtwide shall not exceed 18 to 1 [~~one~~].

(D) A school district is not required to provide transportation for the summer program.

(E) Teachers shall possess certification as required in [~~the~~] TEC, §29.061, and §89.1245 of this title (relating to Staffing and Staff Development).

(F) Reporting of student progress shall be determined by the board of trustees. A summary of student progress shall be provided to parents at the conclusion of the program. This summary shall be provided to the student's teacher at the beginning of the next regular school term.

(G) A school district may join with other school districts in cooperative efforts to plan and implement programs.

(H) The summer school program shall not substitute for any other program required to be provided during the regular school term, including those required in [~~the~~] TEC, §29.153.

(4) Funding and records for programs.

(A) A school district shall use state and local funds for program purposes.

(i) Available funds appropriated by the legislature for the support of summer school programs provided under [~~the~~] TEC, §29.060, shall be allocated to school districts in accordance with this subsection.

(ii) Funding for the summer school program shall be on a unit basis in such an allocation system to ensure a pupil/teacher ratio of not more than 18 to 1 [~~one~~]. The numbers of students required to earn units shall be established by the commissioner. The allotment per unit shall be determined by the commissioner based on funds available.

(iii) Any school district required to offer the program under paragraph (2)(A) of this subsection that has fewer than 10 students district-wide desiring to participate is not required to operate the program. However, those school districts must document that they have encouraged students' participation in multiple ways.

(iv) Payment to school districts for summer school programs shall be based on units employed. This information must be submitted in a manner and according to a schedule established by the commissioner in order for a school district to be eligible for funding.

(B) A school district shall maintain records of eligibility, attendance, and progress of students.

§89.1265. Program Evaluation.

(a) All school districts required to implement [~~conduct~~] a bilingual education or English as a second language (ESL) program shall conduct an annual evaluation in accordance with Texas Education Code (TEC), §29.053, collecting a full range of data to determine program effectiveness to ensure student academic success. The annual evaluation report shall be presented to the board of trustees before November 1 of each year and the report shall be retained at the school district level in accordance with TEC, §29.062.

(b) Annual school district reports of educational performance shall reflect:

(1) the academic progress in the language(s) of instruction for emergent bilingual students by bilingual education and/or ESL program model [~~English learners~~];

(2) the extent to which emergent bilingual students [~~English learners~~] are developing English proficiency by bilingual education and/or ESL program model, including proficiency in the partner language for students participating in a dual language immersion program model [~~becoming proficient in English~~];

(3) the number of students who have been reclassified as English proficient and their continued academic progress after reclassification; and

(4) the number of teachers and aides trained and the frequency, scope, and results of the professional development in approaches and strategies that support second language acquisition.

(c) In addition, for those school districts that filed in the previous year and/or will be filing a bilingual education exception and/or ESL waiver in the current year, the annual district report of educational performance shall also reflect:

(1) the number of teachers for whom a bilingual education [~~an~~] exception or ESL waiver was/is being filed;

(2) the number of teachers for whom a bilingual education [~~an~~] exception or ESL waiver was filed in the previous year who successfully obtained certification; [~~and~~]

(3) the frequency and scope of a comprehensive professional development plan, implemented as required under §89.1207 of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers), and results of such plan if a bilingual education [~~an~~] exception and/or ESL waiver was filed in the previous school year; and [.]

(4) the number of students under the bilingual education exception or ESL waiver who were/are temporarily served in an alternative language program.

(d) School districts shall report to parents the progress of their child in acquiring English as a result of participation in the program offered to emergent bilingual students [~~English learners~~].

(e) In alignment with the district improvement plan, each [~~Each~~] school year, the principal of each school campus, with the assistance of the campus level committee, shall develop, review, and revise the campus improvement plan described in [~~the~~] TEC, §11.253, for the purpose of improving student performance for emergent bilingual students [~~English learners~~].

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

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

TRD-202301332
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 134. LICENSING, REGISTRATION, AND CERTIFICATION FOR SURVEYORS

SUBCHAPTER G. EXAMINATIONS

22 TAC §§134.61, 134.67, 134.71, 134.73

The Texas Board of Professional Engineers and Land Surveyors (Board or TBPELS) proposes rule amendments to 22 Texas Administrative Code, Chapter 134, Subchapter G, regarding the examination process for professional land surveyors, specifically proposed amendments to §134.61, relating to Surveying Examinations Required for a Registration as a Professional Surveyor; §134.67, relating to the Examination on the Principles and Practice of Surveying; §134.71, relating to taking an Examination for Record Purposes; and §134.73, relating to Examination Results and Analysis. These proposed changes are referred to as "proposed rules" or "proposed amendments."

BACKGROUND AND SUMMARY

The 2018-2019 Report of the Sunset Review of the Texas Board of Professional Land Surveying noted that the Surveying Board did not utilize the national Principles and Practice of Surveying examination (NCEES PS Exam) for registration of land surveyors in Texas. The Sunset Report found Texas was the only state

that did not use this exam for registration. (Texas Sunset Advisory Commission: Staff Report with Final Results, p. 22, June 2019). The Sunset Commission adopted Recommendation 2.8, which directed the board to conduct a comprehensive analysis regarding adoption of the nationally accepted practice exam and a separate, corresponding jurisprudence exam.

After the Surveying Board was abolished and its duties transferred to the Texas Board of Professional Engineers and Land Surveyors, TBPELS undertook several years of research, data collection and analysis, and exam development concerning conversion to the nation surveying exam. The analysis was monitored, reviewed, and the transition recommended to the Board by the Surveying Advisory Committee (SAC), as required by Texas Occupations Code §1001.216.

At its November 17, 2022, meeting, the Board received and reviewed the SAC's exam analysis recommendation, and the Board approved the SAC's recommendation to use the new examination process to become a Registered Professional Land Surveyor (RPLS) in the state of Texas. Starting in 2023, the current RPLS exam will be replaced with a combination of the National Council of Examiners for Engineering and Surveying (NCEES) Principles and Practice of Professional Surveying (PS) exam and a new Texas State Specific Exam (TSSE).

The proposed rules implement the changes to the examination requirements resulting from the Sunset Commission recommendation, subsequent analysis, and resulting approval by the Board to convert to the national NCEES PS exam and a state-specific jurisprudence exam.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §134.61 identify the exams that an applicant must take to become a Registered Professional Land Surveyor (RPLS), including the National Professional Surveying (PS) exam and the Texas Specific Surveying Exam (TSSE).

Proposed amendments to §134.67 provide specifics concerning the National PS exam and TSSE, the number of times an applicant may attempt to take each exam, and the process to follow if an applicant does not pass the exams within the allotted attempts or timeframe. These provisions are similar to the provisions that currently apply to the RPLS exam and the engineering exams.

Proposed new §134.71 clarifies that the NCEES national exam may be taken for records purposes. Applicants who have not taken the NCEES PS exam as part of the application process have always been allowed to take the NCEES PS exam for comity or reciprocity purposes and this proposal clarifies the name of the exam.

Proposed amendments to §134.73 add the TSSE to the provisions for examination grading and review and clarify the process for review to follow national exam standards.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to local government as a result of enforcing or administering the proposed rule and that the reduction in revenue to the state is justified because (1) the revenue from the exam fee is not entirely eliminated and (2) the reduction in the fee the Board will charge applicants reflects the reduction in the Board's costs to develop and administer the state exam.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the implementation of an exam procedure that matches the national norm and that implements a recommendation from the 2018-2019 Sunset Commission report. Applicants for the RPLS will continue to be evaluated for their knowledge of land surveying practice and Texas-specific laws and procedures. Applicants will also increase mobility both in and out of state by using the nationally developed and accepted examination.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, although the Board is decreasing the fee it charges applicants for the state exam by $100, applicants will have an overall increase in exam fees over the current exam fees. The increased fee will be paid directly to NCEES and are the same as those charged in all other states for land surveyor applicants.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since 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, is not required.

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

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency.

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 are 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 do not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules result in a decrease in fees paid to the agency although NCEES does charge a greater fee to be paid

by the applicant directly to NCEES, which is consistent with the exam fee NCEES charges to applicants of other states.

5. The proposed rules do not create a new regulation.

6. The proposed rules do not expand, limit, or repeal a regulation except to provide an exam process that aligns with national standards and the recommendations of the Sunset Commission.

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

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

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and that 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.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, preparation of an environmental impact analysis under §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; via mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY AND SECTIONS AFFECTED

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. The rules are also proposed pursuant to Texas Occupations Code §§1071.254 and 1071.256 related to examinations required to become an RPLS.

No other codes, articles, or statutes are affected by this proposal.

§134.61. Surveying Examinations Required for a Registration to Practice as a Professional Surveyor.

(a) Applicants are required to take [~~two~~] written experience and knowledge examinations, furnished and graded by the NCEES or by the board unless a waiver is granted pursuant to Texas Occupations Code section 1071.259 for Out-of-State Surveyors.

(b) All examinations shall be in the English language.

(c) Experience and knowledge examinations [~~may~~] shall be:

(1) a Fundamentals of Surveying examination prepared by NCEES; [~~and~~]

(2) a Principles and Practice of Surveying examination prepared by the NCEES; and

(3) a Texas Specific Surveying Examination prepared by the board. [~~or equivalent as determined by the board.~~]

(d) The board shall publish examination information which shall include at least the following:

(1) the places where the examinations shall be held;

(2) the dates of the examinations;

(3) the deadline date for an examinee to schedule an examination, if applicable;

(4) fees for each examination; and

(5) types of examinations offered.

(e) Examinations may be scheduled by timely submission of registration information in a format specified by the Board with the appropriate examination fee.

(f) Individuals who plan to take an examination must have their registration completed by the close of regular business on the date established by the applicable examination schedule.

(g) Applicants providing an official verification from NCEES or an NCEES member board certifying that they have passed the Fundamentals of Surveying and/or Principles and Practices of Surveying examination(s) in that state shall not be required to take the examination(s) again.

(h) Examination registration fees may be collected by the board or a contracted exam administrator and, when appropriate, shall be refunded or transferred to future examination administrations in accordance with established board or exam administrator policy and if approved by the executive director.

(i) Examination candidates who have been called into active U.S. military duty or who are re-assigned military personnel and will not be available to sit for an examination may request an extension of the approved examination period defined in §134.67 of this chapter (relating to Examination on the Principles and Practice of Surveying). Such candidates shall submit adequate documentation, including copies of orders, and a request to extend the approved examination period to the board. The candidate shall notify the board of their availability to resume the examination period within 60 days of release from active duty or when they are deployed to a location that provides a board approved examination.

(j) All examinations shall be administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.), and its subsequent amendments. Special accommodations can be provided for examinees with physical or mental impairments that substantially limit life activities.

(1) Any individual with a disability who wishes to request special accommodations must submit an official request and supporting medical documentation that has been generated by an appropriate licensed health care professional in a format specified by the contracted exam administrator.

(2) The request must be submitted prior to the exam registration deadline established by the contracted exam administrator.

(3) The board or the contracted exam administrator may request additional documentation to substantiate a request for special accommodations.

(4) The requestor will be notified of approval of the request or reason for denial of the request by the board or contracted exam administrator.

(k) Pursuant to Texas Occupations Code §54.002, if an examination candidate's religious beliefs prevent the candidate from taking an examination on a religious holy day that conflicts with the normally scheduled examination date, the candidate shall submit a request to the contracted exam administrator and the board to take the examination on an alternate date.

(l) Upon successful passage of the experience and knowledge examinations an applicant shall be considered to have met the examination requirements for registration as a registered professional land surveyor in Texas.

§134.67. Examination on the Principles and Practice of Surveying.

(a) General Exam Provisions

(1) To meet the examination requirements set forth in §1071.256 of the Surveying Act an applicant must pass both the NCEES Principles and Practice of Surveying examination (PS Exam) and the Texas Specific Surveying Examination (TSSE).

(2) The [~~examination on the principles and practice of surveying is~~] PS exam and TSSE are open only to applicants who have received board approval to take the exams and Texas registered professional land surveyors who wish to take the exams [~~examination~~] for record purposes.

(3) [~~(b)~~] An applicant approved to take the PS exam and TSSE [~~examination on the principles and practice of surveying~~]:

(A) [~~(1)~~] shall be advised of the date he or she is eligible.

(B) [~~(2)~~] shall be solely responsible for timely scheduling for the examinations [~~examination~~] and any payment of examination fees.

[~~(3) shall have no more than three examination attempts and those attempts must be completed within a four-year period starting with the date of the first exam taken by the applicant. No extensions shall be granted except as provided for in §134.61(i) of this chapter (relating to Surveying Examinations Required for a License to Practice as a Professional Surveyor.)~~]

[~~(4) shall have no more than eight years from the date of approval to complete the allowed exam attempts.~~]

(4) [~~(c)~~] For the purposes of this section, exam attempt means a unique administration of an examination [~~or exam component~~] for which attendance is documented.

(5) [~~(d)~~] An applicant who does not pass the [~~examination on the principles and practice of surveying~~] PS exam or the TSSE within the approved examination period described in subsections [~~subsection~~](b) or (c) of this section is considered not approved and may not re-apply for approval until he or she has obtained at least one (1) year of additional surveying experience as described in Subchapter E of this chapter (relating to Experience) or until the applicant has completed at least six (6) additional semester hours of formal college level classroom courses relevant to land surveying. The time period to obtain additional surveying experience or enroll in additional college courses commences on the date of the last exam attempt. [~~or when the approved examination period expired.~~] Applicants meeting the additional experience or education requirements must apply in accordance with §134.21 of this chapter (relating to Application for Standard License) and receive approval for additional exam attempts.

(6) If the applicant has attempted neither exam within the approved examination period described in subsections (b) or (c) of this section, the applicant may re-apply to take the exams after the prior approved examination period has expired under §134.21 of this chapter (relating to Application for Standard License) and may receive approval for additional exam attempts.

[~~(e) The examination on the principles and practice of surveying shall be offered according to the schedule determined by the NCEES or by the board.~~]

(7) [~~(f)~~] The [~~principles and practice of surveying~~] PS exam and TSSE shall be constructed according to §1071.256 of the Surveying Act. The examinations shall be written and [~~so~~] designed to aid the Board in determining the applicant's knowledge of land surveying, mathematics, land surveying laws, and [~~his/her~~] the applicant's general fitness to practice the profession as outlined in the Surveying Act.

[~~(g) The board may develop an examination to meet the requirements of this section (relating to Examination on the Principles and Practice of Surveying).~~]

[~~(h) The board may approve the national NCEES Principles and Practice of Surveying examination, in conjunction with a state-specific Texas Land Surveying examination, to meet the requirements of this section (relating to Examination on the Principles and Practice of Surveying).~~]

(b) Principles and Practice of Surveying Exam

(1) The board shall utilize the PS Exam developed and administered by NCEES to meet this requirement.

(2) The PS exam shall be offered according to the schedule determined by the NCEES.

(3) An applicant who has passed the PS exam will not be required to re-take the examination.

(4) Applicants who are granted certification as a Surveyor-in-Training in accordance with §134.1 of this chapter (relating to Surveyor-in-Training Designation) are approved to take the PS exam.

(5) Applicants who have been approved for examinations per §134.87 of this chapter (relating to Final Actions on Applications) are approved to take the PS exam.

(6) An applicant approved to take the PS exam shall be allowed not more than three examination attempts and those attempts must be completed within a four-year period starting with the date of the notification for approval to take the exam. No extensions of time shall be granted except as provided for in §134.61(i) of this chapter (relating to Surveying Examinations Required for a License to Practice as a Professional Surveyor).

(c) [~~(i)~~] Texas Specific Surveying Examination (TSSE)

(1) The TSSE [~~state-specific Texas Land Surveying examination~~] shall be developed by the board to supplement the NCEES PS Exam [~~Principles and Practice of Surveying examination~~] and cover any topic areas specific to the professional practice of land surveying in Texas that are not covered by the NCEES PS exam [~~Principles and Practice of Surveying examination~~]. The TSSE [~~state-specific Texas Land Surveying examination~~] shall not exceed four hours in duration.

(2) The TSSE shall be offered according to a schedule and at a location determined by the board.

(3) An applicant who has passed the TSSE will not be required to re-take the examination.

(4) Applicants who have been approved for examinations per §134.87 of this chapter (relating to Final Actions on Applications) are approved to take the TSSE.

(5) An applicant approved to take the TSSE shall be allowed not more than three examination attempts and those attempts must be completed within a four-year period starting with the date of the notification for approval to take the exam. No extensions of time shall be granted except as provided for in §134.61(i) of this chapter (relating to Surveying Examinations Required for a License to Practice as a Professional Surveyor).

§134.71. Examination for Record Purposes.

A land surveyor currently registered in Texas may take the NCEES examination on the principles and practice of surveying for record purposes. Unless required to do so by the Board, an individual who has passed an examination may not re-take the examination.

§134.73. Examination Results and Analysis.

(a) For each examinee that has completed the examination on the fundamentals of surveying, [~~or~~] the examination on the principles and practice of surveying, or the Texas Specific Surveying Examination, the board or NCEES shall provide a numerical score, if applicable, and an indication of whether the person passed or failed the examination.

(b) For those exams or exam components with numerical scores, the passing score is 70.

(c) In accordance with Texas Occupations Code §1001.273, the board or NCEES will provide a written analysis furnished by the NCEES to anyone who has failed either the examination on the fundamentals of surveying or the examination on the principles and practice of surveying.

(d) Once the board or NCEES has provided a written analysis of an examination, no further review or re-grading shall be available for the examination except as provided by NCEES policy and procedures. [~~in subsection (e) of this section. However, the executive director may, at his or her discretion, review the administrative portions of an examination answer sheet to resolve administrative uncertainties and/or determine the manner in which an examination should be scored.~~]

[~~(e) An examinee may request manual verification of grading of the examination on the principles and practice of surveying results only as permitted by the uniform examination procedures set out by NCEES or by the board:~~]

[~~(1) only at the date(s) and time(s) specified by NCEES in its notification to the examinee of his or her failure of the examination; and~~]

[~~(2) provided that any costs associated with manual verification by NCEES will be paid by the examinee.~~]

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301309
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 440-7723

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§53.4 - 53.6, concerning Fees, new §53.18, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for Digital Products, and an amendment to §53.60, concerning Stamps. The amendments and new section would function, in conjunction with proposed amendments to §§65.7, 65.8, 65.10, 65.42, 65.64 and proposed new §57.984, published elsewhere in this issue of the *Texas Register,* to create and implement provisions for use of a digital version of the youth hunting license, digital tags for lifetime resident hunting licenses and lifetime resident fishing licenses, and a digital version of the exempt angler red drum tag.

The 87th Texas Legislature (2021) enacted House Bill (H.B.) 3081, which authorized the commission to develop and implement a program for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals. The department accordingly initiated a pilot program in 2022 to determine the public receptivity to and logistical feasibility of the concept of digital licenses, stamp endorsements, and tags for hunting and fishing, which resulted in the creation of digital versions of the super combination hunting and "all water" fishing license and the lifetime resident super combination hunting and "all water" fishing package (47 TexReg 1888).

After conducting an analysis of customer purchasing behavior with respect to digital licenses and products, the department has determined that it is appropriate to offer a digital version of the youth hunting license, the lifetime resident hunting license, and the lifetime fishing license for the license year beginning September 1, 2023. Additionally, the exempt angler red drum tag, which allows persons who are exempt from fishing license and stamp endorsement requirements to harvest red drum, would be available in a digital version.

The proposed amendment to §53.4, concerning Lifetime Licenses, would provide for the issuance of digital versions of the lifetime resident hunting and lifetime resident fishing licenses.

The proposed amendment to §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, would provide for the issuance of a digital version of the youth hunting license.

The proposed amendment to §53.6, concerning Recreational Fishing Licenses, Stamps, and Tags, would provide for a digital version of the exempt angler red drum tag.

Proposed new §53.18, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for Digital Products, would add the youth hunting license, lifetime resident hunting license, and lifetime resident fishing licenses to the applicability of rules in the subchapter with respect to providing proof of licensure for persons who purchase a digital license.

The proposed amendment to §53.60, concerning Stamps, would create exceptions to the current rules regarding possession of required stamps necessary to accommodate the creation of digital licenses.

Chris Cerny, Business Analyst, has determined that for each of the first five years that the rules as proposed are in effect, there

will be minimal fiscal implications to the department, if any, and those fiscal implications will be positive.

There will be no implications for other units of state or local governments as a result of administering or enforcing the rules.

Mr. Cerny also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the provision of additional licensing options for public enjoyment.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest public wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (governing digital licenses and tagging); not repeal, expand, or limit a regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chris Cerny at (512) 389-4594, e-mail: chris.cerny@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.4 - 53.6, 53.18

The amendments and new section are proposed under the authority of Parks and Wildlife Code, §42.010, which requires the department to prescribe the form and issuance of hunting licenses authorized under Parks and Wildlife Code, Chapter 42; §42.0101, which authorizes the commission to promulgate rules for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals, including rules allowing a person using a digital tag to create a digital record at the time of the taking of an animal that includes information required by the department as soon as possible after the taking of the animal and requiring a person using a digital tag to retain in the person's possession documentation of a required digital record at all times before the carcass is finally processed; §42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, and final processing requirements of Chapter 42; §42.006, which authorizes the commission to prescribe requirements relating to possessing a license issued under Chapter 42 by rule; §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; §46.0086, which authorizes the commission to prescribe tagging requirements for the take of finfish; §50.004, which requires the department to issue and prescribe the form and manner of issuance for combination hunting and fishing licenses, including identification and compliance requirements; §61.052, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and §61.054 which requires the commission to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments and new section affect Parks and Wildlife Code, Chapters 42, 46, 50, and 61.

§53.4. Lifetime Licenses.

(a) Fees.

(1) lifetime resident super combination hunting and "all water" fishing package--$1,800.[;]

[(A) ~~includes the digital tag option that does not require the license log or the physical license tags found on the physical license. The digital tag option is available beginning the year after the year of purchase of the license (and each year thereafter); and~~]

[(B) ~~the provisions of §53.3(a)(12)(B) - (D) of this title (relating to Combination Hunting and Fishing License Packages) apply.~~]

(2) - (5) (No change.)

(b) - (c) (No change.)

(d) The licenses listed in this section are available with a digital tag option that does not require the license log or the physical license tags found on the physical license.

(1) The digital tag option is available beginning the year after the year of purchase of the license (and each year thereafter); and

(2) the provisions of §53.3(a)(12)(B) - (D) of this title (relating to Combination Hunting and Fishing License Packages) apply.

§53.5. Recreational Hunting Licenses, Stamps, and Tags

(a) Hunting Licenses:

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

(3) youth hunting--$7.

(A) Valid for any person under 17 years of age on the date of license purchase.

(B) This license is available in a digital version that does not include the license log or the physical license tags found on the physical license.

(4) - (9) (No change.)

(b) - (d) (No change.)

§53.6. Recreational Fishing Licenses, Stamps, and Tags.

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

(e) Fishing tags:

(1) exempt angler red drum tag--$3;[.]

(A) Provides a red drum tag for persons that are exempt from the purchase of a resident or non-resident fishing license of any type or duration.[;]

(B) This tag is available in a digital version. At the time of execution, the user must be in possession of a smart phone, computer, tablet, or similar device indicating acquisition of the digital tag.

(2) bonus red drum tag provides a second red drum tag to persons that have previously received a red drum tag--$3. This tag is available in a digital version. At the time of execution, the user must be in possession of a smart phone, computer, tablet, or similar device indicating acquisition of the digital tag;

(3) - (4) (No change.)

§53.18. License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for Digital Products.

(a) The provisions of this section are in addition to the provisions of §53.2 of this title (relating to License Issuance Procedures, Fees, Possession, and Exemption Rules) and to the extent that any provision of this section conflicts with the provisions of §53.2 of this title, this section controls.

(b) Hunting license possession. A person may hunt in this state without having a valid physical hunting license in immediate possession if that person has acquired a license electronically and has a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of a digital license described in §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages), §53.4 of this title (relating to Lifetime Licenses), or §53.5(a)(3) of this title (relating to Recreational Hunting Licenses, Stamps, and Tags).

(c) Fishing license possession.

(1) A person may fish in this state without having a valid physical fishing license in immediate possession if that person has acquired a license electronically and has a receipt, notification, or application data from the department on a smart phone, computer, tablet, or similar device indicating acquisition of a digital license described in §53.3(a)(12) of this title or §53.4 of this title.

(2) A person may catch and retain a red drum over 28 inches in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp, and valid red drum tag in immediate possession, if the person has:

(A) obtained a valid digital exempt angler red drum tag; or

(B) purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under §53.4 of this title.

(d) Issuance of licenses, stamp endorsements, and tags electronically (on-line or by telephone).

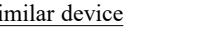
(1) A person may acquire a tag electronically from the department by agreeing to pay a convenience fee of up to $5 in addition to the normal tag fee, if a fee is required. This fee shall not be charged if the tag is acquired in the same transaction with a license.

(2) The fees established by this subsection apply to the electronic acquisition of a digital license, stamp endorsement, or tag identified in §53.3(a)(12) of this title, §53.4 of this title, §53.5(a)(3) of this title, or §53.6 of this title (relating to Recreational Fishing Licenses, Stamps, and Tags).

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

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

TRD-202301325
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 389-4775



SUBCHAPTER B. STAMPS

31 TAC §53.60

The amendment is proposed under the authority of Parks and Wildlife Code, §42.010, which requires the department to prescribe the form and issuance of hunting licenses authorized under Parks and Wildlife Code, Chapter 42; §42.0101, which authorizes the commission to promulgate rules for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals, including rules allowing a person using a digital tag to create a digital record at the time of the taking of an animal that includes information required by the department as soon as possible after the taking of the animal and requiring a person using a digital tag to retain in the person's possession documentation of a required digital record at all times before the carcass is finally processed; §42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, and final processing requirements of Chapter 42; §42.006, which authorizes the commission to prescribe requirements relating to possessing a license issued under Chapter 42 by rule; §46.0085, which authorizes the department to issue tags for finfish species allowed

by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; §46.0086, which authorizes the commission to prescribe tagging requirements for the take of finfish; §50.004, which requires the department to issue and prescribe the form and manner of issuance for combination hunting and fishing licenses, including identification and compliance requirements; §61.052, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and §61.054 which requires the commission to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapters 42, 46, 50, and 61.

§53.60. Stamps.

(a) (No change.)

(b) Stamp Purchase Identification and Possession Requirements.

(1) A person may hunt without a required state hunting stamp endorsement in immediate possession if the person:

(A) possesses a valid digital license issued under the provisions of §53.3(a)(12) of this title, [~~or~~] a valid license with digital tags under §53.4 [~~§53.4(a)(1)~~] of this title (relating to Lifetime Licenses) or §53.5(a)(3) of this title (relating to Recreational Hunting Licenses, Stamps, and Tags); or

(B) (No change.)

(2) A person may fish without a required fishing stamp endorsement in immediate possession if the person:

(A) possesses a valid digital license issued under the provisions of §53.3(a)(12) of this title or a valid license with digital tags under §53.4 [~~§53.4(a)(1)~~] of this title; or

(B) has acquired a stamp endorsement electronically and has a valid authorization number in possession while awaiting fulfilment of the physical tag. Authorization numbers shall only be valid for 20 days from purchase date.

(c) - (e) (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 April 10, 2023.

TRD-202301326
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.984

The Texas Parks and Wildlife Department proposes new §57.984, concerning Special Provisions - Digital Exempt Angler Red Drum Tag. The proposed new section would prescribe the requirements for the take of oversize red drum by persons who are exempt by statute or rule from fishing license possession requirements. The department in proposed new 31 TAC §53.18 published elsewhere in this issue of the *Texas Register* would create a digital version of the current exempt angler red drum tag. The proposed new rule is necessary to prescribe the requirements for the execution of the tag. The proposed new rule is also necessary because under ordinary circumstances the provisions would be part of §57.981, concerning Bag, Possession, and Length Limits; however, that section is currently the subject of proposed rulemaking, which makes it unavailable for amendment in time to take effect before the next license year.

The 87th Texas Legislature (2021) enacted House Bill (H.B.) 3081, which authorized the commission to develop and implement a program for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals. The department accordingly initiated a pilot program in 2022 to determine the public receptivity to and logistical feasibility of the concept of digital licenses, stamp endorsements, and tags for hunting and fishing, which resulted in the creation of digital versions of the super combination hunting and "all water" fishing license and the lifetime resident super combination hunting and "all water" fishing package (47 TexReg 1888).

After conducting an analysis of customer purchasing behavior with respect to digital licenses, the department has determined that it is feasible to offer a digital version of the exempt angler red drum tag, which allows persons who are exempt from fishing license and stamp endorsement requirements to harvest red drum.

Chris Cerny, Business Analyst, has determined that for each of the first five years that the rule as proposed is in effect, there will be minimal fiscal implications to the department, if any, and those fiscal implications will be positive.

There will be no implications for other units of state or local governments as a result of administering or enforcing the rule.

Mr. Cerny also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the provision of additional licensing options for public enjoyment.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an

agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed amendments will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because the proposed rule regulates various aspects of recreational license privileges that allow individual persons to pursue and harvest public wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (governing digital licenses and tagging); not repeal, expand, or limit a regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chris Cerny at (512) 389-4594, e-mail: chris.cerny@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The new section is proposed under the authority of Parks and Wildlife Code, §42.010, which requires the department to prescribe the form and issuance of hunting licenses authorized under Parks and Wildlife Code, Chapter 42; §42.0101, which authorizes the commission to promulgate rules for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals, including rules allowing a person using a digital tag to create a digital record at the time of the taking of an animal that includes information required by the department as soon as possible after the taking of the animal and requiring a person using a digital tag to retain in the person's possession documentation of a required digital record at all times before the carcass is finally processed; §42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, and final processing requirements of Chapter 42; §42.006, which authorizes the commission to prescribe requirements relating to possessing a license issued under Chapter 42 by rule; §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; §46.0086, which authorizes the commission to prescribe tagging requirements for the take of finfish; §50.004, which requires the department to issue and prescribe the form and manner of issuance for combination hunting and fishing licenses, including identification and compliance requirements; §61.052, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and §61.054 which requires the commission to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed new rule affects Parks and Wildlife Code, Chapters 42, 46, 50, and 61.

§57.984. Special Provisions - Digital Exempt Angler Red Drum Tag.

(a) In addition to the requirements of §57.981(c)(5)(G) of this title (relating to Bag, Possession, and Length Limits), one red drum exceeding the maximum length limit may be retained by a person who is by statute or rule exempt from fishing license possession requirements, provided the person has obtained a digital exempt angler red drum tag. A fish retained under the provisions of this section may be retained in addition to the daily bag and possession limit provided under §57.981(c)(5)(G)(iii) of this title.

(b) A person who lawfully takes a red drum under the provisions of subsection (a) of this section is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use of license tags for that species; however, that person shall immediately upon take ensure that a harvest report is created and submitted via a mobile or web application provided by the department for that purpose. If the absence of data connectivity prevents the receipt of a confirmation number from the department following the report required by this subparagraph, the person who took the red drum is responsible for ensuring that the report required by this subparagraph is uploaded to the department immediately upon the availability of network connectivity.

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

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

TRD-202301327
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 389-4775

CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.7, 65.8, 65.10, 65.42, and 65.64, concerning the Statewide Hunting Proclamation. The amendments would function, in conjunction with proposed amendments to §§53.4 - 53.6, 53.60, new 53.18, and new §57.984, published elsewhere in this issue of the *Texas Register,* to create and implement provisions for the use of a digital version of the youth hunting license and digital tags for lifetime resident hunting licenses and lifetime resident fishing licenses.

The 87th Texas Legislature (2021) enacted House Bill (H.B.) 3081, which authorized the commission to develop and implement a program for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals. The department accordingly initiated a pilot program in 2022 to determine the public receptivity to and logistical feasibility of the concept of digital licenses, stamp endorsements, and tags for hunting and fishing, which resulted in the creation of digital versions of the super combination hunting and "all water" fishing license and the lifetime resident super combination hunting and "all water" fishing package (47 TexReg 1888).

After conducting an analysis of customer purchasing behavior with respect to digital licenses, the department has determined that it is feasible to offer a digital version of the youth hunting license and the lifetime resident hunting license.

2. Fiscal Note.

Chris Cerny, Business Analyst, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal fiscal implications to the department, if any, and those fiscal implications will be positive.

There will be no implications for other units of state or local governments as a result of administering or enforcing the rules.

Mr. Cerny also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the provision of additional licensing options for public enjoyment.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed amendments will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest public wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (governing digital licenses and tagging); not repeal, expand, or limit a regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chris Cerny at (512) 389-4594, e-mail: chris.cerny@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.7, 65.8, 65.10

The amendments are proposed under the authority of Parks and Wildlife Code, §42.010, which requires the department to prescribe the form and issuance of hunting licenses authorized under Parks and Wildlife Code, Chapter 42; §42.0101, which authorizes the commission to promulgate rules for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals, including rules allowing a person using a digital tag to create a digital record at the time of the taking of an animal that includes information required by the department as soon as possible after the taking of the animal and requiring a person using a digital tag to retain in the person's possession documentation of a required digital record at all times before the carcass is finally processed; §42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, and final processing requirements of Chapter 42; §42.006, which authorizes the commission to prescribe requirements relating to possessing a license issued under Chapter 42 by rule; §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; §46.0086, which authorizes the commission to prescribe tagging requirements for the take of finfish; §50.004, which requires the department to issue and prescribe the form and manner of issuance for combination hunting and fishing licenses, including identification and compliance requirements; §61.052, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals,

game birds, or aquatic animal life in this state; and §61.054 which requires the commission to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapters 42, 46, 50, and 61.

§65.7. Harvest Log.

(a) The provisions of this subsection apply only to a person in possession of a license purchased through an automated point-of-sale system and do not apply to a digital license issued by the department pursuant to §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages), §53.4 [~~or §53.4(a)(1)~~] of this title (relating to Lifetime Licenses) or §53.5(a)(3) of this title (relating to Recreational Hunting License, Stamps, and Tags).

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

(b) (No change.)

§65.8. Alternative Licensing System.

(a) - (c) (No change.)

(d) This section does not apply to the digital licenses identified in §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages), §53.4 [~~or §53.4(a)(1)~~] of this title (relating to Lifetime Licenses), or §53.5(a)(3) of this title (relating to Recreational Hunting Licenses, Stamps, and Tags).

§65.10. Possession of Wildlife Resources.

(a) (No change.)

(b) Under authority of Parks and Wildlife Code, §42.0177, the tagging requirements of Parks and Wildlife Code, §42.018, are modified as follows.

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

(5) Except as provided in paragraph (3) of this subsection, the tagging requirements for deer and turkey taken under a digital license issued under the provisions of §53.3(a)(12) of this title (relating to Super Combination Hunting and Fishing License Packages), [~~or~~] under the digital tagging option of §53.4 [~~§53.4(a)(1)~~] of this title (relating to Lifetime Licenses), and §53.5(a)(3) of this title (relating to Recreational Hunting License, Stamps, and Tags) are prescribed in subsection (e) of this section.

(6) A person who has purchased a digital license identified in §53.4 [~~§53.4(a)(1)~~] of this title and selected the fulfilment of physical tags must comply with the tagging requirements of Parks and Wildlife Code, Chapter 42, and this chapter that are applicable to the tagging of deer and turkey under a license that is not a digital license.

(c) - (d) (No change.)

(e) A person who lawfully kills a deer or turkey under a digital license issued under the provisions of §53.3(a)(12) of this title, [~~(relating to Combination Hunting and Fishing License Packages), or~~] the digital tagging option under §53.4 [~~§53.4(a)(1)~~] of this title or §53.5(a)(3) of this title (relating to Recreational Hunting License, Stamps, and Tags) [~~(relating to Lifetime Licenses)~~] is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use or possession of license tags for those species; however, that person shall ensure that immediately upon take a harvest report is created and submitted via a mobile or web application provided by the department for that purpose.

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

(f) - (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 April 10, 2023.

TRD-202301328
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 389-4775

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DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.42, §65.64

The amendments are proposed under the authority of Parks and Wildlife Code, §42.010, which requires the department to prescribe the form and issuance of hunting licenses authorized under Parks and Wildlife Code, Chapter 42; §42.0101, which authorizes the commission to promulgate rules for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals, including rules allowing a person using a digital tag to create a digital record at the time of the taking of an animal that includes information required by the department as soon as possible after the taking of the animal and requiring a person using a digital tag to retain in the person's possession documentation of a required digital record at all times before the carcass is finally processed; §42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, and final processing requirements of Chapter 42; §42.006, which authorizes the commission to prescribe requirements relating to possessing a license issued under Chapter 42 by rule; §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; §46.0086, which authorizes the commission to prescribe tagging requirements for the take of finfish; §50.004, which requires the department to issue and prescribe the form and manner of issuance for combination hunting and fishing licenses, including identification and compliance requirements; §61.052, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and §61.054 which requires the commission to specify the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapters 42, 46, 50, and 61.

§65.42. Deer.

(a) General.

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

(5) In the counties or portions of counties listed in subsection (b)(2)(H) of this section, antlerless deer harvested on properties not subject to the provisions of §65.29 of this title (relating to Managed Lands Deer (MLD) Programs) must be reported via the department's internet or mobile application within 24 hours of the time of kill, including antlerless deer harvested during the special seasons established by subsection (b)(5) - (7) of this section. This paragraph does not apply to antlerless deer harvested under a digital license issued by the department pursuant to §53.3(a)(12) of this title (relating to Super Combination Hunting and Fishing Packages), a valid license with digital tags issued under §53.4 of this title (relating to Lifetime Licenses), or a valid digital license issued under §53.5(a)(3) of this title (relating to Recreational Hunting License, Stamps, and Tags), which must be reported as required under §65.10 of this title (relating to Possession of Wildlife Resources).

(b) - (c) (No change.)

§65.64. Turkey.

(a) (No change.)

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

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

(3) Spring season and bag limits.

(A) - (B) (No change.)

(C) In Bastrop, Caldwell, Colorado, Fayette, Jackson, Lavaca, Lee, Matagorda, Milam, and Wharton counties, there is a spring general open season.

(i) - (ii) (No change.)

(iii) Except as provided by §65.10 of this title (relating to Possession of Wildlife Resources) for turkeys harvested under a digital license issued by the department pursuant to §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages), [~~or~~] a valid license with digital tags under §53.4 [~~§53.4(a)(1)~~] of this title (relating to Lifetime Licenses), or a valid digital license under §53.5 of this title (relating to Recreational Hunting Licenses, Tags, and Stamps), all turkeys harvested during the open season established under this subparagraph must be reported within 24 hours of the time of kill via an internet or mobile application designated by the department for that purpose.

(4) (No change.)

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Bowie, Cass, Fannin, Grayson, Jasper (other than the Angelina National Forest), Lamar, Marion, Nacogdoches, Newton, Polk, Red River, and Sabine counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

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

(3) In the counties listed in this subsection:

(A) - (B) (No change.)

(C) except as provided by §65.10 of this title for turkeys harvested under a digital license issued pursuant to §53.3(a)(12) [~~§53.3~~] of this title, [~~or~~] a valid license with digital tags under §53.4[~~§53.4(a)(1)~~] of this title, or a valid digital license under §53.5(a)(3) of this title, all turkeys harvested during the open season must be registered via the department's internet or mobile application within 24 hours of the time of kill. The department will publish the internet address and information on obtaining the mobile application in generally accessible locations, including the department internet web site (www.tpwd.texas.gov). Harvested turkeys may be field dressed but must otherwise remain intact.

(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.

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

TRD-202301329
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 389-4775

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SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §§65.82, 65.85, 65.88

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.82, 65.85, and 65.88, concerning Disease Detection and Response.

The proposed amendments would function collectively to refine surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

Chronic wasting disease (CWD) is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, there is scientific evidence to suggest that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the CDC and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly

(through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml. Developed in 2012 in consultation with the Texas Animal Health Commission, other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are absolutely critical to containing it on the landscape. Accordingly, the first step in the department's response to CWD detections is the timely establishment of management zones around locations where detection occurs. One type of management zone is the surveillance zone (SZ), defined by rule as "a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected." Within a SZ, the movement of live deer is subject to restrictions and the presentation of harvested deer at a department check stations is required. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply.

The Texas Parks and Wildlife Commission recently directed staff to develop guidelines or a standard operating procedure (SOP) with respect to the establishment and duration of the various management zones, including SZs. At the January 2023 meeting of the commission, staff presented the SOP for establishing SZs in scenarios where CWD has been detected in a deer breeding facility but not at any release site associated with a breeding facility. In such cases, the department will not establish a SZ if the following can be verified: 1) the disease was detected early (i.e., it has not been in the facility long); 2) the transmission mechanism and pathway are known; 3) the facility was promptly depopulated following detection; and 4) there is no evidence that free-ranging deer populations have been compromised. If any of these criteria is not satisfied, an SZ will be established, to consist of all properties that are wholly or partially located within two miles of the property (or properties, if the breeding facility consists of several separately-deeded but contiguous properties) containing the positive deer breeding facility.

The proposed amendment to §65.82, concerning Surveillance Zones; Restrictions, would establish ten new surveillance zones (SZ 9-17) and modify two existing SZs (SZ 3 and SZ 8) in response to recent detections of CWD in deer breeding facilities and on associated release sites. As noted previously in this preamble, the department has been engaged in a long-term effort to stem the spread of CWD; however, by 2021 it was apparent that more robust measures were warranted because CWD was still being detected in additional deer breeding facilities. The commission adopted those rules, which require higher rates of testing, ante-mortem (live-animal) testing of breeder deer prior to release, and enhanced recordkeeping and reporting measures, in December of 2021 (46 TexReg 8724). This year is the first full year of the applicability of those measures.

On August 30, 2022, the department received confirmation that a yearling white-tailed buck deer in a deer breeding facility located in Gillespie County had tested positive for CWD; additional testing at that facility resulted in another positive test confirming CWD in a male yearling white-tailed deer on September 20, 2022 and a six-year-old female on December 15, 2022. On September 12-13 and October 12, 2022, the department received confirmation that five female white-tailed deer of approximately three years of age in a deer breeding facility located in Limestone County had tested positive for CWD. In response, the department promulgated emergency rules (47 TexReg 7615) to establish surveillance zones surrounding the affected facilities. The emergency rule expired on March 4, 2023. The proposed amendment would use the normal rulemaking process to replace the SZs established by the emergency rule in accordance with the SOP. The proposed amendment also would modify existing SZ 8 in Duval County. Surveillance Zone 8 was established in response to the detection of CWD in a deer breeding facility. The proposed modification would shrink the size of the current SZ to be consistent with the SOP. In addition, the proposed amendment would eliminate current paragraph (1)(H)(iii), which imposed a date for the termination of effectiveness of the affected subparagraph. In the course of deliberating the proposal, the commission determined that the efficacy of the new SOP for managing SZ delineations would be frustrated in the SZ in Duval County were the provision in question allowed to remain. The proposed amendment would shrink existing SZ 3 in Medina, Bandera, and Uvalde counties. The current SZ, along with a containment zone (CZ), was established in response to the detection of CWD in a number of deer breeding facilities, as well as in free-ranging deer on release sites associated with several facilities, in Medina County, and was enlarged in response to the confirmation of CWD in two more deer breeding facilities in adjacent Uvalde County (five positives (four males aged 1.5-3.4 years, one female aged 3.5 years) confirmed on March 29, 2021 at one deer breeding facility and one positive (male, 3.8 years of age) confirmed on June 15, 2021, at another deer breeding facility. The department has determined that the new SOP for SZs allows the current SZ 3 to be reduced in overall size, provided a separate SZ is created for each of the two properties in Uvalde County, which is consistent with the new SOP because deer from those facilities were not liberated to adjoining release sites and no additional positives have been detected in the current SZ surrounding those locations. Thus, the proposed amendment would essentially create two SZs in Uvalde County.

On March 10, 2023, the department received confirmation that CWD was present in a deer breeding facility in Zavala County (three buck deer approximately 2.5 years of age). On March 17, 2023, the department received confirmation that CWD was

present in a deer breeding facility in Gonzales County (three female deer between the ages of 1.5 and 7.5 years of age). On March 21, 2023, the department received confirmation that CWD was present in a deer breeding facility in Hamilton County (one female deer, 3.5 years of age). On March 22, 2023, the department received confirmation that CWD was present in a deer breeding facility in Washington County (one female deer, 1.9 years of age). On April 6, 2023, the department received confirmation that CWD was present in a deer breeding facility in Frio County. The proposed amendment would establish a SZ around each of the positive facilities (SZs 9-18, respectively).

The proposed amendment to §65.85, concerning Mandatory Check Stations, would provide for the designation of mandatory check stations for SZs at locations other than within the SZ. The current rule stipulates that the department may establish mandatory check stations in SZs. Under the new SOP for delineation of SZs, however, it could be possible for a SZ to contain no suitable public locations where the department could set up a check station. Therefore, the proposed amendment would provide for the establishment of mandatory check stations for a given SZ that are not necessarily within the SZ. The department stresses that such check stations would be sited as close to the SZ as possible and the department would undertake substantial public awareness measures as well as communication with landowners in the SZ.

The proposed amendment to §65.88, concerning Deer Carcass Movement Restrictions, would allow the head of a susceptible species taken within an SZ within which the department has not designated a mandatory check station to be transported outside of the SZ, provided such transfer is conducted immediately upon leaving the SZ where the susceptible species was taken and by the most direct route to the nearest department-designated mandatory check station. Under current rule, the head of a susceptible species taken in a SZ cannot be taken from the SZ unless accompanied by a department-issued check station receipt. The department's SOP for SZs, described earlier in this preamble, presents the possibility that the department might be unable to establish mandatory check stations within a given SZ; therefore, the proposed amendment would allow for transport in such circumstances. The proposed amendment also would prescribe acceptable methods for the disposal of heads following presentation at a check station (if the head is not being taken to a taxidermist), which would be either return to the property where the animal was harvested or disposal in a landfill permitted by the Texas Commission on Environmental Quality. Because cranial and spinal tissues have the possibility of being infectious, they must be disposed of properly. Disposal at the location of harvest prevents dispersal of potentially infectious tissues to unexposed locations and landfill disposal at an accredited facility is an acceptable barrier to disease transmission.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties and resources.

Mr. Macdonald also has determined that for each of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from locations where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There could be adverse economic impact on persons required to comply with the rules as proposed. Such impacts would be identical to those described in the analysis of the rules' potential effect on small businesses, microbusinesses, and rural communities elsewhere in this preamble.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services.

For the purposes of this analysis, the department considers all deer breeders to be small or microbusinesses, which ensures that the analysis captures all deer breeders possibly affected by the proposed rulemaking. The department has determined that there are a total of eight deer breeding facilities (other than breeding facilities where CWD has been detected, which are prohibited from transferring deer under other rules) within the proposed SZ 8 (Duval County), three deer breeding facilities within proposed SZ 9 (Gillespie County), two within proposed SZ 10 (Limestone County), four within proposed SZ 13 (Zavalla County), one withing proposed SZ 17 (Frio County), and none within SZ 11 or SZ 12 (Uvalde County), SZ 14 (Gonzales County), SZ 15 (Hamilton County), or SZ 16 (Washington County). Under current rule, a deer breeding facility that is within a SZ and MQ (Movement Qualified, which is the authorization to transfer deer) may transfer to or receive breeder deer from any other MQ deer breeding facility in this state and deer from a deer breeding facility located outside a SZ may be released within a SZ if authorized by Division 2 of this subchapter. With one exception, all the deer breeding facilities affected by the proposed amendment are designated MQ; therefore, the department has determined that there will be no adverse economic impact for those permittees because they will be able to operate normally, provided they are compliant with existing rules in order to remain MQ. The exception is a single facility that is currently designated NMQ and therefore prohibited from transferring deer under current rule and not as a result of the proposed rule.

The department has determined that the proposed rule will not affect rural communities because the rule does not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022,

as the agency has determined that the rule as proposed will not result in direct impacts to local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed new rule. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; expand an existing regulation (by creating new areas subject to the rules governing SZs), but will otherwise not limit or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Hunter Reed, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (830) 890-1230 (e-mail: hunter.reed@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs.

(1) Surveillance Zones.

(A) - (B) (No change.)

(C) Surveillance Zone 3. That portion of the state not within the CZ described in §65.81(1)(C) of this title (relating to Containment Zones; Restrictions) lying within a line beginning at the intersection of F.M. 1250 and U.S. Highway 90 in Hondo in Medina County; thence west along U.S. Highway 90 to [~~F.M. 1574 in Uvalde County; thence south along F.M. 1574 to F.M. 1023 (Garner Field Road); thence west along F.M. 1023 to County Road 373; thence south along County Road 373 to County Road 374; thence west along County Road 374 to F.M. 140; thence northwest along F.M. 140 to F.M. 117; thence north along F.M. 117 to U.S. Highway 83; thence southwest along U.S. Highway 83 to F.M. 1435; thence north along F.M. 143 to U.S. Highway 90; thence west along U.S. Highway 90 to F.M. 2369; thence northwest along F.M. 2369 to F.M. 1403; thence north along F.M. 1403 to State Highway 55; thence northwest along S.H. 55 to Indian Creek Road; thence northeast along Indian Creek Road to Lower Frio Ranch Road; thence southeast along Lower Frio Ranch Road to Deep Creek; thence southeast along Deep Creek to the U.S. Highway 83; thence north along U.S. Highway 83 to State Highway 127 in Concan; thence southeast along State Highway 127 to~~] the Sabinal River in Uvalde County; thence north along the Sabinal River to F.M. 187; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to 18th Street in Hondo; thence east along 18th Street to State Highway 173; thence [~~Thence~~] south along State Highway 173 to U.S. Highway 90 ; thence west along U.S. Highway 90 to Avenue E (F.M. 462); thence south along Avenue E (F.M. 462) to F.M. 1250; thence west along F.M 1250 to U.S. Highway 90.

(D) - (G) (No change.)

(H) Surveillance Zone 8. SZ 8 is that portion of Duval County lying within the area described by the following latitude-longitude coordinate pairs: -98.27174932070, 27.95642982020; -98.27388849940, 27.95652170740; -98.27601633780, 27.95673759350;-98.27812373230, 27.95707655480; -98.28020166610, 27.95753714120; -98.28224124840, 27.95811738240; -98.28423375210, 27.95881479580; -98.28617065090, 27.95962639760; -98.28804365580, 27.96054871560; -98.28984475060, 27.96157780350; -98.29156622620, 27.96270925800; -98.29320071330, 27.96393823800; -98.29424069340, 27.96481101760; -98.30642858790, 27.97549504130; -98.30692921880, 27.97594346320; -98.30836946820, 27.97735119370; -98.30970296670, 27.97883952330; -98.31092400210, 27.98040208240; -98.31202734290, 27.98203218360; -98.31300826060, 27.98372284990; -98.31386255010, 27.98546684490; -98.31458654760, 27.98725670330; -98.31517714670, 27.98908476310; -98.31563181130, 27.99094319850; -98.31594858710, 27.99282405280; -98.31612610990, 27.99471927320; -98.31616361140, 27.99662074460; -98.31606092310, 27.99852032470; -98.31581847640, 28.00040987900; -98.31543730170, 28.00228131520; -98.31491902360, 28.00412661810; -98.31426585420, 28.00593788410; -98.31348058400, 28.00770735470; -98.31256656960, 28.00942745010; -98.31152771970, 28.01109080170; -98.31036847870, 28.01269028330; -98.30909380710, 28.01421904230; -98.30770916090, 28.01567052860; -98.30652296870, 28.01677477150; -98.29476413900, 28.02715939820; -98.29446157480, 28.02742312300; -98.29287488890, 28.02870162410; -98.29119732650, 28.02988528270; -98.28943607290, 28.03096902640; -98.28759867300, 28.03194821070; -98.28569299860, 28.03281863930; -98.28372721490, 28.03357658150; -98.28216192700, 28.03408627840; -98.28212906620, 28.03409614390; -98.28209992850, 28.03411284900; -98.28209629310, 28.03411493290; -98.28025876110, 28.03509401150; -98.27835296060, 28.03596433010; -98.27638705720, 28.03672215850; -98.27436947480, 28.03736424880; -98.27230885930, 28.03788784910; -98.27021404140, 28.03829071510; -98.26809399880, 28.03857112010; -98.26595781780, 28.03872786210; -98.26381465380, 28.03876026950; -98.26167369230, 28.03866820320;

-98.25954410930, 28.03845205790; -98.25743503190, 28.03811276000; -98.25535549920, 28.03765176380; -98.25331442320, 28.03707104520; -98.25132055070, 28.03637309330; -98.24938242580, 28.03556089930; -98.24750835300, 28.03463794430; -98.24570636160, 28.03360818380; -98.24398417140, 28.03247603080; -98.24234915950, 28.03124633730; -98.24113442760, 28.03021886870; -98.23083475970, 28.02104737240; -98.23050872200, 28.02075285160; -98.22906895270, 28.01934417220; -98.22773612680, 28.01785493140; -98.22651595000, 28.01629151040; -98.22541364430, 28.01466060750; -98.22443392620, 28.01296921000; -98.22358098620, 28.01122456380; -98.22285847120, 28.00943414270; -98.22226946880, 28.00760561600; -98.22181649430, 28.00574681570; -98.22150148010, 28.00386570320; -98.22132576720, 28.00197033470; -98.22129010010, 28.00006882730; -98.22139462340, 27.99816932350; -98.22163888140, 27.99627995700; -98.22202182030, 27.99440881740; -98.22254179260, 27.99256391580; -98.22319656450, 27.99075315070; -98.22398332570, 27.98898427370; -98.22489870110, 27.98726485670; -98.22593876580, 27.98560225960; -98.22709906180, 27.98400359850; -98.22837461720, 27.98247571570; -98.22975996750, 27.98102514990; -98.23106012000, 27.97982198190; -98.24826906240, 27.96478130770; -98.24845806380, 27.96461741060; -98.25004429250, 27.96333954100; -98.25172121430, 27.96215649990; -98.25348165010, 27.96107334930; -98.25531806430, 27.96009472380; -98.25722259690, 27.95922481070; -98.25918709720, 27.95846733190; -98.26120315840, 27.95782552820; -98.26326215380, 27.95730214530; -98.26535527320, 27.95689942250; -98.26747356090, 27.95661908260; -98.26960795410, 27.95646232490; and -98.27174932070, 27.95642982020.

~~*[(i)* That portion of the state within the boundaries of a line beginning at the intersection of Farm to Market (F.M.) Road 624 and U.S. Highway (U.S.) 59 in Live Oak County; thence southwest along U.S. 59 to the intersection of County Road (C.R.) 101 in Duval County; thence southeast along C.R. 101 to North Julian Street in San Diego; thence south along Julian Street to State Highway (S.H.) 44; thence east on S.H. 44 to C.R. 145 in Jim Wells County; thence north along C.R. 145 to C.R. 172; thence east on C.R. 172 to C.R. 170; thence south on C.R. 170 to C.R. 120; thence east on C.R. 120; to U.S. 281; thence north on U.S. 281 to F.M. 624; thence west along F.M. 624 to U.S. 59.]~~

~~*[(ii)* For the purposes of this subchapter, the zone described in clause (i) of this subparagraph includes the following:]~~

~~*[(I)* the area within the city limits of Freer;]~~

~~*[(II)* the area within the city limits of Alice;]~~

~~*[(III)* the roadway and right-of-way of:]~~

~~[(-a-) U.S. 59 between the city of Freer and the intersection with C.R. 101;]~~

~~[(-b-) U.S. 44 between the city of Freer and the city of Alice; and]~~

~~[(-c-) U.S. 281 between the city of Alice and the intersection with F.M. 624.]~~

~~*[(iii)* The zone established by this subparagraph ceases to exist two years from the effective date of this clause.]~~

(I) Surveillance Zone 9. SZ 9 is that portion of Gillespie County lying within the area described by the following latitude-longitude coordinate pairs: -99.17353593810, 30.39743442450; -99.17375688290, 30.39743648560; -99.18452955870, 30.39756726460; -99.18650306740, 30.39764152210; -99.18868707390, 30.39784203650; -99.19085128910, 30.39816590750; -99.19298645340, 30.39861174960; -99.19508343130, 30.39917765510; -99.19713325040, 30.39986120300; -99.19912713940, 30.40065946870; -99.20105656550, 30.40156903680; -99.20291327150, 30.40258601540; -99.20468931010, 30.40370605310; -99.20637707890, 30.40492435720; -99.20796935200, 30.40623571450; -99.20893862350, 30.40712458840; -99.20895081010, 30.40713624540; -99.20896777450, 30.40714183510; -99.21010719770, 30.40753808480; -99.21210135430, 30.40833614830; -99.21403105790, 30.40924552080; -99.21588805010, 30.41026231130; -99.21766438250, 30.41138216910; -99.21935245120, 30.41260030250; -99.22094502920, 30.41391149870; -99.22243529740, 30.41531014690; -99.22381687330, 30.41679026140; -99.22474340580, 30.41792590210; -99.22480835100, 30.41796172760; -99.22658493020, 30.41908146200; -99.22827324780, 30.42029947810; -99.22986607570, 30.42161056390; -99.23135659370, 30.42300910870; -99.23273841830, 30.42448912760; -99.23347804140, 30.42537038200; -99.23426138900, 30.42634143400; -99.23478898920, 30.42701533530; -99.23593618490, 30.42863897130; -99.23695842220, 30.43032414290; -99.23785131870, 30.43206363690; -99.23861104520, 30.43385000730; -99.23923434200, 30.43567560700; -99.23971853280, 30.43753262050; -99.24006153660, 30.43941309750; -99.24026187630, 30.44130898650; -99.24031868570, 30.44321216980; -99.24031522990, 30.44347512650; -99.24022535810, 30.44837008950; -99.24014183540, 30.45000946140; -99.23991143100, 30.45190278830; -99.23953857940, 30.45377900510; -99.23902486900, 30.45563007650; -99.23837249220, 30.45744807400; -99.23758423530, 30.45922521070; -99.23666346750, 30.46095387400; -99.23561412610, 30.46262665880; -99.23444070000, 30.46423639880; -99.23314821010, 30.46577619740; -99.23174218850, 30.46723945750; -99.23022865440, 30.46861990940; -99.22861408870, 30.46991163820; -99.22690540570, 30.47110910870; -99.22510992410, 30.47220718960; -99.22323533540, 30.47320117520; -99.22128967060, 30.47408680570; -99.21928126630, 30.47486028580; -99.21721872840, 30.47551830030; -99.21511089570, 30.47605802930; -99.21296680130, 30.47647715950; -99.21079563440, 30.47677389450; -99.21067632870, 30.47678656200; -99.21066064460, 30.47678820260; -99.21064811580, 30.47679653780; -99.21044461600, 30.47693085820; -99.20864883670, 30.47802870800; -99.20677396330, 30.47902245240; -99.20558507580, 30.47958005360; -99.20247846250, 30.48096772130; -99.20228690650, 30.48105261060; -99.19918067420, 30.48241824050; -99.19861514510, 30.48266109800; -99.19660637810, 30.48343422190; -99.19454350000, 30.48409187060; -99.19243535100, 30.48463122570; -99.19029096560, 30.48504997540; -99.18811953420, 30.48534632510; -99.18593036330, 30.48551900460; -99.18373283570, 30.48556727370; -99.18153637020, 30.48549092560; -99.17935038070, 30.48529028750; -99.17718423650, 30.48496621930; -99.17504722140, 30.48452011010; -99.17294849400, 30.48395387180; -99.17089704850, 30.48326993120; -99.16890167570, 30.48247121970; -99.16697092580, 30.48156116010; -99.16511307110, 30.48054365280;

-99.16383762300, 30.47975512380; -99.16050915070, 30.47759395960; -99.16032575160, 30.47747402290; -99.15703384190, 30.47530577870; -99.15671572630, 30.47509362850; -99.15502735320, 30.47387466140; -99.15343468090, 30.47256263720; -99.15194452980, 30.47116317790; -99.15056328030, 30.46968228000; -99.14929684530, 30.46812628830; -99.14815064510, 30.46650186960; -99.14790445390, 30.46611914430; -99.14788832480, 30.46609361990; -99.14786511870, 30.46607258170; -99.14672695110, 30.46498723950; -99.14534587130, 30.46350628560; -99.14407960270, 30.46195024290; -99.14293356470, 30.46032577810; -99.14191266110, 30.45863985060; -99.14102125860, 30.45689968290; -99.14026316860, 30.45511272950; -99.13964163080, 30.45328664480; -99.13915929960, 30.45142925030; -99.13881823260, 30.44954850150; -99.13861988230, 30.44765245290; -99.13856414440, 30.44603637950; -99.13855946250, 30.44408935820; -99.13856040750, 30.44380220330; -99.13856402530, 30.44354532120; -99.13859897620, 30.44172302860; -99.13864757930, 30.43800444810; -99.13864952570, 30.43787930220; -99.13878668950, 30.43027345620; -99.13887258090, 30.42859929050; -99.13910492460, 30.42670615000; -99.13947963620, 30.42483023090; -99.13996435970, 30.42308994480; -99.14003555800, 30.42250973950; -99.14041023510, 30.42063381830; -99.14092566160, 30.41878314930; -99.14157962280, 30.41696565550; -99.14236931130, 30.41518911770; -99.14329133930, 30.41346114070; -99.14434175290, 30.41178912120; -99.14551604940, 30.41018021600; -99.14680919670, 30.40864131110; -99.14821565470, 30.40717899290; -99.14972939930, 30.40579951960; -99.15134394780, 30.40450879450; -99.15305238720, 30.40331234110; -99.15484740360, 30.40221527910; -99.15672131320, 30.40122230270; -99.15866609560, 30.40033766070; -99.16067342780, 30.39956513830; -99.16273471980, 30.39890804060; -99.16484115140, 30.39836917910; -99.16698370960, 30.39795085930; -99.16915322740, 30.39765487080; -99.17134042280, 30.39748248000; and -99.17353593810, 30.39743442450.

(J) Surveillance Zone 10. SZ 10 is that portion of Limestone County lying within the area described by the following latitude-longitude coordinate pairs: -96.65881805040, 31.73430086730; -96.66104090900, 31.73442055060; -96.66324985920, 31.73466418940; -96.66543545060, 31.73503074110; -96.66758833200, 31.73551863760; -96.66969929240, 31.73612579150; -96.67175929910, 31.73684960490; -96.67375953710, 31.73768698100; -96.67569144660, 31.73863433690; -96.67754675920, 31.73968761900; -96.67931753350, 31.74084232030; -96.68099618930, 31.74209349980; -96.68257553940, 31.74343580330; -96.68404882080, 31.74486348640; -96.68462217160, 31.74547369050; -96.69651116210, 31.75847900380; -96.69729893530, 31.75937567640; -96.69854199940, 31.76095532870; -96.69966152170, 31.76260105080; -96.70065270400, 31.76430579870; -96.70151129640, 31.76606227520; -96.70223361620, 31.76786296150; -96.70281656340, 31.76970014900; -96.70325763400, 31.77156597240; -96.70355493140, 31.77345244330; -96.70370717380, 31.77535148450; -96.70371370070, 31.77725496460; -96.70357447540, 31.77915473260; -96.70329008530, 31.78104265300; -96.70286173960, 31.78291064030; -96.70229126460, 31.78475069440; -96.70158109530, 31.78655493390; -96.70073426590, 31.78831563060; -96.69975439640, 31.79002524240; -96.69864567720, 31.79167644570; -96.69741285170, 31.79326216650; -96.69606119560, 31.79477561120; -96.69459649460, 31.79621029550; -96.69302501950, 31.79756007230; -96.69135349960, 31.79881915800; -96.68958909370, 31.79998215730; -96.68773935940, 31.80104408660; -96.68741118830, 31.80121724920; -96.68017875870, 31.80498497550; -96.67857966770, 31.80576803130; -96.67658323740, 31.80661450840; -96.67452621960, 31.80734763520; -96.67241742890, 31.80796426980; -96.67026590250, 31.80846176940; -96.66808086110, 31.80883800190; -96.66587166950, 31.80909135460; -96.66364779630, 31.80922074180; -96.66141877320, 31.80922560890; -96.65919415410, 31.80910593500; -96.65698347370, 31.80886223310; -96.65479620720, 31.80849554770; -96.65264172870, 31.80800745030; -96.65052927190, 31.80740003290; -96.64846788960, 31.80667589860; -96.64646641510, 31.80583815100; -96.64453342460, 31.80489038020; -96.64267719970, 31.80383664790; -96.64090569260, 31.80268146970; -96.63922649130, 31.80142979580; -96.63764678780, 31.80008698950; -96.63617334660, 31.79865880470; -96.63514113870, 31.79753453160; -96.63512907170, 31.79752070170; -96.63511132560, 31.79751246930; -96.63344919050, 31.79668870300; -96.63159325040, 31.79563480890; -96.62982203250, 31.79447947590; -96.62814312390, 31.79322765480; -96.62656371510, 31.79188470960; -96.62509056930, 31.79045639480; -96.62372999360, 31.78894883010; -96.62248781220, 31.78736847480; -96.62219922950, 31.78696681040; -96.61946413820, 31.78308965490; -96.61863431950, 31.78184492480; -96.61764443320, 31.78013955960; -96.61678727190, 31.77838253570; -96.61606650000, 31.77658137960; -96.61548519690, 31.77474380640; -96.61504584440, 31.77287768670; -96.61475031560, 31.77099101280; -96.61459986770, 31.76909186490; -96.61459513600, 31.76718837570; -96.61473613210, 31.76528869640; -96.61502224360, 31.76340096120; -96.61545223660, 31.76153325270; -96.61602426190, 31.75969356750; -96.61673586220, 31.75788978150; -96.61758398340, 31.75612961660; -96.61856498750, 31.75442060760; -96.61967466820, 31.75277006970; -96.62090826930, 31.75118506780; -96.62226050510, 31.74967238560; 96.62372558250, 31.74823849730; -96.62529722690, 31.74688953930; -96.62696870810, 31.74563128450; -96.62873286980, 31.74446911720; -96.63058215960, 31.74340801060; 96.63111303750, 31.74313020830; -96.64027391640, 31.73843371330; -96.64166940590, 31.73775591030; -96.64366469470, 31.73690995180; -96.64572041930, 31.73617729780; 96.64782778280, 31.73556108310; -96.64997776830, 31.73506394410; -96.65216117680, 31.73468800780; -96.65436866660, 31.73443488260; -96.65659079340, 31.73430565150; and -96.65881805040, 31.73430086730.

(K) Surveillance Zone 11. SZ 11 is that portion of Uvalde County lying within the area described by the following latitude-longitude coordinate pairs: -99.65125892840, 29.37997244440; -99.64901351840, 29.37941401480; -99.64845146960, 29.37926298170; -99.64642007180, 29.37858685430; -99.64444354350, 29.37779577780; -99.64253035400, 29.37689314240; -99.64068870050, 29.37588281650; -99.63892647290, 29.37476913010; -99.63725121990, 29.37355685560; -99.63567011690,

29.37225118790; -99.63418993490, 29.37085772200; -99.63281701150, 29.36938242860; -99.63155722420, 29.36783162880; -99.63041596490, 29.36621196710; -99.62939811680, 29.36453038250; -99.62890579820, 29.36359183460; -99.62806121330, 29.36305789800; -99.62638629870, 29.36184548510; -99.62480553320, 29.36053968750; -99.62429303370, 29.36007754550; -99.62405653320, 29.35985950010; -99.62381874180, 29.35964253520; -99.62273207700, 29.35860163960; -99.62135950160, 29.35712622890; -99.62010005700, 29.35557532250; -99.61895913350, 29.35395556520; -99.61873659380, 29.35360972870; -99.61862150420, 29.35342798500; -99.61782652640, 29.35209215220; -99.61693676500, 29.35035577580; -99.61617856340, 29.34857213070; -99.61555516190, 29.34674885720; -99.61506922320, 29.34489376500; -99.61503820540, 29.34475276260; -99.61494624750, 29.34432910810; -99.61463086570, 29.34259114510; -99.61442547730, 29.34069635380; -99.61436197100, 29.33879385100; -99.61444061050, 29.33689178380; -99.61466105070, 29.33499829680; 99.61487321080, 29.33380912050; -99.61491150300, 29.33362019190; -99.61506063110, 29.33293256890; -99.61556121170, 29.33108049280; -99.61619893460, 29.32926106910; 99.61697106210, 29.32748208660; -99.61732421150, 29.32676913270; -99.61746690720, 29.32649127370; -99.61801697400, 29.32547330120; -99.61904740670, 29.32379784010; 99.61962570840, 29.32295977640; -99.61999500570, 29.32244439010; -99.62056993200, 29.32166962830; -99.62184101280, 29.32012634080; -99.62322450720, 29.31865919800; 99.62471448910, 29.31727447850; -99.62532991110, 29.31675242370; -99.62534908130, 29.31673657650; -99.62536140450, 29.31671616190; -99.62601184830, 29.31568933250; 99.62716487010, 29.31407645020; -99.62843574650, 29.31253310120; -99.62981903270, 29.31106589070; -99.63130880370, 29.30968109780; -99.63289867970, 29.30838464850; 99.63458185310, 29.30718209080; -99.63635111800, 29.30607857030; -99.63819890080, 29.30507880900; -99.64011729290, 29.30418708460; -99.64209808410, 29.30340721240; 99.64413279780, 29.30274252910; -99.64621272750, 29.30219587850; -99.64832897350, 29.30176959930; -99.65047248120, 29.30146551530; -99.65263407970, 29.30128492740; 99.65480452090, 29.30122860820; -99.65487587710, 29.30122887060; -99.65900846590, 29.30124789310; -99.66110711120, 29.30131575240; -99.66326739090, 29.30150809000; 99.66540870640, 29.30182382290; -99.66752189610, 29.30226160050; -99.66959791860, 29.30281954970; -99.67162789070, 29.30349528360; -99.67360312630, 29.30428591090; -99.67551517240, 29.30518804900; -99.67735584590, 29.30619783800; -99.67911726860, 29.30731095730; -99.67954559440, 29.30760570470; -99.67956313490, 29.30761798010; 99.67958463450, 29.30762363200; -99.68080891950, 29.30796826400; -99.68283907760, 29.30864381890; -99.68481450940, 29.30943427250; -99.68672676130, 29.31033624270; 99.68856764940, 29.31134587030; -99.69032929430, 29.31245883550; -99.69200415500, 29.31367037590; -99.69358506110, 29.31497530720; -99.69506524350, 29.31636804540; 99.69643836310, 29.31784263020; -99.69769853840, 29.31939275110; -99.69884037040, 29.32101177380; -99.69985896580, 29.32269276880; -99.70074995830, 29.32442854090; 99.70150952680, 29.32621166020; -99.70213441260, 29.32803449350; -99.70262193270, 29.32988923730; -99.70296999200, 29.33176795100; -99.70316258900, 29.33347053880; -99.70358951980, 29.33885327800; -99.70360402460, 29.33904533040; -99.70366928260, 29.34094778790; -99.70359239080, 29.34284991320; -99.70337367010, 29.34474356080; -99.70306776070, 29.34634027440; -99.70321386810, 29.35078287580; -99.70322752220, 29.35169864370; -99.70315061320, 29.35360077700; -99.70293185960, 29.35549443210; -99.70257218990, 29.35737149930; -99.70207313650, 29.35922393950; -99.70143682890, 29.36104381850; -99.70066598480, 29.36282334130; -99.69976389890, 29.36455488500; -99.69873442870, 29.36623103210; -99.69758197780, 29.36784460200; -99.69631147760, 29.36938868150; -99.69492836580, 29.37085665520; -99.69343856370, 29.37224223310; -99.69184845020, 29.37353947830; -99.69016483510, 29.37474283200; -99.68839492950, 29.37584713740; -99.68654631520, 29.37684766210; -99.68462691200, 29.37774011850; -99.68264494370, 29.37852068160; -99.68060890300, 29.37918600620; -99.67852751480, 29.37973324070; -99.67640969900, 29.38016003970; -99.67426453180, 29.38046457390; -99.67210120720, 29.38064553800; -99.66992899700, 29.38070215650; -99.66982079290, 29.38070171930; -99.66706723200, 29.38068663350; -99.65998003010, 29.38082841100; -99.65912069230, 29.38083583350; -99.65694891120, 29.38076767780; -99.65478687690, 29.38057522580; -99.65264385560, 29.38025930250; and -99.65125892840, 29.37997244440.

(L) Surveillance Zone 12. SZ 12 is that portion of Uvalde County lying within the area described by the following latitude-longitude coordinate pairs: -99.77993413720, 29.29464496260; -99.77999034560, 29.29464510230; -99.78359395520, 29.29465668420; -99.78570768690, 29.29472252300; -99.78786806550, 29.29491272730; -99.79000963960, 29.29522634520; -99.79212324670, 29.29566203510; -99.79419984340, 29.29621793300; -99.79623054440, 29.29689166050; -99.79820666000, 29.29768033510; -99.80011973380, 29.29858058260; -99.80196157830, 29.29958855110; -99.80372431010, 29.30069992760; -99.80540038360, 29.30190995680; -99.80698262320, 29.30321346090; -99.80846425390, 29.30460486190; -99.80983893070, 29.30607820520; -99.81110076530, 29.30762718570; -99.81224435170, 29.30924517390; -99.81326478910, 29.31092524480; -99.81415770310, 29.31266020720; -99.81491926470, 29.31444263450; -99.81554620640, 29.31626489670; -99.81603583670, 29.31811919260; -99.81619440440, 29.31887663510; -99.81620949950, 29.31895453670; -99.81623277680, 29.31903087490; -99.81624122360, 29.31905863100; -99.81673088120, 29.32091292640; -99.81708111940, 29.32279131760; -99.81729043030, 29.32468576220; -99.81735790960, 29.32658814880; -99.81728325980, 29.32849033120; -99.81706679240, 29.33038416370; -99.81670942610, 29.33226153590; -99.81621268330, 29.33411440730; -99.81557868360, 29.33593484210; -99.81481013500, 29.33771504250; -99.81391032230, 29.33944738320; -99.81288309310, 29.34112444290; -99.81173284150, 29.34273903720; -99.81046448940, 29.34428424870; -99.80908346550, 29.34575345690; -99.80850269810, 29.34629485420; -99.80851507910, 29.34630490290; -99.80678761820, 29.34793865560; -99.80657185830, 29.34814076870; -99.80657138090,

29.34814121170; -99.80655435420, 29.34815699820; -99.80597612830, 29.34869270430; -99.80536412210, 29.34927473890; -99.80510057730, 29.34952246450; -99.80509532990, 29.34952733970; -99.80437561930, 29.35017550490; -99.80278735350, 29.35147413470; -99.80110549990, 29.35267895590; -99.79933726220, 29.35378480570; -99.79749021490, 29.35478694490; -99.79557227110, 29.35568107880; -99.79359164840, 29.35646337560; -99.79155683370, 29.35713048240; -99.78947654670, 29.35767954000; -99.78735970240, 29.35810819530; -99.78521537310, 29.35841461090; -99.78305274890, 29.35859747360; -99.78088109880, 29.35865599960; -99.77870973050, 29.35858993800; -99.77654795040, 29.35839957190; -99.77440502380, 29.35808571740; -99.77229013500, 29.35764971960; -99.77208135310, 29.35759382560; -99.77161614530, 29.35752567680; -99.76950128130, 29.35708963240; -99.76742352200, 29.35653331420; -99.76539177170, 29.35585910680; -99.76341473700, 29.35506989950; -99.76150088920, 29.35416907480; -99.75965842840, 29.35316049340; -99.75789524790, 29.35204847750; -99.75621890060, 29.35083779270; -99.75602127760, 29.35068405070; -99.75590513520, 29.35059296970; -99.75578417860, 29.35050683250; -99.75477991510, 29.34976222060; -99.75319761790, 29.34845803730; -99.75171611030, 29.34706596280; -99.75034173590, 29.34559196180; -99.74908037830, 29.34404235000; -99.74793743590, 29.34242376670; -99.74691779940, 29.34074314620; -99.74602583040, 29.33900768850; -99.74526534270, 29.33722482790; -99.74463958670, 29.33540220140; -99.74415123500, 29.33354761580; -99.74380237120, 29.33166901430; -99.74359448130, 29.32977444280; -99.74352844740, 29.32787201480; -99.74360454380, 29.32596987690; -99.74382243630, 29.32407617420; -99.74418118380, 29.32219901500; -99.74442827720, 29.32121228410; -99.74475467770, 29.32000902450; -99.74500563660, 29.31914317660; -99.74564085140, 29.31732310920; -99.74641050820, 29.31554334500; -99.74731130490, 29.31381150270; -99.74833937880, 29.31213499550; -99.74949032280, 29.31052099920; -99.75075920470, 29.30897642190; -99.75214058830, 29.30750787390; -99.75285889630, 29.30681596510; -99.75290419310, 29.30677371780; -99.75294286840, 29.30672668630; -99.75358175440, 29.30597555990; -99.75496305260, 29.30450698290; -99.75645093470, 29.30312071770; -99.75803902900, 29.30182269650; -99.75972053550, 29.30061847410; -99.76148825540, 29.29951320330; -99.76333462190, 29.29851161350; -99.76525173210, 29.29761799010; -99.76723138150, 29.29683615670; -99.76926509830, 29.29616945840; -99.77134418030, 29.29562074760; -99.77345973130, 29.29519237180; -99.77560269990, 29.29488616370; -99.77776391730, 29.29470343340; and -99.77993413720, 29.29464496260.

(M) Surveillance Zone 13. SZ 13 is that portion of Zavala County lying within the area described by the following latitude-longitude coordinate pairs: -99.51049107440, 28.95090385000; -99.51265315760, 28.95097450990; -99.51480536460, 28.95116935630; -99.51693848750, 28.95148755540; -99.51904339970, 28.95192774590; -99.52111109510, 28.95248804470; -99.52313272620, 28.95316605450; -99.52509964250, 28.95395887460; -99.52700342650, 28.95486311300; -99.52883593070, 28.95587490060; -99.53058931150, 28.95698990850; -99.53225606330, 28.95820336540; -99.53382905030, 28.95951007910; -99.53530153730, 28.96090445770; -99.53666721820, 28.96238053420; -99.53792024330, 28.96393199150; -99.53905524430, 28.96555218970; -99.54006735700, 28.96723419420; -99.54095224290, 28.96897080560; -99.54170610720, 28.97075459030; -99.54232571550, 28.97257791240; -99.54280840750, 28.97443296620; -99.54315210890, 28.97631180980; -99.54335534000, 28.97820639890; -99.54341747360, 28.97994913900; -99.54343981590, 28.99442460320; -99.54343981590, 28.99442463760; -99.54344055730, 28.99490528710; -99.54344055730, 28.99490532000; -99.54346252980, 29.00913749330; -99.54346227850, 29.00929697630; -99.54338251590, 29.01119871480; -99.54316142200, 29.01309179740; -99.54279993550, 29.01496811680; -99.54229959650, 29.01681963700; -99.54166254020, 29.01863842790; -99.54089148760, 29.02041669900; -99.53998973420, 29.02214683280; -99.53896113620, 29.02382141780; -99.53781009360, 29.02543328000; -99.53654153170, 29.02697551360; -99.53516088010, 29.02844151090; -99.53367404930, 29.02982499060; -99.53208740580, 29.03112002460; -99.53040774440, 29.03232106340; -99.52864225940, 29.03342296040; -99.52679851360, 29.03442099340; -99.52488440590, 29.03531088530; -99.52290813750, 29.03608882220; -99.52087817660, 29.03675147010; -99.51880322220, 29.03729598890; -99.51669216630, 29.03772004480; -99.51455405640, 29.03802182020; -99.51239805620, 29.03820002170; -99.51072236680, 29.03825261230; -99.50919518970, 29.03826649830; -99.50904828420, 29.03826754640; -99.50752105150, 29.03827545390; -99.50737410440, 29.03827592700; -99.50594924450, 29.03827772570; -99.49566969890, 29.03834613070; -99.49566961900, 29.03834613120; -99.49473223360, 29.03835232920; -99.49296109140, 29.03836402210; -99.49267466830, 29.03836599620; -99.49226342180, 29.03836658380; -99.49009940990, 29.03829557020; -99.48794532360, 29.03810029240; -99.48581039530, 29.03778158750; -99.48370377490, 29.03734082160; -99.48163449060, 29.03677988360; -99.47961141030, 29.03610117790; -99.47764320340, 29.03530761330; -99.47573830340, 29.03440259080; -99.47390487190, 29.03338998920; -99.47215076360, 29.03227414790; -99.47048349240, 29.03105984880; -99.46891019950, 29.02975229550; -99.46743762220, 29.02835709100; -99.46607206590, 29.02688021350; -99.46481937630, 29.02532799110; -99.46368491490, 29.02370707410; -99.46267353590, 29.02202440700; -99.46178956550, 29.02028719840; -99.46103678340, 29.01850289030; -99.46041840690, 29.01667912560; -99.45993707700, 29.01482371620; -99.45959484740, 29.01294460890; -99.45939317560, 29.01104985160; -99.45933255420, 29.00924911650; -99.45935507090, 28.99505803090; -99.45935583340, 28.99457733840; -99.45937664990, 28.98145463430; -99.45937701260, 28.98135307940; -99.45945839300, 28.97945142360; -99.45968103930, 28.97755852100; -99.46004398980, 28.97568247670; -99.46054568250, 28.97383132270; -99.46118396180, 28.97201298440; -99.46195608750, 28.97023524600; -99.46285874710, 28.96850571740; -99.46388807000, 28.96683180190; -99.46503964370, 28.96522066420; -99.46630853350, 28.96367920000; -99.46768930330, 28.96221400650; -99.46917603890, 28.96083135410; -99.47076237320, 28.95953715970; -99.47244151420,

28.95833696140; -99.47420627300, 28.95723589490; -99.47604909550, 28.95623867160; -99.47701631460, 28.95577153470; -99.47709898860, 28.95573317030; -99.47717746480, 28.95568850370; -99.47874479960, 28.95484972680; -99.48065774630, 28.95396057300; -99.48263268430, 28.95318333200; -99.48466116220, 28.95252132910; -99.48673449980, 28.95197739660; -99.48884382600, 28.95155386170; -99.49098011560, 28.95125253620; -99.49313422850, 28.95107470940; -99.49485788860, 28.95102194360; -99.49502543280, 28.95102065940; -99.49502565540, 28.95102065770; -99.49734003590, 28.95100290910; -99.49734015720, 28.95100290820; -99.51005235880, 28.95090470190; and -99.51049107440, 28.95090385000.

(N) Surveillance Zone 14. SZ 14 is that portion of Gonzales County lying within the area described by the following latitude-longitude coordinate pairs: -97.34738886370, 29.67430305070; -97.34956514000, 29.67441090950; -97.35172868790, 29.67464279800; -97.35387025060, 29.67499772410; -97.35598066570, 29.67547416940; -97.35805090330, 29.67607009540; -97.36007210500, 29.67678295250; -97.36203562200, 29.67760969090; -97.36344026450, 29.67828952150; -97.36785199430, 29.68054764910; -97.37349566950, 29.68333935710; -97.37441330130, 29.68381029960; -97.37623673470, 29.68485356730; -97.37797816230, 29.68599871170; -97.37963012940, 29.68724083300; -97.38118556330, 29.68857461580; -97.38263780340, 29.68999435240; -97.38398063020, 29.69149396710; -97.38520829140, 29.69306704200; -97.38631552700, 29.69470684450; -97.38729759140, 29.69640635590; -97.38815027430, 29.69815830180; -97.38886991860, 29.69995518270; -97.38945343610, 29.70178930650; -97.38989832080, 29.70365282110; -97.39020266000, 29.70553774820; -97.39036514230, 29.70743601730; -97.39038506360, 29.70933950030; -97.39026233020, 29.71124004620; -97.38999745930, 29.71312951620; -97.38959157700, 29.71499981830; -97.38904641350, 29.71684294230; -97.38836429570, 29.71865099380; -97.38754813810, 29.72041622810; -97.38660142920, 29.72213108370; -97.38595242280, 29.72316308890; -97.38220355930, 29.72884796740; -97.38177930530, 29.72947308130; -97.38058405070, 29.73106535480; -97.37927199520, 29.73258597850; -97.37784875500, 29.73402843720; -97.37632042320, 29.73538655020; -97.37469354430, 29.73665449830; -97.37297508580, 29.73782684800; -97.37117240840, 29.73889857550; -97.36929323460, 29.73986508800; -97.36734561530, 29.74072224340; -97.36533789550, 29.74146636830; -97.36327867850, 29.74209427340; -97.36117678870, 29.74260326760; -97.35904123400, 29.74299116940; -97.35688116690, 29.74325631620; -97.35470584520, 29.74339757160; -97.35399482360, 29.74341672900; -97.35395662340, 29.74341740220; -97.35391959260, 29.74342561530; -97.35356363310, 29.74350274660; -97.35142802800, 29.74389052030; -97.34926791980, 29.74415553740; -97.34709256670, 29.74429666220; -97.34491129220, 29.74431328970; -97.34273344530, 29.74420534870; -97.34056836010, 29.74397330180; -97.33842531620, 29.74361814360; -97.33631349820, 29.74314139630; -97.33424195660, 29.74254510330; -97.33221956880, 29.74183182020; -97.33025500110, 29.74100460400; -97.32835667130, 29.74006700000; -97.32817197670, 29.73996795620; -97.32492046280, 29.73821149370; -97.32328126040, 29.73726652240; -97.32153955710, 29.73612060890; -97.31988750120, 29.73487771260; -97.31833216850, 29.73354315930; -97.31688021910, 29.73212266760; -97.31553786970, 29.73062232410; -97.31431086630, 29.72904855710; -97.31320446000, 29.72740810920; -97.31222338460, 29.72570800840; -97.31137183620, 29.72395553780; -97.31065345530, 29.72215820450; -97.31007131160, 29.72032370730; -97.30962789070, 29.71845990380; -97.30932508360, 29.71657477650; -97.30916417900, 29.71467639890; -97.30914585750, 29.71277290060; -97.30927018910, 29.71087243300; -97.30953663310, 29.70898313350; 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(O) Surveillance Zone 15. SZ 15 is that portion of Hamilton County lying within the area described by the following latitude-longitude coordinate pairs:-98.29832003980, 31.45683100770; -98.30053821980, 31.45692253220; -98.30274467610, 31.45713818440; -98.30492996880, 31.45747704170; -98.30708474830, 31.45793765430; -98.30919979520, 31.45851805150; -98.31038657960, 31.45890238740; -98.31669362400, 31.46106097640; -98.31757314480, 31.46137429580; -98.31958188490, 31.46218621200; -98.32152441100, 31.46310897320; -98.32339240950, 31.46413863110; -98.32517788510, 31.46527078000; -98.32687319450, 31.46650057530; -98.32847107970, 31.46782275430; -98.32996469850, 31.46923165910; -98.33134765430, 31.47072126000; -98.33261402310, 31.47228518200; -98.33375837890, 31.47391673150; -98.33477581750, 31.47560892520; -98.33566197690, 31.47735451990; -98.33641305640, 31.47914604320; -98.33665925550, 31.47982827930; -98.33754324230, 31.48238870550; -98.33827257370, 31.48389250930; -98.33842953420, 31.48417632520; -98.33930781770, 31.48590739450; -98.34005903390, 31.48769889290; -98.34067193630, 31.48952865460; -98.34114389300, 31.49138884620; -98.34147287490, 31.49327150360; -98.34160904900, 31.49463708250; -98.34170157760, 31.49532212280; -98.34188349310, 31.49719937850; -98.34192289780, 31.49910272210; -98.34181693100, 31.50100419770; -98.34156603790, 31.50289566260; -98.34117128430, 31.50476901650; -98.34063435240, 31.50661623610; -98.33995753360, 31.50842940960; -98.33914371920, 31.51020077060; -98.33819638750, 31.51192273140; -98.33711958970, 31.51358791540; -98.33591793200, 31.51518918890; -98.33459655670, 31.51671969180; -98.33316111930, 31.51817286660; -98.33161776530, 31.51954248720; -98.32997310320, 31.52082268480; -98.32823417660, 31.52200797380; -98.32640843370, 31.52309327520; -98.32450369570, 31.52407393790; -98.32252812310, 31.52494575960; -98.32082827200, 31.52558836290; -98.31529088300, 31.52752824970; -98.31495277810, 31.52764487610; -98.31286111820, 31.52828819900; -98.31072479060, 31.52881293140; -98.30855295060, 31.52921682410; -98.30635490640, 31.52949814630; -98.30414007870, 31.52965569210; -98.30191796040, 31.52968878630; -98.29969807570, 31.52959728710; -98.29748993910, 31.52938158670; -98.29530301480, 31.52904260950; -98.29314667580, 31.52858180830; -98.29103016340, 31.52800115810; -98.28896254810, 31.52730314750; -98.28774691130, 31.52682831360; -98.28364524440, 31.52514180700; -98.28322840220, 31.52502741460; -98.28116090930, 31.52432927850; -98.27915118130, 31.52351677690; -98.27720782970, 31.52259339180; -98.27569722330, 31.52177212490; -98.27487098790, 31.52129630560; -98.27451294920, 31.52108725890; -98.27272702750, 31.51995442490; -98.27103146470, 31.51872393490; -98.26943352290, 31.51740106160; -98.26794004490, 31.51599147340; -98.26655742540, 31.51450121010; -98.26529158280, 31.51293665660; -98.26414793460, 31.51130451620; -98.26313137410, 31.50961178110; -98.26224624910, 31.50786570290; -98.26149634400, 31.50607376110; -98.26125158690, 31.50539419920; -98.26103720500, 31.50477207340; -98.26067048630, 31.50362150500; -98.26022400310, 31.50187219680; -98.26019757910, 31.50175088800; -98.26016347140, 31.50163099480; -98.25975004400, 31.49996785120; -98.25959479380, 31.49917801640; -98.25948771030, 31.49858334420; -98.25946171780, 31.49843651180; -98.25934393530, 31.49775949680; -98.25919780050, 31.49681330150; -98.25918143380, 31.49668975590; -98.25908513530, 31.49594870230; -98.25891856200, 31.49417506840; -98.25888082590, 31.49227169770; -98.25898844640, 31.49037028660; -98.25924095380, 31.48847897680; -98.25963725850, 31.48660586630; -98.26017565520, 31.48475897480; -98.26085383060, 31.48294620920; -98.26166887360, 31.48117533010; -98.26261728780, 31.47945391800; -98.26369500620, 31.47778934150; -98.26489740930, 31.47618872550; -98.26621934470, 31.47465892070; -98.26679534130, 31.47405293180; -98.26681607220, 31.47403170990; -98.26682929990, 31.47400646050;

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(P) Surveillance Zone 16. SZ 16 is that portion of Washington County lying within the area described by the following latitude-longitude coordinate pairs:-96.37818600590, 30.18191727260: -96.38037260510, 30.18204179120: -96.38126142310, 30.18214344400: -96.38183665460, 30.18217619090: -96.38400921490, 30.18242462620: -96.38615843640, 30.18279594060: -96.38827512360, 30.18328854540: -96.39035021980, 30.18390033310: -96.39237484600, 30.18462868620: -96.39434033840, 30.18547048840: -96.39623828560, 30.18642213800: -96.39677557990, 30.18671848320: -96.39737630640, 30.18705681000: -96.39866130040, 30.18781788400: -96.40040012450, 30.18897655180: -96.40204803700, 30.19023151300: -96.40359798240, 30.19157739740: -96.40504332360, 30.19300844530: -96.40637787030, 30.19451853250: -96.40759590570, 30.19610119620: -96.40869221050, 30.19774966280: -96.40966208600, 30.19945687630: -96.41050137400, 30.20121552930: -96.41120647440, 30.20301809350: -96.41177436110, 30.20485685250: -96.41220259500, 30.20672393420: -96.41248933450, 30.20861134490: -96.41263334350, 30.21051100340: -96.41263399690, 30.21241477560: -96.41249128340, 30.21431450920: -96.41220580560, 30.21620206880: -96.41177877780, 30.21806937060: -96.41121202080, 30.21990841710: -96.41101164340, 30.22042153380: -96.41096545730, 30.22057139600: -96.41026138110, 30.22237430900: -96.40942300250, 30.22413336690: -96.40845390570, 30.22584103440: -96.40735823510, 30.22748999610: -96.40614067850, 30.22907318760: -96.40480644620, 30.23058382600: -96.40336124960, 30.23201543880: -96.40181127600, 30.23336189210: -96.40016316260, 30.23461741630: -96.39842396800, 30.23577663130: -96.39660114190, 30.23683456960: -96.39470249320, 30.23778669750: -96.39273615650, 30.23862893460: -96.39071055710, 30.23935767140: -96.38863437490, 30.23996978450: -96.38665406210, 30.24043452890: -96.38629454620, 30.24050872300: -96.38615699110, 30.24053684440: -96.38400651130, 30.24090834500: -96.38196210040, 30.24114560010: -96.37956349050, 30.24135890920: -96.37943402890, 30.24137020050: -96.37724607410, 30.24149469100: -96.37505342490, 30.24149463060: -96.37286547920, 30.24137001960: -96.37069161440, 30.24112139200: -96.36854114770, 30.24074981350: -96.36642329560, 30.24025687660: -96.36434713430, 30.23964469410: -96.36232156110, 30.23891588970: -96.36035525580, 30.23807358680: -96.35845664370, 30.23712139540: -96.35663385910, 30.23606339620: -96.35489471070, 30.23490412300: -96.35324664800, 30.23364854370: -96.35169672940, 30.23230203860: -96.35025159190, 30.23087037740: -96.34891742260, 30.22935969440: -96.34769993250, 30.22777646210: -96.34660433170, 30.22612746380: -96.34563530760, 30.22441976380: -96.34479700450, 30.22266067780: -96.34409300610, 30.22085774120: -96.34389250760, 30.22026010760: -96.34343696920, 30.21884607860: -96.34307079300, 30.21760464660: -96.34264385410, 30.21573732990: -96.34235846540, 30.21384976040: -96.34221584080, 30.21195002190: -96.34221658270, 30.21004624990: -96.34236067920, 30.20814659660: -96.34264750500, 30.20625919600: -96.34307582360, 30.20439212950: -96.34364379300, 30.20255339060: -96.34434897380, 30.20075085120: -96.34518833940, 30.19899222770: -96.34615828960, 30.19728504830: -96.34725466570, 30.19563662030: -96.34847276860, 30.19405399940: -96.34980737900, 30.19254395910: -96.35125277970, 30.19111296190: -96.35280278010, 30.18976713200: -96.35445074300, 30.18851222870: -96.35618961250, 30.18735362180: -96.35801194480, 30.18629626920: -96.35990993970, 30.18534469510: -96.36187547380, 30.18450297110: -96.36390013580, 30.18377469850: -96.36597526150, 30.18316299340: -96.36809197190, 30.18267047270: -96.37024121010, 30.18229924380: -96.37241378070, 30.18205089490: -96.37460038870, 30.18192648840: -96.37543874540, 30.18191180110: -96.37683307230, 30.18190253200: and -96.37818600590, 30.18191727260:

(Q) Surveillance Zone 17. SZ 17 is that portion of Frio County lying within the area described by the following latitude-longitude coordinate pairs: -99.36629569600, 28.98651965640; -99.36840629430, 28.98609813390; -99.37054371450, 28.98579884880; -99.37269881140, 28.98562308160; -99.37457900900, 28.98557124320; -99.39771126220, 28.98550985040; -99.39799461810, 28.98551013930; -99.40015738770, 28.98558273420; -99.40231013400, 28.98577950890; -99.40444364680, 28.98609962140; -99.40565241680, 28.98635346730; -99.41151732410, 28.98633886810; -99.41178777770, 28.98633916050; -99.41395057600, 28.98641151840; -99.41610336860, 28.98660805720; -99.41823694490, 28.98692793590; -99.42034217650, 28.98736978610; -99.42241005590, 28.98793171750; -99.42443173500, 28.98861132590; -99.42639856270, 28.98940570370; -99.42830212220, 28.99031145210; -99.43013426680, 28.99132469590; -99.43188715450, 28.99244109950; -99.43355328170, 28.99365588600; -99.43512551540, 28.99496385740; -99.43659712350, 28.99635941630; -99.43796180370, 28.99783659080; -99.43921371050, 28.99938905900; -99.44034748040, 29.00101017660; -99.44135825460, 29.00269300520; -99.44224170010, 29.00443034180; -99.44299402840, 29.00621474970; -99.44361201160, 29.00803859030; -99.44409299640, 29.00989405570; -99.44443491580, 29.01177320230; -99.44449215460, 29.01219557370; -99.44450033510, 29.01225994290; -99.44451689260, 29.01232305610; -99.44475929260, 29.01332772140; -99.44510123690, 29.01520686930; -99.44530263880, 29.01710165360; -99.44536304200, 29.01884946530; -99.44536322080, 29.01937485230; -99.44536280650, 29.01952934800; -99.44528111680, 29.02143103340; -99.44505808980, 29.02332395270; -99.44475641780, 29.02488125950; -99.44476655380, 29.03161243470; -99.44476616610, 29.03179688030; -99.44468445450, 29.03369857700; -99.44446138770, 29.03559150680; -99.44418253550, 29.03703079390; -99.44426315140, 29.03734169010; -99.44460517060, 29.03922086200; -99.44480661260, 29.04111566980;

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(R) [(I)] Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

§65.85. Mandatory Check Stations.

(a) The department may establish mandatory check stations in or for any CZ or SZ or portion of a CZ or SZ for the purpose of collecting biological information on susceptible species taken within a CZ or SZ.

(b) The [~~In a CZ or SZ where mandatory check stations have been established, the~~] intact, unfrozen head of any susceptible species that has been killed in a CZ or SZ must be presented to a [~~designated~~] check station designated for the CZ or SZ in which the susceptible species was taken within 48 hours of take by the person or representative of the person who killed the susceptible species, unless otherwise authorized in writing by department personnel.

(c) - (d) (No change.)

§65.88. Deer Carcass Movement Restrictions.

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

(c) For susceptible species harvested in a CZ or SZ, the provisions of subsection (b) of this section are applicable only if the susceptible species is processed within the CZ or SZ where the susceptible species was harvested, except for the transport of an intact head to a designated check station. The head of a susceptible species transported to a designated check station under the provisions of this subsection that is not taken to a taxidermist under the provisions of subsection (f) of this section must be:

(1) returned to the property where it was harvested for disposal; or

(2) disposed of in a landfill permitted by Texas Commission on Environmental Quality (TCEQ).

(d) (No change.)

(e) If a person takes a susceptible species in a SZ within which the department has not designated a mandatory check station, the person shall transport the head of the susceptible species from the SZ solely for the purpose of presentation at the nearest check station established by the department for the SZ in which the susceptible species was taken, provided such transport occurs immediately upon leaving

the SZ where the animal was taken and occurs via the most direct route available. The head of a susceptible species transported to a check station under the provisions of this subsection and not taken to a taxidermist under the provisions of subsection (f) of this section must be:

(1) returned to the property where it was harvested for disposal; or

(2) disposed of in a landfill permitted by TCEQ.

(f) [~~(e)~~] The skinned or unskinned head of a susceptible species from a CZ or SZ, other state, Canadian province, or other place outside of Texas may be transported to a taxidermist for taxidermy purposes, provided all brain material, soft tissue, spinal column and any unused portions of the head are disposed of in a landfill in Texas permitted by TCEQ [~~the Texas Commission on Environmental Quality (TCEQ)~~].

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

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

TRD-202301330
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 389-4775

♦ ♦ ♦

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 361. REGIONAL FLOOD PLANNING

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §§361.10 - 361.13, 361.21, 361.30 - 361.35, 361.38 - 361.40, 361.43 - 361.45, 361.50, 361.51, 361.61, 361.70 - 361.72; new 361.36 and 361.37.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The specific purpose of this rulemaking is to facilitate the regional flood planning process to incorporate changes and improvements to the process and increase the quality of the future flood plans based on lessons learned during the inaugural cycle of this recurring state-wide process. These proposed amendments are intended to make the regional flood planning process more efficient for the flood planning regions while also providing the level of data that will enable the TWDB to prepare a meaningful state flood plan to guide the state in the coming decades.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Several changes are proposed throughout the Chapter such as removing the requirement to summarize data by HUC 8 and changing the reference to annual chance flood events from 1.0% to 1% to clarify the implied level of precision. The order of Flood Mitigation Strategy (FMS), Flood Mitigation Evaluation (FME), and Flood Mitigation Project (FMP) is also revised in this proposal for consistency throughout. Conforming changes are proposed throughout.

Chapter 361 Regional Flood Planning.

Subchapter A. General Information.

Section 361.10 Definitions and Acronyms.

The proposed amendment includes new definitions for terms commonly used in the Chapter and refinement of several other definitions to provide greater clarity and facilitate the regional flood planning process and documents. The TWDB seeks feedback, in particular regarding the definitions of emergency need and critical facilities.

Section 361.11 Designations and Governance of Flood Planning Regions.

Modifications are proposed to the composition of the flood planning groups. The proposed amendments will allow greater flexibility for the flood planning groups in determining the members of their groups, while maintaining the statutorily required composition of the groups. In particular, the proposed amendment requires the RFPGS to consider including a non-voting position to represent regional or local transportation authority such as the Texas Department of Transportation.

Section 361.12 General Regional Flood Planning Group Responsibilities and Procedures.

The proposed amendments to this § 361.12 provide clarification and further direction on the governance of the regional flood planning groups. In particular, the proposed amendments will clarify that only subcommittees that are formed to address geographic-specific issues must include one member from each of the interest categories. This is intended to allow the groups more flexibility in forming non-geographic specific subcommittees.

Section 361.13 Regional Flood Planning Group Deliverables.

The proposed amendment includes minor clean-up and organization of this section. It also removes the requirement for a list of flood management strategies and flood management plans that were identified but found to be infeasible.

Subchapter B. Guidance Principles, Notice Requirements, and General Considerations.

Section 361.21 General Notice Requirements.

The proposed amendment removes the requirement for 14-day notice for some regional flood planning group actions. As proposed, all planning group actions must be noticed 7days prior to the action. This includes all meetings and subcommittee meetings. However, the meeting at which the regional flood planning groups take public input related to the draft regional flood plan will continue to require 30-days' notice. Additionally, when the regional flood planning groups adopt their final regional flood plan or any amendments thereto, or make any changes to the membership composition of the RFPG, in addition to the seven-day notice, the RFPG must accept written comments for seven days before the meeting and the meeting materials must be made available online for three days prior to the meeting and fourteen days after the meeting. The TWDB seeks comments on the proposed changes to the notice requirements.

Section 361.22 General Considerations for Development of Regional Flood Plans.

The proposed amendment deletes most of this section and moves the general requirement that the regional flood planning

groups use the best available information when developing their flood plans to § 361.13.

Subchapter C Regional Flood Plan Requirements.

Section 361.30 Description of the Flood Planning Region.

The proposed amendment reduces the information requested describing the flood planning regions.

Section 361.31 Description of Existing Natural Flood Mitigation Features and Constructed Major Flood Infrastructure in the Region.

The list of natural features and constructed major infrastructure withing the regions is amended to remove some of the examples. Minor typographical errors are also corrected in this section of the proposed amendment.

Section 361.32 Description of the Major Flood Projects Currently Under Development.

The proposed amendment clarifies that when the expected year of completion related to flood projects that have dedicated funding is not available, it does not need to be included in the regional flood plan.

Section 361.33 Existing Condition Flood Risk Analyses in the Region.

In addition to minor typographical clean-ups, the changes proposed in this section add clarification as to what data is necessary for the regions to provide related to the risk of flood in each region. The proposed amendment removes the requirement that data be summarized based on a HUC 8 level and instead refers stakeholders to the guidance provided by the TWDB Executive Administrator. This change will provide greater flexibility for the regional flood planning groups as well as for the TWDB to align the data requested with the information needed by the TWDB.

Section 361.34 Future Condition Flood Risk Analyses in the Region.

The proposed amendment refines the data required for the future condition flood hazard analysis. The requirement to summarize by HUC 8 data is proposed to be removed from this section similar to § 361.33. Additionally, the proposed amendment removes the requirement for an analysis of the 0.2% future flood condition risk analysis. While it is proposed to be removed from the requirement in the rule, it will be permitted and encouraged in the EA guidance.

Section 361.35 Evaluation of Previous and Current Floodplain Management and Recommendations for Changes to Floodplain Management.

A minor typographical clean-up is proposed for this section.

Section 361.36 Flood Mitigation Need Analysis

Sections 361.36 and 361.37 have been exchanged to better align with the flow of the regional flood plans. The proposed new rules remove the requirement that data be summarized based on a HUC 8 level and instead refers stakeholders to the guidance provided by the TWDB Executive Administrator.

Section 361.37 Flood Mitigation and Floodplain Management Goals

The proposed amendment includes small clarifying changes.

Section 361.38 Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects

The proposed amendment includes changes intended to provide more clarity and detailed expectations of the RFPGs. The proposed amendment provides flexibility to the RFPGs when evaluating solutions for flood mitigation solutions. The proposed amendment also removes the requirement for an equitable comparison and consistent assessment of all potentially feasible FMPs and FMSs. The requirement was overly burdensome and the data did not exist in a form that provided for an equitable comparison.

Section 361.40 Impacts of Regional Flood Plan

A requirement for the RFPGs to include a statement that the plan adequately provides for the preservation of life and property and the development of water supply sources is added. This change conforms to the requirements of Water Code § 16.062(h).

Section 361.45 Implementation and Comparison to Previous Regional Flood Plan

The proposed amendment moves language from the previous section into this section where it fits in a logical manner.

Subchapter D Adoption, Submittal, and Amendments to Regional Flood Plans.

Section 361.50 Adoption, Submittal, and Approval of Regional Flood Plans.

The proposed amendments are minor changes to conform with the rest of the rule.

Section 361.51 Amendments to Regional Flood Plans

The proposed amendment includes a process for the RFPGs to correct minor, non-substantive errors in their RFPs after they have adopted their flood plans, but prior to the Board adopting the State Flood Plan. Prior to adopting errata to a final RFP, the RFPG must provide a minimum seven-day public notice. Once adopted, the RFPG will submit errata containing revised pages to the final RFP and public comments received to the EA for review.

Subchapter E Negative Effects on Neighboring Areas and Failure to Meet Requirements

Section 361.61 Addressing Negative Effects on Neighboring Areas Between Flood Planning Regions.

A minor grammatical change is proposed in this section.

Subchapter F Regional Flood Planning Grants

Section 361.70 Planning Group Sponsor Request for Funding

The proposed changes provide for a simplified process for the planning groups sponsors to request funding from the Board. Additional, non-substantive changes are proposed as well.

Section 361.71 Board Consideration of Funding Requests, Applicant's Responsibilities, and Contract

Minor non-substantive changes are proposed in this section. Additionally, changes are proposed to clarify and simplify the process that the planning group sponsors receive planning grants from the Board.

Section 361.72 Use of Funds

The proposed amendment clarifies that reimbursement is allowed for personnel time spent on preparing the notices required before the meetings. Additionally, the proposed amendment provides the latitude for planning groups to use the planning grant funds to either purchase or rent audio visual equipment that will allow them to host hybrid or online meetings in a way that will comply with the Texas Open Meetings Act. The planning grant contracts will include spending restrictions on the audio-visual equipment purchases. The planning groups will also be able to use planning grant funds for renting space to host RFPG meetings.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules as amended to are necessary to protect water resources of this state as authorized by the Texas Water Code; are necessary to protect the health, safety, and welfare of the residents of this state; and are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it facilitates the regional flood planning process. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute to develop regional flood plans.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

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

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code § 16.062. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to facilitate the regional and state flood planning process while making the process more efficient for the regional flood planning regions. The proposed rule will substantially advance this stated purpose by clarifying requirements of the flood plan regions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The proposed rule may (3) require an increase or decrease in future legislative appropriations to the agency

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in fees paid to the agency; (4) create a new regulation; (5) expand, limit, or repeal an existing regulation; (6) increase or decrease the number of individuals subject to the rule's applicability; or (7) positively or adversely affect this state's economy. But the proposed rule may require an increase or decrease in future legislative appropriations to the agency.

AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

This proposed rulemaking includes an assessment of whether the reasons for initially adopting the rule exist and therefore, this rulemaking satisfies the requirement of a formal review in accordance with Texas Government Code § 2001.039.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register.* Include Chapter 361 in the subject line of any comments submitted.

SUBCHAPTER A. GENERAL INFORMATION

31 TAC §§361.10 - 361.13

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.10. Definitions and Acronyms.

(a) 1% Annual Chance Flood Event [~~1.0% annual chance flood event~~] - Flood event having a 1% [~~1.0%~~] chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.

(b) 0.2% Annual Chance Flood Event [~~annual chance flood event~~] - Flood event having a 0.2% chance of being equaled or exceeded in any given year, also referred to as the 500-year flood.

(c) Board - the governing body of the Texas Water Development Board.

(d) Critical Facilities - facilities and infrastructure that are critical to the health and welfare of the population and that are especially important following flood hazard events.

(e) Emergency Need - the need for projects and actions to address a flood hazard that is expected to cause the loss of function of critical facilities or to alleviate immediate threat to life and property from flooding such as imminent anticipated failure of infrastructure.

(f) [~~(d)~~] Executive Administrator (EA) - The Executive Administrator of the TWDB or a designated representative.

(g) [~~(e)~~] FEMA - Federal Emergency Management Agency

(h) [~~(f)~~] FIRM - Flood Insurance Rate Map

(i) [~~(g)~~] Flood - A general and temporary condition of partial or complete inundation of normally dry land area from overflow of inland or tidal waters or from the unusual and rapid accumulation or runoff of surface waters from any source.

(j) [~~(h)~~] Flood-prone - Areas with known risk of flooding primarily during storm events either from existing inundation maps, studies, and/or historic knowledge of flood events. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

(k) [~~(i)~~] Floodplain - That area of land subject to periodic inundation by floodwaters.

(l) [~~(j)~~] Floodplain Management [~~management~~] - The operation of an overall program of corrective and preventative measures for reducing flood damage.

(m) [~~(k)~~] Flood Mitigation - The implementation of actions, including both structural and non-structural solutions, to reduce flood risk to protect against the loss of life and property.

(n) [~~(l)~~] Flood Management Evaluation (FME) - A proposed study to identify flood risk or flood risk reduction solutions. [~~A proposed flood study of a specific, flood-prone area that is needed in order to assess flood risk and/or determine whether there are potentially feasible FMSs or FMPs.~~]

(o) [~~(m)~~] Flood Management Strategy (FMS) - Long term flood risk reduction solution ideas that still need to be formulated, for example, regulatory enhancements. All solutions and strategies that do not belong in FME or FMP belong to FMS. [~~A proposed plan to reduce flood risk or mitigate flood hazards to life or property. A flood management strategy may or may not require associated Flood Mitigation Projects to be implemented.~~]

(p) [~~(n)~~] Flood Mitigation Project (FMP) - A proposed project, both structural and non-structural, that has a non-zero capital costs or other non-recurring cost and that when implemented will reduce flood risk, mitigate flood hazards to life or property.

(q) [~~(o)~~] Flood Planning Region (FPR) - A geographic area designated by the Board pursuant to Texas Water Code §16.062.

(r) [~~(p)~~] Flood Risk - Generally describes the hazard from flood events to life and property, including the likelihood of a hazard occurring; the magnitude of the hazard; the number of people and properties exposed to the hazard; and the vulnerability of the people and properties exposed to the hazard.

(s) [~~(q)~~] Flood Risk Map - A map that shows flood risk for Texas communities at some level of detail using best available data.

(t) [~~(r)~~] GIS - Geographic Information System

(u) [~~(s)~~] GLO - General Land Office

(v) [~~(t)~~] HUC - Hydrologic Unit Code level (e.g., HUC10 [~~HUC8~~]) as delineated by the United States Geological Survey.

(w) [~~(u)~~] Hydrologic and Hydraulic Model - Mathematical model created utilizing computer software that simulates rainfall runoff flow to estimate the extent of water levels and flooding and to test potential ways to reduce flood risk.

(x) [~~(v)~~] Nature-based Flood Mitigation [~~flood mitigation~~] - Nature-based solutions are sustainable planning, design, environmental management, and engineering practices that weave natural features or processes into the built environment to promote adaptation and resilience. [~~Mitigation approaches involving the use of natural features, materials, and processes to reduce the risk and impacts of flooding.~~]

(y) [~~(w)~~] Neighboring Area [~~area~~] - means any area, including but not limited to upstream and downstream areas, potentially affected by the proposed FMP.

(z) [~~(x)~~] Negative Effect - An increase in flood-related risks to life and property, either upstream or downstream of the proposed project. The RFPG may adopt a standard that is more restrictive than the standard provided in TWDB guidance.

(aa) [~~(y)~~] Planning Group Sponsor - A political subdivision designated by the Regional Flood Planning Group as authorized to receive funds for developing or revising regional flood plans. A Planning Group Sponsor must have legal authority to conduct procurement of professional services and enter into the contracts necessary for regional flood planning.

(bb) [~~(z)~~] Political Subdivision - County, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution [~~Art. 3 § 52 or Art. 16 § 59 of the constitution~~] and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation [~~Water Supply Corporation~~] created and operating under Chapter [~~Ch.~~] 67.

(cc) [~~(aa)~~] Potentially Feasible Flood Management Project or Potentially Feasible Flood Mitigation Strategy [~~Potentially feasible flood management strategy or potentially feasible flood mitigation project~~] - an [~~a~~] FMP or FMS [~~or FMP~~] that is permittable, constructible, economically viable, and implementable.

(dd) [~~(bb)~~] Regional Flood Plan (RFP) - The plan adopted or amended by a Regional Flood Planning Group pursuant to Texas Water Code §16.062 (relating to Regional Flood Plans) and this chapter.

(ee) [~~(cc)~~] Regional Flood Planning Group (RFPG) - A group designated by the Board that develops a Regional Flood Plan, pursuant to Texas Water Code §16.062.

(ff) [~~(dd)~~] Residual Risk - The remaining flood risk in an area after the completion of an FMP or FMS or [~~a FMS or FMP or~~] set of FMPs or FMSs [~~or FMPs~~] that reduce flood risk in that same area.

(gg) [~~(ee)~~] State Flood Plan (SFP) - The most recent State Flood Plan adopted or amended by the Board under Texas Water Code §16.061 (relating to State Flood Plan).

(hh) [~~(ff)~~] State Flood Planning Database - A database to be developed and maintained by the TWDB that stores data related to Flood Planning. It is used to collect, analyze, and disseminate regional and statewide Flood Planning data.

(ii) [~~(gg)~~] State Population Projections - Population projections contained in the most recently adopted State Water Plan as further assembled geographically based on HUC watershed [~~HUC 8 watersheds~~] or other appropriate flood-related geographic features determined by the TWDB.

(jj) [~~(hh)~~] TWC - Texas Water Code

(kk) [~~(ii)~~] TWDB - Texas Water Development Board

§361.11. Designations and Governance of Flood Planning Regions.

(a) Once initially designated, the Board may review and update the boundary designations of FPRs as necessary, on its own initiative or upon recommendation of the EA.

(b) If upon FPR boundary designation review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RFPs shall be developed, taking into consideration factors such as:

(1) river [~~River~~] basin and sub-watershed delineations;

(2) hydraulic [~~Hydrologie~~] features of river basins;

(3) coastal [~~Coastal~~] basins and features;

(4) existing [~~Existing~~] FPRs;

(5) development [~~Development~~] patterns;

(6) public [~~Public~~] comment; and

(7) other [~~Other~~] factors the Board deems relevant.

[~~(c) The Board shall designate an individual member for each of the twelve positions, required in subsection (e), for the initial RFPGs.~~]

(c) [~~(d)~~] [~~After the Board names members of the initial RFPG, the EA will provide to each member of the initial RFPG a set of model bylaws. The initial~~] RFPGs shall consider and adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter, Texas Water Code §16.062 [~~Section 16.062~~], and Government Code Chapters [~~Chapter~~] 551 and 552. The RFPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RFPG shall at a minimum address the following elements:

(1) methods of formation and governance of executive committee, or subcommittees or subgroups;

(2) definition of a quorum necessary to conduct business;

(3) methods to approve items of business including adoption of RFPs or amendments thereto;

(4) methods to name additional voting and non-voting members;

(5) terms, conditions, and limits of membership including the terms of member removal;

(6) any additional notice provisions that the RFPG chooses to include;

(7) methods to record and preserve minutes;

(8) methods to resolve disputes between RFPG members on matters coming before the RFPG;

(9) procedures for handling confidential information; and

(10) other procedures deemed relevant by the RFPG.

(d) [~~(c)~~] RFPGs shall at all times[~~,~~] maintain each of the required positions listed below. However, if an [~~a~~] FPR does not have an interest in the category below, then the RFPG shall so advise the Executive Administrator and an individual member designation may not be required.

(1) Public, defined as those persons or entities having no economic or other direct interest in the interests represented by the remaining membership categories;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, such as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and that are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with the production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating for the protection or conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have either fewer than 500 employees and or less than $10 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority; this category may include a transmission and distribution utility;

(9) River authorities, defined as any districts or authorities created by the legislature that contain areas within their boundaries of one or more counties and that are governed by boards of directors appointed or designated in whole or part by the governor, including without limitation the San Antonio River Authority and the Palo Duro River Authority;

(10) Flood Districts, defined as any districts or authorities, created under authority of either the Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including all Chapter 49 districts, particularly districts with flood management responsibilities, including drainage districts, levee improvement districts, but does not include river authorities;

(11) Water Districts, defined as any districts or authorities, created under authority of either the Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including all Chapter 49 districts, particularly districts with flood management responsibilities, including municipal utility districts, freshwater supply districts, and regional water authorities, but does not include drainage districts, levee improvement districts, river authorities;

(12) Water Utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(13) The RFPGs, at their discretion, may include [~~At their the discretion, of the RFPGs may include,~~] additional voting positions upon a two-thirds vote of all of the existing voting positions to ensure adequate representation from the interests in the FPR.

(e) [~~(f)~~] The RFPG shall include the following non-voting members, as designated by the head of their agencies [~~agency~~] for paragraphs (1) - (7) of this subsection, and [~~who~~] shall receive meeting notifications and information in the same manner as voting members:[~~:~~]

(1) Staff member of the TWDB;

(2) Staff member of the Texas Commission on Environmental Quality;

(3) Staff member of the General Land Office;

(4) Staff member of the Texas Parks and Wildlife Department;

(5) Staff member of the Texas Department of Agriculture;

(6) Staff member of the State Soil and Water Conservation Board; and

(7) Staff member of the Texas Division of Emergency Management. [~~;~~]

(f) The RFPG shall include the following non-voting members who shall receive meeting notifications and information in the same manner as voting members:

(1) [~~(8)~~] Non-voting member liaisons designated by each RFPG, as necessary, to represent portions of major river basins that have been split into more than one FPR to coordinate between the upstream and downstream FPRs located within that same river basin. This non-voting member liaison may, at the discretion of the RFPG, be met by a voting member that also meets another position requirement under subsection (d) [~~(c)~~] of this section; and

(2) [~~(9)~~] For FPRs that touch the Gulf Coast, member liaisons designated by each RFPG representing coastal portions of FPRs to coordinate with neighboring FPRs along the Gulf Coast. This non-voting position member liaison may, at the discretion of the RFPG, be met by a voting member that also meets another position requirement under subsection (e) of this section.

(g) Each RFPG shall [~~may~~] consider including a non-voting position [~~designated by each RFPG~~] to represent regional or local transportation authorities for example, from the Texas Department of Transportation, who shall receive meeting notifications and information in the same manner as voting members.

(h) Each RFPG shall provide a current list of its voting and non-voting positions to the EA; the list shall identify each position required under subsection (e) as well as any other positions added by the RFPG and the individual member name that fills each position.

(i) Each RFPG, at its discretion, may at any time add additional voting and non-voting positions to serve on the RFPG including any new interest category in accordance with subsection (d)(13) [~~(e)(13)~~] of this section, including any additional state or federal agencies, and additional representatives of those interests already listed in, and as limited by, subsection (e) of this section that the RFPG considers

appropriate for development of its RFP. Adding any new voting position that increases the total number of voting positions may only occur upon a two-thirds vote of all voting positions.

(j) Each RFPG, at its discretion, may remove individual voting or non-voting positions, other than those listed under subsection (f)(1) - (7) of this section, or eliminate positions in accordance with the RFPG bylaws as long as minimum requirements of RFPG membership are maintained in accordance with subsections (d) [~~(e)~~] and (f) of this section.

(k) RFPGs may enter into formal and informal agreements to coordinate, avoid affecting neighboring areas, and share information with other RFPGs or any other interests within any FPR for any purpose the RFPGs consider appropriate including expediting or making more efficient planning efforts.

§361.12. General Regional Flood Planning Group Responsibilities and Procedures.

(a) The following activities are required of each RFPG every planning cycle:

(1) Designate a political subdivision as a Planning Group Sponsor of the RFPG eligible to apply for financial assistance to be used by the RFPG for planning activities. The Planning Group Sponsor will prepare and submit funding applications on behalf of the RFPG pursuant to Chapter 361, Subchapter F of this title (related to Regional Flood Planning Grants). The RFPG may, at its discretion, designate a different Planning Group Sponsor at any time. The Planning Group Sponsor will be responsible for the following:

(A) General management of the contract between the Planning Group Sponsor and the TWDB;

(B) The general management of the contract between the Planning Group Sponsor and the consultant(s); and

(C) In accordance with the RFPG's bylaws and notice provisions, the preparation of a scope(s) of work for regional flood planning grant funding that identifies responsible parties for task execution, including a task schedule, task and expense budgets, and describes interim draft reports or deliverables, and final reports for the planning process.

(2) Select a technical consultant(s) to be procured by the Planning Group Sponsor in accordance with the procurement requirements that apply to that political subdivision and [~~Texas~~] Government Code Chapter 2254.

(3) Hold at least one public meeting, that may also be a regular RFPG meeting, and in accordance with the notice requirements in §361.21 of this title (relating to General Notice Requirements)[~~,~~] to determine what, if any, additional public notice the RFPG determines is necessary to ensure adequate public notice in its own FPR, including in print form if desirable.

(4) Hold public meetings at central locations readily accessible to the public within the FPR to gather general suggestions and recommendations from the public as to issues, provisions, and types of FMEs, FMPs, and FMSs, [~~FMPs, and FMEs~~] that should be considered or addressed or provisions that should be considered and potentially included during that regional flood planning cycle in accordance with the public notice requirements in §361.21 of this title.

(5) Approve the contract(s) and any subsequent amendments thereto between the Planning Group Sponsor and the technical consultant or TWDB Scope(s) of Work or budgets in open meetings as necessary and in accordance with §361.21 of this title.

(6) Hold regular RFPG meetings, at a minimum, annually.

(b) The RFPG must follow its bylaws to reconcile any work and consider recommendations of any subcommittee or subgroups, including any strategies or projects identified for the RFPG's consideration.

(c) Each RFPG may, at its discretion, designate committees or subcommittees or subgroups within its FPR to meet separately to work on certain assigned issues that the RFPG considers relevant to its plan such as topics relevant across the entire region or issues related to specific geographical areas within the FPR or coordination of shared issues across neighboring FPRs.

(1) If an [~~a~~] RFPG creates a sub-regional committee or subcommittee or subgroup to address issues related to a specific geographical area smaller than the full FPR, it shall, to the extent practical, define such sub-regional geographic areas based on boundaries that are coterminous with full HUC8 watersheds located within the FPR.

(2) If an RFPG creates any [~~Any~~] sub-regional committee, [~~or~~] subcommittee or subgroup to address issues related to a specific geographical area smaller than the full RFPG, it shall [~~must~~] include at least one voting member representing each of the interests under §361.11(d)(1) - (12) [~~§361.11(e)(1) - (12)~~] of this title (relating to Designations and Governance of Flood Planning Regions).

(3) Any outcomes from the activities of such committees or subcommittees or subgroups shall be strictly for the purpose of providing information or recommendations as specifically directed by the full RFPG and for potential consideration by the full RFPG.

(4) RFPGs may not authorize committees or subcommittees or subgroups groups or committees to take any actions regarding:

(A) Modifying the budget or scope of the RFPG planning contract(s);

(B) Directing the RFPG consultant's work or associated expenditure of funds without direct authorization and scope from the RFPG; and

(C) Other activities that are the responsibility of the full RFPG as determined by the flood planning contract with the TWDB and any associated guidance provided by the EA.

(5) Each RFPG or committee or subcommittee or subgroup of an [~~a~~] RFPG is subject to Chapters 551 (relating to Open Meetings) and 552 (relating to Public Information), Government Code.

§361.13. Regional Flood Planning Group Deliverables.

(a) Each RFPG is expected to consider a wide variety of available, relevant, best available information and tools when developing the regional flood plan.

(b) [~~(a)~~] Each RFPG shall deliver a draft and final, adopted RFP in accordance with EA guidance. The RFPs must include the following:

(1) written report content including various presentations of data, tables, charts, maps, and written summaries of certain results related to §§361.30 - 361.45 of this title (relating to Regional Flood Plan Requirements) in accordance with EA guidance and the TWDB grant contract;

(2) [~~a single,~~] standardized tables [~~table~~] that [~~will~~] include [~~a~~] lists [~~list~~] of all recommended FMEs, FMPs, and FMSs [~~and FMPs,~~] and certain key information associated with each FMP, in accordance with guidance and template [~~to be~~] provided by the EA. This table will be the basis for prioritizing recommended FMPs in the state flood plan;

(3) Geographic Information System (GIS) database deliverables and other information in accordance with the contract and guidance provided by and in a manner determined by the EA; [and]

(4) associated data organized in a format and manner determined by the EA; and[.]

(5) [(b)] Documentation of the public process in the plan development, including public comments [Comment] received and responses to public comments on the draft RFP.

(c) The order and chapter content of the published RFPs shall generally follow a standard outline as determined by the EA and based on the scope of the regional flood planning contracts.

(d) The content and format of all associated data deliverables, including the data on which the RFPs are based, shall be in conformance with requirements in guidance documents and data templates to be developed and provided by the EA.

(e) The RFPGs shall, in accordance with their regional flood planning contracts and schedule and TWDB guidance, deliver technical memorandums to the EA prior to the draft RFP and throughout the planning process to demonstrate progress in developing its RFP and to support the concurrent development of the state flood plan. The RFPGs shall approve technical memorandums in accordance with a schedule to be provided by the EA and after notice pursuant to §361.21 of this title (relating to General Notice Requirements). At the discretion of the EA, the technical memorandums shall include:

(1) A list of existing political subdivisions within the FPR that have flood-related authorities or responsibilities;

(2) A list of previous flood studies considered by the RFPG to be relevant to development of the RFP;

(3) A geodatabase and associated maps in accordance with EA guidance that the RFPG considers to be best representation of the region-wide 1% [1.0%] annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the type [source] of flooding for each area as applicable, for use in its risk analysis, including indications of locations where such boundaries remain undefined;

(4) A geodatabase and associated maps in accordance with EA guidance that identifies additional flood-prone areas not described in paragraph (3) of this subsection) based on location of hydrologic features, historic flooding, and/or local knowledge;

[(5) A geodatabase and associated maps in accordance with EA guidance that identifies areas where existing hydrologic and hydraulic models needed to evaluate FMSs and FMPs are available;]

(5) [(6)] A list of available flood-related models that the RFPG considers of most value in developing its plan;

(6) [(7)] The flood mitigation and floodplain management goals adopted by the RFPG per §361.37 [§361.36] of this title (relating to Flood Mitigation and Floodplain Management Goals);

(7) [(8)] The documented process used by the RFPG to identify potentially feasible FMEs, FMPs, and FMSs [and FMPs]; and

(8) [(9)] A list of potential FMEs and potentially feasible FMPs and FMSs [and FMPs] identified by the RFPG, if any. [; and]

[(10) A list of FMSs and FMPs that were identified but determined by the RFPG to be infeasible, including the primary reason for it being infeasible.]

(e) [(f)] The information provided by the RFPG will provide the basis for much of the development and content of the state flood plan.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301317
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER B. GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

31 TAC §361.21

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.21. General Notice Requirements.

(a) Each RFPG and any committee, subcommittee, or subgroup of an RFPG are subject to Chapters 551 and 552, Government Code.

(b) Each RFPG shall create and maintain a website that they will use to post public notices of all its full RFPG, subgroup, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with the items listed below in subsection (h)(1) - (3) of this section.

(c) Each RFPG shall provide a means by which it will accept written public comments [Comment] prior to and after meetings. The RFPGs must also allow oral public comments [Comment] during RFPG meetings.

(d) Confidential materials that fall under protection in accordance with the Homeland Security Act, may not be made available to the general public.

(e) Each RFPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RFPG activities.

(f) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines provided in subsection (h)(1) - (3) of this section to all voting and non-voting RFPG members; and any person or entity who has requested notice of RFPG activities.

(g) At a minimum, all notices must be posted to the RFPG website and in the *Texas Register* on the Secretary of State [secretary of state] website and must include:

(1) the date, time, and location of the meeting;

(2) a summary of the proposed action(s) to be taken;

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when comments [~~Comment~~] will be received from the members and public.

(h) In addition to subsections (a) - (g) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply to any RFPG meetings and any RFPG committee, subcommittee, or subgroup meetings:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available online at least three days prior to and seven days following the meeting when the planning group will take the following actions:

(A) regular RFPG meetings and any RFPG committee, subcommittee, or subgroup meetings;

(B) approval of requests for funds from the Board;

(C) amendments to the regional flood planning scope of work or budget;

(D) approval to submit established deliverables to the Board or EA including technical memorandums;

(E) approval of replacement RFPG members to fill voting and non-voting position vacancies; [~~and~~]

(F) any other RFPG approvals required by TWDB contract or EA guidance not specifically addressed under paragraph (2) or (3) of this subsection;[~~.~~]

(G) holding pre-planning public meetings to obtain input on development of the next RFP per TWC 16.062(d);

(H) determining flood mitigation and floodplain management goals per §361.36 of this title; and

(I) approving process for identifying potential FMEs and potentially feasible FMSs and FMPs per §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects).

(2) at a minimum, notice must be provided at least seven [~~14~~] days prior to the meeting, written comments [~~Comment~~] must be accepted for seven [~~14~~] days prior to the meeting and considered by the RFPG members prior to taking the associated action, and meeting materials must be made available online for a minimum of three [~~7~~] days prior to and 14 days following the meeting, when the planning group will take the following actions:

[~~(A) holding pre-planning public meetings to obtain input on development of the next RFP per TWC 16.062(d);~~]

[~~(B) determining flood mitigation and floodplain management goals per §361.36 of this title;~~]

[~~(C) approving process for identifying potential FMEs and potentially feasible FMSs and FMPs per §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects);~~]

(A) [~~(D)~~] adoption of the final RFP per TWC 16.062(h);

(B) [~~(E)~~] approval of amendments to RFPs per §361.51 of this title (relating to Amendments to Regional Flood Plans [~~Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects~~]); and

(C) [~~(F)~~] approval of any changes to the number of and representation make-up of the RFPG membership. This includes the addition or removal of any voting or non-voting interest category or position, any changes to the representation categories of existing voting and non-voting positions, or the removal of any voting or non-voting positions, including for existing interest categories that may have more than one representative position.

(3) for meetings at which the planning group will take public comment [~~input~~] related to the RFPG's draft RFP per TWC 16.062(f) - (g), the following additional public notice provisions must be met:

(A) The draft RFP must be made available for public inspection online for 30 days prior to the first meeting, if more than one meeting is held, and 30 days following the first meeting;

(B) At a minimum, notice must be provided at least 30 days prior to the first meeting;

(C) Notice must be provided to all adjacent RFPGs;

(D) Notice of the meeting must include a summary of the regional flood plan;

(E) Notice must include information on how the public may submit comments; [~~Comment~~];

(F) A hard copy of the draft RFP must be made available for public inspection in at least one [~~three~~] publicly accessible location [~~locations~~] within the FPR for at least 30 days prior to the first meeting and 30 days following the first meeting; and

(G) Written comment [~~Comment~~] must be accepted for consideration for at least 30 days prior to the first meeting and at least 30 days following the first meeting for consideration and response prior to adoption of the final plan under §361.50 of this title (relating to Adoption, Submittal, Notifications, and Approval of Regional Flood Plans) and oral comments [~~Comment~~] must be accepted during the meeting.

(i) All notice periods given are based on calendar days.

(j) RFPGs shall also provide additional public notice, if any, in accordance with their decision under §361.11(d)(6) of this title (relating to Designations and Governance of Flood Planning Regions), including provision of print notices, if applicable.

(k) Each RFPG shall include a statement in their draft and final adopted regional flood plans regarding the RFPG's conformance with this section.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301318
Amanda Lavin
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Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER C. REGIONAL FLOOD PLAN REQUIREMENTS

31 TAC §§361.30 - 361.40, 361.43 - 361.45

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.30. Description of the Flood Planning Region.

Regional flood plans shall include brief, general descriptions of the following:

(1) social and economic character of the region such as information on development, population, and economic activity [~~and economic sectors most at risk of flood impacts~~];

(2) the areas in the FPR that are flood-prone and the types of major flood risks to life and property in the region;

(3) key historical flood events within the region including associated fatalities and loss of property;

(4) political subdivisions with flood-related authority [~~and whether they are currently actively engaged in flood planning, floodplain management, and flood mitigation activities~~]; and

[~~(5) the general extent of local regulation and development codes relevant to existing and future flood risk;~~]

[~~(6) agricultural and natural resources most impacted by flooding; and~~]

(5) [~~(7)~~] existing local and regional flood plans within the FPR.

§361.31. Description of the Existing Natural Flood Mitigation Features and Constructed Major Flood Infrastructure in the Region.

(a) Regional flood plans shall include a general description of the location, condition, adequacy, and functionality of [~~natural features and constructed~~] major flood related infrastructure [~~infrastrucure~~] within the FPR including, but not limited to:

(1) natural features, including:

(A) [~~(1)~~] rivers, tributaries, and functioning floodplains;

(B) [~~(2)~~] playa lakes; [~~wetlands;~~]

(C) [~~(3)~~] sinkholes; [~~playa lakes;~~]

(2) constructed flood infrastructure, including:

(A) dams and reservoirs that provide flood protection;

[~~(4) sinkholes;~~]

[~~(5) alluvial fans;~~]

[~~(6)~~] [~~vegetated dunes;~~]

(B) [~~(7)~~] levees;

(C) low water crossings;

(D) coastal barriers;

(E) stormwater management systems including tunnels and pump stations;

[~~(8) sea coastal barriers, walls, and revetments;~~]

[~~(9) tidal barriers and gates;~~]

[~~(10) stormwater tunnels;~~]

[~~(11) stormwater canals;~~]

[~~(12)~~] [~~dams that provide flood protection;~~]

(F) [~~(13)~~] detention and retention ponds; and

[~~(14) weirs;~~]

[~~(15)~~] [~~storm drain systems; and~~]

(G) [~~(16)~~] any other flood-related infrastructure.

(b) for non-functional or deficient natural flood mitigation features or major flood infrastructure, explain, in general, the reasons for the features or infrastructure being non-functional or deficient, provide a description of the condition and functionality of the feature or infrastructure and whether and when the natural flood feature or major flood infrastructure may become fully functional, and provide the name of the owner and operator of the major flood infrastructure. [~~infrastrucure.~~]

§361.32. Description of the Major Infrastructure and Flood Mitigation Projects Currently Under Development.

Regional flood plans shall include a general description of the location, source of funding, and anticipated benefits of proposed or ongoing flood mitigation projects in the FPR including:

(1) new structural flood mitigation projects currently under construction;

(2) non-structural flood mitigation projects currently being implemented; and

(3) structural and non-structural flood mitigation projects with dedicated funding to construct and, when available, the expected year of completion.

§361.33. Existing Condition Flood Risk Analyses in the Region.

(a) The RFPGs shall perform existing condition flood risk analyses for the region comprised of [~~comprising~~]:

(1) flood hazard analyses that determines location, magnitude and frequency of flooding;

(2) flood exposure analyses to identify who and what might be harmed within the region; and

(3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

(b) RFPGs shall perform existing condition flood hazard analyses [~~analysis~~] to determine the location and magnitude of both 1% [~~1.0%~~] annual chance and 0.2% annual chance flood events as follows:

(1) collect data and conduct analyses sufficient to characterize the existing conditions for the planning area;

(2) identify areas within each FPR where hydrologic and hydraulic model results are already available and summarize the information;

(3) utilize best available data, hydrologic and hydraulic models for each area;

(4) identify known flood-prone areas based on location of hydrologic features, historic flooding, and local knowledge obtained from outreach activities and public meetings;

(5) all existing condition flood hazard analyses may consider and include only those flood mitigation projects with dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan;

(6) all existing condition flood hazard analyses shall consider where existing levees or dams do not meet FEMA accreditation as inundated by flooding without those structures in place. Provisionally accredited structures may be allowed to provide flood protection, unless best available information demonstrates otherwise;

(7) [~~(4)~~] prepare a map showing areas identified by the RFPG as having an annual likelihood of inundation of more than 1% [~~1.0%~~] and 0.2%, the areal extent of this inundation, and the types [~~sources~~] of flooding for each area; and

(8) [~~(5)~~] prepare a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding and/ or local knowledge.

(c) The RFPGs shall develop [~~high-level, region-wide and largely GIS-based,~~] existing condition flood exposure analyses, using the information identified in the flood hazard analyses [~~analysis~~] to identify who and what might be harmed within the region for, at a minimum, both 1% [~~1.0%~~] annual chance and 0.2% annual chance flood events as follows:

(1) analyses of existing development within the existing condition floodplain and the associated flood hazard exposure;

[~~(2) for the floodplain as defined by FEMA or as defined by an alternative analysis if the FEMA-defined floodplain is not considered best available; and~~]

[~~(3) may include only those flood mitigation projects with dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan.~~]

(2) [~~(4)~~] all existing condition flood exposure analyses shall consider the population and property located in areas where existing levees or dams do not meet FEMA accreditation as inundated by flooding without those structures in place. Provisionally accredited structures may be allowed to provide flood protection, unless best available information demonstrates otherwise.

(3) [~~(5)~~] In accordance with guidance [~~to be~~] provided by the EA, the existing condition flood exposure analyses shall consider available datasets to estimate the potential flood hazard exposure including, but not limited to:

(A) the number of residential properties and associated population;

(B) the number of non-residential properties;

(C) other public infrastructure;

(D) major industrial and power generation facilities;

(E) number and types of critical facilities;

(F) number of roadway crossings;

(G) length of roadway segments; and

(H) agricultural area and value of crops exposed.

(4) [~~(6)~~] The existing condition flood exposure analyses shall include a qualitative description of expected loss of function, which is the effect that a flood event could have on the function of inundated structures (residential, commercial, industrial, public, or others) and infrastructure, such as transportation, health and human services, water supply, wastewater treatment, utilities, energy generation, and emergency services.

[~~(d) Existing condition vulnerability analysis;~~]

(d) The RFPGs shall perform existing condition vulnerability analyses to identify vulnerabilities of communities and critical facilities identified in subparagraphs (b) and (c) above, as follows:

(1) RFPGs shall identify resilience of communities located in flood-prone areas identified as part of the existing condition flood exposure analyses, utilizing relevant data and tools.

(2) RFPGs shall identify the location [~~vulnerabilities~~] of critical facilities and evaluate the critical facilities' vulnerability to flooding based on existing information, in accordance with EA guidance. [~~by looking at factors such as proximity to a floodplain or other bodies of water, past flooding issues, emergency management plans, and location of critical systems like primary and back-up power.~~]

(e) All data produced as part of the existing condition flood exposure analysis and the existing condition vulnerability analysis shall be summarized in the RFP in accordance with guidance provided by the EA. The data [~~and~~] shall include:

(1) underlying flood event return frequency;

(2) type of flood risk;

(3) county;

[~~(4) HUC8;~~]

(4) [~~(5)~~] existing flood authority boundaries;

(5) [~~(6)~~] social vulnerability indices [~~Social Vulnerability Indices~~] for counties and census tracts; and

(6) [~~(7)~~] other categories as determined by RFPGs or to be designated by the EA.

(f) The information developed by the RFPG under this section shall be used to assist the RFPG establish priorities in subsequent planning tasks, to identify areas that need FMEs, and to efficiently deploy its resources.

§361.34. Future Condition Flood Risk Analyses in the Region.

(a) RFPGs shall perform potential future condition flood risk analyses for the region comprised of [~~comprising~~]:

(1) flood hazard analyses that determines location, magnitude and frequency of flooding;

(2) flood exposure analyses to identify who and what might be harmed within the region; and

(3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

(b) RFPGs shall perform a future condition flood hazard analysis to determine, at a minimum, the location of 1% [~~both 1.0%~~] annual chance [~~and 0.2% annual chance~~] flood events as follows:

(1) collect best available data and conduct analyses sufficient to characterize the future conditions for the planning area based on a "no-action" scenario of approximately 30 years of continued development and population growth under current development trends and patterns, and existing flood regulations and policies. RFPGs shall consider the following as available and pertinent in the FPR [~~based on~~]:

(A) current land use and development trends and practices and associated projected population based on the most recently adopted State Water Plan [~~state water plan~~] decade and population near-

est the next RFP adoption date plus approximately 30 years or as provided for in guidance;

(B) reasonable assumptions regarding locations of residential development and associated population growth;

(C) anticipated relative sea level change and subsidence based on existing information;

(D) anticipated changes to the functionality of the existing floodplain;

(E) anticipated sedimentation in flood control structures and major geomorphic changes in riverine, playa, or coastal systems based on existing information;

(F) assumed completion of major flood mitigation projects currently under construction or that already have dedicated construction funding; and

(G) other factors deemed relevant by the RFPG.

(2) identify areas within each FPR where future condition hydrologic and hydraulic model results are already available and summarize the information;

(3) utilize best available data, hydrologic and hydraulic models for each area;

(4) where future condition results are not available, but existing condition hydrologic and hydraulic model results are already available, the RFPGs shall modify hydraulic models to identify future conditions flood risk for 1% [~~1.0% and 0.2%~~] annual chance storms based on simplified assumptions utilizing the information identified in paragraph (1)(A) of this subsection.

(5) prepare a map showing areas of 1% [~~and 0.2%~~] annual chance of inundation for future conditions, the areal extent of this inundation, and the types [~~sources~~] of flooding for each area.

(6) prepare a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding, and/ or local knowledge.

(c) future condition flood exposure analysis. The RFPGs shall use the information identified in the future condition flood hazard analysis to develop and perform high-level, region-wide and largely GIS-based, future condition flood exposure analyses to identify who and what might be harmed within the region for, at a minimum, for [~~both~~] future condition 1% [~~1.0%~~] annual chance [~~and future condition 0.2% annual chance~~] flood event. The future condition flood exposure analysis should include an analysis of existing and future developments within the future condition floodplain and the associated flood hazard exposure. [~~events as follows:~~]

[~~(1) analyses of existing and future developments within the future condition floodplain and the associated flood hazard exposure; and~~]

[~~(2) to include only those flood mitigation projects with dedicated construction funding scheduled for completion prior to the next RFP adoption date plus 30 years or as provided for in guidance.~~]

[~~(3) Identification of flood prone areas associated with the hazard exposure analyses shall be based on analyses that rely primarily on the use and incorporation of existing and available: ~~]

[~~(A) FIRMs or other flood inundation maps and GIS related data and analyses;~~]

[~~(B) available hydraulic flood modeling results;~~]

[~~(C) model-based or other types of geographic screening tools for identifying flood prone areas; and~~]

[~~(D) other best available data or relevant technical analyses that the RFPG determines to be the most updated or reliable.~~]

(d) Future condition vulnerability analysis.

(1) RFPGs shall identify resilience of communities located in flood-prone areas identified in the future condition flood exposure analysis utilizing relevant data and tools.

(2) RFPGs shall identify vulnerabilities of critical facilities to flooding by looking at factors such as proximity to a floodplain, proximity to other bodies of water, past flooding issues, emergency management plans, and location of critical systems like primary and back-up power.

(e) All data produced as part of the future condition flood hazard analysis and future condition flood exposure analysis shall be summarized in the RFP in accordance with guidance provided by the EA and shall include:

(1) underlying flood event return frequency;

(2) type of flood risk;

(3) county;

[~~(4) HUC8;~~]

(4) [~~(5)~~] existing flood authority boundaries;

(5) [~~(6)~~] social vulnerability indices [~~Social Vulnerability Indices~~] for counties and census tracts; and

(6) [~~(7)~~] other categories to be designated by the EA.

(f) The information developed by the RFPG under this section shall be used to assist the RFPG establish priorities in subsequent planning tasks, to identify areas that need FMEs, and to efficiently deploy its resources.

§361.35. Evaluation of Previous and Current Floodplain Management and Recommendations for Changes to Floodplain Management.

(a) Recognizing the extent that previous and current practices may have increased flood risks, including residual risks, and considering broad floodplain management and land use approaches that will avoid increasing flood risks, and avoid negatively affecting neighboring areas, the RFPG shall:

(1) consider the extent to which a lack of, insufficient, or ineffective current floodplain management and land use practices, regulations, policies, and trends related to land use, economic development, and population growth, allow, cause, or otherwise encourage increases to flood risks to both:

(A) existing population and property, and

(B) future population and property.

(2) take into consideration the future flood hazard exposure analysis performed under §361.34 of this title (relating to Future Condition Flood Risk Analyses in the Region), consider the extent to which the 1% [~~1.0%~~] annual chance floodplain, along with associated flood risks, may change over time in response to anticipated development and associated population growth and other relevant man-made causes, and assess how to best address these potential changes.

(3) based on the analyses in paragraphs (1) - (2) of this subsection, make recommendations regarding forward-looking floodplain management and land use recommendations, and economic development practices and strategies[,] that should be implemented by entities within the FPR. These region-specific recommendations may include

[~~minimum~~] floodplain management and land use standards and should focus on how to best address the changes in paragraph (2) of this subsection for entities within the region. These recommendations shall inform recommended strategies for inclusion in the RFP.

(b) [~~(4)~~] RFPGs may also choose to adopt region-specific, [~~minimum~~] floodplain management or land use or other standards that impact flood-risk, that may vary geographically across the region, that each entity in the FPR must adopt prior to the RFPG including in the RFP any FMEs, FMPs or FMSs[~~, or FMPs~~] that are sponsored by or that will otherwise be implemented by that entity.

§361.36. Flood Mitigation Need Analysis.

(a) Based on the analyses and goals developed by the RFPG under §§361.33 - 361.36 of this title and any additional analyses or information developed using available screening-level models or methods, the RFPG shall identify locations within the FPR that the RFPG considers to have the greatest flood mitigation and flood risk study needs by considering:

(1) the areas in the FPR that the RFPG identified as the most prone to flooding that threatens life and property;

(2) the relative locations, extent, and performance of current floodplain management and land use policies and infrastructure located within the FPR, particularly within the locations described in paragraph (1) of this subsection;

(3) areas identified by the RFPG as prone to flooding that don't have adequate inundation maps;

(4) areas identified by the RFPG as prone to flooding that don't have hydrologic and hydraulic models;

(5) areas with an emergency need;

(6) existing modeling analyses and flood risk mitigation plans within the FPR;

(7) flood mitigation projects already identified and evaluated by other flood mitigation plans and studies;

(8) documentation of historic flooding events;

(9) flood mitigation projects already being implemented; and

(10) any other factors that the RFPG deems relevant to identifying the geographic locations where potential FMEs and potentially feasible FMPs and FMSs shall be identified and evaluated under §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects).

(b) The RFPG shall conduct the analysis in subsection (a) of this section in a manner that will ensure the most effective and efficient use of the resources available to the RFPG.

§361.37. Flood Mitigation and Floodplain Management Goals.

Considering the Guidance Principles under §362.3 of this title (related to Guidance Principles), the existing condition flood risk analyses performed under §361.33 of this title (relating to Existing Condition Flood Risk Analyses in the Region), future condition flood risk analyses identified under §361.34 of this title (relating to Future Condition Flood Risk Analyses in the Region), and the consideration of current floodplain management and land use approaches under §361.35 of this title (relating to Evaluation of Previous and Current Floodplain Management Approaches and Recommendations for Changes to Floodplain Management), input from the public, and other relevant information and considerations, RFPGs shall:

(1) Identify specific and achievable flood mitigation and floodplain management goals along with target years by which to meet those goals for the FPR to include, at a minimum, goals specifically addressing risks to life and property.

(2) Recognize and clearly state the levels of residual risk that will remain in the FPR even after the stated flood mitigation goals in paragraph (1) of this section are fully met.

(3) Structure and present the goals and the residual risks in an easily understandable format for the public including in conformance with guidance to be provided by the EA.

(4) Use these goals to guide the RFPG in carrying out the tasks required under §§361.37 - 361.39 of this title.

(5) When appropriate, choose goals that apply to full single HUC8 watershed boundaries or coterminous groups of HUC8 boundaries within the FPR.

(6) Identify both short-term goals (10 years) and long-term goals (30 years).

§361.38. Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects.

(a) Based on analyses and decisions under §§361.33 - 361.37 of this title the RFPG shall identify and evaluate potential FMEs and potentially feasible FMPs and FMSs [~~and FMPs~~], including nature-based solutions, some of which may have already been identified by previous evaluations and analyses by others. [~~An FME is a proposed flood study of a specific, flood-prone area, that may include a flood risk analysis, that is needed in order to determine whether there are potentially feasible FMSs or FMPs.~~] An FME may eventually result in detailed hydrologic and hydraulic analyses and identification of projects or strategies that could be amended into an [~~a~~] RFP as FMPs or FMSs [~~or FMPs~~].

(b) When evaluating FMSs and FMPs the RFPG will, at a minimum, attempt to identify one solution that provides flood mitigation associated a with 1% [~~1.0%~~] annual chance flood event. In instances where mitigating for 1% [~~1.0%~~] annual chance events is not feasible, the RFPG shall document the reasons for its infeasibility, and at the discretion of the RFPG, other [~~FMS and~~] FMPs to mitigate more frequent events may also be identified and evaluated based on guidance [~~to be~~] provided by the EA.

(c) A summary of the RFPG process for identifying potential FMEs and potentially feasible FMPs and FMSs [~~and FMPs~~] in subsection (a) of this section shall be established and included in the draft and final adopted RFP.

(d) The RFPG shall then identify potentially feasible FMPs and FMSs [~~and FMPs~~] in accordance with the RFPG process established under subsection (c) of this section.

(e) For areas within the FPR that the RFPG does not yet have sufficient information or resources to identify potentially feasible FMPs and FMSs [~~and FMPs~~], the RFPG shall identify areas for potential FMEs that may eventually result in FMPs.

(f) The RFPG shall evaluate potentially feasible FMPs and FMSs [~~and FMPs~~] understanding that, upon evaluation and further inspection, some FMPs or FMSs [~~or FMPs~~] initially identified as potentially feasible may, after further inspection, be reclassified as infeasible.

(g) Recommended FMPs will be ranked in the state flood plan and:

(1) shall represent discrete[~~,~~] projects;

(2) shall not entail an entire capital program or drainage masterplan; and

(3) may rely on other flood-related projects.

(h) Evaluations of potentially feasible FMPs and FMSs [~~and FMPs~~] will require associated, detailed hydrologic and hydraulic modeling results that quantify the reduced impacts from flood and the associated benefits and costs. Information may be based on previously performed evaluations of projects and related information. Evaluations of potentially feasible FMPs and FMSs [~~and FMPs~~] shall include the following information and be based on the following analyses:

(1) A reference to the specific flood mitigation or floodplain management goal addressed by the feasible FMP or FMS [~~or FMP~~];

(2) A determination of whether FMP or FMS [~~or FMP~~] meets an emergency need;

(3) An indication regarding the potential use of federal funds[~~,~~] or other sources of funding[~~,~~] as a component of the total funding mechanism;

(4) An indication of any water supply source benefits;

[~~(4) An equitable comparison between and consistent assessment of all FMSs and FMPs that the RFPGs determine to be potentially feasible;~~]

(5) A demonstration that the FMP or FMS [~~or FMP~~] will not negatively affect a neighboring area;

(6) A quantitative reporting of the estimated benefits of the FMP or FMS, [~~or FMP,~~] including reductions of flood impacts of the 1% [~~1.0%~~] annual chance flood event and other storm events identified and evaluated if the project mitigates to more frequent event[~~,~~] to include, where applicable, but not limited to:

(A) Associated flood events that must, at a minimum, include the 1% [~~1.0%~~] annual chance flood event and other storm events identified and evaluated;

(B) Reduction in habitable, equivalent living units flood risk;

(C) Reduction in residential population flood risk;

(D) Reduction in critical facilities flood risk;

(E) Reduction in road closure occurrences;

(F) Reduction in acres of active farmland and ranchland flood risk;

(G) Estimated reduction in fatalities, when available;

(H) Estimated reduction in injuries, when available;

(I) Reduction in expected annual damages from residential, commercial, and public property; and

(J) Other benefits as deemed relevant by the RFPG including environmental benefits and other public benefits.

(7) A quantitative reporting of the estimated capital cost of projects in accordance with guidance provided by the EA;

[~~(8) Calculated benefit-cost ratio for FMPs in accordance with guidance to be provided by the EA and based on current observed conditions;~~]

(8) [~~(9)~~] For projects that will contribute to water supply, all relevant evaluations required under §357.34(e) of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects), as determined by the EA based on the type of contribution, and a description of its consistency with the currently adopted State Water Plan;

(9) [~~(10)~~] A description of potential impacts and benefits from the FMP or FMS [~~or FMP~~] to the environment, agriculture, recreational resources, navigation, water quality, erosion, sedimentation, and impacts to any other resources deemed relevant by the RFPG;

(10) [~~(11)~~] A description of residual, post-project, and future risks associated with FMPs including the risk of potential catastrophic failure and the potential for future increases to these risks due to lack of maintenance;

(11) [~~(12)~~] Implementation issues including those related to right-of-ways, permitting, acquisitions, relocations, utilities and transportation; and

(12) [~~(13)~~] Funding sources and options that exist or will be developed to pay for development, operation, and maintenance of the FMP or FMS [~~or FMP~~].

(i) Evaluations of potential FMEs will be at a reconnaissance or screening-level, unsupported by associated detailed hydrologic and hydraulic analyses. These will be identified for areas that the RFPG considers a priority for flood risk evaluation but that do not yet have the required detailed hydrologic and hydraulic modeling or associated project evaluations available to evaluate specific FMPs or FMSs [~~or FMPs~~] for recommendation in the RFP. These FMEs shall be based on recognition of the need to develop detailed hydrologic models or to perform associated hydraulic analyses and associated project evaluations in certain areas identified by the RFPG. Evaluations of potential FMEs shall include the following analyses:

(1) A reference to the specific flood mitigation or floodplain management goal to be addressed by the potential FME.

(2) An indication [~~A determination~~] of whether FME may meet an emergency need.

(3) An indication regarding the potential use of federal funds, or other sources of funding as a component of the total funding mechanism.

[~~(4) An equitable comparison between and consistent assessment of all FMEs.~~]

(4) [~~(5)~~] An indication of whether hydrologic and or hydraulic models are already being developed or are anticipated in the near future and that could be used in the FME.

(5) [~~(6)~~] A quantitative reporting of the estimated benefits, including reductions of flood risks, to include, as applicable:

(A) Estimated habitable, living unit equivalent and associated population in FME area;

(B) Estimated critical facilities in FME area;

(C) Estimated number of roads closures occurrences in FME area, when available;

(D) Estimated acres of active farmland and ranchland in FME area; and

(E) A quantitative reporting of the estimated study cost of the FME and whether the cost includes use of existing or development of new hydrologic or hydraulic models.

(6) [~~(7)~~] For FMEs, RFPGs do not need to demonstrate that an FME will not negatively affect a neighboring area.

(j) RFPGs shall evaluate and present potential FMEs and potentially feasible FMPs and FMSs [~~and FMPs~~] with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RFP.

(k) Analyses under this section shall be performed in accordance with guidance requirements to be provided by the EA.

(l) All data produced as part of the analyses under §361.38 of this title (related to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects) shall be organized and summarized in the RFP in accordance with guidance provided by the EA and shall be provided in a format determined by the EA.

(m) Analyses shall clearly designate a representative location of the FME and beneficiaries including a map and designation of HUC level as determined by the EA [~~HUC8~~] and county location.

§361.39. Recommended Flood Management Evaluations, Flood Mitigation Projects, and Flood Management Strategies[~~, and Flood Mitigation Projects~~].

(a) RFPGs shall recommend FMPs and FMSs [~~and FMPs~~] to reduce the potential impacts of flood based on the evaluations under §361.38 of this title (related to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects) and [~~Projects) and~~] RFPG goals and that must, at a minimum, mitigate for flood events associated with a 1% [~~at 1.0 percent~~] annual chance (100-yr flood), where feasible. In instances where mitigating for 100-year events are [~~is~~] not feasible, FMPs and FMSs [~~FMS and FMPs~~] to mitigate more frequent events may be recommended based on guidance to be provided by the EA. Recommendations shall be based upon the identification, analysis, and comparison of alternatives that the RFPG determines will provide measurable reductions in flood impacts in support of the RFPG's specific flood mitigation and/or floodplain management goals.

(b) RFPGs shall provide additional information in conformance with guidance [~~to be~~] provided by the EA which will be used to rank recommended FMPs in the state flood plan.

(c) RFPGs shall calculate the benefit-cost ratio for recommended FMPs in accordance with guidance provided by the EA.

(d) [~~(c)~~] RFPGs shall recommend FMEs that the RFPG determines are most likely to result in identification of potentially feasible FMPs and FMSs [~~and FMPs~~] that would, at a minimum, identify and investigate one solution to mitigate for flood events associated with a 1% [~~1.0%~~] annual chance flood event and that support specific RFPG flood mitigation and/or floodplain management goals.

(e) [~~(d)~~] Recommended FMSs or FMPs may not negatively affect a neighboring area or an entity's water supply.

(f) [~~(e)~~] Recommended FMSs or FMPs that will contribute to water supply may not result in an overallocation of a water source based on the water availability allocations in the most recently adopted State Water Plan.

(g) [~~(f)~~] Specific types of FMEs, FMPs, or FMSs[~~, or FMPs~~] that should be included and that should not be included in RFPs must be in accordance with guidance [~~to be~~] provided by the EA.

§361.40. Impacts of Regional Flood Plan.

Regional flood plans shall include:

(1) a region-wide summary of the relative reduction in flood risk that implementation of the regional flood plan would achieve within the region including with regard to life, injuries, and property;

(2) a statement that the FMPs in the plan, when implemented, will not negatively affect neighboring areas located within or outside of the FPR;

(3) a statement that the plan adequately provides for the preservation of life and property and the development of water supply sources, where applicable;

(4) [~~(3)~~] a general description of the types of potential positive and negative socioeconomic or recreational impacts of the recommended FMPs and FMSs [~~and FMPs~~] within the FPR; and

(5) [~~(4)~~] a general description of the overall impacts of the recommended FMPs and FMSs in the RFP on the environment, agriculture, recreational resources, water quality, erosion, sedimentation, and navigation.

§361.43. Administrative, Regulatory, and Legislative Recommendations.

RFPGs shall develop and include in their flood plans:

(1) legislative recommendations that they consider necessary to facilitate floodplain management and flood mitigation planning and implementation;

(2) other regulatory or administrative recommendations that they consider necessary to facilitate floodplain management and flood mitigation planning and implementation;

(3) any other recommendations that the RFPG believes are needed and desirable to achieve its regional flood mitigation and floodplain management goals; and

(4) recommendations regarding potential[~~,~~] new revenue-raising opportunities[~~,~~] including potential new municipal drainage utilities or regional flood authorities[~~,~~] that could fund the development, operation, and maintenance of floodplain management or flood mitigation activities in the region.

§361.44. Flood Infrastructure Financing Analysis.

RFPGs shall indicate how individual local governments, regional authorities, and other political subdivisions in their region propose to finance the region's recommended FMSs, FMPs, and FMEs included in their flood plan. The assessment shall also describe what role the RFPG proposes for the state in financing recommended FME, FMPs, and FMSs.[~~, FMPs, and FMEs. As projects are implemented, those improvements and associated benefits shall be incorporated into and reflected in the subsequent RFPs.~~]

§361.45. Implementation and Comparison to Previous Regional Flood Plan.

Each RFPG shall, in accordance with guidance from the EA:

(1) collect information from local sponsors of FMPs on implementation of previously recommended FMPs and provide to the EA; [~~and~~]

(2) as projects are implemented, incorporate those improvements and associated flood-risk reduction benefits into the plan and reflect in the subsequent RFPs; and

(3) [~~(2)~~] include a general description of how the new RFP differs from the previous plan including with regard to the status of existing flood infrastructure, flood mitigation achieved, goals, and recommended projects.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301319
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER D. ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL FLOOD PLANS

31 TAC §361.50, §361.51

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.50. Adoption, Submittal, Notifications, and Approval of Regional Flood Plans.

(a) The RFPGs shall approve each recommended FME, FMP, and FMS [~~FMS, and FMP~~] by a separate vote and shall adopt their draft and final RFPs by a vote and submit their final adopted RFPs to the Board every five years on a date to be determined by the EA, as modified by subsection (d)(2)(D) of this section, for approval and inclusion in the State Flood Plan.

(b) The draft RFP submitted to the EA must be in the electronic and paper format specified by the EA. Each draft RFP must certify that the draft RFP is complete and adopted by the RFPG.

(c) Prior to adopting a final RFP, the RFPGs shall consider the following comments [~~Comment~~] in accordance with §361.21 of this title (relating to General Notice Requirements) to include:

(1) any written or oral comments [~~Comment~~] received from the public on the draft RFP; and

(2) the EA's written comments [~~Comment~~] on the draft RFP.

(d) RFPGs shall submit the draft RFP and the adopted RFPs and any subsequent amendments to approved RFPs to the EA in conformance with this section.

(1) RFPs shall include:

(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;

(B) A list of recommended FMEs, FMPs, and FMSs, [~~FMPs, FMEs, and FMSs,~~] with accompanying data to be used by the EA to rank each associated non-zero capital costs or other non-recurring costs in accordance with specifications and guidance to be provided by the EA;

(C) An executive summary that documents key RFP findings and recommendations; and

(D) In the adopted RFP, summaries of all written and oral comments [~~Comment~~] received pursuant to subsection (c) of this section, with a response by the RFPG explaining how the plan was revised or why changes were not warranted in response to written comments [~~Comment~~] received under subsection (c) of this section.

(2) RFPGs shall submit RFPs to the EA according to the following schedule:

(A) Draft RFPs are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the draft RFP, the RFPGs shall provide and or upload data, metadata, and all other relevant digital information supporting the plan to the Board, including to the Board's State Flood Plan Database, when available. All changes and corrections to this information must be entered into or otherwise updated in RFPG's dataset including into the Board's State Flood Plan Database, when available, prior to submittal of a final adopted RFP.

(C) The RFPG shall make publicly available and transfer copies of all data, models, and reports generated by the planning process and used in developing the RFP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RFPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RFPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted by the EA.

(E) Once approved by the Board, RFPs shall be made available on the Board website.

(e) Upon receipt of an RFP adopted by the RFPG, the Board shall consider approval of such plan based on the following criteria:

(1) verified adoption of the RFP by the RFPG;

(2) whether the RFP satisfies the requirements for regional flood plans adopted in the guidance principles at §361.20 of this title (relating to Guidance Principles for State and Regional Flood Planning);

(3) whether the RFP adequately provides for the preservation of life and property and the development of water supply sources, where applicable; and

(4) the RFP does not negatively affect a neighboring area.

(f) The Board may approve an RFP only after it has determined that the RFP complies with statute and rules.

(g) RFPs approved by the Board pursuant to this chapter shall be incorporated into the State Flood Plan as outlined in §362.4 of this title (relating to State Flood Plan Guidelines).

~~[(h) The initial RFP shall be delivered to the EA on or before January 10, 2023.]~~

§361.51. Amendments to Regional Flood Plans.

(a) Local Flood Planning Amendment Requests. A Political Subdivision in the FPR may request an RFPG to consider an amendment to an adopted RFP based on changed conditions or new information. An RFPG must formally consider such request within 180 days after its receipt and shall amend its adopted RFP if it determines an amendment is warranted.

(b) If the Political Subdivision is not satisfied with the RFPG's decision on the issue, it may file a petition with the EA to request review of the RFPG's decision and consider the amendment to the approved RFP. The Political Subdivision shall send the petition to the EA and the chair of the affected RFPG.

(1) The petition must include:

(A) the changed condition or new information that affects the approved RFP;

(B) the specific sections and provisions of the approved RFP that may be affected by the changed condition or new information;

(C) the efforts made by the Political Subdivision to work with the RFPG to obtain an amendment; and

(D) any other information that may be useful to the EA in determining whether an amendment is necessary.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RFP, the EA shall request the RFPG to consider making the appropriate change. If the RFPG does not amend its plan consistent with the request within 90 days, it shall provide a written explanation to the EA explaining the reason for not amending the RFP, after which the EA may present the issue to the Board for consideration at a public meeting. The Board may then direct the RFPG to amend its RFP.

(c) Amendments to RFPs and State Flood Plan. An RFPG may amend an adopted, Board-approved RFP at a regular RFPG meeting.[~~, after giving notice for an amendment and providing notice in accordance with §361.21 of this title (relating to General Notice Requirements).~~] An RFPG must obtain Board approval of all amendments to RFPs under the standards and procedures of this section. The RFPG may initiate an amendment or an entity may request an RFPG to amend its adopted, Board-approved RFP.

[~~(1) An RFPG's consideration for action to initiate an amendment may occur at a regular RFPG meeting.~~]

(1) [~~(2)~~] The RFPG shall hold a public meeting at which the RFPG may choose to take action on the amendment. The amendment shall be available for EA and public comment in accordance with §361.21 of this title.

(2) [~~(3)~~] The RFPG [~~may adopt the amendment at a regularly scheduled RFPG meeting held in accordance with §361.21 of this title. The~~] amendment materials shall be submitted to the EA and shall:

(A) include the RFPG responses to all comments [~~Comment~~] received on the amendment in associated with notice in §361.21 of this title (relating to General Notice Requirements); and

(B) demonstrate that the amended RFP complies with statute and rules including that it satisfies the requirements in the guidance principles §362.3 of this title (relating to Guidance Principles) and does not negatively affect a neighboring area.

(3) [~~(4)~~] After adoption of the amendment, the RFPG shall submit the amendment and its response to comment [~~Comment~~] to the Board which shall consider approval of the amendment following EA review of the amendment.

(d) All amendments to an RFP must meet all the requirements related to development of an RFP.

(e) Following amendments of RFPs, the Board shall make any necessary amendments to the State Flood Plan as outlined in §362.4(b) of this title (relating to State Flood Plan Guidelines).

(f) RFPGs may adopt errata to the final RFP to correct minor, non-substantive errors identified after adoption of the final RFP but prior to adoption of the corresponding State Flood Plan. Before adopting errata to a final RFP, the RFPG must provide public notice and receive comments in accordance with §361.21 of this title. Upon adoption of the errata, the RFPG shall submit to the EA an errata package containing revised pages of the RFP and public comments received. The EA will notify the RFPG within 60 days whether the errata are acceptable as errata or will need to be made through the amendment process.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301320
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER E. NEGATIVE EFFECTS ON NEIGHBORING AREAS AND FAILURE TO MEET REQUIREMENTS

31 TAC §361.61

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.61. Addressing Negative Effects on Neighboring Areas Between Flood Planning Regions.

(a) In the event an RFPG has asserted or the Board finds that there is an element of a draft RFP that will negatively affect a neighboring area in a different FPR, the involved regions shall make a good faith effort to voluntarily work together to resolve the issue.

(b) The EA may use the following process to address the issue:

(1) notify the affected RFPGs of the nature of the potential negative effect;

(2) request affected RFPGs appoint a representative or representatives authorized to negotiate on behalf of the RFPG and notify the EA in writing of the appointment; and

(3) assist in negotiating resolutions of the issue with RFPGs.

(c) In the event the negotiations are unsuccessful, the EA may:

(1) propose a recommendation for resolution of the issue to the Board; or

(2) hold a public meeting on the proposed recommendation for resolution of the issue at a time and place determined by the EA. At the meeting, the EA may take comments [~~Comment~~] from the RFPGs, Political Subdivisions, and members of the public on the issues identified by the Board as unresolved issues; and

(3) after the public meeting, the EA may make a recommendation to the Board for resolution of the issue.

(d) The Board shall consider the EA's recommendation and any written statements by a representative for each affected RFPG and determine the resolution of the issue.

(e) The EA shall notify affected RFPGs of Board's decision and shall direct changes to the affected RFPs, to be incorporated in accordance with Texas Water Code §16.062(i).

(f) The Board may also, at its discretion, consider approving a regional flood plan with the exception of the specific element that will negatively affect a neighboring area.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301321
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER F. REGIONAL FLOOD PLANNING GRANTS

31 TAC §§361.70 - 361.72

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and§16.453(Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.70. Planning Group Sponsor Request for Funding [~~Notice of Funds and Submission and Review of Regional Flood Planning Applications~~].

(a) The EA will notify the RFPGs that funds are available and that applications will be accepted from Planning Group Sponsors for grants to develop or negotiate a scope of work or to develop or revise regional flood plans. An [~~A~~] RFPG may not receive grant funds unless the RFPG has provided the EA with a copy of the RFPG's adopted by-laws.

(b) The RFPG shall provide a written designation to the EA naming the Planning Group Sponsor that is authorized to request [~~apply for~~] grant funds on behalf of the RFPG. [~~The RFPG shall ensure that the Planning Group Sponsor has the legal authority to conduct the procurement of professional services and enter into the contracts necessary for regional flood planning.~~]

(c) The RFPG meeting to consider its additional, region-specific, public notice requirements in accordance with §361.12(3) of this title (relating to General Regional Flood Planning Group Responsibilities and [~~an~~] Procedures) must occur prior to taking action regarding its request for funding under this subchapter and must be documented in its application for funding.

(d) The designated Planning Group Sponsor shall provide notice that a request [~~an application~~] for funding is being submitted in accordance with §361.21 of this title (relating to General Notice Requirements).

(e) The EA may request clarification from the Planning Group Sponsor, if necessary, to evaluate the application. Incomplete applications may be rejected and returned to the applicant.

~~[(f) The applications will be evaluated on the following criteria:]~~

~~[(1) degree to which proposed flood planning does not duplicate previous or ongoing flood or water planning;]~~

~~[(2) application organization, responsiveness, and reasonableness of budget;]~~

~~[(3) scope of work;]~~

~~[(4) eligibility of tasks for funding under this subchapter;]~~

~~[(5) the relative need of the Planning Group Sponsor for the funding based upon an assessment of the necessary scope of work, amount of work, and cost to develop the regional flood plan as compared to statewide needs for development of all regional flood plans;]~~

~~[(6) the degree to which the scope of work associated with the funding and to be performed by the RFPG will address the flood risks in the FPR; and]~~

~~[(7) Conformance with the requirements in the Board request for applications including other information as may be required in the application.]~~

§361.71. Board Consideration of Funding Requests, [~~Applications,~~] Applicant's Responsibilities, and Contract.

(a) The EA will provide a summary of regional flood planning funding allocations [~~applications~~] with recommendations for approval to the Board for consideration at a [~~regularly scheduled~~] public meeting of the Board. The EA shall notify the RFPGs [~~applicants~~] and other persons who have provided comments [~~Comment~~] of the time and place of such meeting.

(b) [~~The Board may approve, deny, amend, or continue consideration of an application.~~] If the Board approves the funding allocation, [~~an application for funding,~~] the Planning Group Sponsor will be notified of the [~~amount of funds available and the~~] deadline for executing a contract with the Board. If the Planning Group Sponsor [~~applicant~~] does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The Planning Group Sponsor may request an extension of time for good cause shown prior to the contract execution deadline.

(c) The Board may approve, deny, amend, or continue consideration of allocation of funding to any Planning Group Sponsor.

(d) [~~(c)~~] The Planning Group Sponsor must demonstrate the availability of matching funds when applicable. However, the Board may in its discretion award up to 100% of the necessary and direct costs of the development or revision of a plan.

(e) [~~(d)~~] The [~~the~~] contracts and sub-contracts for regional flood planning funds shall include:

(1) a detailed statement of the purpose for which the money is to be used;

(2) a scope of work;

(3) the total amount of money to be paid under the contract and, as determined by the EA, subdivided into budget tasks;

(4) the time for completion; and

(5) any other terms and conditions required by the EA or agreed to by the contracting parties.

§361.72. Use of Funds.

(a) Limitations of funding. The Board has sole discretion in determining which activities are necessary for the development or revision of RFPs. However, no funds provided by the Board may be expended by RFPGs for the following:

(1) activities for which the Board determines existing information, data, or analyses are sufficient for the planning effort including but not limited to:

(A) model development, modeling, or collection of data describing flood hazard exposure or flood risks where information for evaluation of flood hazard exposure or flood risks is currently available from other sources or that will be made available by TWDB or others in sufficient time to be utilized by the RFPG in development of their RFP;

(B) detailed technical evaluations of FMEs or FMSs or FMPs, including regarding feasibility, cost, or impacts, where recent, sufficient information for planning is available, including from the Board or other entity, to evaluate the FMEs or FMSs or FMPs;

(C) evaluations of topics not directly related to the regional flood planning contract scope of work or related flood planning rules for development of regional flood plans; and

(D) revision of the Board-adopted state population projections.

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) costs associated with administration of the plan's development by the Planning Group Sponsor or RFPG members, including but not limited to:

(A) compensation for the time or expenses of RFPGs members' service on or for the RFPG;

(B) costs of administering the RFPGs, other than those explicitly allowed under subsection (b) of this section;

(C) staff or overhead costs for time [~~spent providing public notice and meetings, including time~~] and expenses for attendance at such meetings;

(D) costs for training;

(E) costs of developing an application for funding or reviewing materials developed due to this grant; and

(F) costs of administering the regional flood planning grant and associated contracts.[;]

(4) analysis or other activities related to planning for disaster response or recovery activities; and

(5) analyses of benefits and costs of FMSs beyond the scope of such analyses that is specifically allowed or required by regional flood planning guidance to be provided by the EA unless the RFPG demonstrates to the satisfaction of the EA that these analyses are needed to determine the selection of the FMS or FMP.

(b) The following administrative costs are eligible for funding if the RFPG or its chairperson approves [~~certifies,~~] during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:

(1) travel expenses, as authorized by the General Appropriations Act, are available only for attendance at a posted meeting of the RFPG unless the travel is specifically authorized by the RFPG and EA;

(2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RFPGs and certified by the chairperson;

(3) direct costs, [~~excluding personnel-related costs~~] of the Planning Group Sponsor, for placing public notices for the legally required public meetings and of providing copies of information for the public and for members of the RFPGs as needed for the efficient performance of planning work;

(4) the cost of public notice postings including a website and for postage for mailing notices of public meetings; [~~and~~]

(5) the Planning Group Sponsor's personnel costs, for the staff hours that are directly spent providing, preparing for, and posting public notice for RFPG meetings, including time and direct expenses for their support of and attendance at such RFPG meetings in accordance with, and as specifically limited by, the flood planning grant contract with the Board;[.]

(6) the reasonable cost of purchase or rental of audio-visual equipment that is necessary to comply with Texas Government Code Chapter 551 related to Open Meetings; and

(7) the cost for rental space to hold RFPG meetings.

(c) Subcontracting. An [~~A~~] RFPG through the Planning Group Sponsor's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional flood plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301322
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-8676

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CHAPTER 361. REGIONAL FLOOD PLANNING

The Texas Water Development Board (TWDB or "board") proposes the repeal of 31 Texas Administrative Code (TAC) §§361.22, 361.36, and 361.37.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE ADOPTED REPEALS.

The TWDB proposes the repeal to these sections of the rules. New rules 31 TAC §361.36 and §361.37 are being proposed elsewhere in this issue of the *Texas Register.*

SECTION BY SECTION DISCUSSION OF THE PROPOSED REPEALS

Subchapter B Guidance Principles, Notice Requirements, and General Considerations

§361.22 General Considerations for Development of Regional Flood Plans

Section 361.22 is proposed to be repealed because the language was not useful to the development of regional or the state flood plans.

Subchapter C Regional Flood Plan Requirements

Section 361.36 Flood Mitigation Need Analysis

Section 361.36 is proposed to be repealed and substitute language is being proposed. The new language that is being proposed is included elsewhere in this issue of the *Texas Register.*

Section 361.37 Flood Mitigation and Flood Management Goals

Section 361.36 is proposed to be repealed and substitute language is being proposed. The new language that is being proposed is included elsewhere in this issue of the *Texas Register.*

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeal. For the first five years these rules are repealed, there is no expected additional cost to state or local governments resulting from their administration.

The repeal is not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments. The repeal is not expected to have any impact on state or local revenues. The repeal does not require any increase in expenditures for state or local governments. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from this repeal.

Because the repeal will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 does not apply.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed repeal is in effect, the public will benefit from the rulemaking as it facilitates the regional flood planning process. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed repeal is in effect, the repeal will not impose an economic cost on persons required to comply with the repeal as the repeal is being proposed in order to develop regional flood plans as required by statute.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of this repeal. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the repeal. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the repeal in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the repeal is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major

environmental rule" is defined as a rule with the specific intent to protect the environment or

reduce risks to human health from environmental exposure, a rule that may adversely affect in a

material way the economy or a sector of the economy, productivity, competition, jobs, the

environment, or the public health and safety of the state or a sector of the state. The intent of the repeal is to facilitate the regional and state flood planning process.

Even if the proposed repeal were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This repeal does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code

§16.062. Therefore, this proposed repeal does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to

the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed repeal and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this repeal is to facilitate the regional and state flood planning process while making the process more efficient for the regional flood planning regions. The proposed repeal will substantially advance this stated purpose by clarifying requirements of the flood plan regions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed repeal because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed repeal does not affect a landowner's rights in private real property because this repeal does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeal. Therefore, the proposed repeal does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed repeal in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed repeal would be in effect, the proposed repeal will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in fees paid to the agency; (4) create a new regulation; (5) expand, limit, or repeal an existing regulation; (6) increase or decrease the number of individuals subject to the rule's applicability; or (7) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register.* Include Chapter 361 in the subject line of any comments submitted.

SUBCHAPTER B. GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

31 TAC §361.22

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund, and §16.453 (Floodplain Management Account for funding planning grants).

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.22. General Considerations for Development of Regional Flood Plans.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301315
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER C. REGIONAL FLOOD PLAN REQUIREMENTS

31 TAC §361.36, §361.37

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund, and §16.453 (Floodplain Management Account for funding planning grants).

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.36. Flood Mitigation and Floodplain Management Goals.
§361.37. Flood Mitigation Need Analysis.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301316
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-8676

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CHAPTER 362. STATE FLOOD PLANNING GUIDELINES

SUBCHAPTER A. STATE FLOOD PLAN DEVELOPMENT

31 TAC §§362.2 - 362.4

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §§ 362.2 - 362.4

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The specific purpose of this rulemaking is to incorporate the changes proposed in the regional flood planning rules to the state flood plan development rules as applicable.

The intent of the amendments is to develop the statewide flood plan to incorporate changes and improvements to the process and increase the quality of the flood plan based on lessons learned during the inaugural cycle of this recurring state-wide process.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 362.2 Definitions and Acronyms

The proposed definition of Flood Management Strategy (FMS) is modified to better capture the intent behind an FMS so that it is useful information.

Section 362.3 Guidance Principles

Minor changes are proposed to the guidance principles. The guidance principles are used by the regional flood planning groups in developing their regional flood plans and they will be used by the Board in developing the state flood plan in 2024. The proposed changes are minor non-substantive changes.

Section 362.4 State Flood Plan Guidelines

Minor non-substantive changes are proposed to conform with the changes proposed in 31 TAC §361.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules as amended to are necessary to protect water resources of this state as authorized by the Texas Water Code; are necessary to protect the health, safety, and welfare of the residents of this state; and are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it facilitates the regional flood planning process. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute to develop regional flood plans.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

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

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement

a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather under Texas Water Code § 16.062. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to facilitate the state flood planning process while making the process more efficient for the regional flood planning regions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The proposed rule may (3) require an increase or decrease in future legislative appropriations to the agency.

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in fees paid to the agency; (4) create a new regulation; (5) expand, limit, or repeal an existing regulation; (6) increase or decrease the number of individuals subject to the rule's applicability; or (7) positively or adversely affect this state's economy. But the proposed rule may require an increase or decrease in future legislative appropriations to the agency.

AGENCY REVIEW OF EXISTING RULES (Texas Government Code §2001.039)

This proposed rulemaking includes an assessment of whether the reasons for initially adopting the rule exist and therefore, this rulemaking satisfies the requirement of a formal review in accordance with Texas Government Code § 2001.039.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register.* Include Chapter 362 in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is proposed under the authority of Texas Water Code §16.061 State Flood Planning.

Cross Reference: Texas Water Code §16.061 State Flood Planning.

TEXAS ADMINISTRATIVE CODE: As in effect on 02/16/2023.

§362.2. Definitions and Acronyms.

(a) 1% Annual Chance Flood Event [~~1.0% annual chance flood event~~]--Flood event having a 1% [~~1.0%~~] chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.

(b) 0.2% Annual Chance Flood Event [~~annual chance flood event~~]--Flood event having a 0.2% chance of being equaled or exceeded in any given year, also referred to as the 500-year flood.

(c) Board--The governing body of the Texas Water Development Board.

(d) Executive Administrator (EA)--The Executive Administrator of the TWDB or a designated representative.

(e) Flood Mitigation--The implementation of actions, including both structural and non-structural solutions, to reduce flood risk to protect against the loss of life and property.

(f) Flood Management Evaluation (FME)--A proposed study to identify flood risk or flood risk reduction solution. [~~A proposed flood study of a specific, flood-prone area that is needed in order to assess flood risk and/or determine whether there are potentially feasible FMSs or FMPs.~~]

(g) Flood Management Strategy (FMS)--Long term flood risk reduction solution ideas that still need to be formulated, for example, regulatory enhancements. All solutions and strategies that do not belong in FME or FMP belong to FMS. [~~A proposed plan to reduce flood risk or mitigate flood hazards to life or property. A flood management strategy may or may not require associated Flood Mitigation Projects to be implemented.~~]

(h) Flood Mitigation Project (FMP)--A proposed flood project, both structural and non-structural, that has a non-zero capital costs or other non-recurring cost and that when implemented will reduce flood risk or mitigate flood hazards to life or property.

(i) Neighboring area--Any area, including but not limited to upstream and downstream areas, potentially affected by the proposed flood mitigation project.

(j) Political Subdivision--County, city, or other body politic or corporate of the state, including any district or authority created under Art. 3 §52 or Art. 16 §59 of the constitution and including any interstate compact commission to which the state is a party and any nonprofit WSC created and operating under Ch. 67.

(k) Regional Flood Plan (RFP)--The plan adopted or amended by a Regional Flood Planning Group pursuant to Texas Water Code §16.062 (relating to Regional Flood Plans) and this chapter.

(l) State Flood Plan (SFP)--The most recent State Flood Plan adopted or amended by the Board under Texas Water Code §16.061 (relating to State Flood Plan).

(m) TWDB--Texas Water Development Board.

§362.3. Guidance Principles.

(a) Regional flood planning guidance principles shall be the same as the state flood planning guidance principles and will be revisited every five years.

(b) Development of the regional and state flood plans shall be guided by the following principles. The regional and state flood plans:

(1) shall be a guide to state, regional, and local flood risk management policy;

(2) shall be based on the best available science, data, models, and flood risk mapping;

(3) shall focus on identifying both current and future flood risks, including hazard, exposure, vulnerability and residual risks; selecting achievable flood mitigation goals, as determined by each RFPG for their region; and incorporating strategies and projects to reduce the identified risks accordingly;

(4) shall, at a minimum, evaluate flood hazard exposure to life and property associated with the 1% and 0.2% [~~0.2 percent~~] annual chance flood events [~~event~~] (the 100 and 500-year floods [~~flood~~]) and, in these efforts, shall not be limited to consideration of historic flood events;

(5) shall, [~~when possible and~~] at a minimum, evaluate flood risk to life and property associated with 1% [~~1.0 percent~~] annual chance flood event (the 100-year flood) and address, when feasible, through recommended [~~strategies and~~] projects and strategies, the flood mitigation goals of the RFPG (per item 2 above) to address flood events associated with a 1% [~~1.0 percent~~] annual chance flood event (the 100-year flood); and, in these efforts, shall not be limited to consideration of historic flood events;

(6) shall consider the extent to which current floodplain management, land use regulations, and economic development practices increase future flood risks to life and property and consider recommending adoption of floodplain management, land use regulations, and economic development practices to reduce future flood risk;

(7) shall consider future development within the planning region and its potential to impact the benefits of flood management strategies (and associated projects) recommended in the plan;

(8) shall consider various types of flooding risks that pose a threat to life and property, including, but not limited to, riverine flooding, urban flooding, engineered structure failures, slow rise flooding, ponding, flash flooding, and coastal flooding, including relative sea level change and storm surge;

(9) shall focus primarily on flood management strategies and projects with a contributing drainage area greater than or equal to 1.0 (one) square mile [~~miles~~] except in instances of flooding of critical facilities or transportation routes or for other reasons, including levels of risk or project size, as determined by the RFPG;

(10) shall consider the potential upstream and downstream effects, including environmental, of potential flood mitigation projects and flood management strategies [~~(and associated projects)~~] on neighboring areas. In recommending projects and strategies, RFPGs shall ensure that no neighboring area is negatively affected by the regional flood plan;

(11) shall include an assessment of existing, major flood mitigation infrastructure and will recommend both new strategies and projects that will further reduce risk, beyond what existing flood strategies and projects were designed to provide, and make recommendations regarding required expenditures to address deferred maintenance on or repairs to existing flood infrastructure;

(12) shall include the estimate of costs and benefits at a level of detail sufficient for RFPGs and sponsors of flood mitigation projects to understand project benefits and, when applicable, compare the relative benefits and costs, including environmental and social benefits and costs, between feasible options;

(13) shall provide for the orderly preparation for and response to flood conditions to protect against the loss of life and property and reduce injuries and other flood-related human suffering;

(14) shall provide for an achievable reduction in flood risk at a reasonable cost to protect against the loss of life and property from flooding;

(15) shall be supported by state agencies, including the TWDB, General Land Office, Texas Commission on Environmental Quality, Texas State Soil and Water Conservation Board, Texas Parks and Wildlife Department, and the Texas Department of Agriculture, working cooperatively to avoid duplication of effort and to make the best and most efficient use of state and federal resources;

(16) shall include recommended strategies and projects that minimize residual flood risk and provide effective and economical management of flood risk to people, properties, and communities, and associated environmental benefits;

(17) shall include strategies and projects that provide for a balance of structural and nonstructural flood mitigation measures, including projects that use nature-based features, that lead to long-term mitigation of flood risk;

(18) shall contribute to water supply development where possible;

(19) shall also follow all regional and state water planning guidance principles per §358.3 of this title (relating to state water planning guidelines) [~~(31 TAC 358.3)~~] in instances where recommended flood projects also include a water supply component;

(20) shall be based on decision-making that is open to, understandable for, and accountable to the public with full dissemination of planning results except for those matters made confidential by law;

(21) shall be based on established terms of participation that shall be equitable and shall not unduly hinder participation;

(22) shall include flood management strategies and projects recommended by the RFPGs that are based upon identification, analysis, and comparison of all flood management strategies the RFPGs determine to be potentially feasible to meet flood mitigation and floodplain management goals;

(23) shall consider land-use and floodplain management policies and approaches that support short- and long-term flood mitigation and floodplain management goals;

(24) shall consider natural systems and beneficial functions of floodplains, including flood peak attenuation and ecosystem services;

(25) shall be consistent with the National Flood Insurance Program (NFIP) and shall not undermine participation in nor the incentives or benefits associated with the NFIP;

(26) shall emphasize the fundamental importance of floodplain management policies that reduce flood risk;

(27) shall encourage flood mitigation design approaches that work with[,] rather than against[,] natural patterns and conditions of floodplains;

(28) shall not cause long-term impairment to the designated water quality as shown in the state water quality management plan as a result of a recommended flood management strategy or project;

(29) shall be based on identifying common needs, issues, and challenges; achieving efficiencies; fostering cooperative planning with local, state, and federal partners; and resolving conflicts in a fair, equitable, and efficient manner;

(30) shall include recommended strategies and projects that are described in sufficient detail to allow a state agency making a financial or regulatory decision to determine if a proposed action before the state agency is consistent with an approved regional flood plan;

(31) shall include ongoing flood projects that are in the planning stage, have been permitted, or are under construction;

(32) shall include legislative recommendations that are considered necessary and desirable to facilitate flood management planning and implementation to protect life and property;

(33) shall be based on coordination of flood management planning, strategies, and mitigation projects with local, regional, state, and federal agencies projects and goals;

(34) shall be in accordance with all existing water rights laws[,] including, but not limited to, Texas statutes and rules, federal statutes and rules, interstate compacts, and international treaties;

(35) shall consider protection of vulnerable populations;

(36) shall consider benefits of flood mitigation projects [~~management strategies~~] to water quality, fish and wildlife, ecosystem function, and recreation, as appropriate;

(37) shall minimize adverse environmental impacts and be in accordance with adopted environmental flow standards;

(38) shall consider how long-term maintenance and operation of flood mitigation projects [~~strategies~~] will be conducted and funded; and

(39) shall consider multi-use opportunities such as green space, parks, water quality, or recreation, portions of which could be funded, constructed, and or maintained by additional, third-party project participants.

§362.4. State Flood Plan Guidelines.

(a) The EA shall prepare, develop, and formulate the state flood plan and the Board shall adopt a state flood plan pursuant to the schedule in Texas Water Code §16.061.

(b) The EA shall incorporate into the state flood plan presented to the Board those RFPs approved by the Board pursuant to Texas Water Code §16.062 and Chapter 361 of this title (relating to Regional Flood Planning). The Board shall, not less than 30 days before adoption or amendment of the state flood plan, publish notice of its intent to adopt a state flood plan and shall mail notice to each RFPG. The Board shall hold a public meeting during which it may adopt a state flood plan or amendments thereto.

(c) The state flood plan shall incorporate information from Board-approved RFPs, and shall address, at a minimum, the following:

(1) basis for state flood planning, including sections on Texas water statutes, rules, regulations, and Texas' flood management and mitigation institutions;

(2) summary of the condition and adequacy of major flood control infrastructure on a regional basis;

(3) summary of existing flood risk [~~hazards~~] associated with 1% [~~1.0%~~] annual chance and 0.2% annual chance flood events;

(4) description of methods used to develop the regional and state flood plans;

(5) a statewide, ranked list of recommended FMEs, FMPs, and FMSs[, ~~and FMPs~~] that have associated one-time capital costs or other non-recurring costs derived from the Board-approved RFPs;

(6) an analysis of completed, ongoing, and proposed FMEs, FMPs, and FMSs[, ~~and FMPs~~] included in previous state flood plans including projects funded by the TWDB;

(7) a discussion of how the recommended FMEs, FMPs, and FMSs[, ~~and FMPs~~] will reduce flood risk and mitigate flood hazards; and

(8) legislative recommendations the Board considers necessary to facilitate flood mitigation planning and FME, FMP, and FMS[, ~~and FMP~~] implementation.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301323
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-8676

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PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 518. GENERAL PROCEDURES SUBCHAPTER C. RELATING TO RESTRICTIONS ON ASSIGNMENT OF VEHICLES

31 TAC §518.10

The Texas State Soil and Water Conservation District Board proposes new rule §518.10; pursuant to Government Code, Sec. 2171.1045, each state agency shall adopt rules consistent with the management plan adopted under Section 2171.104, relating to the assignment and use of the agency's vehicles.

The purpose of the proposed new rule is the assignment and use of the agency's vehicles. (1) each agency vehicle, except a

vehicle assigned to a field employee, be assigned to the agency motor pool and be available for checkout; and

(2) the agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the agency makes a documented finding that the assignment is critical to the needs and mission of the agency.

Fiscal Note

Kenny Zajicek, Fiscal Officer, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments due to enforcing or administering the rule.

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice.

Local Employment Impact Statement

Kenny Zajicek, Fiscal Officer, has determined that the rule will not impact local employment or economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis Kenny Zajicek, Fiscal Officer, has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities because of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Kenny Zajicek, Fiscal Officer, has determined that no private real property interests are affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Public Benefit/Cost Note.

Kenny Zajicek, Fiscal Officer, has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit will be efficient use of state resources. He further has determined there will be no probable economic cost to persons required to comply with the rule.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that: the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Environmental Rule Analysis

The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

Request for Public Comments

The Texas State Soil and Water Conservation Board invites comments on the proposed new rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Heather Bounds, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504, or by email to hbounds@TSSWCB.Texas.Gov. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after the publication of this proposal to be considered.

Statutory Authority

Pursuant to Government Code, Sec. 2171.1045, adopted under Section 2171.104 relating to the assignment and use of the agency's vehicles.

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

§518.10. Relating to the Assignment and Use of the Agency's Vehicles Designation.

Pursuant to Government Code, Sec. 2171.1045, each state agency shall adopt rules, consistent with the management plan adopted under Section 2171.104, relating to the assignment and use of the agency's vehicles. Accordingly, the State Board shall ensure:

(1) each agency vehicle, with the exception of a vehicle assigned to a field employee, be assigned to the agency motor pool and be available for checkout; and

(2) the agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the agency makes a written document finding that the assignment is critical to the needs and mission of the agency.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301296
Heather Bounds
Government Relations Specialist
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 778-8741

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 255. RULEMAKING PROCEDURES

37 TAC §255.6

The Texas Commission on Jail Standards proposes new §255.6, relating to advisory committees. Specifically, the proposed new rule would cite the agency's authority in statute to create advisory committees, establish the general rules that will govern all of its advisory committees, and establish rules to govern specifically the Administrative Rule Advisory Committee. As other committees are established, the Commission will propose amendments to govern each committee specifically. HB 1545 of the 87th Legislative Session added Government Code Sec. 511.0081 Advisory Committees, which gave the Commission authority to establish advisory committees to make recommendations to the commission on programs, rules, and policies administered by the Commission.

Brandon Wood, Executive Director, has determined that for each year of the first five years that the new rule is in effect there will be no fiscal implications to state or local governments as a result of enforcing and administering §255.6.

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

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

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

(3) implementation of the proposed new rule will not require an increase or decrease in future legislative appropriations;

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

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

(6) the proposed new rule will not repeal an existing rule;

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

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

Mr. Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the new rule, as they will not be required to alter their business practices and the rule does not impose any additional costs on those required to comply with the rule.

There are no anticipated economic costs to persons who are required to comply with the new rule as proposed.

Texas Government Code, §2001.0045 does not apply to this proposal because the rule (1) does not impose a cost on regulated persons, (2) is amended to reduce the burden or responsibilities imposed on regulated persons by the rules, (3) is necessary to protect the health, safety, and welfare of the residents of this state, (4) and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

Mr. Wood has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The Commission anticipates that the advisory committees will provide important advice to the Commission from professional and other interested and knowledgeable governmental and public entities related to rulemaking that will help ensure rulemaking benefits all county jail stakeholders.

The Commission has determined that this 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 §2007.043 of the Government Code.

Comments on the proposed rule may be submitted in writing to Texas Commission on Jail Standards, Attn.: William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The new rule is proposed under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This proposed change does not affect other rules or statutes.

§255.6. Advisory Committees.

(a) General. The Texas Commission on Jail Standards (Commission) may establish advisory committees pursuant to Gov't. Code §511.0081 or if mandated by legislative action.

(1) Purpose, Role, and Responsibility. The purpose, role, and responsibility of a Commission advisory committee is to make recommendations to the Commission on programs, rules, and policies administered by the Commission.

(2) Goals. Unless mandated by legislative action, the goal of each advisory committee will be determined by the Commission at the time the advisory committee is created.

(3) Duration. Unless mandated by legislative action, the duration of each advisory committee will be determined by the Commission. The Commission will annually review and determine the continuing need for an advisory committee established by the Commission.

(4) Committee Members.

(A) Committees will consist of a minimum of five members and a maximum of nine members, unless mandated otherwise by legislative action.

(B) Unless otherwise mandated by legislative action, committee members will have various backgrounds of experience, expertise, and interest in the matters the committee will address. Committee members may include Commission commissioners, sheriffs, jail administrators, relevant governmental agency representatives, relevant professionals, and other interested members of the public. The Chair of the advisory committee, in consultation with the Executive Director, will appoint committee members that meet the criteria set forth.

(C) The Chair of the Texas Commission on Jail Standards appoints the Chair of advisory committees unless mandated otherwise by legislative action.

(D) Members of advisory committees will elect an advisory committee Vice-Chair from among its members to serve in the temporary absence of the advisory committee Chair.

(E) Terms. The Commission Executive Director will determine the members' terms of service. The terms of service will be staggered.

(F) Unless prohibited by legislative action, non-voting subject matter experts may be named to the committee at the discretion of the Chair with the consent of the committee.

(5) Rules. Each advisory committee established shall adopt policies and procedures that address the purpose of the advisory committee, membership qualifications, training requirements, terms

of service, operating procedures, conflict of interest, and adherence to the requirements set forth in Texas Government Code 551.

(6) Committee Operations and Meetings.

(A) Meetings. The committee must meet at least quarterly; however, the Chair may decide that it is necessary to meet more frequently. The committee is subject to the Texas Open Meetings Act, Texas Government Code Chapter 551.

(B) Quorum. A majority of members constitutes a quorum.

(C) Compensation and Travel Reimbursement. Members will not be reimbursed for expenses related to their participation in the advisory committee.

(b) Administrative Rules Advisory Committee. The Commission establishes an Administrative Rules Advisory Committee to regularly review all administrative rules as part of the mandated rule review process, administrative rules required by new legislation, administrative rules as recommended by the Commission, and petitions for administrative rule changes. The committee makes recommendations to the Commission related to administrative rules. The Committee consists of a minimum of nine members as follows:

(1) one representative of the Commission to act as Committee Chair;

(2) one sheriff of a county with a population from 80,000 or more;

(3) one sheriff of a county with a population from less than 80,000;

(4) one county judge or county commissioner from a county with a population of 80,000 or more;

(5) one county judge or county commissioner from a county with a population of less than 80,000;

(6) one member of the public who is a representative of a statewide organization that advocates for individuals or issues related to county jails;

(7) one member of the public;

(8) one ex-officio jail administrator from a jail consisting of 50 beds or less;

(9) one ex-officio jail administrator from a jail consisting of 51-999 beds; and

(10) one ex-officio jail administrator from a jail consisting of 1000 or more beds.

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

Filed with the Office of the Secretary of State on April 4, 2023.

TRD-202301279
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: May 21, 2023
For further information, please call: (512) 463-5505

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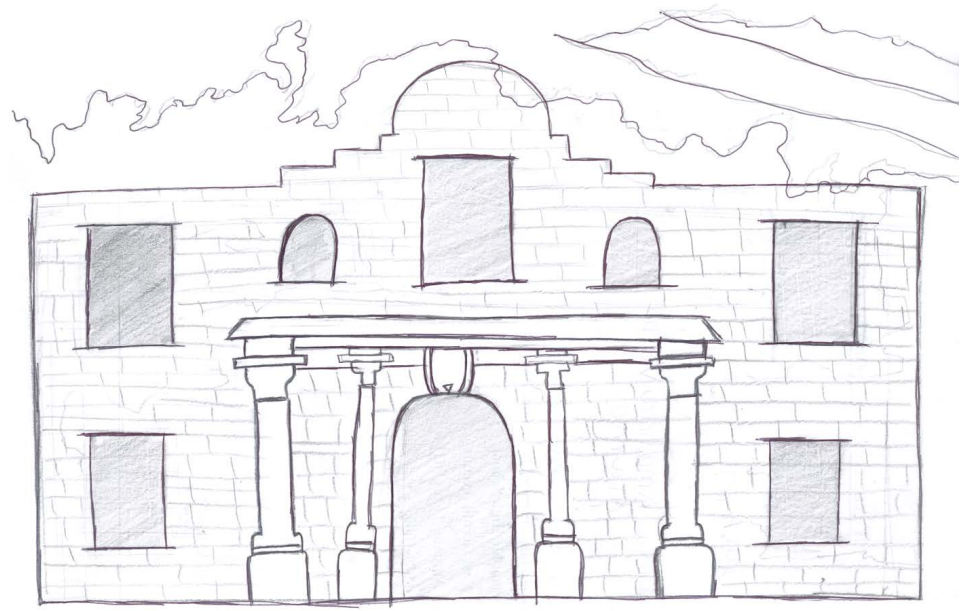

ADOPTED RULES

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

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

13 TAC §§13.1 - 13.3, 13.6, 13.7

The Texas Historical Commission (Commission) adopts amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 13, §§13.1 - 13.3, 13.6, and 13.7 related to the Texas Historic Tax Credit Program. The rules are adopted without changes as published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1392) and will not be republished.

The adopted amendments to §§13.1 - 13.3, 13.6, and 13.7 clarify rules to better align the Texas Historic Preservation Tax Credit Program (THPTC) with the Federal Rehabilitation Tax Credit, which the Commission administers in Texas in conjunction with the National Park Service; reflect changes in legislation to the originating statute Texas Tax Code Chapter 171, Subchapter S; and delete processes that are unnecessary or in inappropriate sections of §13.3.

Section 13.1: Definitions is amended to add one phrase to better align the state tax credit program with the Federal Rehabilitation Tax Credit administered in part by the Commission. Clarifying language is added to other existing terms and phrases.

Section 13.2: Qualification Requirements is amended to reflect changes in legislation.

Section 13.3: Evaluation of Significance is amended to edit several subsections to bring them into better alignment with the Federal Rehabilitation Tax Credit and to reduce an application paperwork requirement.

Section 13.6: Application Review Process is amended to bring the THPTC into better alignment with the Federal Rehabilitation Tax Credit, clarify existing operations, and combine information from other sections in an improved manner.

Section 13.7: Inspection is amended to delete a section of text that was moved to §13.6.

No comments pertaining to these rule revisions were received during the thirty-day period following publication on March 10, 2023, in the *Texas Register* (48 TexReg 1392).

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, including the Commission's oversight authority regarding the Texas Historic Preservation Tax Credit Program and under Texas Tax Code §171.909 which authorizes the Commission to adopt rules necessary to implement the Tax Credit for Certified Rehabilitation of Certified Historic Structures under the Texas Franchise Tax. The Commission interprets this authority as allowing for the revision of application procedures and formats.

The Commission hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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

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

TRD-202301331
Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: April 30, 2023
Proposal publication date: March 10, 2023
For further information, please call: (512) 463-6100

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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) adopts amendments to §25.30, adopts repeals of §§25.105, 25.107, and 25.109, adopts new §§25.105, 25.107 and 25.109, and adopts amendments to §25.485 and §25.495. The commission adopts the repeals with no changes and the new rules and amendments with changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6717). The new and amended rules will be republished.

Amended §§25.30, 25.485, and 25.495 change the time period for entities to respond to complaints from 21 days to 15 days. New §§25.105, 25.107, and 25.109 ensure the commission has necessary and current information on power marketers, REPs, and power generation companies (PGCs). New §25.105 and §25.109 respectively create annual registration requirements for power marketers and biennial registration requirements for PGCs. New §25.107 and §25.109 clarify the requirements and

associated processes for certification as a REP or registration as a PGC with the commission. Specifically, new §25.107 clarifies which persons are prohibited from serving as a principal of a REP or controlling the REP, updates the financial requirements to obtain a REP certificate, clarifies the processes for suspension of a REP certificate and suspension of a REP's ability to acquire new customers. It also expands the commission's authority for drawing on financial instruments that are required for certification. The commission also adopts amended certification and registration forms and other documents associated with the §§25.105, 25.107, and 25.109. Further, the commission also adopts implementation deadlines for power marketers, REPs, and PGCs to come into compliance with the amended rules, including a compliance update form specifically for REPs certified with the commission at the time new §25.107 is adopted. The commission makes other changes to the proposed rules and associated forms to clarify its intent.

The commission received comments on the proposed rule from the Alliance for Retail Markets (ARM) and the Texas Energy Association for Marketers (TEAM), individually and collectively (the REP Coalition); CenterPoint Energy Houston Electric, LLC (CenterPoint Energy); the Coalition of Competitive Retail Electric Providers (CCR); the Electric Reliability Council of Texas, Inc. (ERCOT); Enel North America, Inc. (Enel); Entergy Texas, Inc. (ETI) and Southwestern Public Service Company (SPS), individually and collectively (Joint Utilities); Good Company Associates (Good Company); Octopus Energy (Octopus); the Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company LLC (Oncor); South Texas Electric Cooperative, Inc. (STEC); Southwestern Electric Power Company (SWEPCO); Texas Competitive Power Advocates (TCPA); and Texas Industrial Energy Consumers (TIEC).

§§25.30, 25.485, and 25.495 - Customer Complaints

Section 25.30, relating to Complaints, enumerates the rights of a customer to file a complaint with the customer's electric utility and with the commission. Section 25.485, relating to Customer Access and Complaint Handling, establishes customer access and complaint handling standards for REPs and aggregators and delineates the commission's customer complaint process. Section 25.495, relating to Unauthorized Change of Retail Electric Provider, establishes the procedure, including the customer complaint process, that a REP, the registration agent, and a transmission and distribution utility (TDU) must follow if a REP serves a customer without proper authorization in accordance with the requirements of §25.474, relating to Selection of Retail Electric Provider.

Emergency Complaints

OPUC recommended the commission distinguish between "emergency" and "non-emergency" complaints in §§25.30, 25.485, and 25.495. OPUC indicated that certain complaints related to electrical outages for any customer, billing issues for low-income customers, and billing and service issues for critical care consumers should be classified as "emergency" complaints and placed on an expedited timeline.

Joint Utilities, SWEPCO, CCR, and the REP Coalition opposed OPUC's recommendation as burdensome and unnecessary. Joint Utilities, SWEPCO, and CCR commented that such a distinction would lead to inconsistent application by the commission and cause confusion as to what constitutes an emergency complaint. Joint Utilities and CCR explained that the current process used by the commission's Customer Protection Division (CPD) to prioritize certain complaints is preferable, because it permits proactive cooperation among all parties and is less confusing to customers. SWEPCO noted that existing commission rules offer additional protection for customers who submit complaints, such as continuation of service during complaint processing under §22.242(h), relating to Complaints, and supervisory review of the complaint under §25.30(b)(2). The REP Coalition commented that all complaints are important and that artificially distinguishing among complaints based on OPUC's proposed classification system may inefficiently allocate resources and impede the timely resolution of disputes. The REP Coalition emphasized that each complaint received by a REP is fact-dependent and CPD should retain discretion to prioritize complaints accordingly.

Commission Response

The commission declines to establish "emergency" and "non-emergency" complaint categories by rule. This distinction is unnecessary and would limit CPD's flexibility in addressing complaints on a fact-specific basis.

Deadline to respond to a customer complaint

Amended §§25.30, 25.485, and 25.495 revise the deadline for electric utilities, retail electric providers, and aggregators to respond to CPD regarding a customer complaint from 21 to 15 days.

OPUC expressed support for the reduction of customer complaint response deadlines, while the REP Coalition, CenterPoint, Octopus, ETI, Oncor, SPS, CCR, and Joint Utilities opposed the proposed change.

The REP Coalition indicated that a 15-day response deadline is insufficient to adequately respond to a "significant percentage" of customer complaints. Specifically, the REP Coalition explained that due to the extensive internal and external processes a REP undertakes when processing a customer complaint, the proposed change would negatively impact REPs by increasing complaint-related staffing costs or customers due to reductions in complaint response quality.

CCR commented that no basis or justification has been provided for the reduction in complaint response times by REPs. CCR also commented that, if the deadlines are reduced as proposed, then the commission should similarly reduce the amount of time commission staff takes to process those complaints. CCR asserted that complaint time periods are dependent on commission staff rather than REPs. CCR included a table of response times demonstrating that the average time for a REP to respond has remained at or below 15 days for calendar years 2017-2021, and that calendar year 2022 is trending in the same manner. CCR commented that the provided data supports its claim that REPs respond quickly when possible, but when more time is required, REPs utilize that time to ensure the complaint response is thorough.

Commission Response

The commission declines to change the proposed deadline of 15 days for response to a customer complaint submitted to the commission. Changing the response deadline from 21 to 15 days will assist commission staff in expediting complaint resolution for electricity consumers, and consistency across complaint deadlines will increase the efficiency of CPD's processing of customer complaints. This will provide a clear benefit to customers. Further, CPD's own data, as well as the data provided in CCR's comments, indicates that complaint responses are, in fact, sub-

mitted within an average of 15 days, supporting the viability of this response timeline.

The REP Coalition and ETI recommended the commission delay implementation of the reduction of complaint response deadlines from 21 to 15 days due to the burden it would place on respondents. The REP Coalition stated that reducing the deadline for a REP to respond to a customer complaint would cause the REP to incur significant costs, such as those associated with hiring additional investigators. The REP Coalition concluded that without investments by REPs to increase staffing, customers would experience a reduction in quality responses to their complaints. The REP Coalition emphasized this outcome "could in turn lead to a higher volume of subsequent [informal] complaints to the REP and to the Commission" and could even lead to an increased number of informal complaints being escalated to formal complaints. The REP Coalition accordingly requested that the rule amendments become effective six months after the rule's adoption so that REPs can hire additional staff and alter internal systems and processes to conform to the new standard. Similar to the REP Coalition, ETI commented that reducing the amount of time an electric utility has to respond to a complaint would result in rushed or prematurely closed investigations on customer complaints. ETI noted that such an outcome is contrary to the intention behind the change, which is to expedite the resolution of customer complaints.

Commission Response

The commission acknowledges that the change in complaint response deadlines from 21 to 15 days will require changes to internal processes and systems maintained by REPs, aggregators, and electric utilities. Therefore, the adopted rules set the effective date of the 15-day deadline as September 1, 2023. This date is the first day of fiscal year 2024 for the State of Texas, which will assist with data continuity reviews in the future (i.e., all of fiscal year 2023 had the 21-day deadline and for all of fiscal year 2024 and subsequent years, the 15-day deadline will be in effect). The September implementation also allows REPs and electric utilities more than five months to make any necessary adjustments to internal processes.

The REP Coalition recommended that, for informal complaints regarding usage, CPD should be required to contact both the TDU and the REP serving the customer. The REP Coalition explained that the transmission and distribution utility (TDU) may not respond in time for the REP to meet the revised 15-day deadline.

Commission Response

As a matter of process, CPD typically contacts a TDU for customer complaints related to electricity usage. However, the commission declines to codify this informal process as a rule requirement. Such a requirement is unnecessary and would limit CPD's flexibility in addressing complaints on a fact-specific basis.

Calendar days vs. working days

CenterPoint, SPS, and Octopus Energy requested the commission clarify that the proposed 15-day deadline for respondents to respond to a customer's complaint in §§25.30, 25.485, and 25.495 refers to "business days" and not "calendar days."

Commission Response

The usage of "day" in the rules is intentional and reflects the definition of "day" as provided by §22.2(18), relating to Definitions. Under §22.2(18), "day" is defined as "[c]alendar days, not working days, unless otherwise specified by this chapter or the commission's substantive rules." Therefore, no clarification is necessary.

"Complex" complaints

CCR, Oncor, CenterPoint, the REP Coalition, and SPS noted that some customer complaint investigations are more complex than others and will necessarily take longer than 15 days. However, Oncor acknowledged that in most cases, complaint investigations by electric utilities can be completed within 15 days.

Oncor and CenterPoint proposed an alternative response deadline to account for complex complaints that may take longer to investigate than 15 days. CenterPoint recommended that if an investigation is unable to be completed within a "15 business day" period, the responding party must, within that period, advise the complainant of that fact and indicate a reasonable deadline for conclusion of the investigation. Oncor's proposal mirrored CenterPoint's with the exception that Oncor additionally recommended that the initial response also include all substantive progress made on the complaint up to the date of the initial response and did not reference "business" days.

The REP Coalition generally agreed with Oncor's and CenterPoint's recommendations for alternative response deadlines for complex complaints. However, the REP Coalition indicated a preference for CenterPoint's proposed version on the basis that providing even a preliminary substantive response before an investigation is completed could frustrate the complainant if, after the full investigation is completed, the results are not exactly in line with the information provided in the initial response. The REP Coalition emphasized that in such a situation, the inclusion of substantive information in an initial response places an additional burden on the responding party to explain why the initial response differed from the final result of the investigation.

Commission Response

The commission declines to implement a "two-step" process for complaints as proposed by CenterPoint and Oncor. The commission acknowledges that some complaints require more investment of time and resources by respondents to investigate or that follow up communications between the respondent and CPD may be necessary. This is addressed by CPD on a complaint-by-complaint basis. A change in the response deadline will not change that process. Formally bifurcating the process by rule unnecessarily introduces delay into the complaint process because respondents would be required to draft an "initial" response in addition to the "final" response. As noted by the REP Coalition, the contents of the "initial" response may be different from the final response, which may introduce confusion. Furthermore, implementation of this proposal would require the commission to unnecessarily expend additional resources establishing a procedure for reviewing "initial" and "final" responses to customer complaints. This is ultimately not conducive to the resolution of the complaint itself. Finally, regarding CenterPoint's reference to "15 business day" deadline, the commission notes that the deadline is to be calculated using calendar days.

Extension of response time for complaints

Joint Utilities recommended that if the commission retains the 15-day deadline for electric utilities to respond to complaints in §25.30, then the rule should also provide an electric utility the option to administratively request an extension from the commission to adequately investigate and resolve the complaint. SPS similarly requested §25.30(b)(2) be revised to include a formal

method for an electric utility to request, from the commission, an extension of 10 business days for any complaint that requires the electric utility to physically visit the site. SPS explained that customer complaints that most frequently need additional time to resolve are those that require physical site visits by SPS personnel because SPS's service area is so extensive.

Commission Response

The commission declines to implement Joint Utilities' recommended change to permit extension of response time for complaints. This proposal has the same effect as distinguishing between "complex" and "non-complex" complaints, discussed above. Such a requirement is inappropriate for the reasons discussed previously and would limit CPD's flexibility in addressing complaints on a fact-specific basis.

Presentation of informal complaint to respondent

In conjunction with its recommendations to retain the 21-day deadline, the REP Coalition recommended, and Octopus Energy agreed, that §25.485(e)(1)(A)(i) and §25.495(b)(2) be amended to require a customer to submit a complaint to the respondent before filing an informal complaint with the commission. The REP Coalition emphasized that complaints may require more than 15 days to perform an investigation and prepare a written response. The REP Coalition noted this is particularly true when responding to an informal complaint that was not presented to the REP before being submitted to the commission, or when the complaint includes questions about the amount of usage billed. The REP Coalition provided draft language consistent with its recommendations.

Commission Response

The commission acknowledges that a customer's complaint may be most efficiently resolved by direct interaction between the customer and the REP. CPD routinely suggests that customers contact their service provider before filing a complaint with the commission. The same recommendation is also made on the commission's online complaint form. Despite such options being presented, many customers elect to file an informal complaint with the commission rather than their service provider. Customers are not regulated entities and there are a number of reasons why a customer may prefer to file directly with the commission. Accordingly, the commission establishes a standard for sufficiency of information a customer must submit that is necessary for a respondent to investigate a complaint but does not impose further requirements on customers. Accordingly, the revision proposed by the REP Coalition and Octopus is inappropriate.

The REP Coalition recommended that, if the commission implements the reduction of complaint deadlines as proposed, the 15-day deadline only apply to informal complaints filed with the commission. Specifically, the REP Coalition recommended the preservation of the existing 21-day deadline for a REP to respond to customer complaints filed with the REP under proposed §25.485(e)(1)(A)(iii) and proposed §25.495(b)(2)(A). The REP Coalition also recommended that 15-day response deadline, if adopted, apply only to complaints for which the customer has first submitted a complaint directly to the REP. Octopus agreed with the REP Coalition's alternative proposal for §25.485(e)(1)(A)(i) and §25.495(b)(2)(A) and further recommended §25.485(c) be revised on the same basis, to which the REP Coalition agreed. The REP Coalition and Octopus provided draft language consistent with their recommendation.

Commission Response

As previously stated, the commission acknowledges that a customer's complaint may be most efficiently resolved by direct interaction between the customer and the respondent. It is therefore appropriate to retain the existing 21-day deadline for complaints submitted directly to respondents. Doing so will likely also support a more expeditious resolution of any such complaint that is subsequently submitted to the commission. The commission revises §25.30(a) and §25.485(d) accordingly.

However, the commission declines to modify the proposed rule to also extend the deadline to 21 days for complaints that are submitted to the commission without being previously submitted to the respondent as requested by the REP Coalition and Octopus. As noted previously, consistency across complaints will assist CPD in efficiently processing customer complaints. Bifurcating the complaint process based on whether a complaint is first submitted to a REP will have the same effect as distinguishing between complex and non-complex complaints, and is unnecessary, because it would limit CPD's flexibility in addressing complaints on a fact-specific basis.

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

Proposed §25.107 details the requirements, processes, and ongoing obligations associated with certification and maintenance of a REP certificate with the commission.

"External storage for digital media"

Proposed §25.107(d)(2)(E)(i)-(iii), (e)(2)(A), and (i)(3)(D)-(F) each specify certain information that a REP must include as part of its application or annual and semi-annual reports be provided to the commission via "external storage for digital media."

The REP Coalition and Octopus opposed the requirements to submit certain information "via external storage for digital media," such as a physical USB, because it is contrary to the commission's initiative to transition to digital filings. The REP Coalition commented that digital filings are significantly simpler and less resource intensive for both market participants and the commission. The REP Coalition also noted that, because the commission Interchange is capable of receiving Microsoft Excel file types via zip files, such a requirement is unnecessary and should be deleted from the rule. The REP Coalition provided draft language consistent with its recommendation.

Commission response

The commission agrees with the recommendation to delete the phrase "via external storage for digital media." Such a requirement is unnecessary given that the commission Interchange is capable of accepting Microsoft Excel file types and storing them in a compressed format.

For the specific provisions in §25.107 that require certain documentation to be in Microsoft Excel format, such documents must be filed in their native format, such as .xls, .xlsx, or .xlsm, and be capable of basic functions, such as permitting the copying and pasting of data. The commission adds new §25.107(c)(6) to reflect the above requirements.

Proposed §25.107(a)(1)(A) - Applicability; REP certificate required

Proposed §25.107(a)(1)(A) requires a person to obtain a REP certificate under §25.107 before purchasing, taking title to, or reselling electricity to provide retail electric service. Proposed

§25.107(a)(1)(A) further requires certification to be maintained on an ongoing basis by timely reporting and updating the certification information.

The commission revises §25.107(a)(1)(A) to conform with the REP Registration Form published with the proposed rule. Specifically, the revised provision clarifies that a person may certify as an Option 1 REP, Option 2 REP, or Option 3 REP under §25.107 and adds specific cross-references to the reporting and update provisions under §25.107(i) and (h).

Proposed §25.107(a)(1)(C) - Applicability; electric-vehicle charging station

Proposed §25.107(a)(1)(C) states that a person operating an electric vehicle charging station is not, for that reason, required to be certified as a REP.

The REP Coalition commented that the term "electric-vehicle" as used in §25.107(a)(1)(C) likely refers to the definition of "alternatively fueled vehicle" under Texas Transportation Code §502.004, as referenced by [the exception to] the definition of "retail electric provider" under §25.5(114), relating to Definitions, and PURA §31.002(17). The REP Coalition requested the commission clarify in its responses to comments that the term "electric-vehicle" means "alternatively fueled vehicle" as defined by Texas Transportation Code to substantively align with the exemption.

Commission Response

The commission agrees with the REP Coalition's interpretation of the term "electric-vehicle" in §25.107(a)(1)(C). The commission revises §25.107(a)(1)(C) to align with the definition of retail electric provider under §25.5(114), which excludes a person who is not otherwise a REP and who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Transportation Code, Section 502.004 from being considered a REP. The commission modifies §25.107(a)(1)(C) to clarify that such a person is also not required to register as a REP.

Proposed §25.107(a)(3) and §25.107(a)(3)(A) and (B) - Applicability; Certified Option 1 REPs compliance update form

Proposed §25.107(a)(3) requires all Option 1 REPs to use the commission's approved compliance update form to submit up-to-date information related to key contacts, affiliates, financial instruments and other information used to comply with the requirements of the adopted rule. Proposed §25.107(a)(3)(A) establishes a compliance deadline of on or before August 15, 2023, and proposed §25.107(a)(3)(B) describes penalties for not complying with the proposed rule.

The REP Coalition recommended the commission clarify in proposed §25.107(a)(3) that REPs already registered with the commission are not required to file and obtain approval of an amendment to its REP certificate to come into compliance. The REP Coalition requested that REPs only be required to submit a semi-annual report or the compliance update form to demonstrate compliance with the requirements of the amended rule.

Commission Response

A REP certified by the commission before the effective date of the rule must submit the compliance update form prescribed by the commission and is not required to amend its REP certificate to come into compliance. Submission of the compliance update form is procedurally less burdensome than amending a REP's certificate. The commission disagrees with the REP Coalition's proposal that the compliance update form should be a substitute for the REP's semi-annual report. However, the commission acknowledges that already certificated REPs may need more time to implement the changes under the proposed rule. Accordingly, the commission extends the deadline to submit the compliance update form to March 5, 2024. In response to the REP Coalition's original recommendation, the commission notes that the information required by the compliance update form is broader than the information covered in either the annual or semi-annual report. Further, exempting a certified REP from filing its annual or semi-annual report would create a gap in the commission's documented information.

Proposed §25.107(b)(13) - Definition of "Principal"

Proposed §25.107(b)(13)(A)-(E) lists the individuals who are considered principals for purposes of the rule, such as a shareholder with over ten percent equity of the REP or an executive of a company. Proposed §25.107(b)(13)(F) specifically defines "principal" as a person that has apparent or actual authority to exercise control over the REP or exercises control over a principal. A consultant or third-party provider is also considered a principal if they exercise control over the REP or its principals.

The REP Coalition opposed the reference to "consultant" in proposed §25.107(b)(13)(F), which states that consultants can be principals if they have "apparent or actual authority." The REP Coalition explained that consultants should "not have control over entities for whom they are consulting" and if a consultant were to have control over a REP or principal, then the consultant would qualify as one of the other forms of principal listed under §25.107(b)(13). The REP Coalition also commented that the concept of "apparent or actual authority" introduces ambiguity to the definition of "principal" and recommended the phrase be omitted for clarity. The REP Coalition provided draft language consistent with its comments.

OPUC recommended the commission further refine the definition of "principal" under §25.107(b)(13) to ensure that reporting requirements are not overly burdensome and properly tailored to the issues at hand.

Commission Response

The commission disagrees with the REP Coalition's recommendations that references to "consultants" and "apparent or actual authority" should be removed from the definition of "principal." The primary consideration governing whether an entity is a principal is whether it exercises control over the REP or another principal of the REP. However, the commission has experience with instances where this distinction needed further clarification. The plain meaning and ordinary understanding of the word "consultant" refers to a person that does not have control over an entity for which that person is providing consulting services. However, this does not prevent an individual from adopting the title of "consultant" while actually exercising a degree of control over the REP's activities. Accordingly, the commission retains the language specifying that a consultant is a principal when it exercises such control.

Similarly, the commission retains the proposed language stating that a principal's ability to exert control may be based upon "actual or apparent authority". This provision will address scenarios where it may be difficult to determine what explicit authority has been granted to an individual or entity, but the individual or entity is, nonetheless, exercising control over the REP or a principal of the REP. Consistent with well-established agency law, an individual has "apparent authority" when that person makes

representations to third parties that the person has authority to act on behalf of or otherwise exercise control over the REP and the third party reasonably believes such representations. More specifically, there may be instances where a person without actual authority conducts themselves in a manner that a third party may reasonably infer that the person has authority to act on behalf of, or otherwise exercise control over, the REP or its principals. Just as, under agency law, an entity can be held liable for the actions of one of its agents that only has apparent authority, and not specifically granted actual authority, an entity that is exercising control with apparent authority - i.e., exerting direct or indirect binding authority - is considered a principal.

The modifications to the definition of §25.107(b)(13)(F) will minimize the opportunity to circumvent the rule's limitations on who is allowed to exercise control over a REP. A REP may not know at the time it is applying for certification which consultants or other entities may end up exercising control, especially through the use of apparent authority. If the REP becomes aware that a consultant or other entity is exercising apparent authority on its behalf, the REP must either take the necessary actions to prevent the entity from exercising such authority or amend its certificate to recognize that entity as a principal - particularly in instances when the restrictions of subsection (g) are implicated. This is, strictly speaking, not a material change from existing law, which already defines "a person that controls the person in question" as a principal. The commission does, however, modify the definition of principal such that a person must exercise control and have actual or apparent authority, so that it is clear that control remains the critical consideration.

Lastly, with regards to OPUC's request that the definition be revised for clarity, the commission notes that the term "principal" was selected to mirror ERCOT Protocol 16.1.2 Principal of a Market Participant and that the definitions are substantially similar. As discussed above, generally the same entities should be considered principals as were considered such under the existing rule, with the modifications intended to prevent attempts to circumvent commission requirements. The commission does, however, revise §25.107(b)(13)(B) to state "[a] partner of a partnership" to more generally encompass the different types of legal partnerships and varying capacities in which a partner may participate as a principal in the partnership. The commission also revises §25.107(b)(13)(F) to state "A consultant, third-party provider, or fiduciary of a company such as the board of directors, can be a principal . . . " to provide more examples of potential principals and to reintroduce a direct reference to board members from the existing rule.

Proposed §25.107(b)(16) - Definition of "third-party provider"

Proposed §25.107(b)(16) defines "third-party provider" as "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." The definition also specifies that a third-party provider can be a principal to the extent it exercises control over the REP or its principals.

Similar to its recommendations for the term "principal" under §25.107(b)(13), the REP Coalition opposed the definition of "third-party provider" under proposed §25.107(b)(16). Specifically, the REP Coalition commented that the inclusion of the term "consultant" in the definition of "third-party provider" is overbroad and may result in overly expansive reporting requirements. The REP Coalition explained that requiring a REP to report its "consultants" would be overbroad as "consultants" traditionally occupy "purely advisory" roles and are not entities to which a REP outsources functions.

Commission Response

The commission disagrees with the REP Coalition and declines to implement its proposed language. As stated previously, a person or entity can be a "consultant" in name only and yet still act in a more substantial capacity for the REP than would be expected for a "purely advisory" role. Therefore, the inclusion of the term "consultant" in the definition of "third-party provider" is appropriate.

The REP Coalition also recommended adding the word "core" to describe the retail and wholesale functions that a person would perform that would qualify the person as a "third-party provider."

Commission Response

The commission disagrees with the REP Coalition and declines to implement its proposed language. The phrase "outsources or plans to outsource any retail or wholesale electric functions" sufficiently qualifies the intent. The insertion of the word "core" is therefore unnecessary. Furthermore, what constitutes "core" retail or wholesale electric functions introduces ambiguity as to which retail or wholesale functions are, or are not, "core" functions.

The REP Coalition recommended the phrase "[a] third party provider can be a principal to the extent it exercises control over the REP or its principals" be deleted because it is duplicative of the same phrase included in definition of "principal" under §25.107(b)(13). The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to remove the language that clarifies that a third-party provider can be a principal from the definition of third-party provider, as recommended by the REP Coalition. The commission agrees with the REP Coalition the phrase is duplicative of language that is included in the definition of principal, but because the concepts of principal and third-party provider are not intuitively connected, the commission retains the duplicative language for clarity. The commission also modifies the definition for consistency with the definition of principal and for clarity.

Proposed §25.107(d)(1)(B) - Basic ongoing requirements; five assumed names

Proposed §25.107(d)(1)(B) prohibits a REP from using more than five assumed names.

OPUC and Octopus recommended inserting additional language that would prevent a REP from allowing its affiliates to obtain REP certificates and therefore be allowed to use additional assumed names. OPUC and Octopus commented that it is potentially misleading to consumers and does not further competition when REP affiliates utilize many assumed names. Under OPUC and Octopus' proposal, a parent company would have access to only one REP certificate, and by extension a maximum of five assumed names. Consequently, a REP affiliate would be limited to the five assumed names allowed under the parent company's certificate.

The REP Coalition opposed OPUC's and Octopus's recommendation and explained that each REP is a distinct legal entity, regardless of whether the REP has affiliates. The inclusion of a different legal entity's name among the assumed names of a REP would create confusion where none currently exists and is con-

trary to current corporate law practices. Specifically, the REP Coalition stated that a REP cannot conduct business under the legal or assumed name of a separate legal entity and that there is consequently no reason to list an affiliated REP under another REP's assumed names because the affiliated REP is not providing service to that other REP's customers.

The REP Coalition commented that, if the concern raised by OPUC and Octopus is related to duplicative names, the existing version of §25.107 already prohibits names that are "duplicative of a name previously approved for use by a REP certificate holder." The REP Coalition further commented that such a limitation on assumed names would limit a REP's marketing efforts because it would inhibit the REP's ability to choose the names under which it conducts business. The REP Coalition explained that for brand recognition or marketing purposes, the flexibility in choosing multiple assumed names is desirable because it permits a REP to target specific customer classes, such as industrial customers, or subgroups of a class, such as multi-family properties. The REP Coalition questioned whether OPUC's and Octopus's proposal would genuinely benefit customers, commenting that assumed names adopted by a REP generally consist of more common, recognizable, and customer-friendly names rather than the full formal name of the legal entity holding the REP certificate. The REP Coalition stated that the existing requirement in commission rules for a REP to include its certificate number on information provided to customers, such as on advertising and billing materials, is sufficient to inform the customer of all assumed names associated with the certificate.

Lastly, the REP Coalition stated that limiting the ability of REPs to use multiple names with customer-friendly branding on the sole basis that the REPs are under the same corporate umbrella will not provide additional information to customers regarding affiliated REPs. The REP Coalition explained that the limitation could instead confuse customers by preventing the use of names that are shorter and easier to remember.

Commission Response

The commission agrees with REP Coalition and declines to prohibit a REP's affiliates from seeking REP certificates. More investigation would be required to understand the benefits and harms of such a proposal, which is beyond the scope of this rulemaking project.

Proposed §25.107(d)(1)(D)(i)-(vii) - Basic applicant requirements; current and accurate contact information

Proposed §25.107(d)(1)(D)(i)-(vii) requires a REP to maintain current and accurate contact information. The commission revises §25.107(d)(1)(D)(i)-(vii) to conform with the REP Registration Form published with the proposed rule. The commission also revises the REP compliance update form, which was also published with the proposed rule, to the extent such information covered by this provision must also be disclosed.

Specifically, the revised provision requires disclosure of the title of each specified representative and a web address wherever an e-mail address is required. A requirement to include a street and mailing address was added for all representatives except for the emergency contact required under §25.107(d)(1)(D)(v). New §25.107(d)(1)(D)(ii) was added to require contact information for the authorized representative for the application or amendment itself. Lastly, new §25.107(d)(1)(D)(vi) was added to require disclosure of the contact information for an applicant's registered agent.

Proposed §25.107(d)(1)(E), and §25.107(d)(1)(E)(i) and (ii) - Basic ongoing requirements; current and accurate office information

Proposed §25.107(d)(1)(E) requires a REP to maintain certain current and accurate office information. Proposed §25.107(d)(1)(E)(i) and (ii) details the current office information that a REP must disclose which consists of a Texas office for customer service and compliance purposes, and a Texas office for receiving service of process.

The commission revises §25.107(d)(1)(E) to conform with the REP Registration Form published with the proposed rule. The commission also revises the REP compliance update form, which was also published with the proposed rule, to the extent such information covered by this provision must be disclosed. Specifically, the commission adds a requirement to provide a business web address and a mailing address, if different from the applicant's Texas office address or primary business office address.

The commission also adds requirements inadvertently omitted from the published rule, to conform with prior commission requirements and current practice. These include the requirement that the REP's Texas office be the same as the office for service of process in §25.107(d)(1)(E)(i), and that the mailing address not be a post office box in amended §25.107(d)(1)(E)(i)(III).

Finally, the commission adds the requirement that the applicant provide the applicant's state of formation or incorporation and the address of the applicant's primary business office.

Proposed §25.107(d)(1)(I) - Basic application requirements; deadline to respond to commission staff request for information

Proposed §25.107(d)(1)(I) requires a REP to respond within five working days to any commission staff request for information.

Octopus recommended that proposed §25.107(d)(1)(I) be revised to allow a REP to request an extension of time in responding to commission staff's request for information, provided that commission staff agrees to the REP's request for an extension. Octopus provided draft language consistent with its recommendation.

Commission Response

The commission revises §25.107(d)(1)(I) to require REPs to respond within five working days to any commission or commission staff request for information unless otherwise provided by the commission, commission staff, or other applicable law. The addition of this language will address Octopus's concerns by clarifying that the requesting party can establish deadlines other than five days for responding to the request.

Proposed §25.107(d)(2)(B) - Basic applicant requirements; Secretary of State registration

Proposed §25.107(d)(2)(B) requires an applicant seeking certification as a REP to provide the commission with a copy of the applicant's Texas Secretary of State registration. The provision also prohibits a REP from using a business name that is deceptive, misleading, vague, otherwise contrary to §25.272, relating to Code of Conduct for Electric Utilities and Their Affiliates, or duplicative of a previously approved business name used by another REP certificate holder.

Octopus recommended proposed §25.107(d)(2)(B) be revised to include electricity broker names to avoid the potential for customer confusion or deceptive practices by a REP. Specifically,

Octopus recommended prohibiting a REP from using the name of a broker as the primary name on a REP's certificate or as one of a REP's assumed names. Octopus provided draft language consistent with its recommendation. The REP Coalition opposed Octopus's recommendation to revise §25.107(d)(2)(B) and explained that this issue was raised by ARM in comments filed in the broker registration rulemaking for §25.112, relating to Registration of Brokers, which was undertaken in Project No. 49794, Rulemaking for Broker Registrations. The REP Coalition commented that the commission declined to implement such a provision at that time. The REP Coalition further noted that misleading branding is already prohibited under §25.486, relating to Customer Protections for Brokerage Services, therefore such a revision in §25.107 is out of scope and unnecessary. The REP Coalition recommended Octopus' proposal be inserted into §25.112 as part of a separate rulemaking, as §25.112 is more appropriate for such a provision.

Commission Response

The commission declines to modify the proposed rule to prohibit a REP from using a broker name as primary name on its certificate as recommended by Octopus, because the requirement for all communications to be "clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive" in §25.475, relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers, is sufficient to allow the commission to intervene to prevent confusion between registered REPs and brokers.

The commission also does not agree with the recommendation that §25.112 is the appropriate location for Octopus' recommended branding restriction as that rule does not address REP branding. For clarity, the commission notes that §25.112 and §25.486 both involve the regulation of electric brokers, not REPs, and that the commission did not take a stance on REP branding restrictions in Project No. 47974, the project in which those rules were adopted, as suggested by commenters.

The commission also revises §25.107(d)(2)(B)(i) and (ii) to conform with the REP Registration Form published with the proposed rule.

Proposed §25.107(d)(2)(E) - Basic applicant requirements; information on controlling persons

Proposed §25.107(d)(2)(E) requires a person seeking certification as a REP to provide information to the commission related to the applicant's controlling persons. Specifically, it requires the registrant to provide an ownership and corporate structure chart that includes the share percentage each controlling person holds and to provide a list the applicant and corporate parent's affiliates, identified by name and type of commission registration.

The REP Coalition recommended that instead of requiring share ownership percentages on the ownership and corporate structure chart, the commission should only require a REP to identify majority owners. The REP Coalition elaborated that requiring ownership percentages would necessitate frequent updates by a REP. The REP Coalition explained that such updates would be burdensome and resource-intensive for REPs to comply with, as well as for the commission to review and approve, while not providing a commensurate benefit. The REP Coalition provided draft language consistent with its recommendation.

The REP Coalition also recommended clarifying the requirements of the list of affiliates, because it is unclear which affiliates must be disclosed. The REP Coalition explained that the phrase "type of commission registration" suggests only affiliates that are market participants registered with the [c]ommission are required to be provided. The REP Coalition accordingly requested the commission clarify whether the commission intended that result. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

A REP is only required to update its certification when there is a material change under §25.107(h)(2), not when there is a change in ownership percentage. The commission modifies §25.107(h)(2) to clarify that a change in ownership percentage is not, by itself, a material change.

The commission also modifies §25.107(d)(2)(E) to clarify the requirements of this section. Specifically, an applicant must submit a list of its subsidiaries and parent companies, up to the ultimate corporate parent. It must also report any of its sister companies - i.e., any of the subsidiaries of the ultimate corporate parent - that are registered or certified with the commission.

The applicant must also include an ownership and corporate structure chart that includes ownership percentages. The chart must be as detailed as practicable, but must contain, at minimum, the entities listed above and any entities with more than ten percent ownership of the REP or any of the REP's parent companies with a controlling interest in the REP.

Proposed §25.107(d)(2)(F) - Basic applicant requirements; general affirmation

Proposed §25.107(d)(2)(F) requires an applicant to provide a statement affirming compliance with §25.107(d)(1)(F)-(H) and include a short summary describing how the applicant has complied with each subparagraph.

The commission revises this subparagraph to also require the applicant to affirm that it will respond within five working days to any commission staff request for information, as required by §25.107(d)(1)(I) and provide a summary of how it will comply with that requirement.

Proposed §25.107(d)(2)(I) - Basic applicant requirements for Option 2 REPs; affidavits

Proposed §25.107(d)(2)(I) requires an applicant seeking certification as an Option 2 REP to provide an affidavit stating that it will only contract with customers to provide one megawatt or more of energy. Within 30 days of an applicant obtaining its Option 2 REP certificate, the REP is also required to submit signed, notarized affidavits from its customers affirming that the customers understand and accept the applicant's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.

The REP Coalition commented that the 30-day post-certification requirement for signed, notarized customer affidavits should be removed from the rule. The REP Coalition explained that the 30-day deadline could result in errors such as an Option 2 REP missing the deadline for customer affidavit submissions and result in the revocation of the REP's certificate, which would harm the REP's customers. The REP Coalition explained that the timing for such affidavits being required should instead be based on the timing of ERCOT's flight test schedule and the dates the REP signs power purchase agreements.

The REP Coalition alternatively recommended that affidavits only be required prior to serving the customer and not tied to a specific time period such as the proposed 30 days. The REP

Coalition provided draft language consistent with its recommendation.

Commission Response

The commission agrees with the REP Coalition that the 30-day deadline for Option 2 REP affidavits should be changed. Under the existing rule, Option 2 REP affidavits must be filed with the application, and if a REP is concerned that the 30-day deadline may result in errors, it may file its affidavits with its application. The additional 30 days is added to provide a slight buffer to allow REPs to complete executing contracts or other necessary preparatory activities prior to obtaining customer affidavits. It is not intended to allow a REP to fulfill all of its advanced obligations, such as completing ERCOT flight tests. Allowing additional time or not requiring the affidavits until the REP begins providing service, as requested by commenters, would be put a burden on staff to track and could result in commission staff being unaware of an Option 2 REP's failure to provide the necessary affidavits prior to serving a customer. The commission revises §25.107(c)(5) to account for conditional approval of the Option 2 REP certification where a REP submits all or some of the required affidavits.

Proposed §25.107(e)(1)(A) - Technical and managerial resource requirements; combined experience of executive officers or managers

Proposed §25.107(e)(1)(A) requires an Option 1 REP to maintain one or more executive officers or employees in managerial positions whose combined experience in the competitive electric or gas industry equals or exceeds 15 years. Proposed §25.107(e)(1)(A) specifically prohibits the experience of a third-party provider from being used to meet the requirement.

The REP Coalition requested proposed §25.107(e)(1)(A) be revised to permit the experience of a registrant's principals be used to contribute to the 15-year experience requirement because the proposed requirement may "significantly increase payroll costs at a time when controlling costs is of significant importance." The REP Coalition stated that if the commission prefers to limit the ability of principals to contribute experience, then the rule should alternatively permit a REP to rely on a principal for only five of the 15 years of required experience. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission acknowledges REP Coalition's concerns and revises the provision to permit the experience from all principals, not just executive officers, to count toward the 15-year experience requirement.

Proposed §25.107(e)(1)(C) - Technical and managerial resource requirements; primary point of contact and outage reports

Proposed §25.107(e)(1)(C) requires a REP to demonstrate 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.

The commission revises §25.107(e)(1)(C) to conform with the REP Registration Form published with the proposed rule. The revisions expand §25.107(e)(1)(C) to include all applicable ERCOT requirements a REP must comply with to provide retail electric service in the ERCOT region.

Proposed §25.107(e)(2)(D) - Technical and managerial documentation requirements; complaint history

Proposed §25.107(e)(2)(D) requires an applicant to submit to the commission any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application that involve the applicant, the applicant's affiliates, any of the applicant's 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 listed persons.

OPUC recommended the addition of broadband and internet service to the list of utility-like-services an applicant is required to report in its complaint history. The REP Coalition opposed OPUC's recommendation and noted that such services are encompassed within the reference to "telecommunications" under proposed §25.107(e)(2)(D).

Commission Response

The commission agrees with the REP Coalition that the addition of internet and broadband to the list of utility-like services is not strictly necessary. However, to eliminate any perceived ambiguity in this requirement, the commission, modifies the list of utility-like services to include internet and broadband.

The commission also revises §25.107(e)(2)(D) to conform with the REP Registration Form published with the proposed rule. Specifically, the amended provision expands the list of persons that must be disclosed under §25.107(e)(2)(D) to include the applicant, the applicant's corporate parent, all sister companies and subsidiaries of the applicant and the applicant's corporate parent, and affiliates of the foregoing that provide utility-like services, as well as the applicant's principals and any person that merged with any of the preceding persons.

Proposed §25.107(e)(2)(E)(iv) - Technical and managerial documentation requirements; affidavit identifying relationships

Proposed §25.107(e)(2)(E)(iv) requires an applicant to submit to the commission a notarized statement indicating an applicant's relationship to specific persons that meet any of the criteria listed under proposed §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-). Under proposed §25.107(e)(2)(E)(iv)(I), such specific persons include the applicant's principals, executive officers, employees, third-party providers, and third-party provider's employees that exercised direct or indirect control over a market participant in certain situations, such as a REP that experience a mass transition of customers.

CCR and the REP Coalition opposed the list of persons a REP must identify on the basis that it would be burdensome to comply with, because the list is overly broad, ambiguous, and that a REP will likely not be able to sufficiently provide such information. CCR explained that "only executive officers, principals, or third-party risk management consultants possess sufficient authority over a REP's operations so as to be responsible for the identified scenarios" listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-). The REP Coalition specifically opposed the requirement for an applicant to identify all third-party providers and related employees that exercised control over a market participant that meet the criteria listed under proposed §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-).

Commission Response

The commission agrees with CCR and the REP Coalition that disclosure of a third-party provider's employees would be burdensome and revises the rule accordingly. However, the disclosure of the applicant's principals, executive officers, employees, and third-party providers that have been involved in one or more

of the circumstances listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-) are essential disclosures to ensure compliance with §25.107. The applicant is in the best position to know the individuals and entities that it employs and contracts with. Accordingly, it is the applicant's responsibility to be aware, and to make the commission aware, of any persons described by this section.

CCR also commented that the proposed rule does not sufficiently define "direct or indirect control" and that the inclusion of employees and consultants under §25.107(e)(2)(E)(iv)(I) as persons that must be disclosed is not appropriate. The REP Coalition commented that removing "consultant" from the definitions of "principal" and "third-party provider" and then adding "consultant" to the list of persons a REP must disclose under §25.107(e)(2)(E)(iv)(I) would address CCR's concerns.

Commission Response

The commission disagrees with CCR's contention that "direct or indirect control" is insufficiently defined. The term "control" is a defined term under §25.107(b)(4). The commission has also previously addressed comments relating to "authority" and "control" in its response to comments related to the defined term "principal" that address CCR's concerns related to ambiguity. The commission declines to implement the REP Coalition's proposed revision to omit the term "consultant" from the definitions of "principal and "third-party provider" for the reasons stated in the commission's response to comments related to those definitions.

CCR stated the listed scenarios under §25.107(e)(2)(E)(iv)(I) are vaguely defined, making disclosure impractical for applicants. CCR further commented that many applicants are unaware of the identities of market participants that have experienced the triggering scenarios because such information is not typically available publicly. CCR accordingly recommended that if §25.107(e)(2)(E)(iv) is adopted, the commission should commit to publishing information identifying which market participants have experienced one or more of the triggering events under §25.107(e)(2)(E)(iv)(I) so that applicants can disclose such information to the commission accurately. The REP Coalition explained in response to CCR that the commission does not need to publish a list of market participants that were involved in the scenarios under §25.107(e)(2)(E)(iv)(I) because this information is already provided by ERCOT in market notices.

Commission Response

The commission disagrees with CCR and maintains that the scenarios listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-) are sufficiently detailed because each circumstance is self-contained and provides specific criteria that must be met.

The commission also declines to publish a list of which market participants have experienced one of the triggering events, as requested by CCR. It is the responsibility of each REP to inquire into and investigate its employees and contractors for compliance with this section.

With regard to the REP Coalition's comment that ERCOT publishes market notices containing the necessary information, the commission notes that ERCOT market notices do not contain all of the information listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-), such as details related to a commission order that bar participation. Accordingly, applicants should not rely exclusively on these notices to ensure compliance with this requirement.

New §25.107(e)(2)(E)(v) - Technical and managerial documentation requirements; affirmation relating to prohibited persons.

The commission adds new §25.107(e)(2)(E)(v) to conform with the REP Registration Form published with the proposed rule. The new provision requires a statement affirming that the persons listed under §25.107(g)(1) do not control the applicant and are not relied upon to meet the requirements of §25.107(e)(1)(A) and (B).

New §25.107(e)(2)(F) - Technical and managerial documentation requirements; ERCOT requirements

The commission adds new §25.107(e)(2)(F) to conform with the REP Registration Form published with the proposed rule. The new provision specifies the information required to document compliance with the ERCOT-related requirements under §25.107(e)(1)(C) for applicants that provide or will provide retail electric service in the ERCOT region. Specifically, new §25.107(e)(2)(F)(i) requires disclosure of all relevant information related to each service agreement executed with a Qualified Scheduling Entity (QSE). New §25.107(e)(2)(F)(ii) requires an applicant to confirm it has 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. New §25.107(e)(2)(F)(iii) requires an applicant to provide a confirmation that applicant will provide outage notifications in accordance with §25.53. Lastly, new §25.107(e)(2)(F)(iv) requires an applicant to provide a confirmation that applicant has or will soon complete ERCOT's flight test obligation.

Proposed §25.107(f)(1)(A)(ii)(II) - Access to capital; requirements of guarantor; tangible net worth and current ratio

Proposed §25.107(f)(1)(A)(ii)(II) requires a guarantor to have a tangible net worth greater than or equal to $100 million, a minimum current ratio of 1.0, and a debt to total capitalization ratio not greater than 0.60.

OPUC recommended amending proposed §25.107(f)(1)(A)(ii)(II) to require the "net worth ratio" be required to be maintained at a minimum of 1.0 rather than just needing it to be 1.0 at the time the REP is certified. OPUC commented that a "current net worth ratio" of 1.0 is insufficient to cover the additional risk associated with guaranteeing the amount listed in the irrevocable guaranty agreement. OPUC explained that after the guaranty agreement is executed the guarantor's liability will increase. Therefore, a guarantor's increased liability could change the outcome of the "current net worth ratio" because this calculation is based on the value of a guarantor's liability. The REP Coalition opposed OPUC's recommendation because the REP Coalition is neither aware of data indicating that the current guarantor capitalization requirements are insufficient, nor did OPUC provide such data in its comments.

Commission Response

The commission declines to implement OPUC's request regarding the "net worth ratio" because it is unnecessary. The proposed language requires a guarantor to maintain "tangible net worth" greater than and equal to $100 million and a minimum current ratio of 1.0, on an ongoing basis. Commission staff reviews the guarantor's financial statements biannually through the REP's annual and semi-annual reports to ensure guarantors continue to maintain the requirement.

Proposed §25.107(f)(1)(B) and §25.107(f)(1)(B)(i) - Access to capital; irrevocable stand-by letter of credit tiers

Proposed §25.107(f)(1)(B) permits a REP to maintain an irrevocable stand-by letter of credit with a face value based on the number of electric service identifiers (ESI IDs) it serves. The proposed subparagraph also requires a REP to maintain not less than one million dollars in shareholder's equity for the first 24 months a REP is serving load. Proposed §25.107(f)(1)(B)(i), specifies four tiers of total number of ESI IDs ranging from less than 20,000 ESI IDs to greater than and equal to 300,000 and corresponding required value of letters of credit ranging from $500,000 to $3 million.

CCR and TEAM recommended preserving the uniform letter of credit requirement of $500,000 in existing §25.107(f)(1)(B). CCR stated the commission has not provided any rationale for the proposed revisions and requested the commission disclose any data it possesses that supports the changes. CCR also speculated that the commission is increasing the value of letters of credit because of REP defaults that occurred during Winter Storm Uri. CRR noted that if this is the case and the commission is seeking to cover a REP's risk at ERCOT, then this would be a "fundamental shift in how ERCOT is reimbursed" because the market already has an established process to ensure a REP can pay its obligations at ERCOT.

CCR and TEAM commented that the commission has already implemented many changes to address the underlying issues brought about by Winter Storm Uri, rendering the proposed changes to letter of credit unnecessary. CCR and TEAM explained that other commission actions, including weatherization and customer protection initiatives, such as those related to wholesale indexed products, render the need for higher amounts for letters of credit unnecessary.

CCR and TEAM cautioned the commission from making further changes to the ERCOT market structure that may further burden market participants financially or otherwise interfere with market prices. TEAM noted that requiring higher amounts for letters of credit would inhibit competition and create additional barriers to entry to the market as the requirement would compound with a REP's other financial regulatory obligations. Specifically, TEAM stated that the letter of credit required by the commission is additional to other obligations required by ERCOT.

The REP Coalition and TEAM individually also commented that under the proposed tiers, a REP would inadvertently disclose confidential market share information by filing a letter of credit with the commission. The REP Coalition explained that tiering the letter of credit as proposed would enable other market participants to monitor the growth of a newly certified REP based on when it files new letters of credit.

ARM commented that there is no meaningful distinction between the proposed four tiers and accordingly recommended a two-tiered structure would be more appropriate. ARM commented that it does not oppose raising the lowest tier from $500,000 to $1 million because the increase is a reasonable capital requirement for REPs that reduces risk to consumers and other market participants. ARM provided draft language consistent with its recommendation.

Octopus opposed collapsing the tiers and raising the minimum letter of credit amount to $1 million as detailed by ARM. TEAM commented that, if the commission adopts a tiered approach as proposed, then the lowest tier should remain at $500,000.

Commission Response

The commission agrees with ARM that a two-tiered structure is appropriate for letters of credit and revises §25.107(f)(1)(B) accordingly. However, in acknowledgement of the concerns raised by other commenters about barriers to entry and the financial burden represented by increasing letter of credit amounts, the commission declines to increase the lowest tier of letter of credit amount to $1 million. The commission instead revises the minimum letter of credit amount to $750,000 for REPs that have enrolled fewer than 50,000 ESI IDs. The second tier is correspondingly revised to require a minimum letter of credit amount of $1.5 million if a REP has enrolled 50,000 ESI IDs or more.

The market exits and defaults among REPs after Winter Storm Uri demonstrated that a $500,000 letter of credit is not always sufficient to cover the defaulting REP's financial obligations. A higher barrier to entry is appropriate if that barrier is required to ensure that each REP has sufficient financial resources to fulfill its financial obligations. Further, the two-tiered system will ensure that REPs that serve the largest number of customers have sufficient financial resources to meet their correspondingly greater financial obligations. obligations that correspond to the number of customers they serve.

The commission also disagrees with the REP Coalition and TEAM that a tiered structure for letters of credit would disclose a REP's market share information. Market share information would be difficult to ascertain for other REPs, because letters of credit are filed confidentially, and updates are made frequently and for many reasons other than to increase or decrease the value of a letter of credit. Also, the reduction from four to two tiers further minimizes this risk.

The REP Coalition noted that under existing §25.107(f) "REP's have the option for their guarantor to maintain the letter of credit rather than the REP itself," however the proposed version of §25.107 does not retain this language. The REP Coalition recommended the rule be revised to reinstate this option as it provides flexibility for a REP in financing its letter of credit.

Commission Response

The commission disagrees with the REP Coalition that it is necessary to state a guarantor can provide a letter of credit on behalf of a REP. The letter of credit template continues to maintain the option for a REP to procure the letter of credit or for the letter of credit to be procured by an "applicant" on behalf of the REP. Accordingly, the "applicant" in the letter of credit template can maintain a letter of credit on a REP's behalf. Using "guarantor" in the rule as recommended by the REP Coalition would require the REP and guarantor to provide an irrevocable guaranty agreement because "guarantor" is defined under §25.107(b)(7) as a person that provides an irrevocable guaranty agreement to the commission. A REP electing to maintain an irrevocable guaranty agreement under §25.107(f)(1)(A) requires the use of a guarantor, while a REP electing to maintain a stand-by irrevocable guaranty agreement under §25.107(f)(1)(B) does not require a REP to use a guarantor to meet the REP's access to capital requirements.

Octopus recommended that the proposed tiered structure for letters of credit under §25.107(f)(1)(B) be based on MWhs for the prior year to properly allocate more financial risk to REPs that serve commercial and industrial customers. Octopus further recommended for REPs that have less than 12 months of sales history, the face value of the irrevocable standby letter of credit should be the minimum amount and adjusted later as needed.

ARM opposed Octopus' recommendation to base letter of credit amounts on the amount of MWh the REP served in the prior year because the number of ESI IDs more accurately estimates a REP's risk profile. ARM explained that MWhs served do not reasonably represent a REP's risk profile, are more complicated to track, and that both MWhs served and number ESI IDs served by a REP are commercially sensitive pieces of information that should be treated confidentially. Specifically, ARM stated that a MWh-based letter of credit framework would result in REPs that serve large commercial and industrial customers to maintain a letter of credit with a higher face value than REPs that serve residential customers, despite the different risk profiles represented by each customer class.

Commission Response

The commission declines to implement Octopus' proposal for the reasons stated by ARM. Further, implementing Octopus' proposal would be more complicated and administratively burdensome for commission staff and REPs to track.

Proposed §25.107(f)(2)(A) - Customer deposits and prepayments

Proposed §25.107(f)(2)(A) requires a REP to maintain customer deposits in an escrow account, segregated cash account, or provide an irrevocable stand-by letter of credit. The proposed subparagraph also requires a REP to maintain customer prepayments in an escrow account or provide an irrevocable stand-by letter of credit.

The REP Coalition and CCR opposed the removal of "segregated cash accounts" as a method available to a REP to maintain customer prepayments and recommended the language be reinstated. The REP Coalition commented that it is not aware of any concerns with using segregated cash accounts and that using segregated cash accounts for customer prepayments provides greater flexibility to REPs. The REP Coalition provided draft language consistent with its recommendation. CCR emphasized that this change would be burdensome on a REP's operations and that the commission has not provided a justification for this change.

Commission Response

The commission agrees with the REP Coalition and CCR that it is appropriate to allow REPs to maintain customer prepayments in a segregated cash account and revises the provision accordingly. As noted by commenters, this change allows a REP multiple options for protecting customer deposits and prepayments.

Proposed §25.107(f)(4) - Financial documentation requirements

Proposed §25.107(f)(4) requires an applicant to demonstrate compliance with the financial requirements under proposed §25.107(f)(1)-(3) by providing, among other things, 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.

OPUC recommended removing the 60-calendar month time limitation on disclosure of bankruptcy or other pertinent financial disclosures included in existing §25.107(f)(4). OPUC asserted that such events are significant enough that an applicant should be required to report all history and the disclosure period should not be limited to the 60-calendar months prior to the application.

CCR opposed OPUC's recommendation and explained that bankruptcy may not always result in negative outcomes for the market and that bankruptcy is a legal protection for the entity that should not permanently bar an otherwise qualified applicant from the Texas retail electricity market. The REP Coalition generally agreed with OPUC that bankruptcy or other financial disclosures are relevant to certification but opposed eliminating the timeframe limitation altogether and instead recommended that the disclosure period could instead be increased to 120 months.

Commission Response

The commission declines to implement OPUC's recommendation to remove the 60-calendar month disclosure timeframe for the reasons stated by CCR. The 60 months, or five years, prior to the application is a sufficient amount of time to cover relevant disclosures under §25.107(f)(4).

The commission also revises §25.107(f)(4) to conform with the REP Registration Form published with the proposed rule. Specifically, the amended provision requires an applicant to provide the date of the applicant's reporting fiscal year or, if the applicant has a guarantor, the guarantor's reporting fiscal year.

Proposed §25.107(f)(4)(B)(ii) and §25.107(f)(4)(C)(ii) - Documentation to substantiate Unaudited financial statements submitted by a guarantor and a REP respectively

Proposed §25.107(f)(4)(B)(ii) and §25.107(f)(4)(C)(ii) provide the manner in which unaudited financial statements must be substantiated by a guarantor and a REP respectively.

The commission revises §25.107(f)(4)(B)(ii) and §25.07(f)(4)(C)(ii) to conform with the REP Registration Form published with the proposed rule. Specifically, the commission revises §25.107(f)(4)(B) and (C) so that the requirement for audited or unaudited financial statements may be satisfied by either providing three consecutive months of monthly statements if quarterly statements are not available, or by providing a copy of the guarantor's most recent financial statements filed with any agency of the federal government.

Proposed §25.107(f)(4)(D) Documentation for -segregated cash accounts

Proposed §25.107(f)(4)(D) specifies that segregated cash accounts are to be documented by a current account statement and an executed agreement with a person that controls the segregated cash account. The subparagraph further provides details that must be clearly specified on the account statement and the executed agreement.

The commission revises §25.107(f)(4)(D)(i)(III) to align with amended §25.107(f)(2)(A) which permits customer prepayments, in addition to customer deposits, to be maintained in an escrow account, segregated cash account, or otherwise covered by an irrevocable stand-by letter of credit provided to the commission.

Section 25.107(f)(4)(D) and §25.107(f)(4)(D)(iii) are also revised to clarify that a segregated cash account must be documented by the executed agreement with an unaffiliated person that controls the segregated cash account.

Proposed §25.107(f)(4)(E),- Documentation for Escrow accounts

Proposed §25.107(f)(4)(E) requires escrow accounts to be documented by a current account statement and the escrow account agreement.

The commission revises §25.107(f)(4)(E) and §25.107(f)(4)(E)(iii) to mirror the requirement for an executed agreement under amended §25.107(f)(4)(D)(iii). Additionally, new §25.107(f)(4)(E)(i)(III) is added to align with amended §25.107(f)(2)(A) which permits customer prepayments, in addition to customer deposits, to be maintained in an escrow account, segregated cash account, or otherwise covered by an irrevocable stand-by letter of credit provided to the commission.

New §25.107(f)(4)(F)(ii)(II) - Irrevocable standby letter of credit; renewal and expiration

Proposed §25.107(f)(4)(F)(ii)(II) which requires letters of credit to automatically renew and only expire if prior notice is provided to the commission at least 90 days before the expiration.

The commission revises this language to also require commission staff to sign the notice of non-renewable to acknowledge that it was received 90 days prior to the expiration, mirroring an equivalent requirement for guaranty agreements. This harmonization will ensure that the commission is fully aware of the expiration of any financial instrument before the expiration takes effect.

Proposed §25.107(f)(4)(F)(ii)(V) - Irrevocable standby letter of credit; original or photocopy

Proposed §25.107(f)(4)(F)(ii)(V) requires an irrevocable standby letter of credit filed with the commission to permit a draw to be made using the original document or a photocopy.

The REP Coalition noted that some financial institutions may not permit a draw on a letter of credit via a photocopy. Accordingly, the REP Coalition recommended the commission investigate the proposed language further before adoption.

Commission Response

The commission declines to revise §24.107(f)(4)(F)(ii)(V) and emphasizes that a letter of credit must permit a draw to be made with either the original letter of credit or a photocopy of the letter of credit. Existing §25.107(f)(4)(F) requires a REP to use the commission's standard form template which includes language stating that the commission can draw on the irrevocable standby letter of credit with an original document or a photocopy. Accordingly, this is not a new requirement and should not impose any additional compliance burden.

Proposed §25.107(f)(4)(G) and §25.107(f)(4)(G)(ii) - Irrevocable guaranty agreements

Proposed §25.107(f)(4)(G) requires irrevocable guaranty agreements to be executed on the commission approved standard form irrevocable guaranty agreement and to obligate the guarantor to meet commission demands on behalf of the applicant. Proposed §25.107(f)(4)(G)(ii) requires irrevocable guaranty agreements to not have an expiration date and prescribes the process and requirements for termination of an irrevocable guaranty agreement after 90 days advance notice to the commission.

The commission revises §25.107(f)(4)(G) to conform with the REP Registration Form published with the proposed rule. Specifically, §25.107(f)(4)(G) is modified to require a copy of the irrevocable guaranty agreement executed by an applicant and the guarantor to be provided in the manner established by the commission. Section 25.107(f)(4)(G)(ii) is modified to replace the prohibition on the irrevocable guaranty agreement from having an expiration date with the requirement that the irrevocable guaranty agreement must automatically renew. The provision is also modified to provide that an irrevocable guaranty agreement can only expire if prior notice is provided to the commission at least 90 days before the expiration and commission staff acknowledges the notice.

Proposed §25.107(f)(5) - Commission draw on financial instruments

Proposed §25.107(f)(5) lists the circumstances under which a REP's financial instrument may be drawn upon. Such conditions consist of a mass transition of the REP's customers being initiated by the independent organization, a commission order revoking the REP certificate, the termination of a REP's Standard Form Market Participation Agreement (SFA) by ERCOT or similar agreement by an applicable organization, or a finding by the commission's executive director that the REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols.

Octopus, the REP Coalition, and CCR opposed allowing a financial instrument to be drawn upon based on the termination of the REP's SFA or a determination by the executive director. The REP Coalition noted that, under the existing rule, the circumstances in which the commission may draw upon a REP's financial instruments are limited to a mass transition or the revocation of the REP's certificate. The REP Coalition explained that the new conditions are unnecessary, because a mass transition will be ordered if a REP has failed to maintain its financial obligations at ERCOT. The REP Coalition further commented that authorizing the executive director to unilaterally draw upon a customer's letter of credit could harm customers because doing so could impede the ability of a REP "to honor existing customer contracts and to address any allegations of concerns regarding financial stability."

CCR opposed the expansion of scenarios that would authorize the commission to draw upon a REP's irrevocable letter of credit on the basis that such a draw would be unjustified, such as when a REP has no customers or outstanding financial commitments. CCR also stated that the manner of draw on a letter of credit by the commission in some of the proposed scenarios would deprive a REP of due process under the Texas Administrative Procedure Act (APA), such as when ERCOT terminates a REP's SFA under §25.107(f)(5)(C), which would in turn deny a REP the ability to dispute ERCOT's action before the commission.

Commenters recommended the commission revise the provision to require a commission order finding that the REP failed to comply with PURA, commission rules, or the ERCOT Protocols, rather than a decision from the executive director. Octopus and REP Coalition provided draft language consistent with their recommendations.

Commission Response

The commission declines to remove the added triggers for a draw upon a REP's financial instrument and declines to require notice and an opportunity for a hearing before a draw is permissible. Requiring such a hearing would be impractical and contrary to the purpose of these financial instruments to serve as guarantees of immediate payment. Furthermore, because financial instruments can be cancelled with 90 days' notice from the expiration date, commission staff must have a means of quickly accessing proceeds from the instrument to make the funds available for distribution. The additional triggers for a draw upon a financial instrument are necessary customer protections, based on commission staff experience with these instruments. How-

ever, the commission revises the rule to only allow a draw based on the termination of a REP's SFA or based on a finding by the executive director when the instrument will expire within 30 days. This ensures that these added triggers are only utilized when waiting on formal commission action would risk the expiration of the instrument.

The commission disagrees with CCR that a draw upon a REP's financial instrument as proposed would deprive a REP of due process under the APA. By executing the letter of credit or guaranty agreement and filing it with the commission, the REP is aware of the circumstances in which the commission may draw upon the letter of credit and has consented to those circumstances. The APA is not implicated by this process. Further, because the financial instrument specifically authorizes the commission to draw down in certain circumstances, there is no lack of due process. Moreover, the REP has consented to the draw in those circumstances, and the commission is not taking any action that it is not already specifically authorized to take.

The commission does not agree with CCR's concern that the commission will be authorized to draw on a financial instrument unnecessarily, such as when the REP does not have any customers or outstanding financial obligations. The commission will not arbitrarily draw on a REP's financial instrument. Given the fact that a draw upon a financial instrument is a last resort to ensure payment, a REP will have had opportunities with the commission, ERCOT, or other parties to address concerns relating to its financial solvency and ability to honor its existing commitments before such action is taken, including assessing whether there is actual need to draw upon the instrument. Importantly, if the expiration of an instrument is imminent, it may be appropriate for the commission to immediately draw upon a financial instrument to ensure these funds are available, even if it does not immediately distribute the funds. Therefore, if the commission were to draw upon funds prematurely, the proceeds would simply be returned to the REP, consistent with the provisions of this section.

To the extent CCR's due process concerns regarding §25.107(f)(5)(C) relate to ERCOT, the commission notes that the ERCOT-approved SFA provides such recourse for market participants and therefore no due process concerns exist. Section 22: Attachment A of the ERCOT Protocols contains the ERCOT-approved SFA. The SFA exhaustively details the circumstances, procedures, and remedies related to a market participant's performance under the SFA. Termination of the SFA can either occur at the election of the market participant or due to the default of the market participant. If the termination is due to default, the SFA prescribes an opportunity to cure the default if the ERCOT Protocols specify a remedy. The commission also notes that the termination of a REP's SFA allows the commission to draw upon the REP's financial instruments, but it does not require it. If the REP is actively working to remedy a default at ERCOT or contest the decision at the commission, it may not be necessary for the commission to draw upon the instrument before the relevant proceedings have concluded. This is a situational decision that will, by necessity, be made based on the facts and circumstances surrounding the termination of the SFA.

Proposed §25.107(f)(6)(A) - Proceeds from financial instruments; order of priority

Proposed §25.107(f)(6)(A) lists the order of priority in which proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement may be used to satisfy the obligations of a REP. In the proposed rule, the first priority for use of these proceeds was to return outstanding customer deposits and prepayments if not credited by or transferred to each customer's new REP of record or otherwise returned to the customer.

The REP Coalition argued that the addition of returning customer deposits and prepayments to the first item on the list could disincentivize outgoing REPs from returning customer deposits and prepayments in a timely manner, and as a result delay the disbursement of funds. The REP Coalition noted that such an outcome would reduce the funds available for the commission to pay Provider of Last Resort (POLR's) low-income customer's deposits.

Commission Response

In the event of a mass transition, it is important to prioritize continuity of service for all electric customers. This issue is particularly acute for low-income customers who may be unable to provide a deposit for a new provider. The commission agrees with the REP Coalition that the proposed order of priority would reduce the funds available for the commission to pay Provider of Last Resort (POLR's) low-income customer's deposits. Accordingly, the commission reverts the order of priority under §25.107(f)(6)(A) to the order established in the existing rule.

Proposed §25.107(g)(2) - Persons prohibited from exercising control; duty to report

Proposed §25.107(g)(2) requires an independent organization or TDU to alert the commission's enforcement division when it becomes aware of a person controlling a REP that is otherwise barred from exercising direct or indirect control over a REP.

ERCOT noted that it currently only collects limited information on principals submitted by QSEs and congestion revenue right account holders but indicated it can revise the ERCOT Protocols to comply with §25.107(g)(2) if the commission deems it to be necessary.

Commission Response

Adopted §25.107(g)(2) only requires ERCOT, as the independent organization, or a TDU to notify the commission upon becoming aware of a violation. Accordingly, ERCOT is not required to collect additional information to comply with the rule. The commission adds new §25.107(e)(2)(E)(v), which requires a REP to provide a statement affirming that the persons listed under §25.107(g)(1) do not control the REP and are not relied upon to meet the requirements of §25.107(e)(1)(A) and (B).

Proposed §25.107(h) and §25.107(h)(2) - Update or relinquishment of certificate; certificate amendment because of a material change

Proposed §25.107(h) requires a REP to maintain and update applicable information required by §25.107(d)-(f). Proposed §25.107(h)(2) requires a REP to apply to amend its certification within ten working days of a material change to its certification or before the material change is anticipated to occur. It also details what constitutes a material change.

The REP Coalition recommended that the documentation under proposed §25.107(e)(2) for updates related to a REP's technical and managerial capabilities under proposed §25.107(e)(1) should be provided as part of a REP's annual or semi-annual reports under proposed §25.107(i) rather than requiring an amendment application to revise the REP's certificate under proposed §25.107(h) and (h)(2). Octopus supported the REP Coalition's recommendation. The REP Coalition stated that the current pro-

posal could be administratively burdensome for a REP and for the commission because amendment applications require more time to review and process than REP's annual and semi-annual reports. The REP Coalition explained that certain disclosures, such as those relating to third-party providers and disclosures of executive officer experience, do not necessitate an immediate update to a REP's certificate and instead could be more periodically provided to the commission every six months via a REP's annual and semi-annual reports.

Commission Response

The commission declines to implement the REP Coalition's recommendation. Material changes must be documented through amendment applications because each material change affects a REP's ongoing compliance with the requirements of §25.107. Conversely, annual and semi-annual reports are periodic filings that allow the commission to ensure that each REP is maintaining the ongoing requirements of its certificate. However, the commission does revise the rule to clarify what changes in information required under §25.107(e) constitutes a material change, as detailed below.

The REP Coalition alternatively recommended that updates to a REP registration be permitted via notice filings in a master project designated for that purpose. If the commission declines the REP Coalition's alternative recommendation, the REP Coalition recommended the 10-working day deadline for material changes be extended to 20 working days to provide REPs sufficient time to prepare the amendment.

Commission Response

The commission declines to adopt the REP Coalition's alternative recommendation to create a master project for notice filings to report updates to a REP certificate for the reasons stated above. The REP Coalition's second alternative recommendation of 20 working days is an unnecessarily long period for a REP to file because that time period could exceed a calendar month, during which the commission will remain unaware that the REP's certificate is no longer completely accurate. The commission maintains that 10 working days sufficiently balances the administrative burden on REPs to file a certificate amendment with the commission's interest in receiving updated information from REPs.

The REP Coalition also recommend out-of-state complaints involving affiliates under proposed §25.107(e)(2)(D) not be required past the initial application and therefore neither be required in either an amendment application nor the REP's annual or semi-annual reports. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission agrees with the REP Coalition's recommendation and implements the proposed change. The commission revises §25.107(h)(2)(D) to exclude the complaint disclosure requirement under §25.107(e)(2)(D) as such information is more appropriate to disclose only for an initial REP certificate application.

Proposed §25.107(h)(2)(A) and (B) - Update or relinquishment of certificate; changes in ownership and assumed name

Proposed §25.107(h)(2)(A) specifies that a change in ownership, control, corporate restructuring, or transfer of a REP certificate constitutes a material change requiring disclosure. Proposed §25.107(h)(2)(B) specifies that a name change, including an addition of assumed names, constitutes a material change requiring disclosure.

The commission revises §25.107(h)(2)(A) for clarity and §25.107(h)(2)(B) to conform with the REP Registration Form published with the proposed rule. Specifically, §25.107(h)(2)(A) is amended to clarify that a change in control of the REP including a change in controlling owner, a corporate restructuring that involves the REP, a transfer of a REP certificate, or a change in the persons that have a minimum of ten percent ownership of the REP or a controlling parent of the REP each constitute a material change requiring disclosure and amendment of the REP certificate, but that a change in the ownership percentages of individual owners does not. Section 25.107(h)(2)(B) is revised to include deletions of assumed names as material changes requiring disclosure and amendment of the REP certificate.

Proposed §25.107(h)(2)(D) - Update or relinquishment of certificate; material changes

Proposed §25.107(h)(2)(D) specifies that, for Option 1 REPs, a change in technical or managerial qualifications constitutes a material change. Proposed §25.107(h)(2)(D)(i)-(iii) delineates instances that constitute a material change in technical and managerial qualifications and would require a REP to amend its certification. The commission revises §25.107(h)(2)(D) and §25.107(h)(2)(D)(i)-(iii) to conform with the REP Registration Form published with the proposed rule. Specifically, §25.107(h)(2)(D)(i) is merged into §25.107(h)(2)(D) and the cross references to the technical and managerial requirements of §25.107(e)(1)(A) and (B) and the corresponding documentation requirements of §25.107(e)(2)(B)-(C) and §25.107(e)(2)(E)(iv) and (v) are corrected. New §25.107(h)(2)(D)(iii) is added to indicate a change in identification of any of the applicant's principals, executive officers, employees, and third-party providers that meet the criteria under §25.107(e)(2)(E)(iv)(I), or a change in the applicant's relationship with such persons under §25.107 (e)(2)(E)(iv)(II)., if such a relationship exists, constitute material changes requiring disclosure and amendment of the REP certificate. Lastly, new §25.107(h)(2)(D)(iv) is added that requires a REP to amend its certificate if there is a change that requires an updated statement affirming that the persons identified under §25.107(g)(1) do not control the REP and are not relied upon to meet the requirements of §25.107(e)(1)(A) and (B) constitute a material change requiring disclosure and amendment of the REP certificate.

New §25.107(h)(2)(F) - Update or relinquishment of certificate; change in type of certificate

The commission adds new §25.107(h)(2)(F) to conform with the REP Registration Form published with the proposed rule. Specifically, new §25.107(h)(2)(F) specifies that a change in a REP's type of certification as an Option 1, Option 2, or Option 3 REP is a material change requiring disclosure and amendment of a REP certification.

Proposed §25.107(h)(3) - Relinquishment of certificate; required notice

Proposed §25.107(h)(3) authorizes a REP that no longer serves customers to relinquish its certificate and requires a REP that does not serve customers for two consecutive years to relinquish its certificate. Proposed §25.107(h)(3) also lists actions a REP must take if it plans to cease operations or relinquish its certificate.

The commission revises §25.107(h)(3) to conform with the REP Registration Form published with the proposed rule. Specifically, the provision is revised by expanding the list of persons who must be notified 45 days prior to a REP's cessation of operations under §25.107(h)(3) to include the Low Income Discount Administrator. The provision is also revised for clarity to indicate that a REP relinquishing its certificate must only provide notice to the TDUs and providers of last resort in the service territories in which a REP serves customers. Lastly, §25.107(h)(3) is revised to qualify that, as applicable, the notice to municipalities and electric cooperatives is limited to those entities in whose service territory the REP serves customers.

New §25.107(h)(4) and §25.107(h)(4)(A) and (B) - Requirements for application to amend REP certificate

The commission adds new §25.107(h)(4) and §25.107(h)(4)(A) and (B) to conform with the REP Registration Form published with the proposed rule. Proposed §25.107(h)(4) specifies additional information that must be disclosed by a REP applying to amend its certificate

Proposed §25.107(i)(3) and (4) - Reporting requirements; contents of semi-annual and annual report

Proposed §25.107(i)(3) specifies information that must be included both in a REP's annual and semi-annual report to the commission and proposed §25.107(i)(4) specifies additional information that only a REP's annual report must include.

The REP Coalition recommended combining proposed §25.107(i)(3) and (4) and adding new §25.107(i)(4) which would require disclosure only if such information differed from when the REP last updated the information. This would allow a REP to only report about principals, executive management, third-party providers, Load Serving Entity (LSE) and QSE registration information if there is a change from the last time the REP provided the information to the commission. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to revise §25.107(i)(3) and (4) in the manner recommended by the REP Coalition. If no information has changed between the annual and semi-annual report it should not be burdensome for the REP to re-submit this information. Further, requiring REPs to submit the actual information will assure REPs are reviewing this information comprehensively and allow commission staff to verify that the information has not changed.

Proposed §25.107(i)(3)(G) - Reporting requirements; contact information of REP's LSE and QSE

Proposed §25.107(i)(3)(G) requires a REP report any changes to its current LSE contact information kept on file with ERCOT and a copy of all Notices of Change of Information submitted to ERCOT since the REP's last annual or semi-annual report was filed. Additionally, if the REP's designated QSE is the same entity as the REP or an affiliate of the REP or REP's corporate parent, proposed §25.107(i)(3)(G) requires the REP to 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.

The REP Coalition opposed the requirement that a REP disclose QSE and counter party information. The REP Coalition explained that the commission can already access this information through ERCOT and that any benefit from such disclosure is unclear. The REP Coalition further commented that whether a REP, a REP's affiliate, or REP's corporate parent is a QSE should not affect a REP's reporting requirements. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission disagrees with the REP Coalition and maintains the requirement as proposed. Requiring REPs to attach a copy of a form the REP is also required to submit with ERCOT is not unduly burdensome. The disclosure creates greater transparency for the commission regarding the identity of the individuals who have decision-making authority over a REP's operations. The commission revises §25.107(i)(3)(G) to clarify that the requirement to disclose a REP's LSE and, as applicable, a REP's QSE and counter party contact information, only applies to REPs providing retail electric service in the ERCOT region.

New §25.107(i)(4)(C) - Reporting requirements; other disclosures required by commission rules

New §25.107(i)(4)(C) requires an annual report to disclose the information required by §25.491, relating to Record Retention and Reporting Requirements, and other commission rules, as applicable. The commission adds new §25.107(i)(4)(C) to conform with the REP Registration Form published with the proposed rule. Specifically, new §25.107(i)(4)(C) is added to reflect the required disclosures for annual and semi-annual reports under §25.491, relating to Record Retention and Reporting Requirements, which prescribes additional information that must be included in a REP's annual report to the commission, as well as any other applicable commission rules.

Proposed §25.107(l) - Suspension of a REP's ability to acquire new customers

Proposed §25.107(l) authorizes the commission or presiding officer to suspend a REP's ability to acquire new customers. A suspended REP is barred from seeking to acquire new customers. The commission can suspend a REP for a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization. Proposed §25.107(l) also authorizes a suspension to be limited to specific customer classes and for the commission to impose administrative penalties or other conditions on a REP in addition to the suspension. Further, proposed §25.107(1)(1)(E) authorizes the presiding officer to issue an emergency order directing ERCOT to stop processing move-in requests for the REP if the presiding officer determines such action to be in the public interest.

CCR opposed the inclusion of proposed §25.107(l) that authorizes the commission to suspend a REP from acquiring new customers because it would deprive a REP of due process. CCR noted that existing rule language already exists for a party to bring a formal complaint to suspend or revoke a REP's certificate. CCR further noted that the commission already possesses the authority to seek injunctive relief if a REP violates commission rules. CCR commented that such broad commission authority to impact a REP's business activities should not be part of what is otherwise an administrative approval process. Specifically, CCR contended that a suspension from acquiring new customers should comply with the Texas APA, and therefore a contested case proceeding is more appropriate. CCR also commented that a state of default to another market participant is an insufficient basis for the commission to suspend a REP from acquiring new customers.

CCR further contended that the dispute resolution processes maintained by TDUs and ERCOT should be required to occur prior to any action by the commission. CCR stated that the proposed suspension provision would punish a REP who avails itself of such an alternative dispute resolution process or enters into a payment plan, as such action could be a basis for suspension without due process.

The REP Coalition disagreed with CCR that proposed §25.107(l) deprives a REP of due process as it provides notice and an opportunity for a hearing to a REP via the filing of a petition by commission staff to suspend a REP's ability to acquire new customers. The REP Coalition also noted that the circumstances for an emergency suspension without a hearing are provided in the rule. To address CCR's concerns, the REP Coalition recommended new §25.107(l)(2) which would classify a suspension of a REP's ability to acquire new customers as a contested case under Tex. Gov't Code, Chapter 2001. Specifically, the new provision would authorize the commission to hold a hearing on a petition for suspension or refer the case to be heard by the State Office of Administrative Hearings. Additionally, a REP's timely submission of a request for a hearing would delay the suspension until the issuance of a commission order, except in cases where an emergency order is already issued under §25.107(l)(1)(E). Such an order must identify the violations underlying the suspension and any conditions for reinstatement. REP Coalition commented that its proposed language would clarify the intent of the subsection to afford a REP due process and ensure a REP has all information required for reinstatement, with clear deadlines for such information.

The REP Coalition also recommended that, if the intent of the rule is to allow for an immediate suspension once staff files a petition, to amend §25.107(l) to allow for an expedited hearing process similar to the process applicable to cease and desist orders under §25.54(d)(2)(C). The REP Coalition explained that such a process would require the commission to set a hearing date no later than the 10th day after the date a hearing request is received unless an agreement is reached on an alternative date and would allow for a REP to request a stay of the suspension pending the outcome of the hearing.

OPUC supported the inclusion of proposed §25.107(l).

Commission Response

The commission disagrees with CCR that §25.107(l) violates due process and declines to remove the provision. Suspending a REP is an action the commission has historically performed and is authorized to do under PURA Chapter 17. The revisions to §25.107(l) merely flesh out a process for the use of the commission's statutory authority already codified in existing §25.107 to suspend a REP from acquiring new customers. Therefore, the change is beneficial to REPs because the provision serves to provide insight into the considerations that guide the use of this authority and explains the details of the suspension process.

The commission also disagrees with CCR that a REP's certificate should not be suspended until after the completion of a formal complaint or alternative dispute resolution process at ERCOT. The commission agrees that it is often appropriate to let these processes play out before a suspension is concerned, but this is not uniformly the case the commission will not, by rule, limit its ability to take this statutorily authorized action when necessary. The commission's enforcement division and the executive director have reasonable discretion over when to pursue such a suspension and will exercise such discretion prudently.

With regard to emergency suspensions of a REP's ability to acquire new customers, the commission agrees with REP Coalition that such a process should mirror the cease and desist order procedure specified by §25.54. Accordingly, the commission modifies the rule to remove §25.107(l)(1)(E) and replaces it with new §25.107(l)(2). This new paragraph delegates authority to the executive director to suspend a REP's ability to acquire new customers via a cease and desist order, provided the criteria for the issuance of such an order under PURA §15.104 are met. The commission also revises the rule to provide interpretive guidance for PURA §15.104 by explicitly indicating that the statutory phrase "continuous and adequate electric service" is inclusive of the definition of "continuous and reliable electric service" as defined under §25.107(b)(3). Specifically, §25.107(b)(3) defines "continuous and reliable electric service" as "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."

Additionally, the commission emphasizes that, to ensure due process and to align with statutory provisions on the use of cease and desist orders, the executive director may only act under §25.107(l)(2) when prior notice and an opportunity for a hearing is impracticable. To aid the executive director in making the practicability determination, the rule specifies that the executive director may consider, among other relevant factors, whether immediate action is necessary to ensure the REP is able to provide continuous and reliable service to its current or potential customers, reduce the risk of the REP exposing its current or potential customers to a mass transition event, or otherwise ensure the REP is able to meet its financial obligations.

Lastly, §25.107(l)(2) is modified to specify that the procedural provisions for a cease and desist without a hearing from §25.54(d)(2) apply, which include the right to request an expedited hearing on the cease and desist order.

Proposed §25.107(l) - Implementing suspension of a REP's ability to acquire new customers; Action by independent organization

Proposed §25.107(l)(1)(D) states that, upon approval of the petition for suspension by the presiding officer, ERCOT will be directed to stop processing move-in requests for the REP.

ERCOT noted that its current systems are not set up to permit ERCOT to block individual REPs from adding customers. Due to the technical infeasibility of the proposed language, ERCOT proposed an alternative. ERCOT can produce a report similar to an inadvertent gains report and provide that report to the commission. ERCOT provided draft language consistent with its recommendation. The REP Coalition supported ERCOT's recommended language for proposed §25.107(f)(1)(D) and (E) but noted that a REP will need time to implement a commission order to cease soliciting or enrolling new customers. The REP Coalition recommended ERCOT's suggested language for proposed §25.107(l)(1)(D) be amended to allow five business days from the date of the issued order for a REP to implement the suspension. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission agrees with ERCOT and implements its proposed language with minor revisions to account for instances where a REP must "initiate" service due to events outside the REP's control, the REP is obligated to serve the new customer, to the terms of a contract or a mass transition resulting from a

POLR event. The commission also agrees with the REP Coalition and revises §25.107(l)(1)(D) to provide a REP with time to implement a suspension. However, to ensure that the suspension order is implemented efficiently, the commission provides REPs with three working days instead of the requested five.

Proposed §25.107(l)(2) - Suspension of a REP's ability to acquire new customers; lifting of suspension

Under proposed §25.107(l)(2), the presiding officer may lift a suspension of a REP's ability to acquire new customers if all the conditions for reinstatement are met, if the REP is in compliance with all technical, managerial, and financial requirements of this section, and commission staff recommends that the suspension be lifted.

The REP Coalition recommended revising §25.107(l)(2) to state that a REP suspension "must" be lifted by the presiding officer when all violations that led to a REP's suspension are resolved or settled. The REP Coalition opposed usage of the permissive "may" as it provides discretion to the presiding officer on whether to lift the suspension despite such resolution or settlement.

The REP Coalition further recommended proposed §25.107(l)(2)(C) be removed as it conditions the lifting of the suspension upon a recommendation by commission staff. The REP Coalition explained that, in its view, if a REP has fulfilled the conditions for reinstatement, the lifting of the suspension should be mandatory, not discretionary, regardless of whether commission staff files a recommendation. The REP Coalition noted that requiring a commission staff recommendation may delay a reinstatement and that if such a recommendation is necessary, the presiding officer has the discretion to require commission staff to file one. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to implement the REP Coalition's recommendation to automatically lift the REP's suspension from acquiring new customers when all violations that led to the suspension are resolved or settled. The resolution or settlement of violations may require verification and additional circumstances may exist that merit preserving the suspension. However, in acknowledgement of REP Coalition's concerns regarding quick resolutions and to provide maximum flexibility for lifting the suspension, the commission modifies the provision to bifurcate the reinstatement process.

Under the first option, a REP may file a petition for reinstatement that is eligible for informal resolution. In determining whether to lift the suspension, the presiding officer may consider whether the REP has resolved all violations underlying the suspension, fulfilled all conditions for reinstatement, and is in compliance with the technical, managerial, and financial requirements of §25.107. The commission also modifies the rule to clarify that the presiding officer may consider all of the requirements of §25.107, or just a subset of those requirements, as appropriate to the situation. Additionally, the presiding officer may consider any additional grounds relevant to maintaining the suspension to prevent the need for redundant suspension proceedings. Lastly, as requested by the REP Coalition, the commission removes the requirement that commission staff must file a recommendation in support of lifting the suspension, because the presiding officer has discretion to require a recommendation from staff, if needed.

Under the second option, the commission has added a new expedited method for lifting the suspension under §25.107(l)(4) that would authorize commission staff to lift the suspension without any further action required by the commission. Under this option, the suspension order would contain specific, verifiable conditions for expedited reinstatement. However, to ensure that the REP has fulfilled each required condition as intended, the suspension order may condition expedited reinstatement upon staff approval. This strikes an appropriate balance between commenters' due process concerns and desire for expediency, because the suspended REP has the option of working with staff for expedited reinstatement, while still having the option of filing a petition for reinstatement if the REP and commission staff disagree as to whether the conditions have been met.

The commission also emphasizes that expedited reinstatement of a REP's ability to acquire new customers is only appropriate in certain circumstances. Specifically, §25.107(l)(4) provides that "[e]xpedited reinstatement is not appropriate if the basis for the suspension cannot be redressed by the fulfillment of specific, predetermined remedial actions, if the pattern of conduct giving rise to the suspension supports a general concern about the REP's ability to comply with applicable law or provide customers with continuous and reliable service, or if there is evidence that may support additional grounds for suspension" Lastly, the commission authorizes the creation and use of a compliance docket for expedited reinstatements, if required.

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

Intent to sell at wholesale and definition of "self-generator"

The proposed repeal and replace of §25.109 included a new definition of "self-generator" to provide clarity on the applicability of PGC and self-generator registration requirements.

The commission received comments from TIEC, Enel, Good Company, STEC, and TCPA on the proposed provisions. TIEC, Good Company, and Enel recommended the commission take up the issue of defining "self-generator" and addressing the applicability issues in a separate rulemaking.

Commission Response

The commission agrees with commenters that the definition of "self-generator" and the registration applicability issues should be considered in a separate rulemaking. Accordingly, the commission revises the proposed rule to remove language related to these changes. Specifically, the commission deletes the definition of "self-generator" under §25.109(b)(3) and revises §25.109(e) to require attestations by persons registering as self-generators affirming only that the registrant is not a power generation company and does not intend to generate electricity intended to be sold at wholesale. Further, if the registrant is a Qualifying Facility (QF) and registering as a self-generator, then the registrant either does not sell electricity or provides electricity only to the purchaser of the facility's thermal output. The commission deletes the reference in the existing rule to electric energy storage equipment or facilities to which PURA, Chapter 35, Subchapter E applies as the definition of "power generation company" includes this reference in the definition. The commission further omits the proposed requirement that Exempt Wholesale Generators (EWGs) must register under §25.107 as a PGC. The requirement that QFs must register as PGCs has been retained in the adopted rule as that requirement is present in the existing rule. The commission also makes revisions to the rule for clarity.

§25.109(b)(2) - Definition of "principal"

Proposed §25.109(b)(2)(A)-(F) defines "principal" with specific reference to a variety of persons that traditionally exert authority or control across different legal business organizations.

Commission Response

The commission revises the definition of "principal" to conform with the same definition included in the adopted version of §25.107(b)(13) to the extent the definitions overlap, including the clarification that "a fiduciary of a company such as the board of directors, is a principal" provided they possess apparent or actual authority to exercise control over a PGC or its principals, and actually exercise such control. The commission also similarly revises §25.109(b)(2)(B) to state "a partner of a partnership."

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.30

The amended rules are adopted under the following provisions of PURA: §14.002 which authorizes the commission to 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 §15.104 which authorizes the commission or executive director to issue a cease and desist order with or without notice or opportunity for a hearing. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §17.052 which authorizes the commission to adopt and enforce rules related to certification or registration including suspension or revocation for repeated violations of Chapter 17 of PURA or commission rules. 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, 15.104 17.001, 17.003, 17.004, 17.052 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, or by telephone with the electric utility. The electric utility must promptly investigate and advise the complainant of the results within 21 days.

(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 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.

(c) 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, internet address: www.puc.texas.gov, and Relay Texas (toll-free) 1-800-735-2989.

(2) The electric utility must investigate all complaints and advise the commission in writing of the results of the investigation within 15 days after the complaint is forwarded to the electric utility. For complaints filed with the commission before September 1, 2023, the deadline is 21 days after the complaint is forwarded.

(3) The electric utility must keep a record for two years after determination by the commission of all complaints forwarded to it by the commission. This record must 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 must require no further action by the electric utility need not be recorded.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301297
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Public Utility Commission of Texas
Effective date: April 26, 2023
Proposal publication date: October 14, 2022
For further information, please call: (512) 936-7322

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SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §§25.105, 25.107, 25.109

The repealed rules are adopted under the following provisions of PURA: §14.002 which authorizes the commission to 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 §15.104 which authorizes the commission or executive director to issue a cease and desist order with or without notice or opportunity for a hearing. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA

§17.052 which authorizes the commission to adopt and enforce rules related to certification or registration including suspension or revocation for repeated violations of Chapter 17 of PURA or commission rules. 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, 15.104 17.001, 17.003, 17.004, 17.052 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301298
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: April 26, 2023
Proposal publication date: October 14, 2022
For further information, please call: (512) 936-7322

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16 TAC §§25.105, 25.107, 25.109

The new rules are adopted under the following provisions of PURA: §14.002 which authorizes the commission to 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 §15.104 which authorizes the commission or executive director to issue a cease and desist order with or without notice or opportunity for a hearing. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §17.052 which authorizes the commission to adopt and enforce rules related to certification or registration including suspension or revocation for repeated violations of Chapter 17 of PURA or commission rules. 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, 15.104 17.001, 17.003, 17.004, 17.052 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 in order 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 January 1, 2024 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 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. A person may certify as an Option 1 REP, Option 2 REP, or Option 3 REP under this section. Certification must be maintained on an ongoing basis by timely reporting and updating the certification information in accordance with subsections (i) and (h) of 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 who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Transportation Code, Section 502.004, 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 certified as an Option 1 REP via an application submitted prior to the effective date of this section must come into compliance with the requirements of this section by March 5, 2024. Prior to March 5, 2024, a person certified as an Option 1 REP via an application submitted prior to the effective date of this section must meet the requirements of this section as it was in effect on April 1, 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 March 5, 2024.

(B) A REP who does not demonstrate compliance with this section on or before March 5, 2024, may be subject to a suspension of acquiring new customers under subsection (l) 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 partner of a partnership;

(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 exercises control and has apparent or actual authority to exercise such control over either the REP or a principal that is otherwise described by this subsection. A consultant, third-party provider, or fiduciary of a company such as the board of directors, is a principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.

(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. A contractor, consultant, agent, or any other person not directly employed by the REP can be a third-party provider. A third-party provider is a principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.

(c) Application processing.

(1) A person can apply to certify as a REP or amend a 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 in accordance with subsection (h)(2) of this section.

(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) An Option 2 REP application for certification that meets all other requirements of this section except for the provision of customer affidavits under subparagraph (d)(2)(I) may be conditionally granted by the presiding officer. If such an application is conditionally granted, the applicant must, within 30 days from the date the application is granted, file in the docket the affidavit or affidavits required by subsection (d)(2)(I). The application will be withdrawn and the application denied with respect to each customer for whom the applicant fails to timely file the required affidavit. Within 45 days after the application is conditionally granted, commission staff must file a status report indicating whether each of the required affidavits were timely filed. The presiding officer will then issue a follow-up order confirming the approval of the application as to each customer for whom the required affidavit was filed and denying the application as to each customer for whom the required affidavit was not filed.

(6) Document format. If a provision of this subsection specifies a certain format for a document that must be filed with or submitted to the commission, an applicant must file or submit that document in the native format specified. A document filed in its native format must permit basic data manipulation functions, such as copying and pasting of data.

(d) Basic requirements.

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

(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) the applicant's primary contact name and title, street and mailing address, business telephone number and toll-free number, business e-mail address, and applicant's web address;

(ii) for the pendency of the application or amendment, the authorized representative's name, title, street and mailing address, telephone number, e-mail address, and web address;

(iii) regulatory contact name, title, street and mailing address, telephone number, e-mail address and web address;

(iv) customer complaint contact name, title, street and mailing address, telephone number including a toll-free number, e-mail address and web address;

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

(E) Maintain current and accurate office information including:

(i) An office that has street address located within Texas that is open during normal business hours 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 the following contact information where the REP's staff can be directly reached:

(I) a business telephone number and toll-free number,

(II) a business e-mail address and web address, and

(III) a business postal address that is not a post office box.

(ii) The applicant's state of formation or incorporation, and the address of the applicant's primary business office; and

(iii) A mailing address, if different from the applicant's Texas office address or primary business office address; and

(iv) The name and address of the applicant's registered agent for the purpose of receiving 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 or commission staff request for information, unless otherwise provided by the commission, commission staff, or other applicable law.

(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) Information related to the applicant's status as a legal entity, including information related to its tax status and authority to do business in Texas to verify the information required under paragraphs (1)(A)-(C) of this subsection. The following information must be provided:

(i) A copy of the applicant's Texas Secretary of State registration and filing numbers associated with the registration. 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.

(ii) The applicant's Texas Comptroller of Public Accounts tax identification number, and all other relevant or other applicable certification or file numbers.

(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 the applicant, including:

(i) a list of the applicant's subsidiaries and parent companies up to the ultimate corporate parent, and any sister companies that are registered or certified with the commission. Each company must be identified by name and, if applicable, type of commission registration or certification.

(ii) an ownership and corporate structure chart that includes ownership percentages. The chart must be as detailed as practicable, but must contain, at minimum, the entities listed under clause (i) of this subparagraph and any entities with more than ten percent ownership of the REP or any of the REP's parent companies with a controlling interest in the REP.

(iii) a list of all principals, provided in Microsoft Excel format;

(iv) a list of all executive officers, provided in Microsoft Excel format.

(F) A statement affirming compliance with paragraphs (1)(F) - (I) of this subsection and a short summary describing how the applicant has complied, or for paragraph (1)(I) of this subsection how the applicant will comply, with each subparagraph.

(G) The control number 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 conditional 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; 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 on an ongoing basis.

(A) One or more principals 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) One executive officer or employee in a managerial position 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) If providing retail electric service in the ERCOT region, compliance with all applicable ERCOT requirements, including:

(i) execution of a service agreement with a QSE;

(ii) maintaining 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;

(iii) providing outage notifications in accordance with § 25.53 of this title; and

(iv) completing ERCOT flight test obligations.

(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 information 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 accompanied by a description of each third-party provider's responsibilities and delegation of authority, provided in Microsoft Excel format.

(B) Resumes showing prior experience of one or more of the applicant's principals or managerial employees in the competitive retail electric industry or competitive gas industry to demonstrate at least 15 years of experience and, if applicable, a resume showing one of the applicant's executive officers or managerial employees possess at least 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 corporate parents, all sister companies and subsidiaries of the applicant, and affiliates of the foregoing that provide utility-like services such as telecommunications, internet, broadband, 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 identifies and, if applicable, describes the applicant's relationship with any of the following persons.

(I) Identification of all of the applicant's principals, executive officers, employees, and third-party providers 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 over a market participant 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 other than ERCOT terminated;

(-c-) exercised direct or indirect control of a market participant 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-) 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 ERCOT SFA or similar agreement for an applicable independent organization 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.

(v) A statement affirming that the persons listed under paragraph (g)(1) of this section do not control the applicant and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section.

(F) To document compliance with subsection (e)(1)(C) of this section, an applicant must provide:

(i) all relevant information related to each service agreement executed with a QSE, including:

(I) the term of the service agreement and date the service agreement began;

(II) the name of the QSE;

(III) the QSE's contact name and title;

(IV) the QSE's physical address;

(V) the QSE's e-mail address and web address; and

(VI) the QSE's business telephone number and toll-free number;

(ii) a confirmation that applicant has 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;

(iii) a confirmation that applicant will provide outage notifications in accordance with §25.53 of this title; and

(iv) a confirmation that applicant has or will soon complete ERCOT's flight test obligation.

(f) Financial requirements. An Option 1 REP must, on an ongoing basis, 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 subparagraph (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, based on the number of electronic service identifiers (ESI IDs) the REP serves in the manner prescribed by clauses (ii) and (iii) of this subparagraph. Additionally, for the first 24 months a REP is serving load it must maintain not less than one million dollars in shareholders' equity in accordance with clauses (iv) and (v) of this subparagraph.

(i) Figure: 16 TAC §25.107(f)(1)(B)

(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 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 §25.478 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 and prepayments in an escrow account, segregated cash 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 REP must use and maintain either an escrow account, segregated cash account, or irrevocable stand-by letter of credit to protect customer deposits and prepayments. If a REP

uses an escrow account or segregated cash account, the same account must be used for customer deposits and prepayments. More than one irrevocable stand-by letter of credit can be provided 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, segregated cash 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 control 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 by an applicant to demonstrate compliance with the financial requirements under paragraphs (1), (2), and (3) of this subsection, as applicable. Additionally, the applicant must provide the month and last day of the applicant's reporting fiscal year or, if the applicant has a guarantor, the guarantor's reporting fiscal year. The applicant must also 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 audited or unaudited financial statements of the guarantor for the most recently completed quarter.

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

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

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the guarantor's most recent financial statements filed with any agency of the federal government, including 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 accompanying 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.

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

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the REP's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.

(D) Segregated cash accounts must be documented by a current account statement and the executed agreement with an unaffiliated person that controls the segregated cash account.

(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, prepayments, or both.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, 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) A REP must provide an executed agreement with a provider of credit that governs the control and management of the account. The provider of credit must not be affiliated with the applicant or the applicant's corporate parent. If the segregated cash account contains customer deposits, the agreement must specify 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 executed escrow account agreement.

(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, prepayments, or both.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, 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 only customer deposits, prepayments, or both, and that the customer deposits 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 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 Board of Governors of the Federal Reserve System, 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 and commission staff signs the notice of non-renewal to acknowledge that the notice was received 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's demands on behalf of the applicant. A copy of the executed irrevocable guaranty agreement must be provided in the manner established by the commission.

(i) The guarantor's obligation to satisfy a commission 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 irrevocable guaranty agreement must automatically renew and only expire if prior notice is provided to the commission at least 90 days before expiration. Commission staff must sign a notice of non-renewal to acknowledge that the notice was received at least 90 days prior to the date of expiration. Any notices or amendments must be 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 independent organization terminates a similar agreement and the REP's financial resource expires in 30 days less; or

(D) The commission's executive director determines that a REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols; and the financial resource expires in 30 days or less.

(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, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator under §25.45 of this title (relating to Low-Income List Administrator);

(ii) second, if available, to assist in the payment of residential customer deposits to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator under §25.45 of this title;

(iii) third, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provider service in a mass transition event under §25.43 of this title, and to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title;

(iv) fourth, for services provided by the independent organization related to serving customer load;

(v) fifth, for services provided by a TDU; and

(vi) sixth, for administrative penalties assessed under Chapter 15 of PURA or commission rules.

(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 market participant, at any time within the six months prior to the market participant:

(i) experiencing a mass transition of the REP's customers under §25.43 of this title;

(ii) having their ERCOT SFA, or similar agreement for an independent organization other than ERCOT terminated; or

(iii) exiting an electricity or gas market with outstanding payment obligations that, at the time of the application or amendment, remain outstanding; or

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

(2) If 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 from the occurrence 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 control of the REP including a change in the controlling owner, a corporate restructuring that involves the REP, a transfer of a REP certificate, or a change in the persons that have a minimum of ten percent ownership of the REP or a controlling parent of the REP, but not including a change in the ownership percentages of individual owners;

(B) a name change (including addition or deletion 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 technical and managerial requirements of subsection (e)(1)(A) and (B) of this section that correspond with the documentation requirements under subsection (e)(2)(B) and (C), and (E)(iv) and (v) of this section. Such information includes:

(ii) personnel relied upon for experience, and

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

(iv) a change in identification of any of the applicant's principals, executive officers, employees, and third-party providers that meet the criteria under subsection (e)(2)(E)(iv)(I) of this section, or a change in the applicant's relationship with such persons under subsection(e)(2)(E)(iv)(II) of this section, if such a relationship exists; and

(v) a change necessitating an updated statement affirming that the persons identified under subsection (g)(1) of this section do not control the REP and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section; 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 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;

(F) a change in REP's type of certification as an Option 1, Option 2, or Option 3 REP; and

(G) for Option 2 REPs, the addition or removal of customers served by the Option 2 REP.

(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 control 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. The REP must also notify, the Low Income Discount Administrator, the applicable independent organization, and all TDUs and the providers of last resort for service territories in which the REP serves customers. As applicable, a REP must also notify all electric cooperatives and municipally owned utilities in whose service territory the REP serves customers. 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.

(4) A REP that applies to amend its certification must:

(A) state the effective date of each material change that prompted the amendment application; and

(B) identify whether it is currently providing service to customers in Texas.

(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 in Microsoft Excel format.

(E) A list of all executive officers, provided in Microsoft Excel format.

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

(G) For a REP providing retail electric service in the ERCOT region, a copy of the REP's current LSE contact information kept on file with ERCOT, including a copy of each Notice of Change of Information submitted to ERCOT since the REP's last annual or semi-annual report was filed. If 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 must 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:

(I) calculations demonstrating a guarantor's adequate tangible net worth and financial ratios,

(II) proof that a REP maintains 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.

(C) The information required by §25.491 of this title (relating to Record Retention and Reporting Requirements) and other commission rules, as applicable.

(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 for a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization. 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 under 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 an 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 under §25.43 of this title;

(16) Failure to timely remit payment for invoiced charges to a TDU under §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 a suspension under subsection (l) of this section;

(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 may suspend a REP's ability to acquire new customers for a significant violation, as described by subsection (k) of this section. A suspension of a REP's ability to acquire new customers may be limited to specific customer classes. The suspension order may also impose administrative penalties or other conditions for reinstatement on a REP whose ability to acquire new customers has been suspended.

(1) Commission staff may initiate a proceeding for suspension of a REP's ability to acquire new customers under this subsection by filing a petition for suspension.

(A) Commission staff must provide reasonable notice of a petition for suspension to the affected REP in accordance with §22.54 of this title (relating to Notice to Be Provided by the Commission).

(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. Notice is deemed to have been received upon the earlier of receipt of actual notice or three days after the order is mailed. 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.

(2) The executive director may suspend a REP's ability to acquire new customers without prior notice or opportunity for a hearing in the form of a cease and desist order if the executive director determines that providing notice and an opportunity for a hearing is impracticable and that the conduct of the REP meets the criteria for issuing such an order under PURA §15.104(a)(2). In determining the practicability of providing notice and an opportunity for hearing, the executive director may consider, among other relevant factors, whether immediate action is necessary to ensure the REP is able to provide continuous and reliable service to its current or potential customers, reduce the risk of the REP exposing its current or potential customers to a mass transition event, or otherwise ensure the REP is able to meet its financial obligations. For purposes of determining whether the criteria of PURA §15.104(a)(2) are met, the statutory term continuous and adequate electric service includes continuous and reliable electric service as defined in this section. If the executive director issues a cease and desist order suspending a REP's ability to acquire new customers without prior notice or opportunity for a hearing, the procedural provisions of §25.54(d)(2) of this title (relating to Cease and Desist Orders) apply.

(3) In addition to any other applicable requirements, an order suspending a REP's ability to acquire new customers must describe the conduct of the of the REP and the significant violations that support the issuance of the order. The order must also describe any conditions the REP must meet for reinstatement.

(4) If appropriate, an order suspending a REP's ability to acquire new customers may also include specific, verifiable conditions for expedited reinstatement. The conditions for expedited reinstatement may require actions beyond those required to come into compliance with applicable law and may include verification from commission staff that the conditions for expedited reinstatement have been met, verification that commission staff has not identified any reasons the suspension should remain in effect, or a deadline for meeting one or more of the conditions. Expedited reinstatement is not appropriate if the basis for the suspension cannot be redressed by the fulfillment of specific, predetermined remedial actions, if the pattern of conduct giving rise to the suspension supports a general concern about the REP's

ability to comply with applicable law or provide customers with continuous and reliable service, or if there is evidence that may support additional grounds for suspension. If appropriate, a compliance docket will be opened for filings relevant to this paragraph. If the REP fulfills the conditions for expedited reinstatement and files all required supporting documentation, commission staff must lift the suspension, notify ERCOT of the reinstatement, and file a notice of reinstatement as soon as practicable. If commission staff verification is required and commission staff does not agree that expedited reinstatement is appropriate under the terms of the suspension order, the REP may seek reinstatement under paragraph (6) of this subsection.

(5) A REP that has its ability to acquire new customers suspended must cease, within three working days, the solicitation or enrollment of new customers and the applicable independent organization will be directed to report to commission staff, on a weekly basis, any new customers that have been added by the REP. In this subparagraph, the term "enrollment" means the act of executing a contract with an applicant for the provision of electric service but does not include renewing the contract of an existing customer.

(6) A REP may request reinstatement by filing a petition for reinstatement. The commission delegates authority to the presiding officer to approve a petition for reinstatement under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title. In determining whether to lift the suspension, the presiding officer may consider, as appropriate, whether:

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

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

(C) there exist any additional grounds that would support the suspension of the REPs ability to acquire new customers under this subsection.

(7) A REP subject to suspension of acquiring new customers under this section must continue to serve existing customers and maintain compliance with PURA, commission substantive rules, and protocols adopted by the applicable independent organization. Suspension of the ability to acquire new customers does not impact a REP's obligation to timely initiate service to a customer that completed enrollment with the REP prior to the effective date of the suspension, even if the scheduled service initiation date falls within the suspension period.

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

§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.

(1) A person that owns an electric generating facility, including a Qualifying Facility (QF) as defined by §25.5 of this title, must register under this section as a PGC before the first day it generates electricity.

(2) A person that owns an electric generating facility rated at one megawatt (MW) or more, but is not a PGC, must register as a self-generator before the first day it generates electricity. A QF that does not sell electricity or provides electricity only to the purchaser of the facility's thermal output must register as a self-generator.

(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 of the PGC's or self-generator's commission registration 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 of a sole proprietorship;

(B) A partner of a partnership;

(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 exercises control and has apparent or actual authority to exercise such control over either the person or a principal that is otherwise described by this subsection. A fiduciary of a company, such as the board of directors, is a principal if it has apparent or actual authority to exercise control over the person or a principal of the person, and exercises such control.

(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) Contact information of the registrant and the registrant's primary and secondary emergency contacts, which includes:

(A) a legal business name;

(B) a physical and business mailing address;

(C) a business telephone number; and

(D) a business e-mail address.

(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 affiliates of the registrant's and the registrant's corporate parent identified by name that buy and sell electricity at wholesale in Texas, sell electricity at retail in Texas, or is an electric cooperative or municipally owned utility in Texas.

(4) The applicable control number 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 is not a power generation company and does not intend to generate electricity intended to be sold at wholesale; or

(2) if the registrant is a QF, the registrant either does not sell electricity or provides electricity only to the purchaser of the facility's thermal output.

(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) - (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.

(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 file a statement indicating the deficiencies as part of its recommendation. If the presiding officer finds the registration form to be insufficient, the presiding officer 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 file a statement indicating whether 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, or other applicable provisions of PURA, commission rules, or ERCOT Protocols; and

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

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301299
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Rules Coordinator
Public Utility Commission of Texas
Effective date: April 26, 2023
Proposal publication date: October 14, 2022
For further information, please call: (512) 936-7322

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE PROVIDERS

16 TAC §25.485, §25.495

The amended rules are adopted under the following provisions of PURA: §14.002 which authorizes the commission to 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 §15.104 which authorizes the commission or executive director to issue a cease and desist order with or without notice or opportunity for a hearing. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §17.052 which authorizes the commission to adopt and enforce rules related to certification or registration including suspension or revocation for repeated violations of Chapter 17 of PURA or commission rules. 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, 15.104 17.001, 17.003, 17.004, 17.052 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 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 retail electric provider (REP) or aggregator must 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 be toll-free and must afford customers a prompt answer during normal business hours.

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

(4) A REP or aggregator must employ 24-hour capability for accepting a customer's rescission of the terms of service by telephone, under 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 a formal or informal complaint to the commission, and a terms of service agreement cannot impair this right. A REP or aggregator must 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 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 promptly investigate and advise the complainant of the results within 21 days. A customer who is dissatisfied with the REP's or aggregator's review must 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 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 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. 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 advise the com-

plainant 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, Internet website address: www.puc.texas.gov, and Relay Texas (toll-free) 1-800-735-2989.

(A) Requirements applicable to informal complaints.

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

(I) The account holder's name, billing and service addresses, and telephone number;

(II) The name of the REP or aggregator;

(III) The customer account number or electric service identifier (ESI-ID);

(IV) An explanation of the facts relevant to the complaint;

(V) The complainant's requested resolution; and

(VI) Any documentation that supports the complaint, including copies of bills or terms of service documents.

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

(iii) The REP or aggregator must investigate all informal complaints and advise the commission in writing of the results of the investigation within 15 days after the complaint is forwarded to the REP or aggregator. For complaints filed with the commission before September 1, 2023, the deadline is 21 days after the complaint is forwarded.

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

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

(i) The REP or aggregator must 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) A customer must 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) Informal complaint record retention. The REP or aggregator must keep a record for two years after closure by the commission of all informal complaints forwarded to it by the commission. This record must 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) 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 under §25.474 of this title (relating to Selection of Retail Electric Provider), the REP, registration agent, and transmission and distribution utility (TDU) must follow the procedures set forth in this subsection.

(1) Either the original REP or switching REP must 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 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 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 does not need to obtain an additional authorization from the customer under§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 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 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 under §25.480 of this title (relating to Bill Payment and Adjustments) 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 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 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 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 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 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 may file a complaint with the commission, under §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:

(A) respond to the commission within 15 calendar days after receiving the complaint from the commission. For complaints submitted to the commission before September 1, 2023, the deadline is 21 days after the complaint is received from the commission. The response to the complaint must 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.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301300
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Effective date: April 26, 2023
Proposal publication date: October 14, 2022
For further information, please call: (512) 936-7322

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TITLE 28. INSURANCE

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

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC Chapter 127, Subchapter A §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25; the title of Subchapter B; Subchapter B §§127.100, 127.120, 127.130, and 127.140; and Subchapter C §§127.200, 127.210, and 127.220; and the repeal of 28 TAC §127.110. The amended sections concern how the designated doctor program operates. The repealed section, §127.110, has been incorporated into amended §127.100. The amendments and repeal implement Texas Labor Code §§408.0041, 408.023, and 408.1225, which direct DWC on the operation of the designated doctor program.

The amendments to Subchapter A §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25; the title of Subchapter B; Subchapter B §§127.100, 127.120, and 127.140; Subchapter C §§127.200, 127.210, and 127.220; and the repeal of §127.110 are adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8495), with minor corrections to §§127.5, 127.20, and 127.200 published in the January 13, 2023, issue of the *Texas Register* (48 TexReg 169). The rules will not be republished.

The amendments to §127.130 are adopted with changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8495). In response to a public comment, DWC revised §127.130(f) by adding a reference to the designated doctor's duty in §127.200(a)(12) to notify DWC if continuing to participate on a claim would exceed their scope of practice, to note that DWC's assignment of a designated doctor examination does not alter the scope of practice authorized by the designated doctor's professional license, and to make editorial adjustments for readability. The rule will be republished.

REASONED JUSTIFICATION. The amendments are necessary to maintain and increase participation in the designated doctor program and to allow better access to certain types of specialized examinations. DWC evaluated the program and identified several possible areas of improvement, including changes to address training and testing requirements; designated doctor qualifications, certification, and renewals; multiple certifications; and administrative burdens. DWC's evaluation process included multiple stakeholder meetings and two informal draft proposals to gather information and comments on possible changes to the text before writing and posting the formal proposal. DWC considered the comments and information received through the lengthy informal process, as well as the comments received in response to the formal proposal, when drafting the amendments.

The amendments move the substance of the repealed section into another section to reduce duplication and streamline and clarify the process involved, make changes to revise training and testing requirements, reduce administrative burdens, and update designated doctor qualifications to enable better access to traumatic brain injury and multiple fracture examinations for injured employees.

The amendments add new subsection headers throughout the chapter that enable readers to identify and navigate subsections more easily. They remove unnecessary and obsolete section-specific applicability and effective dates to avoid confusion and streamline rule language. They make editorial changes that clarify the rule language and organization by removing unnecessary words, simplifying sentence structure, adding references, and breaking long paragraphs into shorter paragraphs and lists. The amendments also correct typographic, grammar, and punctuation errors in the current rule text; make changes to update obsolete references; and make updates for plain language and agency style. Some examples of these amendments include changing "shall" to "must," "facsimile" to "fax," and adding "insurance" before "carrier."

Section 127.1 concerns requesting designated doctor examinations. The amendments remove language related to the multiple certification requirement to harmonize with amendments to the multiple certification process in §127.10. The amendments also update and simplify DWC's website and physical addresses, and

clarify DWC's requirements for a case-specific good cause determination for scheduling an examination within 60 days. The amendments remove the provision that formerly required the requester to list all compensable injuries, because the designated doctor will be determining what injuries are compensable when performing an extent-of-injury examination, rather than relying on information from the requester.

Section 127.5 concerns scheduling designated doctor appointments. The amendments relocate existing rule language about designated doctor certification from §127.130 for better placement in the chapter.

Section 127.10 concerns general procedures for designated doctor examinations. The amendments add a reference to Labor Code §408.0041(c), clarify that testing and referral doctors for designated doctor examinations do not have to be in the same workers' compensation network for health care as the injured employee, and clarify that the insurance carrier must pay benefits on the condition to which the designated doctor determines the compensable injury extends.

The amendments also divide subsection (d) into two subsections, remove the requirement for a designated doctor to provide multiple certifications, and add language that specifies that, for examinations conducted under subsection (d) on or after June 5, 2023, a designated doctor may provide multiple certifications of maximum medical improvement (MMI) and impairment ratings only when DWC directs.

DWC analyzed data about designated doctor examinations, benefit review conferences, and contested case hearings involving the issues of MMI, impairment rating, and extent of injury in 2019, and determined that only about 20% of designated doctor reports with multiple certifications were involved in DWC dispute resolution processes. In addition, of the 20% of claims where the parties disputed MMI, impairment rating, and extent of injury in a DWC contested case hearing, DWC administrative law judges requested new certifications from designated doctors about 50% of the time, since the multiple certifications the designated doctor previously produced did not represent the compensable injury determined during the proceeding. DWC concluded that, where multiple certifications are appropriate, DWC administrative law judges are already directing designated doctors to provide them. As a result, the amendment that specifies that designated doctors may provide multiple certifications of MMI and impairment ratings only when directed by DWC will reduce the number of unnecessary multiple certifications that consume time and resources, while continuing to allow for necessary multiple certifications without causing unnecessary delay.

Section 127.15 concerns undue influence on a designated doctor. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.20 concerns requesting a letter of clarification regarding designated doctor reports. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.25 concerns failure to attend a designated doctor examination. The amendments clarify that the requirement applies to a designated doctor examination or a referral examination under §127.10(c).

Subchapter B concerns designated doctor certification, renewal, and qualifications. The amendments change the title of the subchapter by changing "recertification," which referred to the section being repealed, to "renewal" to describe the procedure more accurately.

Section 127.100 concerns designated doctor certification. The amendments merge the language in §127.110, which is being repealed, with §127.100 to eliminate redundancy, reduce confusion and inconsistencies, update terminology, and clarify the process for certification and renewal.

The amendments specify that the requirements for certification and renewal are now combined into §127.100, and modify the requirement for certification testing by requiring that a designated doctor complete certification on or after May 13, 2013. Designated doctors that pass or have previously passed the certification test on or after May 13, 2013, are no longer required to retest every two years when they renew their certification. However, the amendments also add §127.100(d), which allows DWC to require testing of all designated doctors on renewal of their certification if needed. Examples of when testing might be required include, but are not limited to, individual need for retesting based on substandard performance, changes in the duties of a designated doctor, updates to the guidelines, and legislative changes.

The amendments clarify that the disclosure questions on the certification application require detailed explanations, add suspension and revocation to the certification actions that require DWC to send the designated doctor written notice, and relocate existing rule requirements for certification effective and expiration dates.

The amendments add §127.100(g), which relocates existing rule requirements from §127.110. Subsection (g) explains that a designated doctor seeking to renew their certification immediately after their current term expires, without interruption, must apply for certification no later than 45 days before the end of the term. Subsection (g) also explains that DWC will not assign examinations to the designated doctor during the last 45 days of an expiring term if it does not receive an application 45 days before the end of the term, but that designated doctors may still provide services on claims DWC had previously assigned to them during this 45-day period.

The amendments add §127.100(h), which allows DWC to approve a designated doctor certification but restrict some or all appointments until the designated doctor completes additional training, testing, or other requirements. This is necessary for DWC to ensure that designated doctors are adequately trained and able to perform their duties as the Labor Code and DWC rules and guidelines require. Subsection (h) also provides a way for the designated doctor to dispute the restriction.

The amendments reletter existing subsection (f) as subsection (i). They clarify the range of possible actions that, under existing statutes, the commissioner may take on a designated doctor's certification to ensure the quality of the designated doctor's decisions and reviews. The amendments also add failure to comply with the requirements of §180.24 (relating to Financial Disclosure) as a ground for action under the subsection.

The amendments add §127.100(k), which relocates existing rule requirements for certification renewal from §127.110, to ensure consistency in the restructured process. The amendments change "informal hearing" to "informal conference" to clarify the informal nature of the discussion about a denial, suspension, or revocation of a designated doctor certification or application for certification or renewal. Subsection (k) details the procedure for designated doctors to request an informal conference.

The amendments remove existing §127.100(h) because this subsection was added in 2012 when designated doctors were transitioning to the then-new rules for examination qualification criteria. Only one doctor used that process during that transition, and there is no longer a need for it.

The amendments remove existing §127.100(i) because DWC transitioned all designated doctor certification terms to a two-year cycle in 2012. There is no longer a need for this provision in the rules.

Section 127.110 is repealed. Certification and renewal requirements are now combined in amended §127.100 to reduce redundancy and inconsistency, and to make the requirements easier to understand and follow.

Section 127.120 concerns exception to certification as a designated doctor for out-of-state doctors. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.130 concerns qualification standards for designated doctor examinations. The amendments specify an applicability date for the section for designated doctor examination assignments made on or after June 5, 2023, to clarify which standards apply to a given assignment.

The amendments to §127.130(b)(9)(A) also update the qualification requirements for physicians examining traumatic brain injuries, including concussion and post-concussion syndrome, by adding to the list of qualifying American Board of Medical Specialties and American Osteopathic Association Bureau of Osteopathic Specialists board certifications. These amendments are necessary to ensure that injured employees with traumatic brain injuries can continue to access designated doctor examinations.

Over the past several years, DWC has experienced a marked decrease in the number of qualified board-certified physicians to examine injured employees with traumatic brain injuries. Current §127.130(d) allows DWC to exempt a designated doctor from the applicable qualification standard if no other designated doctor is qualified and available to perform the examination. Physicians are trained and tested to be able to handle designated doctor assignments for non-musculoskeletal injuries, and to recognize when an injured employee needs to be referred for ancillary testing. Due to lack of availability, within a seven-month period, DWC selected a physician with a board certification other than those currently listed in §127.130(b)(9)(A) to examine an injured employee with a traumatic brain injury 26% of the time. These designated doctors coordinated testing and referral examinations with other health care practitioners to complete their reports. Their reports were comparable to reports submitted by qualified, board-certified physicians.

As a result, DWC acknowledges the need for the rule to increase the number of board-certified physicians available to examine injured employees with traumatic brain injuries, as well as to improve the ability of physicians with a broader range of board certifications to use testing and referral resources to produce reports that meet the requirements of the designated doctor program. Board-certified physicians are all capable of coordinating referrals of injured employees to other specialists, when necessary, regardless of the types of patients the physicians may see in their medical practice. Should a situation arise where any designated doctor does not believe they have the knowledge or training to address a specific issue in an exam, designated doctors may return the examination to DWC for reassignment.

To support those doctors, DWC will provide additional training, focused on coordinating additional testing and referrals necessary when examining injured employees, and techniques for incorporating the results of the testing and referral examinations into the overall report effectively. This will preserve the quality of the reports on traumatic brain injuries while expanding the pool of doctors able to conduct those examinations.

The amendments to §127.130(b)(9)(B) also update the qualification requirements for physicians examining injured employees with spinal cord injuries and diagnoses, a spinal fracture with documented neurological deficit, or cauda equina syndrome. The amendments change the phrase "documented neurological deficit" to "documented neurological injury, or vascular injury," to clarify what types of conditions require a designated doctor examination by a qualified, board-certified specialist. The amendments also clarify that an injured employee with more than one spinal fracture must be examined by a qualified, board-certified specialist to harmonize with the amendments to the types of multiple fractures, joint dislocation, and pelvis or hip fractures in §127.130(b)(9)(E).

The amendments to §127.130(b)(9)(E) clarify the certifications required for complex fractures. They no longer require a board-certified specialist for multiple fractures unless they are accompanied by vascular injury or are more than one spinal fracture. Currently, a board-certified physician must examine an injured employee with multiple fractures (more than one fracture). That can create unnecessary administrative problems and delays. Sometimes, a chiropractor or physician without a board specialty listed in §127.130(b)(9)(E) is selected as a designated doctor to examine an injured employee with a single fracture. But when the designated doctor gets the medical records, they may show more than one simple, resolved fracture, which means that the designated doctor must return the examination for reassignment.

As a result, the amendments to §127.130(b)(9)(E) are necessary to clarify that an injured employee with one or more fractures with vascular injury, including crush injuries to bones, must be examined by a physician qualified under §127.130(b)(9)(E). An injured employee with more than one simple, resolved fracture (without vascular injury) may be examined by a chiropractor or a physician with a different board certification or no board certification. This amendment will reduce wasted time and resources, and increase efficiency in assigning and conducting designated doctor examinations.

The amendments also allow a chiropractor or a physician with a different board certification or no board certification to examine an injured employee with a hip fracture without vascular injury; and add multiple rib fractures, with or without vascular injury, to the types of injuries that require examination by a physician qualified under §127.130(b)(9)(E). Because multiple rib fractures may be accompanied by damage to internal organs, clarifying that their examination requires a board-certified physician is necessary.

The amendments to §127.130(c) remove language related to disqualification of a designated doctor under Labor Code §408.0041(b-1) for clarity.

The amendments to §127.130(d) clarify that the exemption from qualification standards applies to a medical doctor or doctor of osteopathy when a designated doctor is not available with the qualifications listed in subsections (b)(9)(A)-(I).

DWC has adjusted §127.130(f) in response to a comment on the proposal by adding a reference to the designated doctor's duty in §127.200(a)(12) to notify DWC if continuing to participate on a claim would exceed their scope of practice, to note that DWC's assignment of a designated doctor examination does not alter the scope of practice authorized by the designated doctor's professional license, and to make editorial adjustments for readability.

The amendments to §127.130(g) remove a reference to §127.110(b) that the repeal of §127.110 makes obsolete.

Section 127.140 concerns disqualifying associations. The amendments make editorial changes.

Section 127.200 concerns duties of a designated doctor. The amendments add the requirement for a designated doctor to complete required training or pass required testing detailed in the designated doctor's approval of certification to harmonize with the amended language in §127.100(h) that allows DWC to approve a designated doctor certification but restrict some or all appointments for a designated doctor until the designated doctor completes additional training, testing, or other requirements. The amendments are necessary to enhance and preserve the integrity of the program.

Section 127.210 concerns designated doctor administrative violations. The amendments clarify that a designated doctor's failure to attend an examination or comply with rescheduling requirements may be grounds for revoking or suspending a certification or sanctioning a designated doctor. The amendments are necessary to ensure the quality and efficiency of the designated doctor program.

Section 127.220 concerns designated doctor reports. The amendments add the requirements for a designated doctor to specify the date the additional testing or referral examination was completed, and to provide the total amount of time required for the designated doctor to review the medical records. They are necessary for DWC to administer the designated doctor program effectively by ensuring a more complete and descriptive record that provides the required information and better reflects the amount of work involved in producing the report.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received three written comments on the proposal by the January 30, 2023, deadline, and no oral comments at the January 18, 2023, hearing. DWC will address any remarks about associated forms and non-rule matters outside of the rulemaking process. Commenters in support of the proposal with changes were: Gary W. Floyd, M.D., Texas Medical Association; and Barbara K. Salyers, Texas Mutual Insurance Company. A commenter against the proposal was: Benjamin de Leon, Office of Injured Employee Counsel (OIEC).

Comment on §127.1. A commenter stated that DWC should not remove the requirement to list injuries determined to be compensable because it may create confusion and mistakes, increase the administrative burden in the system, negatively impact the dispute resolution process, and potentially delay medical and income benefits for injured employees. The commenter also disagreed with the change to replace "parties" with "insurance carrier, the claimant, or the claimant's representative" because it does not account for OIEC assistance, and suggested that DWC add language to include OIEC in the rule.

Agency Response to Comment on §127.1. DWC appreciates the comment but declines to make the suggested changes. On the list of compensable injuries, DWC disagrees that removing the requirement would create confusion and mistakes because §130.1 of this title, concerning certification of maximum medical improvement and evaluation of permanent impairment, already states that the certifying doctor--which can be a treating doctor, a designated doctor, or a required medical examination doctor--certifies maximum medical improvement, determines whether there is permanent impairment, and assigns an impairment rating. Designated doctors are trained to define the compensable injury, taking into consideration the injured employee's history, examination, and medical records. The designated doctor takes into account the information on the examination request but is not limited to this information in evaluating the injured employee. In addition, the treating doctor and the insurance carrier can still provide an analysis letter to the designated doctor, and the injured employee can talk directly to the designated doctor at the examination if clarification is needed.

Although DWC does not believe that a change to the rule to retain the list of compensable injuries is necessary or advisable, DWC may adjust the associated form, DWC Form-032, *Request for Designated Doctor Examination,* to include a question about whether there has been an approved DWC Form-024, *Benefit Dispute Agreement,* final decision, or final court order to determine the compensable injury. That adjustment would allow DWC, on receiving the form, to investigate the documents indicated on the form and provide that information to the assigned designated doctor.

DWC also disagrees that the changes will increase the overall administrative burden in the system, negatively impact dispute resolution, or delay medical and income benefits. While it is true that requiring a Presiding Officer's Directive (POD) for multiple certifications will result in more PODs, it doesn't necessarily follow that more PODs increases inefficiency and confusion. Instead, PODs that are focused on the specific injury and that direct designated doctors to perform multiple certifications only when needed should reduce confusion and duplication, which is a problem in the current system. DWC is also working to streamline the POD process for multiple certifications to ensure that they are processed as efficiently as possible and minimize delays.

On the word "parties," DWC disagrees that the clarification to replace it with "insurance carrier, the claimant, or the claimant's representative" excludes OIEC. Section 150.3(a)(3) of this title (Representatives: Written Authorization Required) allows a representative, as defined in the Texas Workers' Compensation Act (recodified at Labor Code §401.011(37)) to provide unpaid services in workers' compensation matters if the person who is not either an adjuster or attorney files with DWC a written power of attorney, or written authorization from the claimant, allowing that person access to confidential records. Labor Code §401.011(37) defines "representative" as a person, including an attorney, authorized by the commissioner to assist or represent an employee, a person claiming a death benefit, or an insurance carrier in a matter arising under this subtitle that relates to the payment of compensation. Labor Code §404.101 requires OIEC to provide assistance to workers' compensation claimants and assist injured employees through the ombudsman program in DWC's dispute resolution system and with resolving complaints.

Comments on §127.10. A commenter stated that DWC should add language like the language in §127.200(a)(10) to §127.10(c)(3) to clarify that reimbursement for additional testing and examinations performed by referral doctors is subject to

Chapters 133 and 134 to make it clear that DWC's medical billing requirements and reimbursement rates still apply to any testing or referral services a designated doctor orders in the same way as designated doctor examinations.

The commenter stated that the proposed change to §127.10(d), which provides that only DWC may direct a designated doctor to provide multiple MMI/impairment rating certifications, would reduce opportunities for the parties to resolve disputes regarding extent of injury, MMI, and impairment rating without the need for dispute resolution. The commenter asked that, if DWC adopts the change, DWC add language to §127.10(d) to allow adequate time for parties to seek their own opinions through the treating doctor, referral doctor, or required medical examination doctor before initiating the dispute resolution process. The commenter stated that providing alternate certifications does not require additional examination time, as the designated doctor has already evaluated the extent of the compensable injury; and that providing multiple certifications requires adding or subtracting diagnoses and their corresponding percentage of impairment from the whole person impairment rating calculations.

Another commenter stated that DWC should not eliminate multiple certifications when a designated doctor is requested to address issues of MMI, impairment rating, and extent of injury in the same examination because they are helpful and save time, and because injured employees rely on them.

Agency Response to Comments on §127.10. DWC appreciates the comment but declines to make the requested changes. The fee rules and guidelines in Chapters 133 and 134 of this title already apply to testing and referral services that are ordered by a designated doctor, so an additional mandate would be unnecessary and could cause confusion.

Based on DWC's data, of the designated doctor reports with multiple certifications that go to a contested case hearing, DWC administrative law judges had to request new certifications from designated doctors about half the time because the multiple certifications that the designated doctor had produced previously did not represent the compensable injury during the proceeding. As a result, DWC administrative law judges are already directing designated doctors to provide multiple certifications when appropriate, so avoiding producing multiple certifications that will not ultimately be useful in resolving the dispute should make the process more efficient. DWC recognizes that for the cases that do end up in a contested case hearing, having the administrative law judge direct a designated doctor to provide multiple certifications may add some time. Because of that, DWC is adjusting its process to mitigate the time loss by adding benefit review officers to work with the parties to get a POD for multiple certifications, when needed, before the first benefit review conference.

Comment on §127.20. A commenter stated that DWC should amend §127.20(a) to require DWC to request clarification of a designated doctor opinion if both parties agree that clarification of an issue or issues is needed. The commenter stated that, too often, DWC automatically rejects such requests, only for the parties to re-urge the request during the dispute resolution process, which requires the administrative law judge to seek clarification.

Agency Response to Comment on §127.20. DWC appreciates the comment but declines to make the requested change. Because of the fact-specific nature of the matter, and the analysis involved, it is important that DWC have the discretion to determine when a letter of clarification is an appropriate and efficient use of system resources. Requests cannot be leading or inflammatory, and clarification must be necessary and appropriate to resolve a future or pending dispute. Those are qualitative determinations that require careful consideration, which a mandatory rubber stamp would remove.

Comment on §127.100. A commenter stated that DWC should not eliminate the requirement for a designated doctor to test every two years. The commenter agreed with requiring additional certification testing for substandard performance but requests that DWC keep a testing requirement to prevent substandard performance.

Agency Response to Comment on §127.100. DWC appreciates the comment but declines to make the requested change. The education and performance review requirements to ensure consistent designated doctor training and to maintain performance standards remain. The amendments to §127.100(d) allow DWC to require testing at renewal of a designated doctor's certification, when indicated. Examples of when testing might be required include not only identified performance issues, but also changes in the duties of a designated doctor in general, updates to the guidelines, and legislative changes. DWC expects that the additional testing on an as-needed basis will be sufficient to ensure that designated doctors are trained and able to perform their duties to the standard DWC sets.

Comment on §127.120. A commenter stated that, for an out-of-state doctor in §127.120, there are no express restrictions or parameters on the out-of-state doctor's qualifications. The commenter recommended changes to §127.120(a) to require the out-of-state doctor to have equivalent applicable qualifications to the standards in §127.130.

Agency Response to Comment on §127.120. DWC appreciates the comment but declines to make this change. DWC has the discretion to evaluate which requirements to waive, and does so on a case-by-case basis to ensure that an out-of-state examination is conducted timely and to the required standard. Restricting DWC's discretion to assign out-of-state examinations to qualified doctors could make it difficult to find a doctor willing to do the examination and create unnecessary delays and costs.

Comments on §127.130. A commenter expressed appreciation for DWC's inclusion of previously holding a board certification in the definition of "board certified," as consistent with other laws that prohibit differentiation between physicians on the basis of maintenance of certification for paying, reimbursing, or contracting with a physician to provide services.

Another commenter disagreed with allowing doctors not board-certified in neurological surgery, neurology, physical medicine and rehabilitation, or psychiatry to evaluate and rate a traumatic brain injury. The commenter recommended that DWC continue using only the doctors currently listed in §127.130(b)(9)(A) to evaluate traumatic brain injuries. The commenter also recommended that DWC add a testing requirement to increase the number of doctors that can examine traumatic brain injuries and maintain injury examination quality standards. The commenter agreed with DWC's clarification of who may examine spinal cord injuries and complex fractures because it benefits injured employees to have board-certified specialists examining those medically complex injuries.

Agency Response to Comments on §127.130. DWC appreciates the comments. DWC agrees with the commenter's observation that the act of initially getting board-certified is what demonstrates qualification in the field. DWC disagrees with the recommendation to not expand the list of doctors that may examine

traumatic brain injuries. DWC may exempt a designated doctor from the applicable qualification standard if no other doctor is qualified and available to perform the examination. In the past, when a designated doctor with one of the listed board specialties has not been available, DWC has assigned traumatic brain injury evaluations to physicians with other specialty certifications and informed them that they can refer the injured employee to another doctor if needed as part of the designated doctor evaluation. DWC has found that in this situation, the appropriate referrals and tests are conducted, and the reports produced are of comparable quality to reports produced by the listed specialties.

DWC has worked to recruit new designated doctors, especially those with board certifications that are more specific to examine traumatic brain injuries, and hopes that program improvements will increase physician participation of neurologists, neurosurgeons, physical medicine and rehabilitation doctors, and psychiatrists, but assigning examinations for traumatic brain injuries only to those specialties would result in unacceptable and unreasonable delays for those injured employees' examinations for no real benefit. DWC expects that the board-certified doctors qualified to perform traumatic brain injury examinations under the amended rule will coordinate testing and referral doctors in the same way that the doctors that DWC exempted from the qualification standard out of necessity, and will produce reports of comparable quality. To further ensure this, DWC will require additional training for designated doctors with board certifications, focusing on coordinating additional testing and referrals that are needed when examining injured employees with brain injuries, as well as techniques for effectively incorporating the results of the testing and referrals into the overall report.

Comment on §§127.130 and 127.200. A commenter stated that there are places in Chapter 127 where the terminology for the services that a designated doctor provides and the underlying standards may unintentionally be confused with expanding the scope of a person's practice as established by the Texas Legislature. The commenter recommended changes to §§127.130 and 127.200 to prevent unintended consequences.

Agency Response to Comment on §§127.130 and 127.200. DWC appreciates the comment. DWC does not have the authority to expand or decrease a persons' scope of practice, so any attempt to do so in this rule would be ineffective. However, in response to the comment, DWC revised §127.130(f) by adding a reference to the designated doctor's duty in §127.200(a)(12) to notify DWC if continuing to participate on a claim would exceed their scope of practice, to note that DWC's assignment of a designated doctor examination does not alter the scope of practice authorized by the designated doctor's professional license, and to make editorial adjustments for readability.

Comment on §127.210(b). A commenter stated that the liability language in §127.210(b) is broadly drafted and not tailored to DWC's authority and suggested alternative language. The commenter stated that the lack of qualifying language on liability that limits it to DWC's sanction powers could be misconstrued as grounds for civil liability or an administrative enforcement action by another agency, that the provision is also not properly limited to an act committed at the direction of the designated doctor, and that sanctioning a doctor for an unknown action by his or her agent is unfair and may deter an individual from registering as a designated doctor.

Agency Response to Comment on §127.210(b). DWC appreciates the comment but declines to make this change. Modifying the liability language as the commenter suggests would essentially absolve health care providers of misconduct for the actions of their lawful agents. Many designated doctors employ staff and other agents, such as scheduling companies, under employment relationships or general contracts that delegate to the agent the designated doctor's duties to perform services in the Texas workers' compensation system that are not within the specific knowledge or direction of the designated doctor. The suggested language would create ambiguity in situations where designated doctors have such agency relationships. This would, in turn, interfere with DWC's ability to monitor and enforce compliance with Texas laws and DWC rules.

SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS

28 TAC §§127.1, 127.5, 127.10, 127.15, 127.20, 127.25

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on April 5, 2023.

TRD-202301291
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Texas Department of Insurance, Division of Workers' Compensation
Effective date: April 30, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 804-4703

SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL, AND QUALIFICATIONS

28 TAC §§127.100, 127.120, 127.130, 127.140

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to the title of 28 TAC Chapter 127, Subchapter B and §§127.100, 127.120, 127.130, and 127.140 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§127.130. Qualification Standards for Designated Doctor Examinations.

(a) Applicability. This section applies to designated doctor assignments made on or after June 5, 2023.

(b) Qualification standards by type of injury or diagnosis. A designated doctor is qualified to perform a designated doctor examination on an injured employee if the designated doctor meets the appropriate qualification standard for the area of the body affected by the injury and the injured employee's diagnosis and has no disqualifying associations under §127.140 of this title (relating to Disqualifying Associations). A designated doctor's qualification standards are as follows:

(1) To examine injuries and diagnoses relating to the hand and upper extremities, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.

(2) To examine injuries and diagnoses relating to the lower extremities excluding feet, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.

(3) To examine injuries and diagnoses relating to the spine and musculoskeletal structures of the torso, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.

(4) To examine injuries and diagnoses relating to feet, including toes and heel, a designated doctor must be a licensed medical doctor, doctor of osteopathy, doctor of chiropractic, or doctor of podiatric medicine.

(5) To examine injuries and diagnoses relating to the teeth and jaw, including a temporomandibular joint, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of dental surgery.

(6) To examine injuries and diagnoses relating to the eyes, including the eye and adnexal structures of the eye, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of optometry.

(7) To examine injuries and diagnoses relating to mental and behavioral disorders, a designated doctor must be a licensed medical doctor or doctor of osteopathy.

(8) A designated doctor must be a licensed medical doctor or doctor of osteopathy to examine injuries and diagnoses relating to other body areas or systems, including, but not limited to:

(A) internal systems;

(B) ear, nose, and throat;

(C) head and face;

(D) skin;

(E) cuts to skin involving underlying structures;

(F) non-musculoskeletal structures of the torso;

(G) hernia;

(H) respiratory;

(I) endocrine;

(J) hematopoietic; and

(K) urologic.

(9) Notwithstanding paragraphs (1) - (8) of this subsection, a designated doctor must be a licensed medical doctor or doctor of osteopathy with the required board certification to examine any of the following diagnoses.

(A) For purposes of this section, a designated doctor is "board-certified" in a required specialty or subspecialty, as applicable, if they hold or previously held:

(i) a general certificate in the required specialty or a subspecialty certificate in the required subspecialty from the American Board of Medical Specialties (ABMS); or

(ii) a primary certificate in the required specialty and a certificate of special qualifications or certificate of added qualifications in the required subspecialty from the American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS).

(B) To examine traumatic brain injuries, including concussion and post-concussion syndrome, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) psychiatry;

(V) orthopaedic surgery;

(VI) occupational medicine;

(VII) dermatology;

(VIII) plastic surgery;

(IX) surgery;

(X) anesthesiology with a subspecialty in pain medicine;

(XI) emergency medicine;

(XII) internal medicine;

(XIII) thoracic and cardiac surgery; or

(XIV) family medicine.

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) psychiatry;

(V) orthopedic surgery;

(VI) preventive medicine/occupational-environmental medicine;

(VII) preventive medicine/occupational;

(VIII) dermatology;

(IX) plastic and reconstructive surgery;

(X) surgery (general);

(XI) anesthesiology with certificate of added qualifications in pain management;

(XII) emergency medicine;

(XIII) internal medicine;

(XIV) thoracic and cardiovascular surgery; or

(XV) family practice and osteopathic manipulative treatment.

(C) To examine spinal cord injuries and diagnoses, including a spinal fracture with documented neurological injury, or vascular injury, more than one spinal fracture, or cauda equina syndrome, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) orthopaedic surgery; or

(V) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) orthopedic surgery;

(V) preventive medicine/occupational-environmental medicine; or

(VI) preventive medicine/occupational.

(D) To examine severe burns, including chemical burns defined as deep partial or full thickness burns, also known as second, third, or fourth-degree burns, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) dermatology;

(II) physical medicine and rehabilitation;

(III) plastic surgery;

(IV) orthopaedic surgery;

(V) surgery; or

(VI) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) dermatology;

(II) physical medicine and rehabilitation;

(III) plastic and reconstructive surgery;

(IV) orthopedic surgery;

(V) surgery (general);

(VI) preventive medicine/occupational-environmental medicine; or

(VII) preventive medicine/occupational.

(E) To examine complex regional pain syndrome (reflex sympathetic dystrophy), a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) neurological surgery;

(II) neurology;

(III) orthopaedic surgery;

(IV) plastic surgery;

(V) anesthesiology with a subspecialty in pain medicine;

(VI) occupational medicine; or

(VII) physical medicine and rehabilitation.

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;

(II) neurology;

(III) orthopedic surgery;

(IV) plastic surgery;

(V) preventive medicine/occupational-environmental medicine;

(VI) preventive medicine/occupational;

(VII) anesthesiology with certificate of added qualifications in pain management; or

(VIII) physical medicine and rehabilitation.

(F) To examine any joint dislocation, one or more fractures with vascular injury, one or more pelvis fractures, or multiple rib fractures, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) emergency medicine;

(II) orthopaedic surgery;

(III) plastic surgery;

(IV) physical medicine and rehabilitation; or

(V) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) emergency medicine;

(II) orthopedic surgery;

(III) plastic surgery;

(IV) physical medicine and rehabilitation;

(V) preventive medicine/occupational-environmental medicine; or

(VI) preventive medicine/occupational.

(G) To examine complicated infectious diseases requiring hospitalization or prolonged intravenous antibiotics, including blood borne pathogens, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) internal medicine; or

(II) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) internal medicine;

(II) preventive medicine/occupational-environmental medicine; or

(III) preventive medicine/occupational.

(H) To examine chemical exposure, excluding chemical burns, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) internal medicine;

(II) emergency medicine; or

(III) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) internal medicine;

(II) emergency medicine;

(III) preventive medicine/occupational-environmental medicine; or

(IV) preventive medicine/occupational.

(I) To examine heart or cardiovascular conditions, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) internal medicine;

(II) emergency medicine;

(III) occupational medicine;

(IV) thoracic and cardiac surgery; or

(V) family medicine.

(ii) Qualifying AOABOS certifications are:

(I) internal medicine;

(II) emergency medicine;

(III) preventive medicine/occupational-environmental medicine;

(IV) preventive medicine/occupational;

(V) thoracic and cardiovascular surgery; or

(VI) family practice and osteopathic manipulative treatment.

(c) Qualification to perform initial examination. To be qualified to perform an initial examination on an injured employee, a designated doctor, other than a chiropractor, must be qualified under Labor Code §408.0043. A designated doctor who is a chiropractor must be qualified to perform an initial designated doctor examination under Labor Code §408.0045.

(d) Exemption from qualification standards. If a designated doctor is not available with the qualifications listed in subsections (b)(9)(A) - (I), the division may exempt a medical doctor or doctor of osteopathy from any of the qualification standards specified in this chapter to serve as a designated doctor to help timely resolve a dispute or perform a particular examination.

(e) Continuity of examinations. A designated doctor who performs an initial designated doctor examination of an injured employee and meets the appropriate qualification standard to perform that examination under subsection (b) of this section will remain assigned to that claim and perform all subsequent examinations of that injured employee unless the division authorizes or requires the designated doctor to discontinue providing services on that claim.

(f) Removal of designated doctor from a claim. The division may authorize a designated doctor to stop providing services on a claim if the doctor does any of the following:

(1) decides to stop practicing in the workers' compensation system.

(2) decides to stop practicing as a designated doctor in the workers' compensation system.

(3) relocates their residence or practice.

(4) asks the division to indefinitely defer the doctor's availability on the designated doctor list.

(5) determines that examining the injured employee would exceed the scope of practice authorized by their license. The division's assignment of a designated doctor exam does not alter the scope of practice authorized by the designated doctor's professional license. Section 127.200(a)(12) of this title requires a designated doctor to notify the division if continuing to participate on a claim would exceed their scope of practice.

(6) can otherwise demonstrate to the division that their continued service on the claim would be impracticable or could impair the quality of examinations performed on the claim.

(g) Prohibition. The division will prohibit a designated doctor from providing services on a claim if:

(1) the doctor has failed to become certified as a designated doctor;

(2) the doctor no longer meets the appropriate qualification standard under subsection (b) of this section to perform examinations on the claim;

(3) the doctor has a disqualifying association specified in §127.140 of this title that is relevant to the claim;

(4) the doctor has repeatedly failed to respond to division appointment, clarification, or document requests or other division inquiries about the claim;

(5) the doctor's continued service on the claim could endanger the health, safety, or welfare of either the injured employee or doctor; or

(6) the division has revoked or suspended the designated doctor's certification.

(h) License revoked or suspended. The division will prohibit a designated doctor from performing examinations on all new or existing claims if the designated doctor's license has been revoked or suspended, and the suspension has not been probated by an appropriate licensing authority.

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

Filed with the Office of the Secretary of State on April 5, 2023.

TRD-202301292
Kara Mace
Deputy Commissioner for Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: April 30, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 804-4703

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SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RECERTIFICATION, AND QUALIFICATIONS

28 TAC §127.110

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeal of 28 TAC §127.110 under Labor Code §§408.0041, 408.023 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on April 5, 2023.

TRD-202301293
Kara Mace
Deputy Commissioner for Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: April 30, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 804-4703

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SUBCHAPTER C. DESIGNATED DOCTOR DUTIES AND RESPONSIBILITIES

28 TAC §§127.200, 127.210, 127.220

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §§127.200, 127.210, and 127.220 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on April 5, 2023.

TRD-202301294

Kara Mace
Deputy Commissioner for Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: April 30, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 804-4703

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CHAPTER 180. MONITORING AND ENFORCEMENT
SUBCHAPTER B. MEDICAL BENEFIT REGULATION

28 TAC §180.23

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 Texas Administrative Code (TAC) §180.23, concerning division-required training for doctors. Section 180.23 implements Labor Code §§408.023 and 408.1225, concerning doctor certification and training. DWC adopts the amendments without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8516). The rule will not be republished.

REASONED JUSTIFICATION. The amendments make editorial changes, updates for plain language and agency style, and updates to conform the rule to related rules in 28 TAC Chapter 127. The amendments also make the rule easier to navigate by adding subsection headers. The purpose of the amendments is to attract and retain doctors in the maximum medical improvement (MMI) and impairment rating (IR) certification program by revising testing frequency, which reduces confusion and administrative burdens.

Amending §180.23 is necessary to remove references to recertification training requirements under 28 TAC Chapter 127 because DWC's recent amendments to Chapter 127 include a combined process for certification and renewal under §127.100. As a result, any references to recertification under §127.110 are obsolete. The amendments to §180.23 also align the testing requirements for MMI and IR certifications with the updated procedure in Chapter 127.

SUMMARY OF COMMENTS. DWC did not receive any comments on the proposed amendments to §180.23, either orally at the January 18, 2023, hearing or in writing by the January 30, 2023, deadline.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §180.23 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health

care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on April 5, 2023.

TRD-202301290
Kara Mace
Deputy Commissioner for Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: April 30, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

The Texas Water Development Board (TWDB) adopts amendments to 31 Texas Administrative Code (TAC) §§353.4, 353.12, 353.41, 353.103, 353.122, and 353.140. The proposal is adopted without changes as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 464). The rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

These amendments are being made pursuant to the TWDB's periodic rule review of Chapter 353. In assessing the reasons for initially adopting the rules and assessing any necessary updates, the TWDB identified some necessary changes.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

SUBCHAPTER A. GENERAL PROVISIONS.

§353.4. Public Participation.

Section 353.4 is revised to conform with current agency practice. While the rule states that members of the public must sign a registration form at the Board Meeting, the agency currently allows members of the public to submit a form via email in anticipation of Board Meetings.

§353.12. Applications Filing and Notice.

Section 353.12 is revised to provide transparency to the public on applications received by the TWDB. While current rule requires publishing a list of certain applications received in the *Texas Register* each month, the TWDB adopts amendments to post the list on the agency's website instead. The statute requiring reporting of certain applications received does not require publication in the *Texas Register* and those individuals interested in TWDB applications are more likely to check the agency website than the *Texas Register.*

SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM.

§353.41. Adoption of Comptroller Rules.

Section 353.41 is revised to update citations and cross references. The former General Services Commission duties and rules were transferred to the Comptroller of Public Accounts.

SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS).

§353.103. State Agency Geographic Information Standards.

Section 353.103 is revised to update an outdated statutory reference and correct grammar.

SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS.

§353.122. Procedures For Collecting A Delinquent Obligation.

Section 353.122 is revised to change an updated United States Postal Service term from "address service requested" to "address correction requested."

SUBCHAPTER J. ENHANCED CONTRACT MONITORING.

§353.140. Enhanced Contract Monitoring Procedure.

Section 353.140 is revised to simplify the enhanced contract monitoring procedures that the TWDB uses for analyzing contracts. The simplified language will align more closely with statutory requirements for applicable types of contracts. The simplified list of attributes and risk factors to be considered by staff will aid staff in tailoring risk reviews to specific types of contracts. The key risk factors that apply to typical TWDB contracts will remain in the procedures.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the adopted rulemaking. For the first five years these rules are in effect, there is no expected additional

cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs because the rules update non-substantive references and terminology or only impact internal agency procedures. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the adopted rulemaking is in effect, the public will benefit from the rulemaking as it simplifies and clarifies TWDB processes and updates outdated terminology and references. Ms. Rebecca Trevino also has determined that for each year of the first five years the adopted rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as it generally only impacts internal TWDB procedures.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the adopted rule does not adversely affect a local economy in a material way for the first five years that the adopted rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as adopted. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

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

Even if the adopted rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify and simplify TWDB procedures. The adopted rule would substantially advance this stated purpose by updating outdated terminology and references and by clarifying agency practice and procedure related to general administrative functions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill obligations mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is a state agency in the executive branch that is required to adopt certain general state agency requirements in rule.

Nevertheless, the TWDB further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule establishes internal agency practices without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

No public comments were received during the comment period, which ended on March 6, 2023. No changes were made to the rulemaking as proposed.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §353.4, §353.12

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendments are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301307
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESSES PROGRAM

31 TAC §353.41

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301308
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS)

31 TAC §353.103

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301310
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS

31 TAC §353.122

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301311
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER J. ENHANCED CONTRACT MONITORING

31 TAC §353.140

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301312
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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CHAPTER 380. ALTERNATIVE DISPUTE RESOLUTION

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §380.2, §380.3

The Texas Water Development Board (TWDB) adopts amendments to 31 Texas Administrative Code (TAC) §380.2, Applicability, and §380.3 Definitions. The proposal is adopted without changes as published in the February 3, 2023, issue of the *Texas Register,* (48 TexReg 474). The rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

The TWDB adopts amendments to 31 TAC Chapter 380, Alternative Dispute Resolution, Subchapter A, General Provisions. These amendments are adopted to make the rules consistent with statute in Chapter 2260, Texas Government Code.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

31 TAC §380.2, Applicability

Section 380.2 Applicability, is revised to add new paragraph (4). New paragraph (4) allows a claim for breach of contract to which Chapter 114, Civil Practices and Remedies Code to proceed against the TWDB, consistent with applicable statute in Chapter 2260, Texas Government Code.

31 TAC §380.3, Definitions

Section 380.3 Definitions, is revised to provide that certain attorney's fees may be recoverable in an action against the TWDB, consistent with applicable statute in Chapter 2260, Texas Government Code.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the adopted rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments and there will be no change in costs for either state or local governments as these changes are necessary to comply with the resolution of certain contract claims against the state in Chapter 2260 of the Texas Government Code. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the adopted rulemaking is in effect, the public will benefit from the rulemaking as it clarifies the resolution process between the TWDB and contractors regarding certain contract claims against the state. Ms. Rebecca Trevino also has determined that for each year of the first five years the adopted rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute in Chapter 2260 of the Texas Government Code.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the adopted rule does not adversely affect a local economy in a material way for the first five years that the adopted rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as adopted. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify the resolution process between the TWDB and contractors regarding certain contract claims against the state.

Even if the adopted rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1)

exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather under Chapter 2260 of the Texas Government Code. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify the resolution process between the TWDB and contractors regarding certain contract claims against the state. The adopted rule would substantially advance this stated purpose by aligning currently adopted TWDB rules with statutory changes regarding the kinds of contract claims subject to TWDB rule and the recovery of certain attorney's fees in the resolution of a contract dispute with the TWDB.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code

§2007.003(b)(4). The TWDB is the agency primarily charged with the responsibility for water planning and for administering water financing for the state.

Nevertheless, the TWDB further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with existing state law related to the resolution of contract claims against the state by contractor in accordance with Texas Government Code, Chapter 2260. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

No public comments were received during the comment period, which ended on March 6, 2023.

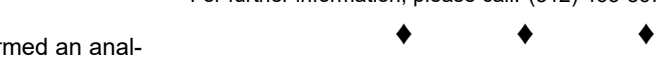
STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Government Code, Chapter 2260. This rulemaking affects Water Code, Chapter 6 of the and Government Code, Chapter 2260.

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

Filed with the Office of the Secretary of State on April 6, 2023.

TRD-202301306
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 467. FIRE MARSHAL

The Texas Commission on Fire Protection (Commission) adopts new 37 Texas Administrative Code Chapter 467, Fire Marshal, with Subchapter A, §§467.1, 467.3, 467.5; Subchapter B, §467.201; Subchapter C, §467.301; and Subchapter D, §467.401. The purpose of the proposed new rule Chapter 467, Fire Marshal, outlines the requirements for becoming a certified Fire Marshal in Texas.

Chapter 467, Fire Marshal §§467.5, 467.201 and 467.301 are adopted without changes to the text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1271). These rules will not be republished. Sections 467.1, 467.3 and 467.401 are adopted with changes and will be republished.

No comments were received from the public regarding the adoption of the new rules.

SUBCHAPTER A. MINIMUM STANDARDS FOR BASIC FIRE MARSHAL CERTIFICATION

37 TAC §§467.1, 467.3, 467.5

The rules are adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

§467.1. Basic Fire Marshal Certification.

(a) A Fire Marshal is defined as an individual designated to provide delivery, management, and/or administration of fire protection- and life safety-related codes and standards, investigations, education, and/or prevention services.

(b) All individuals holding a Fire Marshal certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) Special temporary provision. Individuals are eligible to take the commission examination for Basic Fire Marshal by:

(1) holding as a minimum, Instructor I certification through the commission; and

(2) holding as a minimum, Fire Investigator certification through the commission; and

(3) holding as a minimum, Fire Inspector certification through the commission.

(d) All applications for testing during the special temporary provision period must be received no earlier than August 1, 2023, and no later than August 1, 2024.

(e) Subsections (c) and (d) of this section will expire on August 30, 2024.

§467.3. Minimum Standards for Basic Fire Marshal Certification.

In order to be certified as a Basic Fire Marshal, an individual must:

(1) hold Basic Fire Inspector certification through the commission; and

(2) hold Basic Fire Investigator or Basic Arson Investigator certification through the commission; and

(3) hold Fire and Life Safety Educator I; and

(4) complete a commission-approved Fire Marshal program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification); and

(5) An approved Fire Marshal program must consist of the completion of a commission-approved Fire Marshal Curriculum as specified in Chapter 15 of the commission's Certification Curriculum Manual.

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

Filed with the Office of the Secretary of State on April 3, 2023.

TRD-202301265
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: April 23, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 936-3841

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SUBCHAPTER B. MINIMUM STANDARD FOR INTERMEDIATE FIRE MARSHAL CERTIFICATION

37 TAC §467.201

The amendments are adopted under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission

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

Filed with the Office of the Secretary of State on April 3, 2023.

TRD-202301267
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: April 23, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 936-3841

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SUBCHAPTER C. MINIMUM STANDARDS FOR ADVANCED FIRE MARSHAL CERTIFICATION

37 TAC §467.301

The amendments are adopted under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

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

Filed with the Office of the Secretary of State on April 3, 2023.

TRD-202301268
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: April 23, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 936-3841

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SUBCHAPTER D. MINIMUM STANDARDS FOR MASTER FIRE MARSHAL CERTIFICATION

37 TAC §467.401

The amendments are adopted under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

§467.401. Master Fire Marshal Certification.

Applicants for Master Fire Marshal certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Marshal certification as defined in §467.5 of this title (relating to Minimum Standards for Advanced Fire Marshal Certification); and

(2) hold Master Fire Inspector certification through the commission; and

(3) hold Master Fire Investigator or Master Arson Investigator through the commission; and

(4) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in any combination of Fire Science and/or Criminal Justice. College-level courses from both the upper and lower division may be used to satisfy the education requirements for Master Fire Marshal Certification.

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

Filed with the Office of the Secretary of State on April 3, 2023.

TRD-202301269
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: April 23, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 936-3841

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING

40 TAC §175.17

The Texas Veterans Land Board (VLB) adopts an amendment to §175.17, that amended the fees for the preparation or approval of any documents including a deed issued when a loan is paid in full, without changes to the proposed text as published in the December 9, 2022, issue of the *Texas Register* (47 TexReg 8108) and the text will not be republished.

Introduction and Background

The transfer processing fee for documents is currently $75.00 and has been for many years. This fee amount is $25.00 below the standard processing fee for standard assumptions. To get in line with the industry standard the VLB has proposed an increase of the fee from $75.00 to $150.00. Currently, this deficient amount is being debited from the client remittance at loan level, so that the vendor's invoice can be paid each month. To prevent further need for absorption of losses by the fund, an increase in the amount that third party vendors may charge for services related to partial releases and severances must be approved.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

Adopted amendment §175.17 is proposed under Texas Natural Resources Code §161.070, which provides the VLB the authority to set and collect, for the use of the state, reasonable fees in the amount determined by the VLB.

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

Filed with the Office of the Secretary of State on April 3, 2023.

TRD-202301270
Mark Havens
Chief Clerk, Deputy Land Commissioner
Texas Veterans Land Board
Effective date: April 23, 2023
Proposal publication date: December 9, 2022
For further information, please call: (512) 475-1859

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Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 1, Purpose of Rules, General Provisions.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 1 continue to exist.

Comments regarding suggested changes to the rules in Chapter 1 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 1. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-050-001-LS. Comments must be received by May 22, 2023. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

TRD-202301358
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 12, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 21, Water Quality Fees.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 21 continue to exist.

Comments regarding suggested changes to the rules in Chapter 21 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 21. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-020-021-OW. Comments must be received by May 22, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202301359
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 12, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code (30 TAC) Chapter 297, Water Rights, Substantive.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in 30 TAC Chapter 297 continue to exist.

Comments regarding suggested changes to the rules in 30 TAC Chapter 297 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in 30 TAC Chapter 297. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted

at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-046-297-OW. Comments must be received by May 22, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202301355
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 12, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 329, Drilled or Mined Shafts.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 329 continue to exist.

Comments regarding suggested changes to the rules in Chapter 329 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 329. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-047-329-WS. Comments must be received by May 22, 2023. For further information, please contact Pavan Bairu, Radioactive Materials Division, at (512) 239-6648.

TRD-202301356
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 12, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 342, Regulation of Certain Aggregate Production Operations.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 342 continue to exist.

Comments regarding suggested changes to the rules in Chapter 342 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 342. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-048-342-WS. Comments must be received by May 22, 2023. For further information, please contact Rebecca Moore, Project Manager, Occupational Licensing and Registration Division, at (512) 239-2463.

TRD-202301357
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 12, 2023

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 74, Curriculum Requirements, Subchapter AA, Commissioner's Rules on College Readiness, and Subchapter BB, Commissioner's Rules Concerning High School Graduation, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 74, Subchapters AA and BB, in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6953).

Relating to the review of Chapter 74, Subchapters AA and BB, TEA finds that the reasons for adopting Subchapters AA and BB, continue to exist and readopts the rules. TEA received no comments related to the review of Subchapters AA and BB. No changes to Subchapter AA are necessary as a result of the review. At a later date, TEA may propose changes to Subchapter BB to address financial aid application graduation requirements and individual graduation committees.

This concludes the review of Chapter 74.

TRD-202301346
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 12, 2023

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 129, Student Attendance, Subchapter AA, Commissioner's Rules; and Subchapter BB, Commissioner's Rules Concerning Truancy, pursuant to Texas Government Code, §2001.039. TEA proposed the review of 19 TAC Chapter 129, Subchapters AA and BB, in the January 27, 2023, issue of the *Texas Register* (48 TexReg 418).

Relating to the review of 19 TAC Chapter 129, Subchapter AA, TEA finds that the reasons for adopting the rules continue to exist and readopts the rules. TEA received comments related to the review of Subchapter AA. Following is a summary of the comments received and the agency responses.

Comment: A school district administrator commented on the success of Independent School District Optional Flexible School Day Program (OFSDP) in the administrator's district and recommended that the ODSFP continue. t.

Response: The agency agrees with the support for continuation of this program and commends the efforts of districts and charters for utilizing the OFSDP to help students find successful paths to graduation.

At a later date, TEA anticipates updating statutory references within §129.1031.

Relating to the review of 19 TAC Chapter 129, Subchapter BB, TEA finds that the reasons for adopting the rules continue to exist and readopts the rules. TEA received comments related to the review of Subchapter BB. Following is a summary of the comments received and the agency responses.

Comment: An individual commented that the current truancy laws are ineffective because district attorneys have discretion in proceeding with criminal or civil cases. The commenter also stated that the sanctions provided in the rule are not necessary because an intervention plan is required or the case will be dismissed by the court. The commenter suggested that the commissioner of education work with legislators to revise truancy laws to hold parents and students accountable or eliminate mandatory attendance.

Response: The agency disagrees and provides the following clarification. Student attendance is a strong indicator of positive school outcomes. The truancy prevention measures provided for in the rule are designed to reduce truancy through school-based intervention and support and to minimize the need for referrals to court for truancy. The agency further clarifies that the interventions and supports are inclusive of parents as partners in the effort to improve attendance.

At a later date, TEA may make updates to address truancy prevention and barriers to attendance and to accommodate changes due to the current legislative session.

This concludes the review of 19 TAC Chapter 129.

TRD-202301347
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 12, 2023

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 157, Hearings and Appeals, Subchapter AA, General Provisions for Hearings Before the Commissioner of Education; Subchapter BB, Specific Appeals to the Commissioner; Subchapter CC, Hearings of Appeals Arising Under Federal Law and Regulation; and Subchapter DD, Hearings Conducted by Independent Hearing Examiners, pursuant to Texas Government Code, §2001.039. TEA proposed the review of 19 TAC Chapter 157, Subchapters AA-DD, in the January 27, 2023 issue of the *Texas Register* (48 TexReg 418).

Relating to the review of 19 TAC Chapter 157, Subchapters AA-DD, TEA finds that the reasons for adopting Chapter 157, Subchapters AA-DD, continue to exist and readopts the rules. TEA received no comments related to the review of Subchapters AA-DD. At a later date, TEA plans to propose changes to update the web addresses in Subchapter AA, §157.1041, and to update statutory references in Subchapter CC.

TRD-202301348
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 12, 2023

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Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (TWDB) files the adoption of its review of rules in 31 Texas Administrative Code, Title 31, Part 10, Chapter 353, Subchapters B, D, E, F, and I.

This review is being conducted in accordance with the requirements of the Texas Government Code §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years.

Notice of the review of the aforementioned subchapters was published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 525). TWDB received no comments during the comment period.

TWDB conducted its review in accordance with the requirements of the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The TWDB considered whether the initial factual, legal, and policy reasons for adopting each rule in these subchapters continued to exist and determined that the original reasons for adopting these rules continue to exist and readopts these subchapters. This concludes TWDB's review of 31 TAC, Title 31, Part 10, Chapter 353, Subchapters B, D, E, F, and I.

TRD-202301313
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Filed: April 6, 2023

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The Texas Water Development Board (TWDB) adopts the review of the rules in 31 Texas Administrative Code (TAC), Title 31, Part 10, Chapter 380, Alternative Dispute Resolution, Subchapter B, Negotiation of Contract Disputes, Subchapter C, Mediation of Contract Disputes, and Subchapter D, Assisted Negotiation Processes.

Notice of the review of the aforementioned subchapters was published on February 3, 2023, issue of the *Texas Register* (48 TexReg 525). TWDB received no comments during the comment period.

TWDB conducted its review in accordance with the requirements of the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The TWDB considered whether the initial factual, legal, and policy reasons for adopting each rule in these subchapters continued to exist and determined that the original reasons for adopting these rules continue to exist and readopts these subchapters. This concludes TWDB's review of 31 TAC, Title 31, Part 10, Chapter 380, Subchapters B through D.

TRD-202301314
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Filed: April 6, 2023

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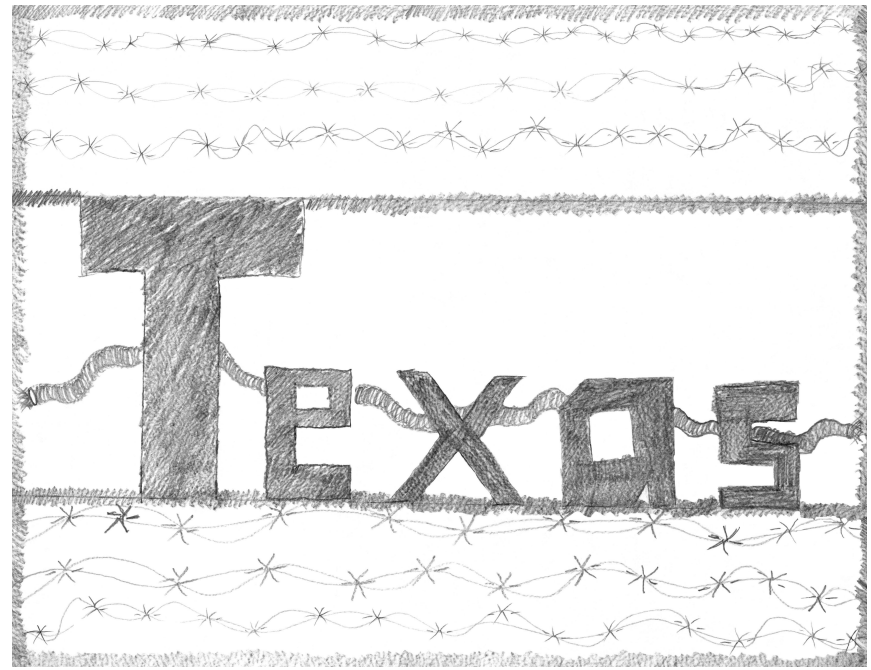
TEXAS

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
$< 50,000$	$750,000
$\geq 50,000$	$1,500,000

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.

Texas State Affordable Housing Corporation

Public Comment Needed: Texas Housing Impact Fund (THIF) Policies

The Texas State Affordable Housing Corporation has published amended policies for the Texas Housing Impact Fund program. A copy of the proposed amendments may be found on TSAHC's website at www.tsahc.org. Please submit public comment via email to the program manager at ImpactFund@tsahc.org with the subject line 'THIF policies'. Public comment must be submitted for consideration by May 26, 2023, at 5:00 p.m.

TRD-202301341
David Long
President
Texas State Affordable Housing Corporation
Filed: April 11, 2023

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Coastal Bend Workforce Development Board

Invitation for Bids for Airframe Equipment (IFB No. 23-06)

The Coastal Bend Workforce Development Board, dba Workforce Solutions Coastal Bend in collaboration with the Kingsville Chamber of Commerce and Coastal Bend College, is seeking bids on the purchase of airframe equipment for a Texas Industry Partnership Program to create an Airframe & Power Plant certification program. The goal of this project is to train students for accreditation as aviation maintenance technicians in preparation for employment opportunities with contractors at the Naval Air Station Kingsville. Accredited aviation maintenance technicians will support the mission to train carrier-based strike fighter pilots.

The IFB will be available on Monday, April 24, 2023 at 2:00 p.m. Central Time and can be accessed on our website at: https://www.workforcesolutionscb.org/about-us/procurement-opportunities/or by contacting Esther Velazquez at (361) 885-3013 or esther.velazquez@workforcesolutionscb.org.

Bids packages are due on Monday, May 8, 2023 at 2:00 p.m. Central Time. The bid opening will occur virtually at 3:00 p.m. on Monday, May 8, 2023, and interested parties are invited to participate from a computer, tablet, or smart phone via Zoom:

Join Zoom Meeting

https://us02web.zoom.us/j/81222672702?pwd=MzhoZW92NHB-VMThOdk1yZDB5Vmc1dz09

US Toll-Free: (888) 475-4499

Meeting ID: 812 2267 2702

Passcode: 786486

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 1 (800) 735-2989 (TDD) and 1 (800) 735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

TRD-202301342
Esther Velazquez
Contract and Procurement Specialist
Coastal Bend Workforce Development Board
Filed: April 11, 2023

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/17/23 - 04/23/23 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/17/23 - 04/23/23 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.

TRD-202301336
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 11, 2023

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Texas Education Agency

Request for Applications Concerning the 2023-2024 Texas Reading Initiative - Literacy Coaching and Professional Development K-5 Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-23-117 is authorized by United States Code, Title 20, Chapter 70, Subchapter II, Part B, Subpart 2, §6642.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-23-117 from eligible applicants, which include local educational agencies, independent school districts, open-enrollment charter schools, and regional education service centers (ESCs). Eligible applicants may apply for this grant individually or as a consortium to serve the unique and diverse needs of their communities for the Literacy Coaching Track. ESCs are the only eligible entities that can apply for the Literacy Conference Track. Grant funds will be used to support activities that directly impact

learning in Kindergarten-Grade 5. Applicants must score a minimum of 75% of the total points on the application to be considered for an award. TEA seeks to support four regional literacy conferences focused on the science of teaching reading, high-quality instructional material (HQIM) implementation, and a knowledge-building approach to learning.

Description. TEA seeks to provide grants for developing a pipeline of literacy coaches and supporting regional literacy conferences focused on the science of teaching reading, HQIM implementation, and supporting a knowledge-building approach to learning. School districts, open-enrollment charter schools, and ESCs may apply for the Literacy Coaching Awards individually or as a consortium to serve the unique and diverse needs of their communities. This grant serves eligible entities from Kindergarten-Grade 5.

Literacy Coaching Grantees may use funds from the subgrant to compensate literacy coaches and are encouraged to use strategic compensation models that enhance recruitment and retention of literacy coaches in traditionally hard-to-staff locations. Successful grantees will identify placement of literacy coaches based on school or district needs that may include economically disadvantaged, students with disabilities, emergent bilingual students, and highly mobile/at-risk students. Competitive preference will also include applications that seek to serve rural communities and districts in Qualified Opportunity Zones (QOZs). Literacy coaches will support HQIM implementation with competitive preference for districts implementing TEA's open education resource products, Amplify K-5. It is encouraged that applicants demonstrate how their HQIM products directly align to the Reading Language Arts Research-Based Instructional Strategies (RBIS).

Regional Literacy Conferences Grantees may use funds from the subgrant to support the planning and execution of regional literacy conferences. Successful grantees will recruit educators who teach economically disadvantaged students, students with disabilities, emergent bilingual students, and highly mobile/at-risk students to attend the conference. Competitive preference will also include applications that seek to serve rural communities and districts in QOZs.

Dates of Project. 2023-2024 Texas Reading Initiative - Literacy Coaching and Professional Development K-5 grant program will be implemented during the 2023-2024 school year. Applicants should plan for a starting date of no earlier than October 2, 2023, and an ending date of no later than September 30, 2024.

Project Amount. Approximately $1,676,895 million is available for funding the 2023-2024 Texas Reading Initiative - Literacy Coaching and Professional Development K-5 grant program. It is anticipated that approximately 16 Literacy Coaching grants will be awarded and 4 Regional Literacy Conferences grants will be awarded. Annually, funding after Year 1 ("continuation funding") is contingent on satisfactory progress of prior year compliance with requirements, achievement of stated service and performance targets, general budget approval by the commissioner of education, and appropriations by the United States Congress. Continuation funding may require grantees to submit a non-competitive or competitive continuation grant application each year of the total subgrant period. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Peer reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted via a survey, which can be found at the link identified in the Program Guidelines of the RFA, no later than May 15, 2023. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by May 19, 2023. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), June 2, 2023, to be eligible to be considered for funding. TEA will only accept applications by email to competitivegrants@tea.texas.gov.

Issued in Austin, Texas, on April 12, 2023.

TRD-202301344
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 12, 2023

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Request for Applications Concerning the 2023-2024 Texas Reading Initiative - Literacy Coaching and Professional Development 6-12 Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-23-118 is authorized by United States Code, Title 20, Chapter 70, Subchapter II, Part B, Subpart 2, §6642.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-23-118 from eligible applicants, which include local educational agencies, independent school districts, open-enrollment charter schools, and regional education service centers (ESCs). Eligible applicants may apply for this grant individually or as a consortium to serve the unique and diverse needs of their communities for the Literacy Coaching Track. ESCs are the only eligible entities that can apply for the Literacy Conference Track. Grant funds will be used to support activities that directly impact learning in Grades 6-12. Applicants must score a minimum of 75% of the total points on the application to be considered for an award.

Description. TEA seeks to provide grants for developing a pipeline of literacy coaches and supporting regional literacy conferences focused on the science of teaching reading, high-quality instructional material (HQIM) implementation, and supporting a knowledge-building approach to learning. School districts, open-enrollment charter schools,

and ESCs may apply for the Literacy Coaching Awards individually or as a consortium to serve the unique and diverse needs of their communities. This grant serves eligible entities from Grades 6-12.

Literacy Coaching Grantees may use funds from the subgrant to compensate literacy coaches and are encouraged to use strategic compensation models that enhance recruitment and retention of literacy coaches in traditionally hard-to-staff locations. Successful grantees will identify placement of literacy coaches based on school or district needs that may include economically disadvantaged, students with disabilities, emergent bilingual students, and highly mobile/at-risk students. Competitive preference will also include applications that seek to serve rural communities and districts in Qualified Opportunity Zones (QOZs). Literacy coaches will support HQIM implementation with competitive preference for districts implementing TEA's open education resource products. It is encouraged that applicants demonstrate how their HQIM products directly align to the Reading Language Arts Research-Based Instructional Strategies (RBIS).

Regional Literacy Conferences Grantees may use funds from the subgrant to support the planning and execution of regional literacy conferences. Successful grantees will recruit educators who teach economically disadvantaged students, students with disabilities, emergent bilingual students, and highly mobile/at-risk students to attend the conference. Competitive preference will also include applications that seek to serve rural communities and districts in QOZs .

Dates of Project. The 2022-2024 Texas Reading Initiative - Literacy Coaching and Professional Development 6-12 grant program will be implemented during the 2023-2024 school year. Applicants should plan for a starting date of no earlier than October 2, 2023, and an ending date of no later than September 30, 2024.

Project Amount. Approximately $1,676,895 is available for funding the 2023-2024 Texas Reading Initiative - Literacy Coaching and Professional Development 6-12 grant program. It is anticipated that approximately 16 Literacy Coaching grants will be awarded and approximately 4 Literacy Conference grants will be award. Annually, funding after Year 1 ("continuation funding") is contingent on satisfactory progress of prior year compliance with requirements, achievement of stated service and performance targets, general budget approval by the commissioner of education, and appropriations by the United States Congress. Continuation funding may require grantees to submit a non-competitive or competitive continuation grant application each year of the total subgrant period. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Peer reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted via a survey which can be found at the link identified in the Program Guidelines of the RFA, no later than May 15, 2023. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by May 19, 2023. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), Friday, June 2, 2023, to be eligible to be considered for funding. TEA will only accept applications by email to competitivegrants@tea.texas.gov.

Issued in Austin, Texas, on April 12, 2023.

TRD-202301345
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 12, 2023

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 22, 2023**. 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 **May 22, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ANDERSON WATER COMPANY, INCORPORATED; DOCKET NUMBER: 2022-1514-UTL-E; IDENTIFIER: RN101201036; LOCATION: Shiro, Grimes County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $510; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: ARROWHEAD HILL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2021-1585-PWS-E; IDENTIFIER: RN101243020; LOCATION: Belton, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(3)(A)(ii)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(s)(2)(D), by failing to properly verify the accuracy of the analyzer used to determine the effectiveness of chloramination every 90 days; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: $1,375; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Ben Adams dba Old Town Water Supply Corporation, Terry Adams dba Old Town Water Supply Corporation, and David Hicks dba Old Town Water Supply Corporation; DOCKET NUMBER: 2022-1512-UTL-E; IDENTIFIER: RN101459667; LOCATION: Elysian Fields, Harrison County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $500; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Blackland Water Supply Corporation; DOCKET NUMBER: 2022-0294-PWS-E; IDENTIFIER: RN101253805; LOCATION: Royse City, Rockwall County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q), by failing to institute special precautions, protective measures, and Boil Water Notices within 24 hours in the event of low distribution pressures or of becoming aware of conditions which indicate that the potability of the drinking water supply has been compromised; PENALTY: $1,380; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Edmonson; DOCKET NUMBER: 2022-1522-UTL-E; IDENTIFIER: RN101205375; LOCATION: Edmonson, Hale County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $575; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(6) COMPANY: City of Hooks; DOCKET NUMBER: 2022-1469-UTL-E; IDENTIFIER: RN101389245; LOCATION: Hooks, Bowie County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Devin Mendoza, (512) 239-1832; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Meadow; DOCKET NUMBER: 2022-1422-UTL-E; IDENTIFIER: RN101453884; LOCATION: Meadow, Terry County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $550; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(8) COMPANY: City of Stephenville; DOCKET NUMBER: 2022-0317-MLM-E; IDENTIFIER: RN102081049; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: wastewater treatment facility; 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 stormwater associated with industrial activities; 30 TAC §305.125(1) and §319.6, and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010290001, Monitoring and Reporting Requirements Number 2, by failing to assure the quality of all measurements through the use of method blanks, laboratory control samples, duplicate analyses, and matrix spikes; and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010290001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $26,950; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Covestro LLC; DOCKET NUMBER: 2022-1626-AIR-E; IDENTIFIER: RN100209931; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2102, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $340; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Cypress Valley Water Supply Corporation; DOCKET NUMBER: 2021-0968-PWS-E; IDENTIFIERS: RN101436616 and RN101184745; LOCATION: Woodlawn, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine air-water-volume for all pressure tanks greater than 1,000 gallons in capacity; 30 TAC §290.45(b)(1)(C)(i) and (g)(5)

and THSC, §341.0315(c), by failing to provide a well capacity of 0.51 gallons per minute per connection as required by the alternate capacity requirement approved by the ED; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system; 30 TAC §290.46(f)(2) and (3)(A)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(m)(1)(B), by failing to inspect the interior of the facility's pressure tanks at least once every five years; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; PENALTY: $3,510; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: DEANVILLE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1406-UTL-E; IDENTIFIER: RN101442085; LOCATION: Deanville, Burleson County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $850; ENFORCEMENT COORDINATOR: Devin Mendoza, (512) 239-1832; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: DMJM Enterprises LLC; DOCKET NUMBER: 2022-1473-UTL-E; IDENTIFIER: RN109172015; LOCATION: Pinehurst, Montgomery County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $500; ENFORCEMENT COORDINATOR: Devin Mendoza, (512) 239-1832; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2021-0460-AIR-E; IDENTIFIER: RN102984911; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: hydrocarbon refining and storage facility; RULES VIOLATED: 30 TAC §106.6(b), Permit by Rule Registration Number 155109, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c), New Source Review Permit Number 93973, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $40,188; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $19,275; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2021-0915-AIR-E; IDENTIFIER: RN100210665; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §106.6(b) and §122.143(4), Permit by Rule Registration Number 152673, Federal Operating Permit (FOP) Number O1339, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 13, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 20289, Special Conditions Number 1, FOP Number O1339, GTC and STC Number 13, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $56,800; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $22,720; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: EQUISTAR CHEMICALS, LP; DOCKET NUMBER: 2021-1231-AIR-E; IDENTIFIER: RN100216761; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1), 111.111(a)(4)(A), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(1), New Source Review Permit Number 9423, Special Conditions Numbers 1 and 6.C, Federal Operating Permit Number O1419, General Terms and Conditions and Special Terms and Conditions Number 20, Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions, and failing to operate the flare with no visible emissions except for periods not to exceed a total of five minutes during any two consecutive hours as ensured by the use of steam assist to the flare; PENALTY: $11,175; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,470; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Everett Square Incorporated; DOCKET NUMBER: 2022-1568-UTL-E; IDENTIFIER: RN101211860; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $500; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: FOUNDATION ENERGY MANAGEMENT, L.L.C.; DOCKET NUMBER: 2021-1622-AIR-E; IDENTIFIER: RN105128409; LOCATION: Hallettsville, Lavaca County; TYPE OF FACILITY: oil and gas handling and production facility; RULES VIOLATED: 30 TAC §101.201(b) and Texas Health and Safety Code (THSC), §382.085(b), by failing to create a final record for a non-reportable emissions event no later than two weeks after the end of an emissions event; 30 TAC §116.115(b)(2)(E) and (c) and §116.615(8), Standard Permit Registration Number 162976, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Sampling and Monitoring Records Number (j)(2), and THSC, §382.085(b), by failing to maintain records for the audio, visual, or olfactory inspection; 30 TAC §116.115(c) and §116.615(9), Standard Permit Registration Number 162976, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Best Management Practices and Best Available Control Technology Requirements Number (e)(1), and THSC, §382.085(b), by failing to maintain all air pollution emission capture and abatement equipment in good working order and operating properly during normal plant operations; and 30 TAC §116.115(c) and §116.615(9), Standard Permit Registration Number 162976, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Best Management Practices and Best Available Control Technology Requirements Number (e)(7), and THSC, §382.085(b), by failing to ensure tanks and vessels utilize a paint color that minimizes the effects of solar heating; PENALTY: $16,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT:

$6,550; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(18) COMPANY: GPM Empire, LLC dba Shell 7544; DOCKET NUMBER: 2022-1026-PST-E; IDENTIFIER: RN102151800; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: $13,775; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Harris County Municipal Utility District 172; DOCKET NUMBER: 2022-0253-PWS-E; IDENTIFIER: RN102945524; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(h)(3) and (j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the Executive Director in writing as to the completion of a water works project and attest to the fact that the completed work is substantially in accordance with the plans and specifications on file with the commission; and 30 TAC §290.45(f)(1) and (3) and THSC, §341.0315(c), by failing to provide a purchase water contract which authorizes the purchase of enough water to meet the monthly or annual needs of the purchaser and establishes the maximum rate at which water may be drafted on a daily and hourly basis; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Harvest Midstream I, L.P.; DOCKET NUMBER: 2020-0996-AIR-E; IDENTIFIER: RN100212000; LOCATION: Sweeny, Brazoria County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), 116.620(a)(14), and 122.143(4), 40 Code of Federal Regulations §60.4245(d), New Source Review (NSR) Permit Number 79228, Special Conditions (SC) Number 13.D, Federal Operating Permit (FOP) Number O3162, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 8, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a copy of each performance test report within 60 days after the test has been completed; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 79228, SC Number 1, FOP Number O3162, GTC and STC Number 8, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §122.143(4) and §122.145(2)(A) - (C), FOP Number O3162, GTC, and THSC, §382.085(b), by failing to report all instances of deviations, failing to submit a deviation report for at least each six-month period after permit issuance, and failing to submit the deviation report no later than 30 days after the end of each reporting period; PENALTY: $58,650; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $23,460; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Manuel Izaguirre, Trustee of the Izaguirre Generation Skipping Trust dba Sunset View Estates; DOCKET NUMBER: 2022-1556-UTL-E; IDENTIFIER: RN102678422; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $500; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(22) COMPANY: NRG Texas Power LLC; DOCKET NUMBER: 2021-1208-AIR-E; IDENTIFIER: RN100888312; LOCATION: Thompsons, Fort Bend County; TYPE OF FACILITY: electric power generation plant; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review Permit Numbers 2348A, PSDTX901, and N033, Special Conditions Number 11, Federal Operating Permit Number O74, General Terms and Conditions and Special Terms and Condition Number 11, and Texas Health and Safety Code, §382.085(b), by failing to prevent an excess opacity event; PENALTY: $13,950; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,580; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: PILOT TRAVEL CENTERS LLC; DOCKET NUMBER: 2021-1590-MWD-E; IDENTIFIER: RN102374188; LOCATION: Clint, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §285.3(g)(1), §305.42(a), and TWC, §26.121(a)(1), by failing to obtain proper authorization for the treatment and disposal of domestic wastewater; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(24) COMPANY: Sunset Water LLC; DOCKET NUMBER: 2022-1502-UTL-E; IDENTIFIER: RN101232916; LOCATION: Dumas, Moore County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $625; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(25) COMPANY: U.S. Minerals, Incorporated; DOCKET NUMBER: 2020-0060-AIR-E; IDENTIFIER: RN100929140; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: bulk material handling facility; RULES VIOLATED: 30 TAC §116.115(b)(2)(E)(i) and (c), New Source Review (NSR) Permit Number 82298, Special Conditions (SC) Number 19, and Texas Health and Safety Code (THSC), §382.085(b), by failing to perform weekly inspections to verify proper operation of all hooding, duct, and collection systems and to verify there are no holes, cracks, and/or other conditions that would reduce the collection efficiency of the emission capture system; 30 TAC §116.115(b)(2)(E)(i) and (c), NSR Permit Number 82298, SC Number 20.B., and THSC, §382.085(b), by failing to maintain records for the quarterly visible emissions observations; 30 TAC §116.115(b)(2)(E)(i) and (c), NSR Permit Number 82298, SC Number 20.C., and THSC, §382.085(b), by failing to maintain records for the quarterly visible fugitive emissions observations; 30 TAC §116.115(b)(2)(E)(i) and (c), NSR Permit Number 82298, SC Number 20.E., and THSC, §382.085(b), by failing to maintain records for the stockpile watering; 30 TAC §116.115(b)(2)(G) and(c), NSR Permit Number 82298, SC Number 19, and THSC, §382.085(b), by failing to maintain all air pollution emission capture and abatement equipment

in good working order and operating properly during normal facility operations; 30 TAC §116.115(c), NSR Permit Number 82298, SC Number 7, and THSC, §382.085(b), by failing to limit the operation of the production equipment to the times when the baghouses are fully operational; and 30 TAC §116.115(c), NSR Permit Number 82298, SC Number 12, and THSC, §382.085(b), by failing to spray the stockpiles with water and/or environmentally sensitive chemicals at a minimum of three times per day for a cumulative time not less than seven hours per day during days when material is being moved to or from the stockpiles except during periods of rainfall; PENALTY: $26,135; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,454; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202301337
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 11, 2023

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Enforcement Orders

An agreed order was adopted regarding City of Agua Dulce, Docket No. 2020-0179-MLM-E on April 12, 2023 assessing $35,064 in administrative penalties with $35,064 deferred. Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, 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 XTO Energy Inc., Docket No. 2020-0960-AIR-E on April 12, 2023 assessing $129,375 in administrative penalties with $25,875 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Travis Morgan, Docket No. 2021-0299-MSW-E on April 12, 2023 assessing $3,750 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 Blanchard Refining Company LLC, Docket No. 2021-0345-AIR-E on April 12, 2023 assessing $14,250 in administrative penalties with $2,850 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Elosio Carreon AKA Elojio Carreon, Docket No. 2021-0707-PST-E on April 12, 2023 assessing $11,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Barrett Hollingsworth, 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 La Marque, Docket No. 2021-0952-MWD-E on April 12, 2023 assessing $97,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, 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 Atascosa Rural Water Supply Corporation, Docket No. 2021-1594-PWS-E on April 12, 2023 assessing $3,375 in administrative penalties with $3,375 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 Christian Heritage Classical School, Docket No. 2022-0254-PWS-E on April 12, 2023 assessing $2,100 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southwest Texas Commercial Properties LLC dba Star Stop 430532, Docket No. 2022-0321-PST-E on April 12, 2023 assessing $7,975 in administrative penalties with $1,595 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 South Texas Electric Cooperative, Inc., Docket No. 2022-0427-AIR-E on April 12, 2023 assessing $30,825 in administrative penalties with $6,165 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nerro Supply, LLC, Docket No. 2022-0522-PWS-E on April 12, 2023 assessing $2,487 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, 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 Bay City, Docket No. 2022-0817-PWS-E on April 12, 2023 assessing $2,625 in administrative penalties with $2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, 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 Nueces County Water Control and Improvement District 3, Docket No. 2022-0874-PWS-E on April 12, 2023 assessing $3,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, 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 Texas Water Utilities, L.P., Docket No. 2022-0888-PWS-E on April 12, 2023 assessing $3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Nick Lohret, 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 Carbon, Docket No. 2022-0893-PWS-E on April 12, 2023 assessing $5,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202301351

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 12, 2023

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Enforcement Orders

An agreed order was adopted regarding Paghna Khuon dba Sweet Stop, Docket No. 2021-0066-PST-E on April 11, 2023 assessing $4,500 in administrative penalties with. Information concerning any aspect of this order may be obtained by contacting Marilyn Norrod, 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 Halyard Energy Wharton, LLC, Docket No. 2021-0735-AIR-E on April 11, 2023 assessing $5,500 in administrative penalties with $1,100 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EAGLE TYLER GROCERY, INC. dba Eagle Exxon Tyler, Docket No. 2021-0797-PST-E on April 11, 2023 assessing $4,000 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.

An agreed order was adopted regarding PALADIN GATCO, LLC, Docket No. 2021-1493-WQ-E on April 11, 2023 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 FIRST COMPASS MARKETS, INC., Docket No. 2021-1510-PST-E on April 11, 2023 assessing $5,105 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting William Hogan, 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 Carder Concrete Company, Docket No. 2021-1606-WQ-E on April 11, 2023 assessing $3,800 in administrative penalties with $760 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southwest Harris County Municipal Utility District 1, Docket No. 2022-0171-PWS-E on April 11, 2023 assessing $2,425 in administrative penalties with $485 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret, 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 Cajas Cleaners, LLC, Docket No. 2022-0266-DCL-E on April 11, 2023 assessing $2,239 in administrative penalties with $447 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, 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 Riverbend R.V. Park & Resort, Inc., Docket No. 2022-0470-PWS-E on April 11, 2023 assessing $4,963 in administrative penalties with $992 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio 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 Tony McLarry, Docket No. 2022-0486-WQ-E on April 11, 2023 assessing $7,500 in administrative penalties with $1,500 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 ALVARADO CUMMINGS LLC dba Lucky Mart, Docket No. 2022-0500-PST-E on April 11, 2023 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, 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 Bulldawg Stop, a Texas limited liability company, Docket No. 2022-0565-PST-E on April 11, 2023 assessing $4,994 in administrative penalties with $998 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, 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 Itasca, Docket No. 2022-1207-UTL-E on April 11, 2023 assessing $600 in administrative penalties with $120 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, 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 RIVER OAKS WATER SUPPLY CORPORATION, Docket No. 2022-1237-UTL-E on April 11, 2023 assessing $600 in administrative penalties with $120 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 FOOTHILLS MOBILE HOME RANCH, INC, Docket No. 2022-1384-UTL-E on April 11, 2023 assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Roy Dawkins dba Shady Meadows Mobile Home Park, Docket No. 2022-1390-UTL-E on April 11, 2023 assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202301352
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 12, 2023

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Notice and Comment Hearing Draft Permit No.: O3454

This is a notice for a notice and comment hearing on Federal Operating Permit Number O3454. During the notice and comment hearing informal questions on the Federal Operating Permit will be answered and formal comments will be received. The Texas Commission on Environmental Quality (TCEQ) has scheduled the notice and comment hearing regarding this application and draft permit as follows:

Date: May 25, 2023

Time: 7 p.m.

Location: NorthShore Country Club

801 Broadway Blvd.

Portland, Texas

Location phone: (361) 643-1646

Application and Draft Permit. Flint Hills Resources Ingleside, LLC, PO Box 2917, Wichita, KS 67201-2917, an Other Warehousing and Storage facility, has applied to the TCEQ for a Renewal of Federal Operating Permit (herein referred to as permit) No. O3454, Application No. 33957 to authorize operation of the Ingleside Terminal. The area addressed by the application is located at 103 FM 1069 in Ingleside, San Patricio County, Texas 78362. This application was received by the TCEQ on July 1, 2022.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, will codify the conditions under which the site must operate. The TCEQ Executive Director recommends issuance of the draft permit. The purpose of a federal operating permit is to improve overall compliance with the rules governing air pollution control by clearly listing all applicable requirements, as defined in Title 30 Texas Administrative Code (30 TAC) §122.10. The permit will not authorize new construction or new emissions.

Notice and Comment Hearing. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration and an informal discussion period with commission staff members will begin during the first 30 minutes. During the informal discussion period, the public is encouraged to ask questions and engage in open discussion with the applicant and the TCEQ staff concerning this application and draft permit. Issues raised during this discussion period **will only** be addressed in the formal response to comments if the issue is also presented during the hearing. After the conclusion of the informal discussion period, the TCEQ will conduct a notice and comment hearing regarding the application and draft permit. Individuals may present oral statements when called upon in order of registration. A five-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal and answer questions after the hearing. The purpose of this hearing will be to receive formal public comment which the TCEQ will consider in determining whether to revise and/or issue the permit and in determining the accuracy and completeness of the permit. Any person may attend this meeting and submit written or oral comments. The hearing will be conducted in accordance with the Texas Clean Air Act § 382.0561, as codified in the Texas Health and Safety Code, and 30 TAC §122.340.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the TCEQ Public Education Program toll free at (800) 687-4040 or (800) RELAY-TX (TDD), at least five business days prior to the hearing.

Any person may also submit written comments before the hearing to the Texas Commission on Environmental Quality, Office of Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Written comments should include (1) your name, address, and daytime telephone number, and (2) the draft permit number found at the top of this notice.

A notice of proposed final action that includes a response to comments and identification of any changes to the draft permit will be mailed to everyone who submitted: written comments, and/or hearing requests, attended the hearing, or requested to be on the mailing list for this application. This mailing will also provide instructions for public petitions to the U.S. Environmental Protection Agency (EPA) to request that the EPA object to the issuance of the proposed permit. After receiving a petition, the EPA may only object to the issuance of a permit which is not in compliance with applicable requirements or the requirements of 30 TAC Chapter 122.

Mailing List. In addition to submitting public comments, a person may ask to be placed on a mailing list for this application by sending a request to the TCEQ Office of the Chief Clerk at the address above. Those on the mailing list will receive copies of future public notices (if any) mailed by the Chief Clerk for this application.

Information. For additional information about this permit application or the permitting process, please contact the Texas Commission on Environmental Quality, Public Education Program, MC-108, P.O. Box 13087, Austin, Texas 78711-3087 or toll free at (800) 687-4040. General information about the TCEQ can be found at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained for Flint Hills Resources Ingleside, LLC by calling Kristin Mahesaniya, Environmental Engineer at (512) 230-5006.

Notice Issuance Date: April 10, 2023

TRD-202301350
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 12, 2023

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Notice of Correction to Agreed Order Number 13

In the August 12, 2022, issue of the *Texas Register* (47 TexReg 4861), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 13, for ONEOK Hydrocarbon Southwest, LLC; Docket Number 2022-0372-IWD-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "$10,800."

For questions concerning the error, please contact Michael Parrish at (512) 239-2548.

TRD-202301338
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 11, 2023

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Notice of District Petition

Notice issued April 10, 2023

TCEQ Internal Control No. D-01172023-018; LOB West, Inc., (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 588 (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 to be included in the proposed District; (2) there are two lienholders, K. Hovnanian of Houston II, LLC and Chesmar Homes, LLC, on the property to be included in the proposed District and both have consented to the creation of the proposed District; (3) the proposed District will contain approximately 201.648 acres located within Harris County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas.

By Ordinance No. 2022-874, passed and adopted on November 9, 2022, the City of Houston, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extent, maintain and operate of a waterworks and sanitary sewer system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extent, maintain and operate of works, improve, 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 interests in land and purchase, construct, acquire, improve, extend, maintain and operate improvements, facilities and equipment for the purpose of providing recreational facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additionally, the proposed District may also exercise road powers and authority pursuant to applicable law, and pursuant to applicable law, the proposed District may also establish, finance, provide, operate and maintain a fire department and/or fire-fighting services within the District. 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 $55,460,000 ($45,285,000 for water, wastewater, and drainage plus $4,000,000 for recreation plus $6,175,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site 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 web site, 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 web site at www.tceq.texas.gov.

TRD-202301353
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 12, 2023

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Notice of Opportunity to Comment on a Shutdown/Default Order of an Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ, or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an 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. In accordance with 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 **May 22, 2023**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/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 S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/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 S/DO shall be sent to the attorney designated for the S/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 May 22, 2023**. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Jamal Jafari dba J & K Food Store; DOCKET NUMBER: 2021-0083-PST-E; TCEQ ID NUMBER: RN101549574; LOCATION: 3700 East Rosedale Street, Fort Worth, Tarrant County;

TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.225, by failing to comply with annual Stage I vapor recovery testing requirements; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and system components are operating properly; and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: $18,356; STAFF ATTORNEY: Benjamin Pence, Litigation, MC 175, (512) 239-2157; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202301334
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 11, 2023

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 22, 2023**. 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 May 22, 2023**. 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: Ambers Construction, LLC; DOCKET NUMBER: 2021-0518-MLM-E; TCEQ ID NUMBER: RN111060562; LOCATION: 2440 Highway 326 South, Sour Lake, Hardin County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System General Permit Number TXR150000, Part III, F6(a), by failing to install and maintain best management practices at the Site which resulted in a discharge of pollutants; Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: $10,945; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: EAS OIL, LLC dba Stagecoach Stop; DOCKET NUMBER: 2020-0103-PST-E; TCEQ ID NUMBER: RN101776540; LOCATION: 24 Ranch Road 1376 near Fredericksburg, Gillespie 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), 30 TAC §334.50(b)(1)(A) and TCEQ Agreed Order Docket Number 2017-0986-PST-E, Ordering Provision Number 2.a., by failing to monitor the USTs for releases at a frequency of at least once every 30 days; and 30 TAC §334.7(d)(3), by failing to update the UST registration within 30 days from the date of the occurrence of a change or addition; PENALTY: $67,875; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: G-N-K, INC. dba Road Runner Food Mart 33; DOCKET NUMBER: 2021-1145-PST-E; TCEQ ID NUMBER: RN102060753; LOCATION: 4503 Culebra Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(2), (4), and (c)(4)(C), by failing to operate and maintain the UST system's corrosion protection (CP) system in a manner that ensures that CP will be continuously provided to all underground metal components of the UST system and failed to inspect the impressed current CP system at least once every 60 days to ensure that the rectifier and other system components are operating properly; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $7,258; STAFF ATTORNEY: Marilyn Norrod, Litigation, MC 175, (512) 239-5916; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: VICTORY ROCK TEXAS, LLC; DOCKET NUMBER: 2021-0751-AIR-E; TCEQ ID NUMBERS: RN111259677; RN111259727; LOCATION: approximately 2.5 miles southwest of Prairie Dell on Solana Ranch Road, Bell County; TYPE OF FACILITY: rock crushers; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §116.615(2)(C), by failing to submit the written notification to the executive director describing the change to the representations no later than 30 days after the change; and THSC, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $7,004; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL

OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-202301335
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 11, 2023

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Rule Amendments for the Hospital-Specific Limit Methodology, Disproportionate Share Hospital, and Uncompensated Charity Care Programs

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on April 25, 2023, at 1:00 p.m., to receive public comments on proposed rule amendments to 1 Texas Administrative Code (1 TAC) Section 355.8065, concerning Disproportionate Share Hospital Reimbursement Methodology, 1 TAC Section 355.8066, concerning Hospital-Specific Limit Methodology, and 1 TAC Section 355.8212, concerning Waiver Payments to Hospitals for Uncompensated Charity Care.

This hearing will be conducted online only. There is not a physical location for this hearing. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

https://attendee.gotowebinar.com/register/7398375579652753749

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling (415) 655-0060.

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

A recording of the hearing will be archived and can be accessed on-demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Proposal. The rule amendments to 1 TAC Section 355.8065, concerning Disproportionate Share Hospital Reimbursement Methodology, 1 TAC Section 355.8066, concerning Hospital-Specific Limit Methodology, and 1 TAC Section 355.8212, concerning Waiver Payments to Hospitals for Uncompensated Charity Care, are proposed to be effective June 2023.

Briefing Packet. A briefing packet describing the proposed rule amendments will be made available at https://www.sos.state.tx.us/texreg/ no later than April 14, 2023. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at PFD_Hospitals@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of, or in addition to, oral testimony until 11:59 p.m. on May 15, 2023. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to PFD_Hospitals@hhsc.state.tx.us. Please include "Comments on Proposed Rules §§355.8065, 355.8066, and 355.8212" in the subject line. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St, Austin, Texas 78751.

Contact. Questions regarding the hearing or meeting arrangements should be directed to PFD_Hospitals@hhsc.state.tx.us.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202301340
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 11, 2023

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Notice of Public Hearing on Proposed Updates to Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 19, 2023, at 9:00 a.m., to receive public comments on proposed updates to Medicaid payment rates resulting from Calendar Fee Reviews, Medical Policy Reviews, and Healthcare Common Procedure Coding System (HCPCS) Reviews.

This hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

https://attendee.gotowebinar.com/register/2214045213189178454

After registering, you will receive a confirmation email containing information about joining the webinar. Instructions for dialing-in by phone will be provided after you register.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas, or they may access a live stream of the meeting at https://www.hhs.texas.gov/about/live-archived-meetings. For the live stream, select the "Winters Live" tab. A recording of the hearing will be archived and accessible on demand at the same website under the "Archived" tab. The hearing will be held in compliance with Texas Human Resources Code section 32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Any updates to the hearing details will be posted on the HHSC website at https://www.hhs.texas.gov/about/meetings-events.

Proposal. The effective date of the proposed payment rates for the topics presented during the rate hearing will be as follows:

Effective July 1, 2023

Medical Policy Review:

-VDP Drug Cleanup - Foscavir - J1455

Effective September 1, 2023

Calendar Fee Review:

-Diagnostic Radiology Hospitals

-Diagnostic Radiology Rural Hospitals

-Diagnostic Radiology Non-Hospitals

-Indian Health Services

-Medical and Surgical Supplies

-Medical Nutrition Therapy

-Medical Transportation Program (MTP)

-Physician Administered Drugs - Non-Oncology

-Physician Administered Drugs - Oncology

-Physician Administered Drugs - Vaccines & Toxoids

-Telemedicine, Telehealth, and Telemonitoring

-S Codes Type of Service (TOS) 1-2-8

-S Codes TOS 9-J-E

-Any Combination of TOS 1-2-I-T

-Non-Clinical Labs TOS 5-I-T

-Non-Clinical Labs Hospitals

-Non-Clinical Labs Rural Hospitals

Medical Policy Review:

-Computed Tomography and Magnetic Resonance Imaging (CT & MRI) Acute Care

-CT & MRI Hospitals

-THSTEPS dental

-VDP Drug Cleanup

Quarterly HCPCS Updates:

-Q3 HCPCS Drugs

-Q4 HCPCS Drugs

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

Section 355.7001, Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services;

Section 355.8001, Reimbursement for Vision Care Services;

Section 355.8023, Reimbursement Methodology for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS);

Section 355.8061, Reimbursement for Outpatient Hospitals;

Section 355.8085, Reimbursement Methodology for Physicians and Other Practitioners;

Section 355.8441, Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services (also known as Texas Health Steps);

Section 355.8561, Reimbursement Methodology for the Medical Transportation Program;

Section 355.8610, Reimbursement methodology for Clinical Laboratory Services; and

Section 355.8620, Reimbursement Methodology for Services provided in Indian Health Service and Tribal facilities.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at https://pfd.hhs.texas.gov/rate-packets on or after May 5, 2023. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. For quickest response please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202301339
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 11, 2023

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Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft 2023 State of Texas Consolidated Plan: One-Year Action Plan

The Texas Department of Housing and Community Affairs (TDHCA) will hold one public hearing during a 31-day Public Comment period to accept public comment on the draft 2023 State of Texas Consolidated Plan: One-Year Action Plan (the Plan). The Public Comment period for the draft Plan will be held Monday, April 24, 2023 - Wednesday, May 24, 2023.

The one public hearing for the 2023 One-Year Action Plan is scheduled to take place as follows:

Tuesday, May 2, 2023 - 2:00 p.m.

Stephen F. Austin Building

Room 172

1700 Congress Ave, Austin, TX, 78701

TDHCA, Texas Department of Agriculture (TDA), and Texas Department of State Health Services (DSHS) prepared the Draft 2023 State of Texas Consolidated Plan: One-Year Action Plan (the Plan) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State's administration of the Community Development Block Grant Program (CDBG) by TDA, the Housing Opportunities for Persons with AIDS Program (HOPWA) by DSHS, and the Emergency Solutions Grants (ESG) Program, the HOME Investment Partnerships (HOME) Program, and the National Housing Trust Fund (NHTF) by TDHCA.

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year 2023. The Program Year begins on September 1, 2023, and ends on August 31, 2024. The Plan also illustrates the State's strategies in addressing the priority needs and specific

goals and objectives identified in the 2020-2024 State of Texas Consolidated Plan.

The Plan may be accessed from TDHCA's Public Comment Web page at: http://www.tdhca.state.tx.us/public-comment.htm. The public comment period for the Plan will be open from Monday, April 24, 2023, through Wednesday, May 24, 2023. Anyone may submit comments on the Plan in written form or oral testimony at the May 2, 2023, public hearing. In addition, written comments concerning the Plan may be submitted in the following ways:

1. by mail to: The Texas Department of Housing and Community Affairs,

Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941,

2. by email to: info@tdhca.state.tx.us

Comments may be submitted at any time during the comment period. Comments must be received no later than Wednesday, May 24, 2023, at 5:00 p.m. Austin local time.

Individuals who require auxiliary aids or services at the public hearing should contact Elizabeth Yevich, at (512) 463-7961 or Relay Texas at 1-800-735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Danielle Leath by phone at (512) 475-4606 or by email at danielle.leath@tdhca.state.tx.us at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Danielle Leath al siguiente número (512) 475-4606 o enviarle un correo electrónico a danielle.leath@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-202301333
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 11, 2023

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Texas Department of Insurance

Company Licensing

Application for admission to the state of Texas for CM Indemnity Insurance Company, a foreign fire and/or casualty company. The home office is in Merrill, Washington.

Application for admission to the state of Texas for Physicians Select Insurance Company, a foreign fire and/or casualty company. The home office is in Omaha, Nebraska.

Application for admission to the state of Texas for American Underwriters Insurance Company, a foreign fire and/or casualty company. The home office is in Conway, Arkansas.

Application for admission to the state of Texas for American Eagle Title Insurance Company, a foreign title company. The home office is in Tulsa, Oklahoma.

Application for incorporation in the state of Texas for Incline Americas Insurance Company, a domestic fire and/or casualty company. The home office is in Austin, Texas.

Application for XL Select Insurance Company, a foreign fire and/or casualty company, to change its name to At-Bay Specialty Insurance Company. The home office is in Wilmington, Delaware.

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-202301349
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: April 12, 2023

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Granting of Waterline Easement - Bastrop County

Approximately 1 Acre at Bastrop State Park

In a meeting on May 25, 2023, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the granting of a waterline easement of approximately 1 acre at Bastrop State Park. The public will have an opportunity to comment on the proposed transaction before the commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Jason Estrella, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to jason.estrella@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the commission meeting.

TRD-202301354
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: April 12, 2023

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 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 "48 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 48 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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