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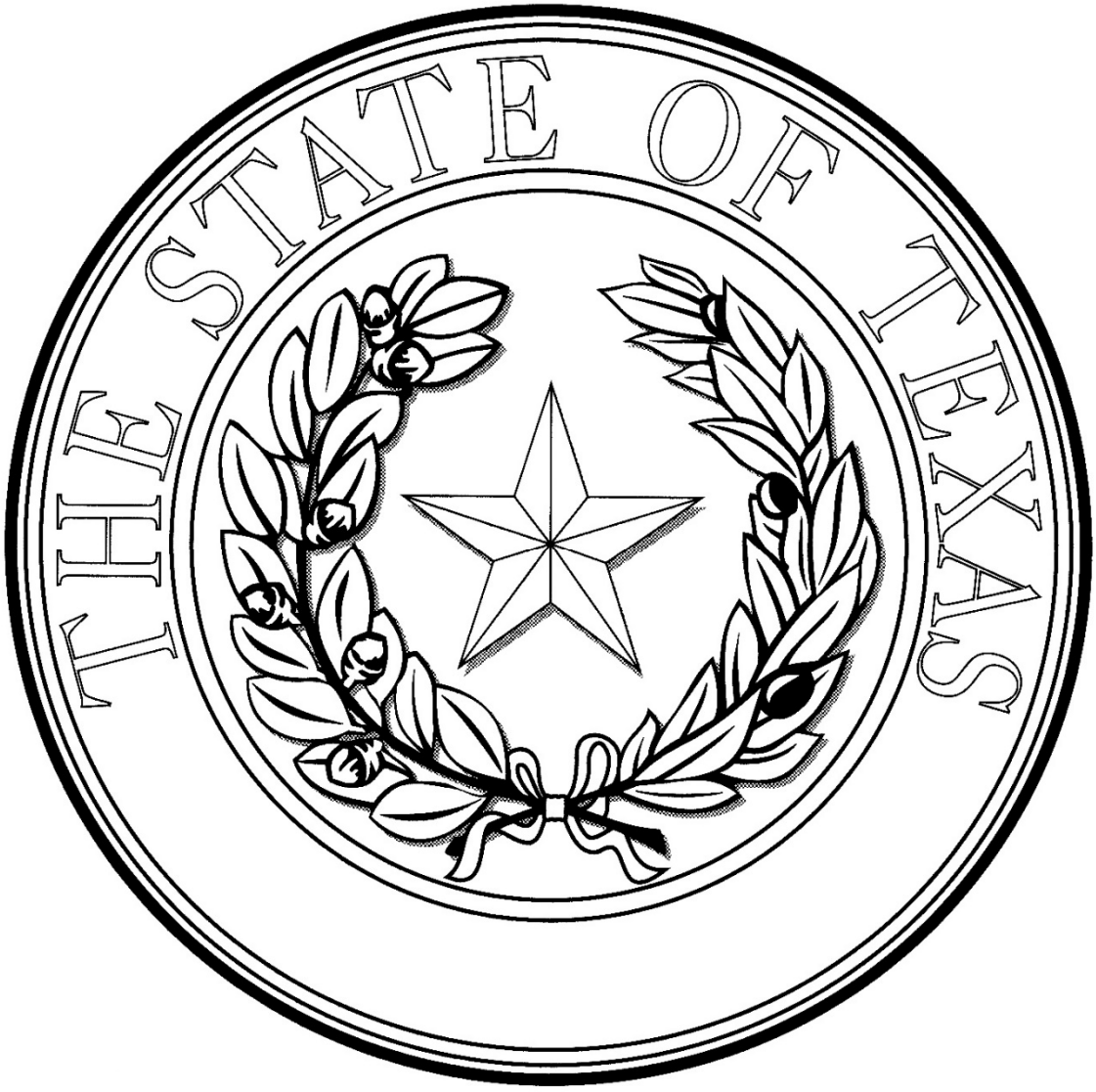

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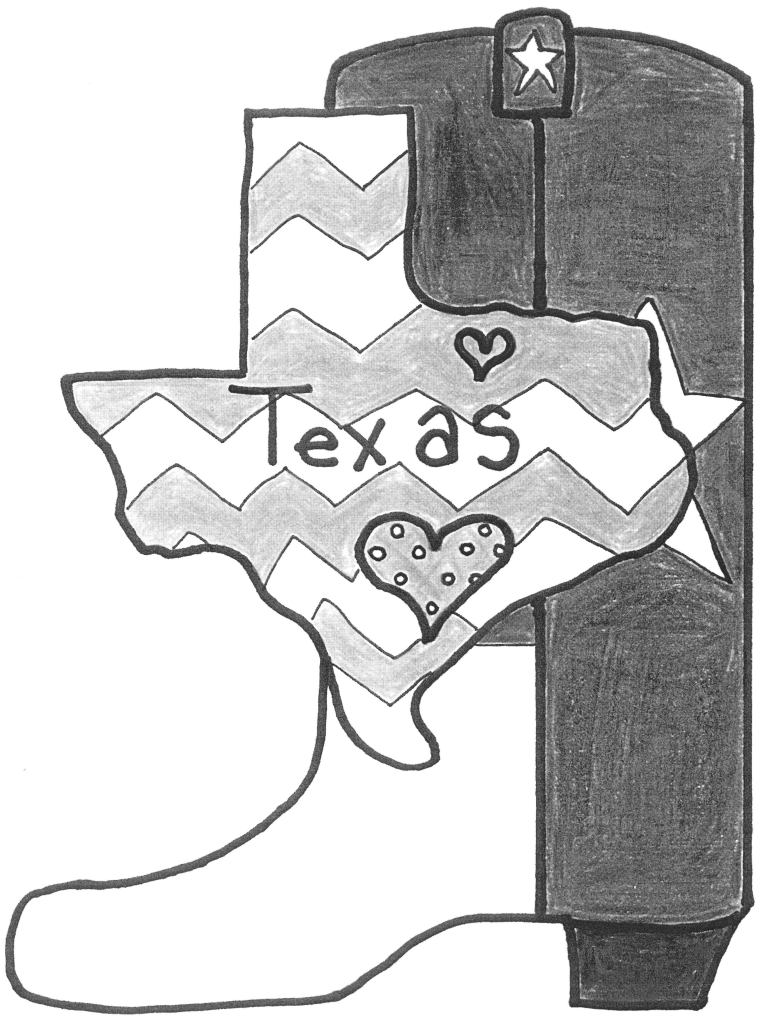

Texas

THE GOVERNOR

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

Appointments

Appointments for January 19, 2024

Appointed to the Public Utility Commission of Texas for a term to expire September 1, 2029, Thomas J. Gleeson of Pflugerville, Texas (replacing Peter M. Lake of Austin, whose term expired).

Designating Thomas J. Gleeson of Pflugerville as presiding officer of the Public Utility Commission of Texas for a term to expire at the pleasure of the Governor. Mr. Gleeson is replacing Kathleen T. Jackson of Beaumont, who was serving as interim presiding officer.

Appointed as State Historic Preservation Officer for a term to expire at the pleasure of the Governor, Edward G. "Ed" Lengel, Ph.D. of Grand Prairie, Texas (replacing Mark S. Wolfe of Austin).

Greg Abbott, Governor

TRD-202400234

♦ ♦ ♦

Proclamation 41-4093

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the Honorable John Whitmire, in taking the Oath of Office as Mayor of the City of Houston, has caused a vacancy to exist in Texas State Senate District No. 15, which is wholly contained within Harris County; and

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

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

WHEREAS, pursuant to Section 41.001 of the Texas Election Code, the first uniform election date occurring on or after the 36th day after the date the special election is ordered is Saturday, May 4, 2024;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Texas State Senate District No. 15 on Saturday, May 4, 2024, for the purpose of electing a state senator to serve out the unexpired term of the Honorable John Whitmire.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Monday, March 4, 2024, in accordance with Section 201.054(a)(1) of the Texas Election Code.

Early voting by personal appearance shall begin on Monday, April 22, 2024, and end on Tuesday, April 30, 2024, in accordance with Sections 85.00l(a) and (e) of the Texas Election Code.

A copy of this order shall be mailed immediately to the Harris County Judge, which is the county within which Texas State Senate District No. 15 is wholly contained, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said election may be held to fill the vacancy in Texas State Senate District No. 15 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 18th day of January, 2024.

Greg Abbott, Governor

TRD-202400209

♦ ♦ ♦

Proclamation 41-4094

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Caldwell, Chambers, Childress, Gonzales, Hardeman, Hardin, Irion, Jefferson, Karnes, Limestone, Parker, Shelby, Tom Green, Wichita, and Wilbarger Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Atascosa, Bandera, Bell, Bexar, Blanco, Burnet, Calhoun, Cameron, Comal, Comanche, Coryell, Culberson, Eastland, El Paso, Erath, Gillespie, Guadalupe, Hays, Hidalgo, Hudspeth, Jasper, Jeff Davis, Kendall, Kerr, Lampasas, Lavaca, Llano, Maverick, McLennan, Medina, Newton, Orange, Presidio, Sabine, San Augustine, Travis, Tyler, Uvalde, Wharton, Willacy, Williamson, and Wilson Counties.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 18th day of January, 2024.

Greg Abbott, Governor

TRD-202400210

♦ ♦ ♦

Proclamation 41-4095

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

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

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Bee, Brewster, Brooks, Caldwell, Cameron, Chambers, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 18th day of January, 2024.

Greg Abbott, Governor

TRD-202400211

♦ ♦ ♦

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0529-KP

Requestor:

The Honorable Paul Bettencourt

Chair, Senate Committee on Local Government

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a county has authority to enact a guaranteed income program and whether such a program would violate article III, section 52(a) of the Texas Constitution (RQ-0529-KP)

Briefs requested by January 31, 2024

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

TRD-202400223

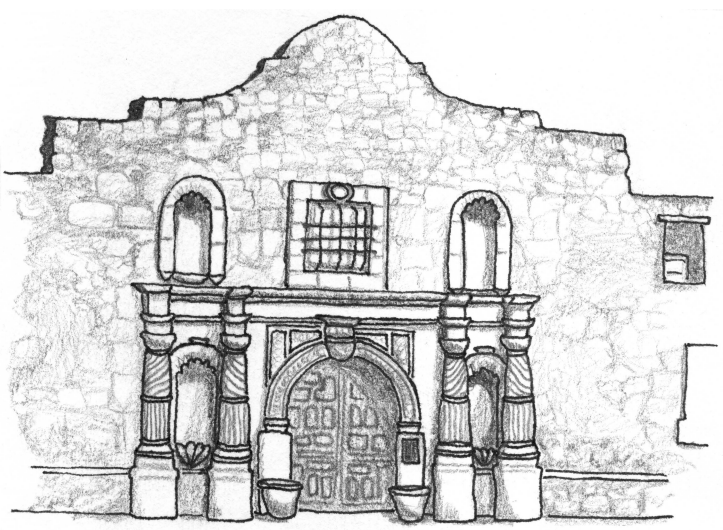
Justin Gordon

General Counsel

Office of the Attorney General

Filed: January 23, 2024

♦ ♦ ♦



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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES
SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.246

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §22.246, relating to Administrative Penalties.

This proposed rule will implement, in part, Public Utility Regulatory Act (PURA) §15.023 as revised by House Bill 1500 during the Texas 88th Regular Legislative Session. The amended rule adds whether a person complied with a voluntary mitigation plan as a factor for the commission to consider when determining the amount of an administrative penalty. The amended rule also removes redundant provisions and replaces them with a reference to §25.8 of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers).

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rule will expand an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Barksdale English, Director, Division of Compliance and Enforcement, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the section.

Public Benefits

Mr. English has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will alignment of commission rules with the statutory requirement that the commission consider adherence with a voluntary mitigation plan when evaluating violations of PURA §39.157 or rules adopted by the commission under that section. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by February 22, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by February 22, 2024. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 55955. Parties may provide comments on the Chapter 22 and Chapter 25 proposals filed in this project in a single filing.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amendment is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §15.023, which authorizes the commission to impose an administrative penalty of up to $1,000,000 for a violation of a voluntary mitigation plan.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001; 14.002; and 15.023.

§22.246. Administrative Penalties.

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

(c) Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.

(1) (No change.)

(2) The administrative penalty for each separate violation of PURA or of a rule or order adopted under PURA may not exceed the limits established by §25.8 of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers) [~~PURA §35.0021, PURA §38.075, or a commission rule or commission order adopted under PURA §35.0021 or PURA §38.075 will be in an amount not to exceed $1,000,000 per violation per day. For all other violations, the administrative penalty for each separate violation will be in an amount not to exceed $25,000 per violation per day. An administrative penalty in an amount that exceeds $5,000 may be assessed only if the violation is included in the highest class of violations in the classification system~~].

(3) The amount of the administrative penalty must be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts to correct the violation; [~~and~~]

(F) adherence with an applicable voluntary mitigation plan approved by the commission under §25.504 of this title (relating to Wholesale Market Power in the Electric Reliability Council of Texas Power Region); and

(G) [~~(F)~~] any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.

(d) - (f) (No change.)

(g) Options for response to notice of violation or continuing violation.

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

(5) Opportunity to remedy a weather preparedness violation.

(A) - (C) (No change.)

(D) For purposes of this paragraph, the following provisions apply unless a provision conflicts with a commission rule or order adopted under PURA §35.0021 or §38.075, in which case, the commission rule or order applies.

(i) Not all violations to which this paragraph applies can be remedied. Subparagraph [~~Clauses~~] (C)(i) and [~~(C)~~](ii) of this paragraph do not apply to a violation that cannot be remedied.

(ii) For purposes of subparagraph [~~clauses~~] (C)(i) and [~~(C)~~](ii) of this paragraph, an entity that claims to have remedied an alleged violation and, if applicable, that the alleged violation was accidental or inadvertent has the burden of proving its claim to the commission. Proof that an alleged violation has been remedied and, if applicable, that the alleged violation was accidental or inadvertent must be evidenced in writing, under oath, and supported by necessary documentation.

(iii) (No change.)

(iv) If the independent organization certified under PURA §39.151 has not provided an entity with a deadline, the executive director will determine whether the deadline can be remedied and, if so, the deadline for remedying a violation within a reasonable period of time. The executive director will provide the entity with written notice of the violation and the deadline for remedying the violation within a reasonable period of time. This notice does not constitute notice under subsection [~~paragraph~~] (f)(2) of this section unless it fulfills the other requirements of that subsection. However, the provisions of subsection [~~subparagraph~~] (f)(2)(D) of this section apply to notice under this clause.

(v) - (vi) (No change.)

(vii) If the commission determines that the deadline for remedying a violation provided by the independent organization certified under PURA §39.151 or determined by the executive director is unreasonable, the commission will determine what the deadline should have been. The commission will use this updated deadline to determine the applicability of subparagraph [~~subclauses~~] (C)(i) and [~~(C)~~](ii) of this paragraph and, if appropriate, as a factor in determining the magnitude of administrative penalty to impose against the entity for the violation.

(h) - (k) (No change.)

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

Filed with the Office of the Secretary of State on January 19, 2024.

TRD-202400199
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 3, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.8

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.8, relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.

This proposed rule will implement, in part, Public Utility Regulatory Act (PURA) §15.023 as revised by H.B. 1500 during the Texas 88th Regular Legislative Session. The amended rule will increase the authorized penalty for violations of voluntary mitigation plans up to $1,000,000 per violation per day. The amendment also aligns violation definitions across classifications, consolidates violation descriptions, and adds a new description for "special violations."

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rule will expand an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Barksdale English, Director, Division of Compliance and Enforcement, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the section.

Public Benefits

Mr. English has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be to incentivize market participants who enter into voluntary mitigation plans to comply with those plans. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by February 22, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. *Comments must be filed by February 22, 2024.* Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 55955. Parties may file comments on the Chapter 22 and Chapter 25 proposals filed in this project in a single filing.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amendment is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §15.023, which authorizes the commission to impose an administrative penalty of up to $1,000,000 for a violation of a voluntary mitigation plan.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001; 14.002; and 15.023.

§25.8. Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.

(a) (No change.)

(b) Classification system.

(1) Class C violations.

(A) Penalties for Class C violations must [~~may~~] not exceed $1,000 per violation per day.

(B) (No change.)

(2) Class B violations.

(A) Penalties for Class B violations must [~~may~~] not exceed $5,000 per violation per day.

(B) All violations not specifically enumerated as a Class C, [~~or~~] Class A, or special violations [~~violation~~] are Class B violations.

(3) Class A violations.

(A) [~~Each separate violation of PURA §35.0021, PURA §38.075, or a commission rule or commission order adopted under PURA §35.0021 or PURA §38.075 is a Class A violation and the administrative penalty will not exceed $1,000,000 per violation per day.~~] Penalties for [~~all other~~] Class A violations must [~~will~~] not exceed $25,000 per violation per day.

(B) (No change.)

(4) Special violations.

(A) "Special violations" does not constitute a class of violations for purposes of PURA §15.023(d).

(B) The following types of violations are special violations for which a penalty must not exceed $1,000,000 per violation per day.

(i) A violation of PURA §39.157(a) or §25.503(g)(7) of this title (relating to Oversight of Wholesale Market Participants) in conjunction with not adhering to an applicable voluntary mitigation plan adopted under PURA §15.023(f) or §25.504 of this title (relating to Wholesale Market Power in the Electric Reliability Council of Texas Power Region);

(ii) A violation of PURA §35.0021 or a commission rule or order adopted under PURA §35.0021; and

(iii) A violation of PURA §38.075 or a commission rule or order adopted under PURA §38.075.

(c) - (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 January 19, 2024.

TRD-202400200
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 3, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.504

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.504, relating to Wholesale Market Power in the Electric Reliability Council of Texas Power Region.

This proposed rule will implement Public Utility Regulatory Act (PURA) §15.023 as revised by House Bill 1500 during the Texas 88th Regular Legislative Session. The proposed rule provides that adhering to a voluntary mitigation plan is one factor that must be considered by the commission to determine whether a generation entity abused market power, rather than constituting an absolute defense against an allegation of market power abuse. In addition, the proposed rule amends the standards, process, and timelines under which voluntary mitigation plans are reviewed and approved or denied by the commission.

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rule will expand an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of

implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Barksdale English, Director, Division of Compliance and Enforcement, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the section.

Public Benefits

Mr. English has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be that only voluntary mitigation plans that are in the public interest are approved, and that voluntary mitigation plans are kept up to date through a regular review process. There will be no economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by February 22, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by February 22, 2024. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 55948.

The commission also invites comments specifically on the following question:

Should the rule define "wholesale market design change," and if so, how should it be defined?

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amendment is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §15.023, which authorizes the commission and a person to enter into a voluntary mitigation plan relating to a violation of PURA §39.157.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001; 14.002; and 15.023.

§25.504. Wholesale Market Power in the Electric Reliability Council of Texas Power Region.

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

(e) Voluntary mitigation plan. Any generation entity may submit to the commission a mitigation plan relating to [~~for ensuring~~] compliance with §25.503(g)(7) of this title or with the Public Utility Regulatory Act §39.157(a). Adherence to a commission-approved voluntary mitigation plan must be considered in a proceeding to determine whether the generation entity violated PURA §39.157 or §25.503(g)(7) of this title and, if so, the amount of the administrative penalty to be assessed for the violation. [~~Any plan that is submitted may be revised, with the agreement of the market participant, and approved or rejected by the commission. Adherence to a plan approved by the commission constitutes an absolute defense against an allegation of market power abuse with respect to behaviors addressed by the plan. Failure to adhere to a plan approved by the commission does not, of itself constitute a violation of §25.503(g)(7) of this title, but may be treated in the same manner as any other violation of a commission order.~~]

(1) The commission will approve the mitigation plan only if it finds that the plan is in the public interest.

(2) A generation entity or commission staff may apply to amend or terminate a voluntary mitigation plan that applies to the generation entity.

(3) The parties to a proceeding related to the approval or amendment of a voluntary mitigation plan are limited to the generation entity applying for the mitigation plan, commission staff, and the independent market monitor.

(4) The commission, on its own motion, may terminate, in whole or in part, a voluntary mitigation plan approved under this subsection. The executive director or the executive director's designee may also terminate a voluntary mitigation plan, in whole or in part, under the following conditions:

(A) The executive director or the executive director's designee must determine that continuation of the plan is no longer in the public interest.

(B) The executive director or the executive director's designee must provide notice of the termination to the generation entity with an approved voluntary mitigation plan at least three working days prior to the effective date of the termination.

(C) The commission must affirm or set aside the executive director or the executive director's designee's termination of a vol-

untary mitigation plan as soon as practicable after the effective date of the termination.

(f) Review of voluntary mitigation plans.

(1) The commission will review each mitigation plan adopted under subsection (e) of this section to determine whether the plan remains in the public interest at least once every two years and not later than 90 days after the implementation date of a wholesale market design change. Commission staff, in consultation with the independent market monitor, will determine when a wholesale market design change requiring review under this paragraph has occurred.

(2) At least 30 days prior to a deadline established by paragraph (1) of this subsection, commission staff must provide a recommendation on whether each voluntary mitigation plan remains in the public interest. As part of its recommendation, for each voluntary mitigation plan adopted prior to September 1, 2023, commission staff must address whether the plan complies with PURA §15.023(f) and this section.

(3) If the commission determines that all or a part of the plan is no longer in the public interest, the commission will terminate any part of the plan that it determines is no longer in the public interest. The generation entity may propose an amended plan for the commission's consideration.

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 January 19, 2024.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 3, 2024
For further information, please call: (512) 936-7322

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. PROFESSIONAL STANDARDS

22 TAC §501.62

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.62 concerning Other Professional Standards.

Background, Justification and Summary

The Board attempts to identify, as much as possible, all professional standards that a CPA is expected to adhere to. Forensic services is a professional standard that has not previously been identified.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will specifically identify a professional standard not previously listed.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 4, 2024.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board

may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.62. Other Professional Standards.

A person in the performance of consulting services, accounting and review services, any other attest service, financial advisory services, or tax services shall conform to the professional standards applicable to such services. For purposes of this section, such professional standards are considered to be interpreted by:

(1) AICPA issued standards, including but not limited to:

(A) Statements on Standards on Consulting Services (SSCS);

(B) Statements on Standards for Accounting and Review Services (SSARS);

(C) Statements on Standards for Attestation Engagements (SSAE);

(D) Statements on Standards for Tax Services (SSTS);

(E) Statements on Standards for Financial Planning Services (SSFPS); [~~or~~]

(F) Statements on Standards for Valuation Services (SSVS); or [~~.~~]

(G) Statements on Standards for Forensic Services (SSFS).

(2) Pronouncements by other professional entities having similar national or international authority recognized by the board including but not limited to the International Financial Reporting Standards (IFRS) promulgated by the International Accounting Standards Board (IASB).

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 January 18, 2024.

TRD-202400175
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 3, 2024
For further information, please call: (512) 305-7842

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.9, concerning Certificate Fee.

Background, Justification and Summary

Individuals applying for their initial CPA license are assessed a fee to cover the administrative costs of processing an application. The rule amendment clarifies that the fee will not be refunded for any reason.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed rule amendment will put applicants on notice that if their application is not approved, or they don't pass the exam, or they don't complete their application for initial licensure the board will apply the fee toward the board's costs of processing the application and not refund the fee.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 4, 2024.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.9. Certificate Fee.

(a) The fee for the initial issuance of a CPA certificate pursuant to the Act will be established by the board. The fee is nonrefundable.

(b) A military service member or military veteran who is eligible for the issuance of the CPA certificate is exempt from this fee.

(c) The exemption from the certificate fee must be evidenced by an active ID, state-issued driver's license with a veteran designation or DD214.

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 January 18, 2024.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 88. STATE LONG-TERM CARE OMBUDSMAN PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§88.2, 88.101, 88.102, 88.104, 88.105, 88.201, 88.305, 88.307, 88.403, 88.404, 88.406, and 88.501; new §§88.106, 88.107, 88.202, 88.405, 88.407, 88.408, 88.409, 88.601, 88.602, and 88.603; and the repeal of §§88.309, 88.405, and 88.407.

BACKGROUND AND PURPOSE

The State Long-Term Care Ombudsman Program (Ombudsman Program) is a federally and state funded program authorized by §711 and §712 of the Older Americans Act (Title 42 United States Code §3058f and §3058g). The Ombudsman program protects and advocates for the health, safety, welfare, and rights of residents of nursing facilities and assisted living facilities.

The proposed rules implement a recent change to §306(a)(9) of the Older Americans Act regarding the minimum expenditure an Area Agency on Aging must make under its area plan in carrying out the Ombudsman Program. The proposed rules also provide that certain state general revenue funds allocated for Ombudsman Program functions may not be included in determining the amount of funds spent to meet this expenditure requirement to ensure that a larger amount of funds is used for the Ombudsman Program. In addition, because the State Ombudsman has excluded these funds from the calculation of the minimum expenditure requirement since 2013, the proposed rule further ensures that host agencies do not reduce the funds used for the Ombudsman Program.

The proposed rules address Title 45, Code of Federal Regulations (45 CFR), §1324.19(b)(7) regarding a certified ombudsman's referral of a complaint about actions of a resident's legally authorized representative to the appropriate agency for investigation. The proposed rules address 45 CFR §1324.11(e) and §1324.19(b) regarding documentation of consent.

The proposed rules address a requirement in 45 CFR §1324.11(e)(2), regarding the Office of the State Long-Term Care Ombudsman (the Office) and a certified ombudsman obtaining a copy of a record from a long-term care facility upon request.

The proposed rules include the term "informed consent" to be consistent with 45 CFR Part 1324.

The proposed rules require a certified ombudsman to, at the request of a long-term care facility, provide a completed HHSC form to the facility at the time the certified ombudsman is requesting access to a confidential record concerning a facility resident to help ensure a record of the request for access exists.

The proposed rules require a host agency to submit a plan of correction to the Office for review and approval by the Office if, as the result of a desk review, the Office sends a written report containing a finding to the host agency and local ombudsman entity.

The proposed rules describe the actions taken if the Office determines that a host agency is not in compliance with Chapter 88, Subchapter E and the determination is not based on onsite monitoring or a desk review.

The proposed rules describe the sanctions that may be imposed on a host agency if the host agency does not complete an action in accordance with an approved plan of correction or an approved modified plan of correction resulting from onsite monitoring, a desk review, or a determination of non-compliance not based on onsite monitoring or a desk review.

The proposed rules include additional performance measures that relate to current Ombudsman Program requirements so that the Office can more thoroughly monitor the progress of a local ombudsman entity's compliance with the requirements. In addition, the proposed rules remove a performance measure regarding the number of assisted living facilities that will receive at least one visit by a certified ombudsman. This performance measure is being removed because it is not as meaningful a marker of compliance as the performance measure regarding the number of visits to assisted living facilities by certified ombudsmen that will occur during a federal fiscal year.

The proposed rules remove the process that allows a host agency to request that an approved performance measure projection be revised. This process was established by the HHSC Office of Area Agencies on Aging and is being removed because the process is no longer in place.

The proposed rules change the term "state fiscal year" to "federal fiscal year" to make time periods consistent and to make compliance with requirements related to the time periods less complicated. The proposed rules increase the variance that measures whether a local ombudsman entity is in compliance with certain performance measures and performance measure projections. This increase in variance will help compensate for unforeseen circumstances that hinder compliance by a local ombudsman entity.

The proposed rules include a process for the submission of a grievance about the performance of the State Ombudsman or a representative of the Office who is an employee or volunteer of HHSC.

The proposed rules change the timeframe by which a local ombudsman entity must enter information about activities and casework into the ombudsman database to help ensure the accuracy and completeness of the information entered.

The proposed rules incorporate current policies and procedures related to the Ombudsman Program, including the submission and review of an Ombudsman Staffing Plan form and not reimbursing a host agency if the form is not approved by the Office, the process for investigating a complaint about the conduct of a legally authorized representative, and documentation of consent related to a complaint.

The proposed rules restructure and reorganize some of the current rules to consolidate subject matters.

The proposed rules repeal several rules and replace them with new rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §88.2, Definitions, adds definitions for the following new terms: "grievance;" "grievant;" "informed consent;" and "ombudsman database." The proposed amendment removes the term "state fiscal year" because this term is no longer used in the rules. The proposed amendment also renumbers the definitions.

The proposed amendment to §88.101, Responsibilities of the State Ombudsman and the Office, references Subchapter G related to Grievances instead of §88.309 relating to Grievances Regarding Performance of a Representative of the Office or Certification Decisions by the State Ombudsman because §88.309 is proposed for repeal. The proposed amendment makes minor editorial changes.

The proposed amendment to §88.102, Certification of an Ombudsman, makes edits to clarify the type of employee or independent contractor the State Ombudsman certifies as a staff ombudsman. The proposed amendment also corrects a rule reference regarding §88.2 because the proposed amendment to §88.2 renumbers the definitions.

The proposed amendment to §88.104, Designation of a Local Ombudsman Entity, in subsection (b)(1) and (2) of the rule updates references regarding §88.2 because the proposed amendment to §88.2 renumbers the definitions. The proposed amendment in subsection (c)(2) references proposed new §§88.106, 88.107, and 88.409 instead of §88.105 because the content in §88.105 related to onsite monitoring, desk review, and non-compliance is addressed in proposed new §§88.106, 88.107, and 88.409. The proposed amendment in subsection (c)(2)(B) of the rule adds "written" before "plan of correction" and reformats the rule for clarity. The proposed amendment in subsection (c)(2)(C) clarifies that the State Ombudsman may remove the designation of a local ombudsman entity if the local ombudsman entity does not complete the actions in accordance with an approved plan of correction or an approved modified plan of correction. The proposed amendment in subsection (f) of the rule updates a rule reference.

The proposed amendment to §88.105, Fiscal Management and Monitoring of a Local Ombudsman Entity, retitles the rule as "Fiscal Management of a Local Ombudsman Entity." The proposed amendment in subsection (b) of the rule adds "through the HHSC Office of the Area Agencies on Aging" to clarify how the State Ombudsman distributes funds to a host agency, corrects a reference to the Older Americans Act, removes outdated funding formulas, clarifies the description of state general revenue funds and their allocation by the State Ombudsman for the performance of Ombudsman Program functions, changes the term "state fiscal year" to "federal fiscal year" and reformats the rule to improve readability and clarity. The proposed amendment removes subsections (c) - (k) related to onsite monitoring, desk review, and non-compliance because these topics are addressed in proposed new §§88.106, 88.107, and 88.409.

Proposed new §88.106, Onsite Monitoring of a Local Ombudsman Entity and a Host Agency, describes what the Office monitors when it conducts an onsite visit of a local ombudsman entity and a host agency. The proposed rule specifies that the Office conducts at least one onsite visit every three years and describes the activities performed in an onsite visit. The proposed rule describes how the Office schedules a date for an onsite visit and notifies the host agency of a scheduled visit at least 30 days before the visit. The proposed rule provides that the Office gives the local ombudsman entity and the host agency a written report that may contain findings and recommendations from the onsite visit within 45 days after the visit. Currently, §88.105(e)(3) allows the Office 30 days after the onsite visit to provide the report. The proposed rule extends the time frame to 45 days to give the Office adequate time to review information obtained from the visit. The proposed rule requires the host agency to submit a written plan of correction to the Office within 45 days after receipt of the written report that contains one or more findings, instead of within 30 days after receipt of the report as provided by the current rule. This change in timeframe allows the host agency adequate time to develop a plan of correction. The proposed rule provides that the Office notifies the local ombudsman entity and host agency of whether the plan is approved or requires modification within 45 days after receipt of the plan of correction, instead of 30 days after receipt of the plan of correction. This change in timeframe

allows the Office adequate time to review the plan of correction. The proposed rule requires the local ombudsman entity or host agency to complete the actions contained in the plan of correction by the dates in the plan and requires the host agency to, if the Office determines that the plan requires modification, submit a modified written plan of correction within a time period determined by the Office for approval by the Office. The proposed rule describes the actions the Office may take to determine if the local ombudsman or host agency entity has completed the actions in accordance with an approved plan of correction or approved modified plan of correction. The proposed rule provides that if the Office determines that the local ombudsman entity or host agency did not complete an action in accordance with an approved plan of correction or an approved modified plan of correction, the Office may allow the local ombudsman entity or host agency additional time to complete the action, HHSC may impose a Level Two sanction in accordance with 26 TAC §213.5, or the State Ombudsman may remove the designation of a local ombudsman entity. The proposed rule provides that if the Office allows a local ombudsman entity or host agency additional time to complete an action and the Office determines that the local ombudsman entity did not complete the action within the time allowed, HHSC may impose a Level Two sanction in accordance with 26 TAC §213.5, or the State Ombudsman may remove the designation of a local ombudsman entity. The proposed rule provides that, at the request of a local ombudsman entity or host agency, the Office provides technical assistance to a local ombudsman entity or host agency regarding developing a plan of correction.

Proposed new §88.107, Desk Review Monitoring of a Local Ombudsman Entity, describes the purpose of a desk review, which includes determining if a local ombudsman entity has conducted at least one visit to each long-term care (LTC) facility in the ombudsman service area each quarter of a federal fiscal year. The proposed rule also describes how often the Office conducts a desk review and that if the Office identifies a finding from a desk review, the Office provides to the local ombudsman entity and the host agency a written report that contains the finding and may include recommendations. Currently, §88.105(j) allows the Office to provide the report within 30 days after the desk review. The proposed rule does not include a time frame to allow the Office a flexible timeline to provide the report. The proposed rule requires a host agency to submit a written plan of correction containing certain information to the Office within 14 days after receipt of a report. The proposed rule provides a time frame for the Office to notify the local ombudsman entity and host agency of whether the plan is approved or requires modification. The proposed rule requires the local ombudsman entity to complete the actions contained in the plan of correction by the dates in the plan if the Office approves the plan. The proposed rule requires the host agency to submit a modified written plan of correction within a time period determined by the Office for approval by the Office, if the Office determines that the plan requires modification. The proposed rule describes the actions the Office takes to determine if the local ombudsman entity has completed the actions in an approved plan of correction or approved modified plan of correction. The proposed rule provides that, if the Office determines that the local ombudsman entity did not complete an action in an approved plan of correction or a modified plan of correction, the Office may allow the local ombudsman entity additional time to complete the action, HHSC may impose a Level Two sanction in accordance with 26 TAC §213.5, or the State Ombudsman may remove the designation of a local ombudsman entity. The proposed rule also provides that if the Office allows a local ombudsman entity additional time to complete an action in the approved plan and the Office determines that the local ombudsman entity did not complete the action within the time allowed, HHSC may impose a Level Two sanction in accordance with 26 TAC §213.5 or the State Ombudsman may remove the designation of the local ombudsman entity. The proposed rule also provides that upon request by a local ombudsman entity or host agency, the Office provides technical assistance to a local ombudsman entity or host agency regarding developing a plan of correction.

The proposed amendment to §88.201, Access to Facilities, Residents, and Resident Records, in subsection (c)(1) of the rule adds a reference to 45 CFR §1324.11(e)(2) and uses language from 45 CFR §1324.11(e)(2) instead of the Older Americans Act for a more specific description of the records to which a certified ombudsman has access, including that a certified ombudsman has access to records regardless of format. The proposed amendment in subsection (c)(1)(A) and (B) of the rule uses the term "informed consent" instead of "consent" to be consistent with 45 CFR Part 1324. The proposed amendment adds a new subsection (d) to provide that, in accordance with 45 CFR §1324.11(e)(2), access by the State Ombudsman and a certified ombudsman to a record as described in subsection (c) of this section, includes obtaining a copy of the record upon request.

Proposed new §88.202, Notification to LTC Facility of Authorization to Access Resident Records, requires a certified ombudsman to, at the request of an LTC facility, provide a completed HHSC form "Acknowledgement of Ombudsman Access to Confidential Record" to the facility at the time the certified ombudsman is requesting access to a confidential record concerning a resident of the facility to help to ensure a record of the request for access exists.

The proposed amendment to §88.305, Complaints, in subsection (b)(1) and (2) of the rule uses the term "informed consent" instead of "consent" to be consistent with 45 CFR Part 1324. The proposed amendment requires a certified ombudsman to inform a complainant that one of the situations in which a complaint will be investigated is when the resident is unable to communicate informed consent to investigate the complaint, has a legally authorized representative, and (1) the complaint relates to an action, inaction, or decision of the legally authorized representative that may adversely affect the health, safety, welfare, or rights of the resident; (2) the certified ombudsman does not have evidence that the resident would object to the complaint being investigated; (3) the certified ombudsman has reasonable cause to believe that it is in the best interest of the resident to investigate the complaint; and (4) the State Ombudsman approves the request of the certified ombudsman to investigate the complaint. The proposed amendment requires a certified ombudsman to request approval from the State Ombudsman to investigate the complaint if this situation exists. The proposed amendment adds a new paragraph (5) in subsection (b) of the rule to require a certified ombudsman to, if the State Ombudsman gives approval, make the referral to the appropriate agency; and determine whether the complaint is satisfactorily resolved. The proposed amendment requires the certified ombudsman to follow the instruction of the State Ombudsman if the State Ombudsman does not approve the request to investigate the complaint. The proposed amendment also requires a certified ombudsman to document the type of consent or authority that allows for a complaint to be investigated. The amendments related to requesting approval from the State Ombudsman to investigate a complaint, making a referral to an appropriate agency, following State Om-

budsman instruction if approval is not given, and documenting consent or authority reflect current policies of the Ombudsman Program. The proposed amendment renumbers the paragraphs in subsection (b) because a new paragraph (5) is added.

The proposed amendment to §88.307, changes the title of the rule from "Requirements Regarding LTC Visits and Submitting Information to the Office" to "Requirements Regarding LTC Facility Visits and Submitting Information to the Office." The change is made to use the defined term "LTC facility" in the title of this rule. The proposed amendment requires a local ombudsman entity to enter activities and casework into the ombudsman database within 14 days after completion of the activity or receipt of the complaint instead of on the 16th day of each month if the 16th is a business day or the first business day after the 16th if the 16th is not a business day. This change in the deadline to enter the information was made to help ensure the accuracy and completeness of the information entered.

The proposed repeal of §88.309, Grievances Regarding Performance of a Representative of the Office or Certification Decisions by the State Ombudsman, deletes the rule as no longer necessary, because the content of the rule is addressed in proposed new Subchapter G.

The proposed amendment to §88.403, Conflicts of Interest Regarding a Host Agency, updates references regarding §88.2 because the proposed amendment to §88.2 renumbers the definitions. The proposed amendment also changes a reference to "§88.2(19)(B)" to specify a governmental entity or nonprofit organization contracting with a host agency.

The proposed amendment to §88.404, Provision of Records to the Office, Disclosure of Confidential Information, and Allegations of Abuse, Neglect, or Exploitation, updates a reference regarding §88.2 because the proposed amendment to §88.2 renumbers the definitions. The proposed amendment also changes a reference to "§88.2(19)(B)" to specify a governmental entity or nonprofit organization contracting with a host agency.

Proposed new §88.405, Performance Measures, describes the performance measures of a local ombudsman entity in proposed subsection (a) including the number of visits to nursing facilities by certified ombudsmen that will occur during a state fiscal year; compliance with the complaint response requirements; compliance with the requirement to submit activities and casework; and compliance with the minimum expenditure requirement. Proposed subsection (b) of the rule requires a host agency to work with the local ombudsman entity to develop projections for certain performance measures for a state fiscal year as directed by the HHSC Office of the Area Agencies on Aging and submit the projections to the Office by July 31st of each year using the HHSC form "Ombudsman Performance Measure Projections." The proposed rule provides that the Office reviews a form submitted by the host agency and approves the form or recommends modifications to the form. If the Office recommends modifications to the form, the proposed rule requires the host agency to submit a revised form to the Office for approval within a time period determined by the Office. The current rule requires that a host agency submit the performance measure projections to the HHSC Office of the Area Agencies on Aging but the proposed rule makes the recipient of the projections the Office because the projections concern the Ombudsman Program. Proposed subsections (c) and (d) of the rule require a host agency to ensure that a local ombudsman entity, by the end of each state fiscal year, meets the performance measure projections approved by the Office as described in subsection (b) and certain performance measures by (1) being within a variance of minus ten percent of the projections or performance measures; or (2) exceeding the projections or performance measures. Proposed subsection (e) of the rule requires that a host agency meets or exceeds the performance measure in subsection (a)(7) of the rule regarding the minimum funding requirement because this requirement is in §306(a)(9) of the Older Americans Act. The term "state fiscal year" is changed to "federal fiscal year" in all subsections of the rule.

The proposed repeal of §88.405, Meeting Performance Measure Projections, deletes the rule as no longer necessary because the content of the rule has been addressed in proposed new §88.405.

The proposed amendment to §88.406, Requirements Regarding Expenditures for the Ombudsman Program, requires a host agency to expend for a federal fiscal year at least the amount of federal funds expended in federal fiscal year 2019, instead of in federal fiscal year 2000, to be in compliance with §306(a)(9) of the Older Americans Act. The proposed amendment provides that in determining the amount of funds expended, the host agency may include all funds except the state general revenue funds allocated to the host agency described in proposed §88.105(b)(3). The proposed amendment also removes a title to a federal regulation for brevity.

Proposed new §88.407, Requirement for Approval of Ombudsman Staffing Plan Form, provides that the Office sends a host agency an Ombudsman Staffing Plan form each year and requires a host agency to complete and submit the Ombudsman Staffing Plan form as specified in the form. The proposed rule also provides that the Office reviews the form and notifies the host agency if the staffing plan form is approved. The proposed rule provides that the Office will not reimburse a host agency for expenditures made by the host agency for Ombudsman Program functions until the Office approves an Ombudsman Staffing Plan form submitted by the host agency.

The proposed repeal of §88.407, Prohibition of Interference and Retaliation by a Host Agency, deletes the rule as no longer necessary because the content of the rule is addressed in proposed new §88.408.

Proposed new §88.408, Prohibition of Interference and Retaliation by a Host Agency, in proposed subsection (a) of the rule, prevents a host agency from willfully interfering with the State Ombudsman or a representative of the Office performing any of the functions of the Ombudsman Program, retaliating against the State Ombudsman or a representative of the Office, and having personnel policies or practices that prohibit a representative of the Office from performing the functions of the Ombudsman Program or from adhering to the requirements of the Older Americans Act, §712. Proposed subsection (b) of the rule requires a host agency to ensure that a governmental entity or nonprofit organization contracting with a host agency, complies with §88.408(a) of this section as if the entity or organization is a host agency. Proposed subsection (c) of the rule allows a host agency to require a representative of the Office to notify the host agency of comments or recommendations made in accordance with §88.302(a)(1)(F) and of certain information relating to a legislator or the media.

Proposed new §88.409, Noncompliance by a Host Agency, in proposed subsection (a) of the rule provides that if the Office determines that a host agency is not in compliance with Subchapter E, relating to Requirements of a Host Agency, and the

determination is not based on onsite monitoring or a desk review, the Office sends the local ombudsman entity and host agency a written notice describing the determination of non-compliance. Proposed subsection (b) of the rule requires the host agency or local ombudsman entity to respond to the written notice within 14 days with a plan of correction describing the action that will be taken to address the non-compliance and the date the action will be completed. Proposed subsection (c) of the rule provides that the Office will notify the host agency within 14 days if the plan of correction is approved or requires modification. Proposed subsection (d) of the rule provides that the Office will determine compliance with the plan of correction by reviewing information in the ombudsman database, requesting that the host agency submit evidence of correction to the Office, or visiting the host agency or local ombudsman entity. Proposed subsection (e) of the rule provides that if the Office determines that the host agency did not complete an action in accordance with an approved plan of correction or an approved modified plan of correction, the Office may allow the host agency additional time to complete the action, HHSC may impose a Level Two or Level Three sanction in accordance with 26 TAC §213.5, or the State Ombudsman may remove the designation of a local ombudsman entity. Proposed subsection (f) of the rule provides that if the Office allows a host agency additional time to complete an action and the Office determines that the host agency did not complete the action within the time allowed, HHSC may impose a Level Two or Level Three sanction in accordance with §213.5 of this title, or the State Ombudsman may remove the designation of the local ombudsman entity. Proposed subsection (g) of the rule provides that the Office will provide technical assistance, upon request, to the host agency or local ombudsman entity regarding the plan of correction.

The proposed amendment to §88.501, HHSC Responsibilities Regarding Individual Conflicts of Interest, corrects a rule reference regarding §88.2 because the proposed amendment to §88.2 renumbers the definitions.

New Subchapter G, Grievances

Proposed new §88.601, Grievances Regarding Performance of a Representative of the Office Who is an Employee, Independent Contractor, or Volunteer of a Host Agency, Including a Managing Local Ombudsman, describes the process and requirements for a local ombudsman entity in receiving and investigating a grievance about the performance of Ombudsman Program functions by a representative of the Office, other than a grievance about a managing local ombudsman. The proposed rule also describes the actions the Office takes regarding a grievance about the performance of Ombudsman Program functions by a managing local ombudsman.

Proposed new §88.602, Grievances Regarding the Performance of the State Ombudsman or a Representative of the Office Who Is an Employee or Volunteer of HHSC, describes the actions taken by the Office for a grievance about the performance of Ombudsman Program functions by the State Ombudsman. The proposed rule requires a grievance about the State Ombudsman that is not related to fraud, waste, or abuse to be submitted to the Director of the Office of the Ombudsman and a grievance about the State Ombudsman related to fraud, waste, or abuse to be submitted to the Office of the Inspector General. The proposed rule also describes the actions taken by the Office for a grievance about the performance of Ombudsman Program functions by a representative of the Office who is an employee or volunteer of HHSC.

Proposed new §88.603, Grievances Regarding Certification Decisions by the State Ombudsman, provides that if the State Ombudsman refuses, suspends, or terminates certification of a representative of the Office, the person whose certification was refused, suspended, or terminated may file a grievance to request a reconsideration of the decision. The proposed rule describes how the grievance must be submitted and the actions the Office takes in reviewing the grievance.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

(5) the proposed rules will create new regulations;

(6) the proposed rules will expand and repeal existing regulations;

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

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

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

HHSC does not expect an adverse economic effect on small businesses, micro-businesses, or rural communities from this proposal because there are no small businesses, micro-businesses, or rural communities included in those required to comply.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Hailey Kemp, Chief Public Affairs Officer, has determined that for each year of the first five years the rules are in effect, the public will benefit from the implementation of federal requirements regarding the Ombudsman Program that help ensure the protection of and advocacy for the health, safety, welfare, and rights of long-term care facility residents. The public will also benefit from clearer rules regarding the requirements of the Ombudsman Program.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there are no new fees or costs imposed on those required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Alexa Schoeman (512) 438-4281 in the Office of the State Long-Term Care Ombudsman.

Written comments on the proposal may be submitted to Alexa Schoeman, Deputy State Ombudsman, P.O. Box 149030, Mail Code W250, Austin, Texas 78714, or street address 4601 W. Guadalupe Street, Austin, Texas 78751; or by e-mail to ltc.ombudsman@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R030" in the subject line.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

26 TAC §88.2

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code, §101A.051.

§88.2. Definitions.

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

(1) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.

(2) Certified ombudsman--A staff ombudsman or a volunteer ombudsman.

(3) CFR--Code of Federal Regulations.

(4) Complainant--A person who makes a complaint.

(5) Complaint--A statement of dissatisfaction or concern made by or on behalf of a resident, that relates to action, inaction, or a decision by any of the following entities or persons, that may adversely affect the health, safety, welfare, or rights of the resident:

(A) a long-term care (LTC) [~~an LTC~~] facility or LTC facility staff;

(B) a governmental entity, including a health and human services agency; or

(C) any other person who provides care or makes decisions related to a resident.

(6) DAHS facility--A day activity and health services facility. A facility licensed in accordance with Texas Human Resources Code, Chapter 103.

(7) Day--A calendar day.

(8) Federal fiscal year--A 12-month period of time from October 1 through September 30.

(9) Governmental entity--An entity that is:

(A) a state agency;

(B) a district, authority, county, municipality, regional planning commission, or other political subdivision of the state; or

(C) an institution of higher education, as defined in Texas Education Code, §61.003.

(10) Grievance--A statement of dissatisfaction or concern regarding a representative of the Office of the State Long-Term Care Ombudsman (Office) or the State Ombudsman and the performance of their functions, responsibilities, and duties described in 45 CFR §1324.13, 45 CFR §1324.19, and this chapter.

(11) Grievant--A person who makes a grievance.

(12) [~~(10)~~] HCSSA--Home and community support services agency. An entity licensed in accordance with Texas Health and Safety Code [~~,~~] Chapter 142.

(13) [~~(11)~~] HHSC--The Texas Health and Human Services Commission or its designee.

(14) [~~(12)~~] Host agency--A governmental entity or nonprofit organization that contracts with HHSC to ensure that the local ombudsman entity implements the State Long-Term Care Ombudsman Program (Ombudsman Program) [~~Ombudsman Program~~] in an ombudsman service area.

(15) [~~(13)~~] Immediate family member--A member of the same household or a relative with whom there is a close personal or significant financial relationship.

(16) Informed consent--Consent from a resident or legally authorized representative after the State Ombudsman or a representative of the Office explains the options for ombudsman action and possible outcomes of such options in a manner and language in which the resident or legally authorized representative understands, as determined by the State Ombudsman or a representative of the Office.

(17) [~~(14)~~] Individual conflict of interest--A situation in which a person is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes a person:

(A) having direct involvement in the licensing, surveying, or certification of an LTC facility, a HCSSA, a DAHS facility, a nursing facility administrator, or a nurse aide;

(B) having ownership or investment interest (represented by equity, debt, or other financial relationship) in an LTC facility, a HCSSA, or a DAHS facility;

(C) managing or being employed in an LTC facility, a HCSSA, or a DAHS facility;

(D) being employed by an LTC facility within the 12 months before performing functions of the Ombudsman Program;

(E) accepting gifts, gratuities, or other consideration from an LTC facility or from a resident of such an LTC facility or the resident's family;

(F) accepting money or any other consideration from anyone other than the local ombudsman entity or host agency for performing functions of the Ombudsman Program;

(G) receiving or having the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of an LTC facility, a HCSSA, or a DAHS facility;

(H) being involved in PASRR screenings for LTC facility placements other than responding to a complaint made to the Ombudsman Program;

(I) determining eligibility regarding Medicaid or other public benefits for residents;

(J) being employed by a managed care organization that provides services to residents;

(K) serving as a representative of the Office for an LTC facility in the ombudsman service area and in which a relative of the representative resides or works;

(L) acting as a decision-maker or legally authorized representative for a resident in the ombudsman service area, including providing adult protective services as described in Texas Human Resources Code, Chapter 48;

(M) being a resident;

(N) being a member of a board or council that represents the interests of an LTC facility; or

(O) having an immediate family member who meets any of the descriptions in subparagraphs (A) - (N) of this paragraph.

(18) [~~(15)~~] Legally authorized representative--A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including:

(A) a parent, guardian, or managing conservator of a minor;

(B) the guardian of an adult;

(C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or

(D) the representative of a deceased person.

(19) [~~(16)~~] Local ombudsman entity--One of the following:

(A) an identifiable unit of a host agency that:

(i) consists of representatives of the Office who are employees, independent contractors, or volunteers of the host agency; and

(ii) implements the Ombudsman Program in an ombudsman service area; or

(B) an identifiable unit of a governmental entity or nonprofit organization that:

(i) consists of representatives of the Office who are employees, independent contractors, or volunteers of the governmental entity or nonprofit organization; and

(ii) contracts with a host agency to implement the Ombudsman Program in an ombudsman service area.

(20) [~~(17)~~] LTC facility--Long-term care facility. A nursing facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 242, and or an assisted living facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 247.

(21) [~~(18)~~] Managing local ombudsman--A person who:

(A) is certified as a staff ombudsman to serve as a managing local ombudsman in accordance with §88.102 of this chapter (relating to Certification of an Ombudsman); and

(B) works with a host agency and the Office to oversee the implementation of the Ombudsman Program in an ombudsman service area.

(22) [~~(19)~~] Office--The Office of the State Long-Term Care Ombudsman. An organizational unit within HHSC that:

(A) is headed by the State Ombudsman;

(B) consists of representatives of the Office who are employees of HHSC; and

(C) oversees the statewide implementation of the Ombudsman Program.

(23) [~~(20)~~] Older Americans Act--A federal law (Title 42, United States Code, §3011 et seq.) that establishes and funds a comprehensive service system for persons 60 years of age or older and certain caregivers and family members of persons 60 years of age or older.

(24) Ombudsman database--The statewide reporting system required by §712(c) of the Older Americans Act that is a web-based application in which Ombudsman Program data is entered, stored, maintained, and analyzed.

(25) [~~(21)~~] Ombudsman intern--A person who is being trained to be a volunteer ombudsman in accordance with the Ombudsman Certification Training Manual but has not been certified as a volunteer ombudsman.

(26) [~~(22)~~] Ombudsman Program--The State Long-Term Care Ombudsman Program as defined in 45 CFR §1324.1. The program through which the functions of the Office are carried out by the State Ombudsman and representatives of the Office.

(27) [~~(23)~~] Ombudsman Program records--The files, records, and other information created or maintained by the State Ombudsman or a representative of the Office in the performance of functions of the Ombudsman Program, including:

(A) information relating to complaint investigations;

(B) emails and documentation of phone conversations;

(C) documentation related to the budget and expenditures for the Ombudsman Program; and

(D) information contained in the ombudsman database.

(28) [~~(24)~~] Ombudsman service area--The county or counties, specified in the contract between HHSC and a host agency, in

which the local ombudsman entity performs functions of the Ombudsman Program.

(29) [~~(25)~~] Organizational conflict of interest-- A situation in which an organization is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes an organization:

(A) having any ownership, operational, or investment interest in, or receiving grants or donations from, an LTC facility;

(B) being an association of LTC facilities or an affiliate of such an association;

(C) having responsibility for licensing, surveying, or certifying LTC facilities;

(D) having a governing board member with an ownership, investment, or employment interest in an LTC facility;

(E) providing long-term care to residents of LTC facilities, including the provision of personnel for LTC facilities or the operation of programs that control access to, or services of, LTC facilities;

(F) providing long-term care coordination or case management for residents of LTC facilities;

(G) setting reimbursement rates for LTC facilities;

(H) providing adult protective services, as described in Texas Human Resources Code, Chapter 48;

(I) determining eligibility regarding Medicaid or other public benefits for residents of LTC facilities;

(J) conducting PASRR screening for LTC facility placements;

(K) making decisions regarding admission of residents to, or discharge of residents from, LTC facilities; or

(L) providing guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of LTC facilities.

(30) [~~(26)~~] PASRR--Preadmission Screening and Resident Review. A review performed in accordance with 42 CFR Part 483, Subpart C.

(31) [~~(27)~~] Private and unimpeded access--Has the following meanings:

(A) as used in §88.201(a)(1) of this chapter (relating to Access to Facilities, Residents, and Resident Records), access to enter an LTC facility without interference or obstruction from facility employees, volunteers, or contractors; and

(B) as used in §88.201(a)(2) of this chapter, access to communicate with a resident outside of the hearing and view of other persons without interference or obstruction from facility employees, volunteers, or contractors.

(32) [~~(28)~~] Representative of the Office--A staff ombudsman, volunteer ombudsman, or ombudsman intern.

(33) [~~(29)~~] Resident--A person of any age who resides in an LTC facility.

(34) [~~(30)~~] Resident representative--A person chosen by a resident, through formal or informal means, to act on behalf of the resident to:

(A) support the resident in decision-making;

(B) access medical, social, or other personal information of the resident;

(C) manage financial matters; or

(D) receive notifications.

(35) [~~(31)~~] Staff ombudsman--A person who meets the following criteria, including a managing local ombudsman:

(A) is certified as a staff ombudsman in accordance with §88.102 of this chapter;

(B) performs functions of the Ombudsman Program; and

(C) is an employee or independent contractor of:

(i) a host agency;

(ii) a governmental entity or nonprofit organization that contracts with a host agency, as described in paragraph (16)(B) of this section; or

(iii) HHSC.

~~[(32) State fiscal year--A 12-month period of time from September 1 through August 31.]~~

(36) [~~(33)~~] State Ombudsman--The State Long-term Care Ombudsman, as defined in 45 CFR §1324.1. The person who heads the Office and performs the functions, responsibilities, and duties described in §88.101 of this chapter (relating to Responsibilities of the State Ombudsman and the Office).

(37) [~~(34)~~] Volunteer ombudsman--A person who:

(A) is certified as a volunteer ombudsman in accordance with §88.102 of this chapter;

(B) performs functions of the Ombudsman Program; and

(C) is not an employee or independent contractor of:

(i) HHSC;

(ii) a host agency; or

(iii) a governmental entity or nonprofit organization that contracts with a host agency, as described in paragraph (16)(B) of this section.

(38) [~~(35)~~] Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

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

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Karen Ray
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Health and Human Services Commission
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SUBCHAPTER B. ESTABLISHMENT OF THE OFFICE

26 TAC §§88.101, 88.102, 88.104 - 88.107

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The amendments and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code, §101A.051.

§88.101. Responsibilities of the State Ombudsman and the Office.

(a) The Office is headed by the State Ombudsman.

(b) The State Ombudsman, directly or through a designee:

(1) may designate a local ombudsman entity to perform the functions of the Ombudsman Program in an ombudsman service area;

(2) certifies ombudsmen as described in §88.102 of this subchapter (relating to Certification of an Ombudsman), and refuses, suspends, and terminates certification, as described in §88.103 of this subchapter (relating to Refusal, Suspension, and Termination of Certification of an Ombudsman);

(3) designates local ombudsman entities, and refuses, suspends, or terminates designation in accordance with §88.104 of this subchapter (relating to Designation of a Local Ombudsman Entity);

(4) approves the allocation of federal and state funds provided to a host agency for the local ombudsman entity and determines that program budgets and expenditures of the Office, host agency, and local ombudsman entities are consistent with laws, rules, policies, and procedures governing the Ombudsman Program;

(5) is responsible for the programmatic oversight of a representative of the Office, which includes:

(A) screening a representative of the Office who is employed by HHSC for individual conflicts of interest as described in subsection (d) of this section;

(B) screening a host agency for organizational conflicts of interest, as described in §88.403 of this chapter (relating to Conflicts of Interest Regarding a Host Agency) at least once a year;

(C) directing a representative of the Office to investigate a complaint or take other action related to a complaint; and

(D) providing advice and consultation to a representative of the Office in the performance of functions of the Ombudsman Program;

(6) identifies, investigates, and resolves complaints, made by or on behalf of residents, that relate to action, inaction, or decisions that may adversely affect the health, safety, welfare, and rights of residents;

(7) represents the interests of residents before governmental agencies and pursues administrative, legal, and other remedies to protect residents;

(8) provides administrative and technical assistance to representatives of the Office, local ombudsman entities, and host agencies regarding performance of the functions of the Ombudsman Program;

(9) consults with host agencies and representatives of the Office in the establishment of Ombudsman Program policies and procedures;

(10) monitors the performance of local ombudsman entities, including providing information to a host agency regarding the performance of a staff ombudsman;

(11) investigates grievances made against a representative of the Office regarding the performance of the functions of the Ombudsman Program, as described in Subchapter G [~~§88.309~~] of this chapter (relating to Grievances [~~Regarding Performance of a Representative of the Office or Certification Decisions by the State Ombudsman~~]);

(12) coordinates with a local ombudsman entity and, if appropriate, a host agency about concerns the State Ombudsman has regarding a representative of the Office, as described in §88.103(e) of this subchapter (relating to Refusal, Suspension, and Termination of Certification of an Ombudsman); and

(13) publishes an annual report in accordance with 45 CFR §1324.13(g).

(c) For purposes of determining if a representative of the Office has an individual conflict of interest in accordance with this section, the state of Texas is the ombudsman service area.

(d) The State Ombudsman:

(1) requires an applicant for a position within the Office to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" to identify an individual conflict of interest of the applicant;

(2) requires a representative of the Office employed by HHSC to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" at least once a year and if the representative of the Office identifies an individual conflict of interest; and

(3) reviews a form required by paragraphs (1) and (2) of this subsection to determine if an identified conflict of interest can be removed or remedied.

(e) The Office makes decisions independent of HHSC, including decisions about:

(1) the disclosure of confidential information maintained by the Ombudsman Program;

(2) recommendations to changes in federal, state, and local laws, rules, regulations, and other governmental policies and actions that relate to the health, safety, welfare, and rights of residents; and

(3) the provision of information to public and private agencies, legislators, the media, and other persons regarding problems and concerns about residents and recommendations related to the problems and concerns.

(f) In accordance with the Older Americans Act, §712(a)(3), [~~and~~] 45 CFR §1324.11(e)(5), and §1324.13(a)(7) - (9), the Office is responsible for:

(1) analyzing, commenting on, and monitoring the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to LTC

facilities and services and to the health, safety, welfare, and rights of residents;

(2) recommending any changes in such laws, rules, regulations, policies, and actions as the Office determines to be appropriate;

(3) providing information to public and private agencies, legislators, the media, and other persons regarding problems and concerns about residents and providing recommendations related to the problems and concerns;

(4) overseeing activities described in paragraphs (1) - (3) of this subsection, including coordination of such activities carried out by representatives of the Office, as described in §88.302(a)(2)(A) of this chapter (relating to Requirement to Ensure a Representative of the Office Performs Functions of the Ombudsman Program);

(5) coordinating with and promoting the development of citizen organizations that have a purpose consistent with the interests of residents;

(6) promoting and providing technical support for the development of resident and family councils; and

(7) providing ongoing support as requested by resident and family councils to protect the well-being and rights of residents.

§88.102. Certification of an Ombudsman.

(a) The State Ombudsman initially certifies a person described in §88.2(35)(C)(i) or (ii) of this chapter (relating to Definitions) as a staff ombudsman [~~described in §88.2(31)(C)(i) or (ii) of this chapter (relating to Definitions)~~] , other than a managing local ombudsman, if:

(1) the person has one of the following:

(A) a bachelor's or advanced degree from an accredited college or university; or

(B) a high school diploma or a certificate recognized by the state in which it was issued as the equivalent of a high school diploma and at least four years of one, or a combination, of the following:

(i) paid experience in a social, behavioral, health, or human service field; or

(ii) experience as a certified ombudsman;

(2) the person has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;

(3) the person:

(A) does not have an individual conflict of interest according to HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" completed by the person; or

(B) has an individual conflict of interest that has been remedied, as described in §88.303 of this chapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity);

(4) the person successfully completes the certification training provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual; and

(5) the local ombudsman entity recommends to the Office, using HHSC form "Certified Ombudsman Application," that the person be approved as a certified ombudsman in accordance with §88.301(a) of this chapter (relating to Requirements to Recommend Certification as an Ombudsman).

(b) The State Ombudsman initially certifies a person as a staff ombudsman to serve as the managing local ombudsman if:

(1) the person meets the criteria in subsection (a)(1) - (3) of this section;

(2) the person successfully completes certification training provided by the Office; and

(3) the person demonstrates competency to serve as a managing local ombudsman.

(c) The State Ombudsman initially certifies a person as a volunteer ombudsman if:

(1) the person meets the criteria in subsection (a)(2) - (4) of this section;

(2) the local ombudsman entity recommends to the Office, using HHSC form "Certified Ombudsman Application," that the person be approved as a certified ombudsman in accordance with §88.301(b) of this chapter; and

(3) the person successfully completes an internship in accordance with the Ombudsman Policies and Procedures Manual.

(d) The State Ombudsman initially certifies a person to be a staff ombudsman or volunteer ombudsman by signing HHSC form "Certified Ombudsman Application."

(e) The State Ombudsman certifies a person to be a staff ombudsman or volunteer ombudsman for a period of two years. After initial certification, the Office renews the certification of a staff ombudsman or volunteer ombudsman if:

(1) for a staff ombudsman, the staff ombudsman:

(A) meets the requirements in subsection (a)(1) - (3) of this section;

(B) completes continuing education provided by the Office; and

(C) demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual; and

(2) for a volunteer ombudsman, the volunteer ombudsman:

(A) meets the requirements in subsection (a)(2) and (3) of this section;

(B) completes continuing education provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual; and

(C) demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual.

(f) The State Ombudsman certifies a person described in §88.2(35)(C)(iii) of this chapter as a staff ombudsman [~~described in §88.2(31)(C)(iii) of this chapter~~] if the person:

(1) has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;

(2) meets one of the following;

(A) does not have an individual conflict of interest according to HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" completed by the person; or

(B) has an individual conflict of interest that has been remedied by the State Ombudsman; and

(3) successfully completes the certification training provided by the Office.

§88.104. Designation of a Local Ombudsman Entity.

(a) The State Ombudsman may designate a local ombudsman entity to perform the functions of the Ombudsman Program in an ombudsman service area.

(b) The State Ombudsman does not designate a local ombudsman entity if the host agency or a governmental entity or nonprofit organization contracting with the host agency, as described in §88.2(19)(B) [~~§88.2(16)(B)~~] of this chapter (relating to Definitions):

(1) has an organizational conflict of interest described in §88.2(29)(A) - (C) [~~§88.2(25)(A) - (C)~~] of this chapter; or

(2) has an organizational conflict of interest described in §88.2(29)(D) - (L) [~~§88.2(25)(D) - (L)~~] of this chapter that has not been removed or remedied as approved by the State Ombudsman in accordance with §88.403(d) of this chapter (relating to Conflicts of Interest Regarding a Host Agency).

(c) The State Ombudsman may remove the designation of a local ombudsman entity if:

(1) the host agency or local ombudsman entity has policies, procedures, or practices that the State Ombudsman determines to be in conflict with the laws, rules, policies, or procedures governing the Ombudsman Program; or

(2) the host agency or local ombudsman entity fails to comply with the requirements of this chapter including:

(A) not removing or remedying an organizational or individual conflict of interest as described in §88.303 of this chapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity) and §88.403 of this chapter;

(B) not submitting: [~~a plan of correction required by §88.105(f) of this subchapter (relating to Fiscal Management and Monitoring of a Local Ombudsman Entity) or a modified plan of correction required by §88.105(g) of this subchapter; or~~]

(i) a written plan of correction required by:

(I) §88.106(d) of this subchapter (relating to On-site Monitoring of a Local Ombudsman Entity and a Host Agency);

(II) §88.107(d) of this subchapter (relating to Desk Review Monitoring of a Local Ombudsman Entity); and

(III) 88.409(b) of this chapter (relating to Non-compliance by a Host Agency); or

(ii) a modified written plan of correction required by:

(I) §88.106(e) of this subchapter;

(II) §88.107(e) of this subchapter; and

(III) §88.409(c) of this chapter; or

(C) not completing actions in accordance with an approved [~~obtaining approval by the Office of a~~] plan of correction or an approved modified plan of correction as required by: [~~§88.105(f) of this subchapter or a modified plan of correction required by §88.105(g) of this subchapter~~]

(i) §88.106(d) of this subchapter;

(ii) §88.107(d) of this subchapter; and

(iii) §88.409(b) of this chapter.

(d) If the State Ombudsman removes the designation of a local ombudsman entity, the Office notifies the local ombudsman entity and host agency, in writing, of the decision to remove the designation.

(e) A host agency may request reconsideration of the State Ombudsman's decision to remove the designation of the local ombudsman entity. To request a reconsideration of the decision, the host agency must, within 10 days after receiving the notification of removal of the designation, submit a written request for reconsideration and additional information supporting the request to the State Ombudsman.

(f) If the removal of designation of a local ombudsman entity results in termination of the contract between HHSC and the host agency, the host agency may appeal the termination in accordance with §213.7 of this title [~~40 TAC §81.15~~] (relating to Appeal Procedures for Area Agency on Aging Contractors).

§88.105. Fiscal Management [~~and Monitoring~~] of a Local Ombudsman Entity.

(a) The State Ombudsman:

(1) determines the use of the federal and state funds appropriated for the operation of the Office;

(2) approves the allocation of federal and state funds to a host agency for the operation of the Ombudsman Program in accordance with subsection (b) of this section; and

(3) determines that Ombudsman Program budgets and expenditures are for an appropriate amount and relate to functions of the Ombudsman Program.

(b) The [~~This subsection describes how the~~] State Ombudsman distributes funds through the HHSC Office of the Area Agencies on Aging to a host agency for the operation of the Ombudsman Program in accordance with the Older Americans Act, §712(a)(2) [~~§306(a)(9)~~]. Annually, a host agency is allocated:

(1) [~~A host agency is allocated~~] a base amount of $3,000 from federal funds appropriated or otherwise available for the Ombudsman Program; [~~. Additional federal funds are allocated as follows:~~]

[~~(A) for state fiscal year 2019:~~]

~~*(i)* 55 percent of the additional funds is allocated based on the licensed capacity of nursing facilities in the ombudsman service area;~~]

~~*(ii)* 20 percent of the additional funds is allocated based on the number of assisted living facilities in the ombudsman service area; and~~]

~~*(iii)* 25 percent of the additional funds is allocated based on the number of certified ombudsmen in the ombudsman service area who actively performed functions of the Ombudsman Program during the previous state fiscal year;~~]

[~~(B) for state fiscal year 2020:~~]

~~*(i)* 65 percent of the additional funds is allocated based on the licensed capacity of nursing facilities in the ombudsman service area;~~]

~~*(ii)* 10 percent of the additional funds is allocated based on the number of assisted living facilities in the ombudsman service area; and~~]

~~*(iii)* 25 percent of the additional funds is allocated based on the number of certified ombudsmen in the ombudsman service area who actively performed functions of the Ombudsman Program during the previous state fiscal year; and~~]

[(C) for state fiscal year 2021 and later:]

[(i) 75 percent of the additional funds is allocated based on the licensed capacity of nursing facilities in the ombudsman service area; and]

[(ii) 25 percent of the additional funds is allocated based on the number of certified ombudsmen in the ombudsman service area who actively performed functions of the Ombudsman Program during the previous state fiscal year.]

(2) additional federal funds:

(A) 75 percent of which is based on the licensed capacity of nursing facilities in the ombudsman service area; and

(B) 25 percent of which is based on the number of certified ombudsmen in the ombudsman service area who actively performed functions of the Ombudsman Program during the previous federal fiscal year; and

(3) [(2) A host agency is allocated funds from] state general revenue funds for the performance of [appropriated or otherwise available for the] Ombudsman Program functions based on the following factors:

(A) the number of assisted living facilities in the ombudsman service area on or about July 1 of each year;

(B) the number of assisted living facilities in the ombudsman service area located in a rural area, as determined by the State Ombudsman, on or about July 1 of each year; and

(C) the type and licensed capacity of assisted living facilities in the ombudsman service area on or about July 1 of each year.

[(c) The Office conducts an onsite visit or a desk review to monitor:]

[(1) the performance of functions of the Ombudsman Program by a representative of the Office;]

[(2) the compliance by a local ombudsman entity with Subchapter D of this chapter (relating to Requirements of a Local Ombudsman Entity); and]

[(3) the compliance by a host agency with Subchapter E of this chapter (relating to Requirements of a Host Agency).]

[(d) The Office conducts at least one onsite visit every three years. An onsite visit includes:]

[(1) observing and evaluating a visit of a managing local ombudsman to an LTC facility; and]

[(2) reviewing information regarding a local ombudsman entity's compliance with subchapter D of this chapter, including documentation regarding:]

[(A) the training of representatives of the Office;]

[(B) identification of individual conflicts of interest; and]

[(C) expenditures for the Ombudsman Program, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office.]

[(e) The Office:]

[(1) selects a date for an onsite visit in consultation with the managing local ombudsman;]

[(2) notifies the host agency of a scheduled onsite visit at least 30 days before the visit; and]

[(3) within 30 days after the Office completes an onsite visit, provides to the local ombudsman entity and the host agency a written report containing findings from the visit.]

[(f) The host agency must, within 30 days after receipt of the written report described in subsection (e)(3) of this section, submit a written plan of correction to the Office that describes:]

[(1) the action that will be taken to correct each finding; and]

[(2) the date by which each action will be completed.]

[(g) Within 30 days after the date the Office receives the plan of correction required by subsection (f) of this section, the Office notifies the local ombudsman entity and host agency of whether the plan is approved or requires modification. If the Office approves the plan, the local ombudsman entity must complete the actions contained in the plan of correction by the dates in the plan. If the Office determines that the plan requires modification, the host agency must submit a modified written plan of correction within a time period determined by the Office for approval by the Office.]

[(h) The Office may take one or both of the following actions to determine if the local ombudsman entity has completed the actions in accordance with an approved plan of correction or approved modified plan of correction:]

[(1) request that the local ombudsman entity submit evidence of correction to the Office; or]

[(2) visit the local ombudsman entity.]

[(i) The Office:]

[(1) may conduct a desk review at any time; and]

[(2) conducts at least one desk review every three months to determine if a local ombudsman entity:]

[(A) is in compliance with §88.305(a)(3) and (c)(2) of this chapter (relating to Complaints) and §88.307(a) of this chapter (relating to Requirements Regarding LTC Visits and Submitting Information to the Office); and]

[(B) is making progress toward meeting performance measure projections required by §88.405(a) of this chapter (relating to Meeting Performance Measure Projections).]

[(j) If the Office identifies an issue of non-compliance or other concern from a desk review, the Office sends the local ombudsman entity and host agency written results of the desk review within 30 days after the Office completes the desk review.]

[(k) Upon request by a local ombudsman entity or host agency, the Office provides technical assistance to a local ombudsman entity or host agency regarding developing a plan of correction or addressing an issue of non-compliance or other concern from a desk review.]

§88.106. Onsite Monitoring of a Local Ombudsman Entity and a Host Agency.

(a) The Office conducts an onsite visit of a local ombudsman entity and a host agency to monitor:

(1) the performance of functions of the Ombudsman Program by a representative of the Office;

(2) the compliance by a local ombudsman entity with Subchapter D of this chapter (relating to Requirements of a Local Ombudsman Entity);

(3) the compliance by a host agency with Subchapter E of this chapter (relating to Requirements of a Host Agency);and

(4) the compliance by a local ombudsman entity and a host agency with Subchapter G of this chapter (relating to Grievances).

(b) The Office conducts at least one onsite visit every three years. An onsite visit includes:

(1) observing and evaluating a visit of a managing local ombudsman to an LTC facility; and

(2) reviewing information regarding a local ombudsman entity's compliance with Subchapter D of this chapter, including documentation regarding:

(A) the training of representatives of the Office;

(B) identification of individual conflicts of interest; and

(C) expenditures for the Ombudsman Program, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office.

(c) The Office:

(1) selects a date for an onsite visit in consultation with the managing local ombudsman;

(2) notifies the host agency of a scheduled onsite visit at least 30 days before the visit; and

(3) within 45 days after the Office completes an onsite visit, provides to the local ombudsman entity and the host agency a written report that may contain findings and recommendations from the visit.

(d) The host agency must, within 45 days after receipt of the written report described in subsection (c)(3) of this section that contains one or more findings, submit a written plan of correction to the Office that describes:

(1) the action that will be taken to correct each finding; and

(2) the date by which each action will be completed.

(e) Within 45 days after the date the Office receives the plan of correction required by subsection (d) of this section, the Office notifies the local ombudsman entity and host agency of whether the plan is approved or requires modification. If the Office approves the plan, the local ombudsman entity must complete the actions contained in the plan of correction by the dates in the plan. If the Office determines that the plan requires modification, the host agency must submit a modified written plan of correction within a time period determined by the Office for approval by the Office.

(f) To determine if the local ombudsman entity or host agency has completed the actions in accordance with an approved plan of correction or approved modified plan of correction, the Office takes one or more of the following actions:

(1) reviews information in the ombudsman database;

(2) requests that the local ombudsman entity or host agency submit evidence of correction to the Office; and

(3) visits the local ombudsman entity.

(g) If the Office determines that the local ombudsman entity or host agency did not complete an action in accordance with an approved plan of correction or an approved modified plan of correction:

(1) the Office may allow the local ombudsman entity or host agency additional time to complete the action;

(2) HHSC may impose a Level Two sanction in accordance with §213.5 of this title (relating to Compliance with Contractor Responsibilities, Rewards and Sanctions); or

(3) the State Ombudsman may remove the designation of the local ombudsman entity as described in §88.104(c)(2)(B) of this subchapter (relating to Designation of a Local Ombudsman Entity).

(h) If the Office allows a local ombudsman entity additional time to complete an action as described in subsection (g)(1) of this section and the Office determines that the local ombudsman entity or host agency did not complete the action within the time allowed:

(1) HHSC may impose a Level Two sanction in accordance with §213.5 of this title; or

(2) the State Ombudsman may remove the designation of the local ombudsman entity as described in §88.104(c)(2)(B) of this subchapter.

(i) Upon request by a local ombudsman entity or host agency, the Office provides technical assistance to a local ombudsman entity or host agency regarding developing a plan of correction.

§88.107. Desk Review Monitoring of a Local Ombudsman Entity.

(a) The Office conducts a desk review of a local ombudsman entity to determine if the local ombudsman entity:

(1) is in compliance with §88.305(a)(3) and (c)(2) of this chapter (relating to Complaints) and §88.307(a) of this chapter (relating to Requirements Regarding LTC Facility Visits and Submitting Information to the Office);

(2) is making progress toward meeting:

(A) performance measures required by §88.405(a)(3) - (6) of this chapter (relating to Performance Measures); and

(B) performance measure projections required by §88.405(b) of this chapter; and

(3) has conducted at least one visit to each LTC facility in the ombudsman service area each quarter of a federal fiscal year as required by the Ombudsman Policies and Procedures Manual.

(b) The Office:

(1) conducts at least one desk review of a local ombudsman entity every three months; and

(2) may conduct a desk review of a local ombudsman entity at any time.

(c) If the Office identifies a finding from a desk review, the Office provides to the local ombudsman entity and the host agency a written report that contains the finding and may include recommendations.

(d) If a local ombudsman entity or host agency receives a written report described in subsection (c) of this section, the host agency, within 14 days after receipt of the report, must submit a written plan of correction to the Office that describes:

(1) the action that will be taken to correct each finding in the report; and

(2) the date by which each action will be completed.

(e) Within 14 days after the date the Office receives the plan of correction required by subsection (d) of this section, the Office notifies the local ombudsman entity and host agency of whether the plan is approved or requires modification. If the Office approves the plan, the local ombudsman entity must complete the actions contained in the plan of correction by the dates in the plan. If the Office determines that the plan requires modification, the host agency must submit a modified written plan of correction within a time period determined by the Office for approval by the Office.

(f) To determine if the local ombudsman entity has completed the actions in accordance with an approved plan of correction or approved modified plan of correction, the Office takes one or more of the following actions:

(1) reviews information in the ombudsman database;

(2) requests that the local ombudsman entity submit evidence of correction to the Office; and

(3) visits the local ombudsman entity.

(g) If the Office determines that the local ombudsman entity did not complete an action in accordance with an approved plan of correction or a modified plan of correction:

(1) the Office may allow the local ombudsman entity additional time to complete the action;

(2) HHSC may impose a Level Two sanction in accordance with §213.5 of this title (relating to Compliance with Contractor Responsibilities, Rewards and Sanctions); or

(3) the State Ombudsman may remove the designation of the local ombudsman entity as described in §88.104(c)(2)(B) of this subchapter (relating to Designation of a Local Ombudsman Entity).

(h) If the Office allows a local ombudsman entity additional time to complete an action as described in subsection (g)(1) of this section and the Office determines that the local ombudsman entity did not complete the action within the time allowed:

(1) HHSC may impose a Level Two sanction in accordance with §213.5 of this title; or

(2) the State Ombudsman may remove the designation of the local ombudsman entity as described in §88.104(c)(2)(B) of this subchapter.

(i) Upon request by a local ombudsman entity or host agency, the Office provides technical assistance to a local ombudsman entity or host agency regarding developing a plan of correction.

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

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Karen Ray
Chief Counsel
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SUBCHAPTER C. ACCESS BY THE STATE OMBUDSMAN AND REPRESENTATIVES OF THE OFFICE

26 TAC §88.201, §88.202

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The amendment and new section affect Texas Government Code §531.0055 and Texas Human Resources Code, §101A.051.

§88.201. Access to Facilities, Residents, and Resident Records.

(a) The State Ombudsman and a representative of the Office have:

(1) immediate, private, and unimpeded access to enter an LTC facility, in accordance with the Older Americans Act, §712(b)(1)(A) and 45 CFR §1324.11(e)(2)(i):

(A) at any time during a facility's regular business hours or regular visiting hours; and

(B) at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated;

(2) immediate, private, and unimpeded access to a resident, in accordance with the Older Americans Act, §712(b)(1)(A) and 45 CFR §1324.11(e)(2)(ii); and

(3) access to the name and contact information of a resident representative, if any, when the State Ombudsman or representative of the Office determines the information is needed to perform functions of the Ombudsman Program, in accordance with 45 CFR §1324.11(e)(2)(iii).

(b) Disclosure of information by the State Ombudsman or a representative of the Office related to any complaint, including a description of the circumstances to be investigated, is subject to requirements in the Ombudsman Policies and Procedures Manual related to disclosure of confidential information.

(c) The State Ombudsman and a certified ombudsman have immediate access:

(1) in accordance with the Older Americans Act, §712(b)(1)(B) and 45 CFR §1324.11(e)(2), to all medical, social and other [~~files,~~] records relating to a resident regardless of format, [~~and other information concerning a resident,~~] including an incident report involving the resident, if:

(A) in accordance with 45 CFR §1324.11(e)(2)(iv)(A) or (B), the State Ombudsman or certified ombudsman has the informed consent of the resident or legally authorized representative;

(B) in accordance with the Older Americans Act, §712(b)(1)(B)(i)(II), the resident is unable to communicate informed consent to access and has no legally authorized representative; or

(C) in accordance with 45 CFR §1324.11(e)(2)(iv)(C), such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access to the records, files, and other information;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and

(iii) if it is the certified ombudsman seeking access to the records, files, or other information the certified ombudsman obtains the approval of the State Ombudsman to access the records, files,

or other information without the legally authorized representative's consent; and

(2) in accordance with 45 CFR §1324.11(e)(2)(v), to the administrative records, policies, and documents of an LTC facility to which the residents or general public have access.

(d) In accordance with 45 CFR §1324.11(e)(2), access by the State Ombudsman and a certified ombudsman to a record, as described in subsection (c) of this section, includes obtaining a copy of the record upon request.

(e) [~~(d)~~] The rules adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Part 160 and 45 CFR Part 164, subparts A and E, do not preclude an LTC facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (a)(3) and (c) of this section are otherwise met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

§88.202. Notification to LTC Facility of Authorization to Access Resident Records.

A certified ombudsman must, at the request of an LTC facility, provide a completed HHSC form "Acknowledgement of Ombudsman Access to Confidential Record" to the facility at the time the certified ombudsman is requesting access to a confidential record concerning a resident from the facility as described in §88.201(c) of this subchapter (relating to Access to Facilities, Residents, and Resident Records).

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Karen Ray
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SUBCHAPTER D. REQUIREMENTS OF A LOCAL OMBUDSMAN ENTITY

26 TAC §88.305, §88.307

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The amendment and new section affect Texas Government Code §531.0055 and Texas Human Resources Code, §101A.051.

§88.305. Complaints.

(a) A local ombudsman entity must:

(1) ensure that a person is allowed to make a complaint as follows:

(A) in writing, including by email;

(B) in person; and

(C) by telephone;

(2) initiate a complaint if the local ombudsman entity becomes aware of circumstances that may adversely affect the health, safety, welfare, or rights of a resident;

(3) respond to the complainant within two business days after receipt of the complaint, except as provided in subsection (c)(2) of this section regarding a complaint that is an allegation of abuse, neglect, or exploitation of a resident; and

(4) ensure that a certified ombudsman initiates an investigation of a complaint as soon as practicable after receipt of the complaint.

(b) A local ombudsman entity must ensure that a certified ombudsman investigates complaints in accordance with this subsection.

(1) If a certified ombudsman receives a complaint, the certified ombudsman must:

(A) document the nature of the complaint;

(B) determine:

(i) whether the complaint is appropriate for the certified ombudsman to investigate;

(ii) if any attempts have been made to resolve the complaint; and

(iii) the outcome sought by the complainant;

(C) if the complainant is not the resident, inform the complainant that the complaint will be investigated only if:

(i) the resident or legally authorized representative communicates informed consent [~~consents~~] to the investigation; [~~or~~]

(ii) in accordance with 45 CFR §1324.19(b)(2)(iii), the resident is unable to communicate informed consent and has no legally authorized representative; or [~~and~~]

(iii) in accordance with 45 CFR §1324.19(b)(7), the resident is unable to communicate informed consent to investigate the complaint, has a legally authorized representative, and:

(I) the complaint relates to an action, inaction, or decision of the legally authorized representative that may adversely affect the health, safety, welfare, or rights of the resident;

(II) the certified ombudsman does not have evidence that the resident would object to the complaint being investigated;

(III) the certified ombudsman has reasonable cause to believe that it is in the best interest of the resident to investigate the complaint; and

(IV) the State Ombudsman approves the request of the certified ombudsman to investigate the complaint; and

(D) in accordance with the Ombudsman Policies and Procedures Manual:

(i) seek the informed consent of the resident or legally authorized representative to investigate the complaint; [~~or~~]

(ii) determine if authority exists to investigate the complaint because, in accordance with 45 CFR §1324.19(b)(2)(iii), the resident is unable to communicate informed consent and has no legally authorized representative; [.]

(iii) request approval from the State Ombudsman for the certified ombudsman to investigate the complaint by making a referral to the appropriate agency for investigation in accordance with 45 CFR §1324.19(b)(7), if:

(I) the resident has a legally authorized representative;

(II) based on the reasonable belief of the certified ombudsman, the complaint relates to an action, inaction or decision by the legally authorized representative that may adversely affect the health, safety, welfare, or rights of the resident;

(III) the resident is unable to communicate informed consent to investigate the complaint;

(IV) the certified ombudsman does not have evidence that the resident would object to the complaint being investigated; and

(V) the certified ombudsman has reasonable cause to believe that it is in the best interest of the resident to investigate the complaint; and

(iv) document one of the following in the ombudsman database:

(I) whether a resident who is able to communicate informed consent communicated informed consent to investigate the complaint;

(II) whether the legally authorized representative communicated informed consent to investigate the complaint;

(III) whether the certified ombudsman has authority to investigate the complaint without consent because the resident is unable to communicate informed consent and does not have a legally authorized representative; or

(IV) whether the State Ombudsman has given approval to investigate the complaint in accordance with clause (iii) of this subparagraph.

(2) If the complainant is the resident and the certified ombudsman has determined the complaint is appropriate for ombudsman investigation and has obtained informed consent to investigate the complaint or has authority to investigate the complaint in accordance with 45 CFR §1324.19(b)(2)(iii), the certified ombudsman must:

(A) determine what, if any, federal or state law or rule applies to the complaint;

(B) observe the environment of the resident and situations in the LTC facility related to the complaint;

(C) interview relevant witnesses;

(D) review relevant records, if necessary, including confidential information if consent or other authority is obtained in accordance with the Ombudsman Policies and Procedures Manual;

(E) if the complaint relates to a regulatory violation, inform the resident of the option to report the complaint to the appropriate regulatory or law enforcement authority;

(F) work with the resident to develop a plan of action for resolution of the complaint;

(G) encourage the resident to participate in the process to resolve the complaint; and

(H) determine the resident's satisfaction with the outcome of the investigation.

(3) If the complainant is not the resident and the certified ombudsman has determined the complaint is appropriate for ombudsman investigation and has obtained consent to investigate the complaint, the certified ombudsman must:

(A) communicate with the resident about the complaint and obtain the resident's perspective about the complaint, if the resident is able to communicate;

(B) determine what, if any, federal or state law or rule applies to the complaint;

(C) inform the resident or legally authorized representative of the residents' rights and other law related to the complaint;

(D) observe the environment of the resident and situations in the LTC facility related to the complaint;

(E) interview relevant witnesses;

(F) review relevant records, if necessary, including confidential records if consent or other authority is obtained in accordance with the Ombudsman Policies and Procedures Manual;

(G) if the complaint relates to a regulatory violation, inform the resident or the legally authorized representative of the option to report the complaint to the appropriate regulatory or law enforcement authority;

(H) work with the resident or legally authorized representative to develop a plan of action for resolution of the complaint;

(I) encourage the resident or legally authorized representative to participate in the process to resolve the complaint; and

(J) determine the resident's or legally authorized representative's satisfaction with the outcome.

(4) If the complainant is not the resident and the certified ombudsman has determined the complaint is appropriate for ombudsman investigation and has authority to investigate the complaint in accordance with 45 CFR §1324.19(b)(2)(iii), the certified ombudsman must:

(A) determine what, if any, federal or state law, regulation, or rule applies to the complaint;

(B) determine how many residents are potentially affected by the complaint;

(C) observe the environment of the resident and situations in the LTC facility related to the complaint;

(D) interview relevant witnesses;

(E) review relevant records, if necessary, including confidential records if consent or other authority is obtained in accordance with the Ombudsman Policies and Procedures Manual; and

(F) determine whether the complaint is satisfactorily resolved.

(5) As described in paragraph (1)(D)(iii) of this subsection, if the complainant is not the resident and the certified ombudsman requests approval to investigate the complaint by making a referral to the appropriate agency for investigation in accordance with 45 CFR §1324.19(b)(7), the certified ombudsman must:

(A) if the State Ombudsman approves the request:

(i) make the referral to the appropriate agency; and

(ii) determine whether the complaint is satisfactorily resolved; or

(B) if the State Ombudsman does not approve the request, follow the instruction of the State Ombudsman.

(6) [~~(5)~~] If the resident or legally authorized representative declines to consent to have the complaint investigated, the certified ombudsman must:

(A) not investigate the complaint;

(B) inform the complainant that the complaint will not be investigated because the resident or legally authorized representative declined to consent; and

(C) advise the complainant of his or her options to pursue resolution.

(7) [~~(6)~~] If a certified ombudsman identifies a complaint that affects a substantial number of residents in an LTC facility, the certified ombudsman may investigate and work to resolve the complaint without obtaining consent from each resident to investigate the complaint. In investigating the complaint, a certified ombudsman may review confidential records only if consent or other authority is obtained in accordance with the Ombudsman Policies and Procedures Manual.

(8) [~~(7)~~] A certified ombudsman must document the complaint investigation in the ombudsman database in accordance with the Ombudsman Policies and Procedures Manual.

(c) If a complaint is an allegation of abuse, neglect, or exploitation of a resident, a certified ombudsman:

(1) must not investigate whether abuse, neglect, or exploitation of a resident has occurred;

(2) within one business day after receipt of the complaint, inform the complainant of the appropriate investigative authority to report the allegation; and

(3) comply with the Ombudsman Policies and Procedures Manual.

(d) In accordance with 45 CFR §1324.11(e)(3)(iv), a representative of the Office must not, except as provided in §1324.19(b)(5) - (8), report allegations of abuse, neglect, or exploitation under state law, including Texas Human Resources Code, Chapter 48, without appropriate consent or court order.

(e) Confidential information described in §88.304(a) of this subchapter (relating to Disclosure of Confidential Information; Exclusion from Reporting Requirements Regarding Abuse, Neglect, or Exploitation; and Provision of Records to the Office) may only be disclosed in accordance with §88.304 of this subchapter.

§88.307. Requirements Regarding LTC Facility Visits and Submitting Information to the Office.

(a) A local ombudsman entity must ensure each LTC facility in the ombudsman service area is visited by a certified ombudsman in accordance with the Ombudsman Policies and Procedures Manual during each federal fiscal year to:

(1) monitor residents' health, safety, welfare, and rights; and

(2) receive, investigate, and resolve complaints on behalf of residents.

(b) A local ombudsman entity must submit activities and casework, as described in the Ombudsman Policies and Procedures Manual, to the Office by entering information into the ombudsman database within 14 days after completion of the activity or receipt of a complaint. [~~by 8:00 a.m. on:~~]

[~~(1) the 16th day of each month if the 16th is a business day; or~~]

[~~(2) if the 16th day of the month is not a business day, the first business day immediately following the 16th.~~]

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

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Karen Ray
Chief Counsel
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26 TAC §88.309

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code, §101A.051.

§88.309. Grievances Regarding Performance of a Representative of the Office or Certification Decisions by the State Ombudsman.

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

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SUBCHAPTER E. REQUIREMENTS OF A HOST AGENCY

26 TAC §§88.403 - 88.409

STATUTORY AUTHORITY

The amendments and new sections authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and

provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The amendments and new sections affect Texas Government Code §531.0055 and Texas Human Resources Code, §101A.051.

§88.403. Conflicts of Interest Regarding a Host Agency.

(a) If a host agency, or a governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(19)(B) [~~§88.2(16)(B)~~] of this chapter (relating to Definitions), has an organizational conflict of interest, the host agency must, within 30 days after identifying the conflict of interest:

(1) complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," including a recommended action to:

(A) remove a conflict of interest described in §88.2(29)(A) - (C) [~~§88.2(25)(A) - (C)~~] of this chapter (relating to Definitions); and

(B) remove or remedy a conflict of interest described in §88.2(29)(D) - (L) [~~§88.2(25)(D) - (L)~~] of this chapter; and

(2) submit the completed form to the Office.

(b) A host agency must ensure that HHSC form "Individual Conflict of Interest Screening of a Representative of the Office," is completed by a managing local ombudsman:

(1) at least once a year; and

(2) if the host agency identifies an individual conflict of interest involving the managing local ombudsman.

(c) Within five business days after identifying an individual conflict of interest regarding a managing local ombudsman, the host agency must:

(1) complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," including a recommended action to remove or remedy the conflict of interest; and

(2) submit the completed form to the Office.

(d) If the Office receives a completed form described in subsection (a) or (c) of this section, the State Ombudsman reviews the form and approves, modifies, or rejects the recommended action to remove or remedy the conflict of interest.

(1) If it is not possible to remove or remedy an organizational conflict of interest of the host agency, the State Ombudsman removes the designation of the local ombudsman entity, as described in §88.104(c)(2)(A) of this chapter (relating to Designation of a Local Ombudsman Entity).

(2) If it is not possible to remove or remedy an individual conflict of interest of the managing local ombudsman, the State Ombudsman refuses to initially certify or terminates certification of the managing local ombudsman as described in §88.103(a)(2) and (d)(4) of this chapter (relating to Refusal, Suspension, and Termination of Certification of an Ombudsman).

§88.404. Provision of Records to the Office, Disclosure of Confidential Information, and Allegations of Abuse, Neglect, or Exploitation.

(a) In accordance with the Older Americans Act, §712(d)(2)(A) and 45 CFR §1324.13(e)(1), the State Ombudsman has the sole authority to make determinations concerning the disclosure of confidential information, as described in §88.304(a) of this chapter (relating to Disclosure of Confidential Information, Exclusion from Reporting Requirements Regarding Abuse, Neglect, and Exploitation, and Provision of Records to the Office).

(b) A request to disclose written confidential information is responded to in accordance with this subsection.

(1) If a person who is not a representative of the Office but works for a host agency or governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(19)(B) [~~§88.2(16)(B)~~] of this chapter (relating to Definitions), receives a request to disclose written confidential information, as described in §88.304(a) of this chapter, the host agency must ensure that the State Ombudsman is immediately:

(A) notified of the request; and

(B) provided any communication from the requestor.

(2) If the State Ombudsman receives a request to disclose written confidential information, the State Ombudsman:

(A) sends written acknowledgement of receipt of the request to the host agency;

(B) reviews the request and responds to the requestor within a time frame required by applicable state or federal law; and

(C) sends a copy of the response to the host agency.

(c) A host agency must ensure that, except as provided in 45 CFR §1324.19(b)(5) - (8), a representative of the Office is not required to report allegations of abuse, neglect, or exploitation under state law, including Texas Human Resources Code, Chapter 48, without appropriate consent or court order.

(d) A host agency must, at the request of the Office, immediately provide Ombudsman Program records that do not contain confidential information, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office, to the Office.

§88.405. Performance Measures.

(a) The performance measures of a local ombudsman entity are described in this subsection.

(1) The number of certified ombudsmen who will, during a federal fiscal year:

(A) conduct visits at LTC facilities; and

(B) identify and investigate complaints.

(2) The percentage of complaints that will be resolved or partially resolved in a federal fiscal year.

(3) The number of visits to assisted living facilities by certified ombudsmen that will occur during a federal fiscal year, as required by the Ombudsman Policies and Procedures Manual.

(4) The number of visits to nursing facilities by certified ombudsmen that will occur during a federal fiscal year, as required by the Ombudsman Policies and Procedures Manual.

(5) Compliance with the complaint response requirements described in §88.305(a)(3) and §88.305(c)(2) of this chapter (relating to Complaints).

(6) Compliance with the requirement described in §88.307(b) of this chapter (relating to Requirements Regarding LTC Facility Visits and Submitting Information to the Office).

(7) Compliance with the minimum expenditure requirement described in §88.406(a) of this subchapter (relating to Requirements Regarding Expenditures for the Ombudsman Program).

(b) A host agency must work with the local ombudsman entity to develop projections for the performance measures described in subsection (a)(1) - (2) of this section for a federal fiscal year and submit the projections to the Office by July 31st of each year using the HHSC form "Ombudsman Performance Measure Projections." The Office reviews a form submitted by the host agency and approves the form or recommends modifications to the form. If the Office recommends modifications to the form, the host agency must submit a revised form to the Office for approval within a time period determined by the Office.

(c) A host agency must ensure that a local ombudsman entity, by the end of each federal fiscal year, meets the performance measure projections approved by the Office as described in subsection (b) of this section by:

(1) being within a variance of minus ten percent of the projections; or

(2) exceeding the projections.

(d) A host agency must ensure that a local ombudsman entity, by the end of each federal fiscal year, meets the performance measures required by subsection (a)(3) - (6) of this section by:

(1) being within a variance of minus ten percent of the measures; or

(2) exceeding the measures.

(e) A host agency must ensure that a local ombudsman entity, by the end of each federal fiscal year, meets or exceeds the performance measure required by subsection (a)(7) of this section.

§88.406. Requirements Regarding Expenditures for the Ombudsman Program.

(a) A host agency must, for the Ombudsman Program implemented by a local ombudsman entity, expend for a federal fiscal year at least the amount of federal funds expended in the federal fiscal year 2019 [~~2000~~]. In determining the amount of funds expended, the host agency may include all funds except the state general revenue funds allocated to the host agency described in §88.105(b)(3) of this chapter (relating to Fiscal Management of a Local Ombudsman Entity).

(b) A function of the Ombudsman Program performed by a local ombudsman entity that is paid for with funds allocated by HHSC must be an allowable activity in accordance with the Ombudsman Policies and Procedures Manual.

(c) A purchase of a service, material, equipment, or good by a host agency for the Ombudsman Program implemented by a local ombudsman entity with funds allocated by HHSC must meet the criteria described in 45 CFR Part 75 [(~~relating to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards~~)].

§88.407. Requirement for Approval of Ombudsman Staffing Plan Form.

(a) The Office sends a host agency an Ombudsman Staffing Plan form on or about July 31st of each year.

(b) A host agency must complete and submit the Ombudsman Staffing Plan form sent to the host agency by the Office as specified in the form.

(c) The Office reviews a completed Ombudsman Staffing Plan form submitted by the host agency and notifies the host agency in writing of whether the form is approved. If the form is not approved by the Office, a host agency may submit a revised form to the Office.

(d) The Office will not reimburse a host agency for expenditures made by the host agency for Ombudsman Program functions until the Office approves an Ombudsman Staffing Plan form submitted by the host agency.

§88.408. Prohibition of Interference and Retaliation by a Host Agency.

(a) A host agency must not:

(1) willfully interfere with the State Ombudsman or a representative of the Office performing any of the functions of the Ombudsman Program, which includes:

(A) prohibiting a representative of the Office from:

(i) commenting or recommending changes, as described in §88.302(a)(1)(F) of this chapter (relating to Requirement to Ensure a Representative of the Office Performs Functions of the Ombudsman Program);

(ii) submitting comments to the Office regarding proposed legislation; or

(iii) responding to a question from a legislator or the media regarding a problem that pertains to an LTC facility or service, or to the health, safety, welfare, and rights of residents; and

(B) requiring a representative of the Office to obtain approval from the host agency before submitting testimony at a legislative hearing;

(2) retaliate against the State Ombudsman or a representative of the Office:

(A) with respect to a resident, employee of an LTC facility, or other person filing a complaint with, providing information to, or otherwise cooperating with, a representative of the Office; or

(B) for performance of the functions, responsibilities, or duties described in 45 CFR §1324.13 and §1324.19 and this chapter; or

(3) have personnel policies or practices that prohibit a representative of the Office from performing the functions of the Ombudsman Program or from adhering to the requirements of the Older Americans Act, §712.

(b) A host agency must ensure that a governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(19)(B) of this chapter (relating to Definitions), complies with subsection (a) of this section as if the entity or organization is a host agency.

(c) A host agency may require a representative of the Office to notify the host agency of:

(1) comments or recommendations made in accordance with §88.302(a)(1)(F) of this chapter; and

(2) subject to disclosure requirements in §88.304 of this chapter (relating to Disclosure of Confidential Information; Exclusion from Reporting Requirements Regarding Abuse, Neglect, or Exploitation; and Provision of Records to the Office):

(A) information being sent to a legislator or the media regarding a problem or concern about a resident or a recommendation related to the problem or concern, as described in §88.302(a)(2)(A)(ii) of this chapter; and

(B) a response to a request for information from a legislator or the media, as described in §88.302(a)(2)(C) of this chapter.

§88.409. Noncompliance by a Host Agency.

(a) If the Office determines that a host agency is not in compliance with this subchapter and the determination is not based on onsite

monitoring or a desk review, the Office sends the local ombudsman entity and host agency a written notice describing the determination of non-compliance.

(b) If a local ombudsman entity or host agency receives a written notice described in subsection (a) of this section, the host agency, within 14 days after the date of the receipt of the notice, must submit a written plan of correction to the Office that describes:

(1) the action that will be taken to correct the noncompliance described in the notice; and

(2) the date by which each action will be completed.

(c) Within 14 days after the date the Office receives the plan of correction required by subsection (b) of this section, the Office notifies the local ombudsman entity and host agency of whether the plan is approved or requires modification. If the Office approves the plan, the host agency must complete the actions contained in the plan of correction by the dates in the plan. If the Office determines that the plan requires modification, the host agency must submit a modified written plan of correction within a time period determined by the Office for approval by the Office.

(d) To determine if the host agency has completed the actions in accordance with an approved plan of correction or approved modified plan of correction, the Office takes one or more of the following actions:

(1) reviews information in the ombudsman database;

(2) requests that the host agency submit evidence of correction to the Office; and

(3) visits the host agency or local ombudsman entity.

(e) If the Office determines that the host agency did not complete an action in accordance with an approved plan of correction or a modified plan of correction:

(1) the Office may allow the host agency additional time to complete the action;

(2) HHSC may impose a Level Two sanction in accordance with §213.5 of this title (relating to Compliance with Contractor Responsibilities, Rewards and Sanctions);

(3) HHSC may impose a Level Three sanction in accordance with §213.5 of this title; or

(4) the State Ombudsman may remove the designation of the local ombudsman entity as described in §88.104(c)(2)(B) of this chapter (relating to Designation of a Local Ombudsman Entity).

(f) If the Office allows a host agency additional time to complete an action as described in subsection (e)(1) of this section and the Office determines that the host agency did not complete the action within the time allowed, HHSC may:

(1) impose a Level Two sanction in accordance with §213.5 of this title;

(2) impose a Level Three sanction in accordance with §213.5 of this title; or

(3) the State Ombudsman may remove the designation of the local ombudsman entity as described in §88.104(c)(2)(B) of this chapter.

(g) Upon request by a local ombudsman entity or host agency, the Office provides technical assistance to a local ombudsman entity or host agency regarding developing a plan of correction.

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 January 18, 2024.

TRD-202400165
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: March 3, 2024
For further information, please call: (512) 438-4281

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26 TAC §88.405, §88.407

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The repeals affect Texas Government Code §531.0055 and Texas Human Resources Code, §101A.051.

§88.405. Meeting Performance Measure Projections.

§88.407. Prohibition of Interference and Retaliation by a Host Agency.

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

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Karen Ray
Chief Counsel
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For further information, please call: (512) 438-4281

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SUBCHAPTER F. REQUIREMENTS OF HHSC

26 TAC §88.501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code, §101A.051.

§88.501. HHSC Responsibilities Regarding Individual Conflicts of Interest.

(a) For purposes of determining if the State Ombudsman or a representative of the Office has an individual conflict of interest, the state of Texas is the ombudsman service area.

(b) HHSC requires an applicant for the position of State Ombudsman to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" to identify an individual conflict of interest of the applicant.

(c) HHSC requires the State Ombudsman to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" on or about January 15th of each year and if the State Ombudsman identifies an individual conflict of interest.

(d) The Executive Commissioner or designee reviews a form completed by an applicant or the State Ombudsman as described in subsection (b) or (c) of this section to determine if an identified conflict of interest can be removed or remedied.

(e) Except as provided in subsection (f) of this section, HHSC does not employ the State Ombudsman or a representative of the Office who has an individual conflict of interest.

(f) HHSC may employ the State Ombudsman or a representative of the Office who has an individual conflict of interest described in §88.2(16)(K), [~~§88.2(14)(K),~~] (L), or (O) of this chapter (relating to Definitions) if:

(1) the Executive Commissioner or designee approves a remedy for the conflict of interest of the State Ombudsman; or

(2) the State Ombudsman approves a remedy for the conflict of interest of a representative of the Office.

(g) HHSC ensures that no person involved in selecting or terminating the State Ombudsman has an individual conflict of interest.

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

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SUBCHAPTER G. GRIEVANCES

26 TAC §§88.601 - 88.603

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The new sections affect Texas Government Code 531.0055 and Texas Human Resources Code, §101A.051.

§88.601. Grievances Regarding Performance of a Representative of the Office Who is an Employee, Independent Contractor, or Volunteer of a Host Agency, Including a Managing Local Ombudsman.

(a) A grievance regarding the performance of functions of the Ombudsman Program by a representative of the Office, other than a grievance about the managing local ombudsman, is addressed in accordance with this subsection. A host agency must ensure that a local ombudsman entity complies with this section.

(1) The local ombudsman entity must:

(A) ensure that a grievance may be submitted:

(i) in writing, in person, or by telephone; and

(ii) anonymously;

(B) request, but not require disclosure of, the name and contact information of a grievant;

(C) document the nature of the grievance in detail;

(D) document the name of the person who conducted the investigation required by subparagraph (F)(ii) of this paragraph;

(E) document the name of persons contacted during the investigation; and

(F) within 30 days after receiving the grievance:

(i) notify the representative of the Office who is the subject of the grievance that a grievance was submitted;

(ii) investigate the grievance;

(iii) develop a proposed response to the grievant, including actions to be taken, if any; and

(iv) submit the following information to the Office:

(I) the information described in subparagraphs (C) - (E) of this paragraph;

(II) a description of the activities conducted during the investigation; and

(III) the proposed response to the grievant as required by clause (iii) of this subparagraph.

(2) If the Office receives the information regarding a grievance described in paragraph (1)(F)(iv) of this subsection, the State Ombudsman:

(A) reviews the information; and

(B) approves or modifies the proposed response to the grievant developed by the local ombudsman entity.

(3) The local ombudsman entity must send a response to the grievant as approved or modified by the State Ombudsman.

(b) A grievance regarding the performance of functions of the Ombudsman Program by a managing local ombudsman is addressed in accordance with this subsection.

(1) A grievance about the managing local ombudsman must be submitted to the Office.

(2) If the Office receives a grievance about a managing local ombudsman, the Office, within 90 days after receiving the grievance:

(A) investigates the grievance;

(B) informs the host agency of the actions to be taken, if any; and

(C) sends a response to the grievant.

§88.602. Grievances Regarding the Performance of the State Ombudsman or a Representative of the Office Who is an Employee or Volunteer of HHSC.

(a) A grievance regarding the performance of functions of the Ombudsman Program by the State Ombudsman is addressed in accordance with this subsection.

(1) A grievance about the State Ombudsman that is not related to fraud, waste, or abuse must be submitted to the Director of the Office of the Ombudsman.

(2) A grievance about the State Ombudsman related to fraud, waste, or abuse must be submitted to the Office of the Inspector General.

(b) A grievance regarding the performance of functions of the Ombudsman Program by a representative of the Office who is an employee or volunteer of HHSC is addressed in accordance with this subsection.

(1) The State Ombudsman:

(A) ensures that a grievance may be submitted:

(i) in writing, in person, or by telephone; and

(ii) anonymously;

(B) requests, but does not require disclosure of, the name and contact information of a grievant;

(C) documents the nature of the grievance in detail;

(D) documents the name of persons contacted during the investigation; and

(E) within 30 days after receiving the grievance:

(i) notifies the representative of the Office who is the subject of the grievance that a grievance was submitted;

(ii) investigates the grievance; and

(iii) develops and submits a response to the grievant, including actions to be taken, if any.

(2) The State Ombudsman submits a grievance about a representative of the Office who is an employee or volunteer of HHSC related to fraud, waste, or abuse to the Office of the Inspector General.

§88.603. Grievances Regarding Certification Decisions by the State Ombudsman.

If the State Ombudsman refuses, suspends, or terminates certification of a representative of the Office, the person whose certification was refused, suspended, or terminated may file a grievance to request that the State Ombudsman reconsider the decision to refuse, suspend, or terminate certification in accordance with this section.

(1) To request a grievance under this section, the grievant must complete HHSC form "Grievance Regarding Ombudsman Certification Decision" and submit the completed form to the Office within 30 days of a decision.

(2) If the Office receives a completed form described in paragraph (1) of this section, the State Ombudsman:

(A) reviews the form;

(B) determines whether the decision to refuse, suspend, or terminate certification is affirmed, modified, or reversed;

(C) sends a response to the grievant which includes a description of the State Ombudsman's determination; and

(D) takes any necessary action in accordance with the determination.

(3) In accordance with 45 CFR §1324.11(e)(7), the State Ombudsman makes the final determination regarding the refusal, suspension, or termination of certification of a representative of the Office.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §34.815

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §34.815, concerning retail fireworks sale permits. Section 34.815 implements House Bill 2259, 88th Legislature, 2023.

EXPLANATION. The proposed amendments to §34.815 enact changes in accordance with HB 2259, which revised Occupations Code §2154.202 by removing language providing for the purchase of retail fireworks permits from licensed manufacturers, distributors, or jobbers or directly from the State Fire Marshal's Office (SFMO) and specifying that TDI is required to enable the sale of retail fireworks permits through a webpage that is linked from TDI's website.

Prior to HB 2259, the Occupations Code allowed various methods for obtaining and distributing retail permits to sell fireworks. These permits could either be acquired directly from SFMO or purchased through distributors, manufacturers, or jobbers. They were typically sold in booklets containing 20 permits. However, these booklets, which included carbon copies of each retail permit sold, proved to be cumbersome for both the industry and SFMO. The information within these booklets had to be manually typed, causing delays in SFMO's receipt of information regarding firework sales. This manual process was also prone to data entry errors and required SFMO to process refunds for unused retail permits in an outdated and slow manner. To simplify and streamline this process, HB 2259 requires that retail firework permits be available for purchase through TDI's website, eliminating the need to obtain them from manufacturers, distributors, or jobbers.

The proposed amendments to the section are described in the following paragraphs.

Section 34.815. Proposed amendments revise and restructure §34.815 using plain language to implement HB 2259. Previously, the rule's steps to get a retail permit were interrupted by bulk storage rules, which added confusion, and the new structure will make the rule more understandable by providing a natural, sequential order of steps necessary to obtain a retail permit to sell fireworks that reflects the new requirements.

New subsection (b) specifies the requirement that an applicant have a sales tax permit number, which must be entered on the retail firework permit in order to receive a permit. This is an existing requirement currently addressed in subsection (b)(5), but the new text more clearly and plainly addresses it.

Current subsection (b) is redesignated as subsection (c), and the text of the subsection is revised to reflect the changes in how retail fireworks permits may now be obtained. In addition, the requirement that a retail permit be signed is deleted from the text and addressed in new subsection (d).

Paragraphs (1) and (4) of subsection (b) are removed, because this text pertains to fireworks sales permit purchases from manufacturers, distributors, or jobbers, which is no longer allowed, and because copies of Occupations Code Chapter 2154 and the firework rules are readily available online. Paragraphs (2), (3), and (6) of subsection (b) are removed and their contents are included as new text in new subsections (e) - (g).

Current subsection (c) is deleted because it relates to the purchase of retail fireworks permits in ways no longer allowed under HB 2259.

New subsection (d) provides that once issued, a retail permit be printed, signed, and posted in a visible place. The requirements to print and post the retail permit are new, reflecting that permits may now only be obtained through a website; this provides documentary evidence of the retail permit, similar to how participating manufacturers, distributors, or jobbers would formerly provide evidence of the valid issuance of a permit.

New subsection (e) provides that retail permits may be issued only to those individuals or groups engaged in the retail sale of fireworks. This requirement is currently addressed in subsection (b)(6); it is relocated here to facilitate the clarity of the rule.

New subsection (f) provides that bulk storage of Fireworks 1.4G must be done in compliance with 28 TAC §34.823. This provision is relocated from current subsection (b)(2) to facilitate the clarity of the rule.

New subsection (g) provides that Fireworks 1.4G must be sold only through permitted sites and within the selling periods defined in Occupations Code §2154.202. This provision is relocated from current subsection (b)(3) to facilitate the clarity of the rule.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda Villarreal, director of Licensing Administration, SFMO, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments because of enforcing or administering the amendments, other than that imposed by the statute. Ms. Villarreal made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Villarreal does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Villarreal expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Occupations Code §2154.202 as amended by HB 2259. The proposed amendments streamline the permit sales process by providing for all retail fireworks permits to be sold online.

Ms. Villarreal expects that the proposed amendments will not increase the cost of compliance with Occupations Code Chapter 2154 because the amendments do not impose requirements beyond those in the statute. The statute as amended by HB 2259 requires the commissioner to provide for the sale of a retail fireworks permit through a website. TDI must also post a link to the retail sales permit website on its website. As a result, any cost associated with compliance does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045. In addition, the proposal is necessary to implement legislation, which is an exception under §2001.0045(c).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later

than 5:00 p.m., central time, on March 4, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on March 4, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §34.815 under Occupations Code §2154.052(a) and (b), and Insurance Code §36.001.

Occupations Code §2154.052(a) provides that the commissioner will administer Occupations Code Chapter 2154 through the state fire marshal and may issue rules to administer the chapter.

Occupations Code §2154.052(b) provides that the commissioner adopt, and the state fire marshal must administer, rules necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state.

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

CROSS-REFERENCE TO STATUTE. Section 34.815 implements Occupations Code §2154.202 and HB 2259.

§34.815. Retail Permits.

(a) A retail permit is required for each retail stand or other retail sales location.

(b) Prior to the issuance of a retail permit, an applicant must present evidence of a valid current sales tax permit issued by the state comptroller.

(c) [~~(b)~~] Retail permits may be obtained at the department's website at www.tdi.texas.gov. [~~any time from any participating manufacturer, distributor, or jobber holding a valid license to do business in Texas or from the state fire marshal and must be signed by the applicant prior to the permit becoming effective.~~]

[~~(1) A retail permittee must purchase Fireworks 1.4G only from a distributor or jobber licensed in this state.~~]

[~~(2) Bulk storage of Fireworks 1.4G by a retail permittee must be in compliance with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G).~~]

[~~(3) Fireworks 1.4G must be sold to the general public only at legally permitted retail fireworks sites and during the legal selling periods defined in the Occupations Code §2154.202.~~]

[~~(4) A copy of Occupations Code Chapter 2154 and the fireworks rules, or a condensed version thereof, must be provided to the purchaser of a retail permit by the participating licensee at the time the permit is issued. Copies of Occupations Code Chapter 2154 and the fireworks rules will be made available through the State Fire Marshal's Office.~~]

[~~(5) Prior to the issuance of a retail permit, the applicant must present evidence of a valid current sales tax permit issued by the state comptroller, and the sales tax permit number must be entered on the retail fireworks permit by the person issuing the permit.~~]

[~~(6) Retail permits may only be issued to individuals or groups engaged in the retail sales of fireworks.~~]

[~~(c) Any licensee purchasing books of permits for sale to retail operators shall properly account for all permits received.~~]

[~~(1) The licensee who issues retail permits shall return books containing duplicate copies of each issued permit to the State Fire Marshal's Office within a week from the time the last permit in each book has been issued. All used and unused permits shall be returned no later than March 1 of each year.~~]

[~~(2) The returned copies in each book are considered the official record of retail permits sold.~~]

[~~(3) A licensee may exchange any unissued retail permit which has not been voided or otherwise rendered unusable for a new permit at the end of each year following expiration.~~]

(d) The retail permit, once issued, must be printed, signed, and posted in a place visible to the public within the retail space to be effective.

(e) Retail permits will only be issued to individuals or groups engaged in the retail sale of fireworks.

(f) Bulk storage of Fireworks 1.4G by a retail permittee must be in compliance with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G).

(g) Fireworks 1.4G must be sold to the general public only at legally permitted retail fireworks sites and during the legal selling periods defined in the Occupations Code §2154.202.

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

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Jessica Barta
General Counsel
Texas Department of Insurance
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 360. DESIGNATION OF RIVER AND COASTAL BASINS

31 TAC §§360.1 - 360.3

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §§360.1 - 360.3, concerning Designation of River and Coastal Basins.

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

Chapter 360 contains the agency's rules related to the designation of river and coastal basins in accordance with the requirement of Texas Water Code Section 16.051(c). The TWDB proposes to amend the rules to modernize the rule language and reflect the new manner in which the TWDB stores the digital files of the maps of that designate the state's river and coastal basins.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

In §360.1, the section is proposed to be amended to modernize the rule language.

In §360.2, the section is proposed to be amended to modernize the rule language.

In §360.3, the section is proposed to be amended to update how the TWDB stores the digital files of the state's designated river and coastal basins. The section is proposed to be amended to remove references to the storage of a "quad map" on a CD-ROM, because CD-ROMs are no longer the medium the TWDB uses to store digital files. The proposed amendments to this section do not change any of the state's designations of its river and coastal basins.

Additionally, in §360.3, subsections (a) though (w) contain figures that are not proposed to be amended in this rulemaking and will not be republished with the rule.

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, nor is there any expected reduction in costs to either state or local governments. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. 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 proposed rulemaking is in effect, the public will benefit from the rulemaking as the amendment reflects how the TWDB stores the digital files designating state's coastal and river basins and modernizes the rule language for the public's understanding of the rule's effect. 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 do not impose an economic cost on persons required to comply with the rule.

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 proposed rulemaking is to modernize the rule language and to update how the TWDB stores the digital files of the designations of the state's coastal and river basins.

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 the specific statutory authorization for this specific rulemaking is authorized by Texas Water Code §16.051(c). 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 proposed amendment is to update how the TWDB stores the digital files of the designations of the state's coastal and river basins and modernize the rule language.

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 under state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency charged with designating the state's coastal and river basins in accordance with Chapter 16, Texas Water Code.

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. In other words, this proposed rule is merely an amendment to reflect how the TWDB stores the digital files of the designations of the state's coastal and river basins and modernize the rule language. It does not require regulatory compliance with any persons or political subdivisions. 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 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 future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) 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 360" in the subject line of any comments submitted.

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

The amendment is proposed 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 §16.051(c).

This rulemaking affects Water Code, §16.051(c).

§360.1. Scope of Chapter.

This chapter serves [~~shall serve~~] as the board's designation [~~delineation~~] of river basins and coastal basins pursuant to the requirement of the Texas Water Code, §16.051(c).

§360.2. Definitions of Terms.

The following words and terms, when used in this chapter, have [~~shall have~~] the following meanings, unless the context clearly indicates otherwise. Words defined in Texas Water Code, Chapter 16 and not defined here have [~~shall have~~] the meanings provided in Chapter 16. Quad map--Official 1 to 24,000 foot maps produced by the United States Geological Survey on which river basin and coastal basin boundaries are delineated.

§360.3. Designation of River Basins and Coastal Basins.

(a) The Canadian River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(a) (No change.)

(b) The Red River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(b) (No change.)

(c) The Sulphur River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(c) (No change.)

(d) The Cypress Creek basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(d) (No change.)

(e) The Sabine River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(e) (No change.)

(f) The Neches River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(f) (No change.)

(g) The Neches-Trinity coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~]

with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(g) (No change.)

(h) The Trinity River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(h) (No change.)

(i) The Trinity-San Jacinto coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(i) (No change.)

(j) The San Jacinto River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(j) (No change.)

(k) The San Jacinto-Brazos coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(k) (No change.)

(l) The Brazos River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(l) (No change.)

(m) The Brazos-Colorado coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(m) (No change.)

(n) The Colorado River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(n) (No change.)

(o) The Colorado-Lavaca coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(o) (No change.)

(p) The Lavaca River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(p) (No change.)

(q) The Lavaca-Guadalupe coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(q) (No change.)

(r) The Guadalupe River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(r) (No change.)

(s) The San Antonio River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(s) (No change.)

(t) The San Antonio-Nueces coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(t) (No change.)

(u) The Nueces River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored on CD-Rom of these quad maps with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(u) (No change.)

(v) The Nueces-Rio Grande coastal basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(v) (No change.)

(w) The Rio Grande River basin boundary is designated by lines delineated on quad maps listed in the following table. Digital files of these quad maps are stored [~~on CD-Rom of these quad maps~~] with the basin lines drawn thereon, are adopted by reference, and are located in the offices of the Texas Water Development Board.
Figure: 31 TAC §360.3(w) (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 January 18, 2024.

TRD-202400178
Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: March 3, 2024
For further information, please call: (512) 463-7686

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
SUBCHAPTER C. PROGRAM SERVICES
DIVISION 4. HEALTH CARE SERVICES

37 TAC §380.9188

The Texas Juvenile Justice Department (TJJD) proposes to amend Texas Administrative Code, Chapter 380, Subchapter C, §380.9188.

SUMMARY OF CHANGES

The amendments to §380.9188, Suicide Alert for High-Restriction Facilities, will change the requirement for mental health professionals at high-restriction TJJD facilities to consult with the designated mental health professional (i.e., the local clinical director) when determining whether changes will be made to a youth's observation level or suicide precautions to apply only when: (1) the assessing mental health professional is not licensed to practice independently, and (2) the youth's observation level or precautions would be lowered. The amendments will also specify that, when a youth on suicide alert is transferred to another high-restriction TJJD facility, the mental health professional at the receiving facility communicates (rather than consults) with the designated mental health professional or designee regarding the plan for treatment and assessment.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to better leverage staffing resources in addressing the mental health needs of TJJD youth who are on suicide alert.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed section is in effect, the section will have the following impacts.

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

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

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

(6) The proposed section does not expand, limit, or repeal an existing regulation.

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

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the TJJD Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9188. Suicide Alert for High-Restriction Facilities.

(a) Purpose. This rule establishes procedures for identification, assessment, treatment, and protection of youth in high-restriction facilities who may be at risk for suicide.

(b) Applicability. This rule applies to all youth currently placed in high-restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. Definitions pertaining to this rule are under §380.9187 of this chapter.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide is provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide participate in regular programming to the extent possible, as determined by a mental health professional. Only a mental health professional may make exceptions to the provision of regular programming, housing placement, or clothing.

(3) Using force to remove clothing shall be avoided whenever possible and used only as a last resort when the youth is physically engaging in suicidal and/or self-harming behavior.

(4) Designated staff carry rescue kits at all times while on duty for use in the event of a medical emergency caused by a suicide attempt. Rescue kits are also placed in designated buildings or areas of the campus that are not accessible to youth.

(5) As soon as possible, but not to exceed two hours, after a suicide attempt, the youth's parent or guardian is notified (with the youth's consent if the youth is age 18 or older).

(e) Intake Screening and Assessment.

(1) Upon Initial Admission to TJJD.

(A) Upon arrival to a TJJD orientation and assessment unit, designated intake staff keep youth within direct line-of-sight supervision until the youth is screened or assessed for suicide risk.

(B) Within one hour after the youth's arrival to a TJJD orientation and assessment unit, a mental health professional initiates an initial mental health screening and documents the results.

(C) If the mental health professional identifies the youth as potentially at risk for suicide, the mental health professional immediately conducts a suicide risk assessment.

(D) Within 14 days after arrival at the orientation and assessment unit, all youth receive a comprehensive mental health evaluation conducted by a mental health professional. The mental health evaluation will include a suicide risk assessment if one has not already been completed.

(E) The suicide risk assessment completed upon initial admission includes, at a minimum:

(i) a mental status exam;

(ii) a review of all mental health and medical records submitted from the courts, county juvenile detention facilities, or any other medical or mental health provider, to include any assessments by mental health professionals relating to prior suicide alerts during confinement;

(iii) a review of all other available screenings and assessments; and

(iv) referrals for follow-up treatment or further assessment, as indicated.

(F) The designated mental health professional reviews the suicide risk assessment.

(2) Upon Arrival at a TJJD Facility after Intake.

(A) Except for youth who are on suicide alert at the time of arrival, the following actions must occur within one hour after a youth's arrival at a high-restriction facility following an intrasystem transfer, any period of time spent out of TJJD's physical custody due to a significant life event, or a period of at least 48 hours spent out of TJJD's physical custody for any reason:

(i) a trained designated staff member initiates a suicide risk screening; or

(ii) a mental health professional initiates a suicide risk assessment.

(B) The youth is kept within direct line-of-sight supervision until the youth is screened or assessed.

(C) If a screening is conducted:

(i) the trained designated staff member immediately contacts a mental health professional to assign an observation level, if appropriate, based on results of the screening; and

(ii) the youth is immediately placed on the observation level directed by the mental health professional; and

(iii) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(D) The suicide risk assessment conducted upon a youth's arrival at a TJJD facility includes, at a minimum:

(i) a mental status exam;

(ii) a review of the youth's masterfile and medical record, as indicated;

(iii) referrals for follow-up treatment or further assessment, as indicated;

(iv) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and

(v) a review by the designated mental health professional of the assessment.

(3) Additional Screening by Infirmary for Intrasystem Transfers.

(A) Upon arrival of a youth from another high-restriction TJJD facility, a nurse completes an intrasystem health screening, including questions relating to suicidal ideation and suicidal behavior.

(B) If the youth is identified by the screening as potentially at risk for suicide, the nurse immediately contacts a mental health professional and communicates the results of the screening.

(f) Responding to Suicidal Ideation, Self-Harming Behavior, or Suicidal Behavior.

(1) A staff member who has reason to believe that a youth has verbalized suicidal ideation or demonstrated self-harming or suicidal behavior must:

(A) immediately use the rescue kit if appropriate and seek medical attention if there is a medical emergency;

(B) verbally engage the youth;

(C) provide constant observation unless a mental health professional directs a higher observation level;

(D) begin a suicide observation log to document status checks of the youth;

(E) immediately notify the campus shift supervisor and document the notification; and

(F) refer the youth for a suicide screening.

(2) As soon as possible, but no later than one hour after notification, the campus shift supervisor ensures a trained designated staff member initiates a suicide risk screening or a mental health professional initiates a suicide risk assessment. This screening or assessment is not required when deemed inappropriate due to a medical emergency.

(3) If a screening is conducted:

(A) the trained designated staff member immediately contacts a mental health professional to assign an observation level based on results of the screening; and

(B) the mental health professional conducts a suicide risk assessment within an appropriate time frame, as established in agency procedures. Procedures will assign time frames based on the youth's assigned observation level and screening result.

(4) If the youth is transported to the emergency room:

(A) upon return to the facility, the youth is placed on one-to-one observation until assessed by a mental health professional; and

(B) a mental health professional initiates a suicide risk assessment within four hours after the youth's return to the facility.

(5) The suicide risk assessment conducted in response to suicidal behavior or ideation includes:

(A) a mental status exam;

(B) a review of the youth's masterfile and medical record, as indicated;

(C) referrals for follow-up treatment or further assessment, as indicated;

(D) a determination of whether to place the youth on suicide alert, and if placed, designation of the appropriate observation level and other safety precautions; and

(E) a review by the designated mental health professional of the assessment.

(6) Whenever possible, suicide risk screenings and assessments are conducted in a confidential setting.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements.

(A) Upon completion of a suicide risk assessment, the mental health professional documents the results of the assessment, including any changes in the youth's observation level.

(B) If the youth is placed on suicide alert, the mental health professional ensures the youth's name is placed on the facility's suicide alert list. The designated mental health professional ensures the updated list is distributed to facility staff.

(2) Notification of Assessment Results.

(A) If the youth is placed on suicide alert:

(i) as soon as possible, infirmary staff, the youth's case manager, staff responsible for supervising the youth, and the campus shift supervisor are notified of the youth's observation level, other safety precautions, and any additional instructions; and

(ii) the youth's parent or guardian is notified as soon as possible after the youth is placed on suicide alert (with the youth's consent if the youth is age 18 or older).

(B) If the youth is not placed on suicide alert, the mental health professional notifies the referring staff and the youth's case manager that the youth was assessed but not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the campus shift supervisor ensures a specific staff member is assigned to monitor the youth and carry the suicide observation folder.

(h) Supervision of Youth on Suicide Alert.

(1) Unless the youth is already placed in a suicide-resistant room, the campus shift supervisor or trained designated staff member coordinates a search of the youth's room or personal area and removes any potentially dangerous items.

(2) The suicide observation folder must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation folder.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the folder and document the transfer of supervision in the folder.

(3) As required by the suicide observation level and other safety precautions assigned to the youth, the monitoring staff member must:

(A) maintain direct visual observation of the youth;

(B) document the youth's status at the required interval; and

(C) follow any precautions set by the mental health professional.

(4) The monitoring staff member must not leave a youth assigned to one-to-one observation unattended or let the youth out of the staff member's sight.

(5) During waking hours, the monitoring staff must not leave a youth assigned to constant observation unattended or let the youth out of the staff member's sight.

(6) Any time a youth on one-to-one or constant observation is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts, excluding genitalia, breasts, and buttocks); and/or

(B) maintain verbal contact.

(7) When a youth on one-to-one or constant observation is engaged in regular programming (e.g., education, group sessions, recreation), the monitoring staff will accompany the youth to the activity and remain within the required distance (i.e., 6 or 12 feet). If the youth cannot be maintained within the required distance without disrupting the program, a mental health professional must be consulted to consider possible modifications to the youth's supervision plan or scheduled routine to ensure the youth can be appropriately monitored.

(8) Issuing suicide-resistant clothing and removing a youth's clothing, as well as canceling programming and routine privileges, will be avoided whenever possible and used only as a last resort for periods during which the youth is physically engaging in suicidal and/or self-harming behavior.

(A) Decisions regarding issuance of suicide-resistant clothing and restrictions in programming and/or routine privileges may be made only by a mental health professional.

(B) A decision to conduct a strip search if criteria in §380.9709 of this chapter are met may be made only in consultation with a mental health professional.

(C) A decision to use force in order to remove a youth's regular clothing after a youth has been issued suicide-resistant clothing may occur only upon the recommendation of a mental health professional and with the approval of the directors over treatment and facility operations or the directors' designees.

(D) If force is used to remove a youth's regular clothing as provided by subparagraph (C) of this paragraph, a mental health professional must evaluate the youth's need for trauma symptom care and ensure the care is provided if appropriate.

(9) Unless approved by the designated mental health professional in consultation with the facility administrator, youth on suicide alert are not allowed access to off-campus activities or non-medical appointments. Decisions regarding off-campus medical appointments are made by medical staff.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) A mental health professional develops a written treatment plan (or revises an existing care plan) that includes treatment goals and specific interventions designed to address and reduce suicidal ideation and threats, suicidal and/or self-harming behavior, and suicidal threats perceived to be based upon attention-seeking or manipulative behavior. The treatment plan describes:

(A) signs, symptoms, and circumstances under which the risk for suicide or other self-harming behavior is likely to reoccur;

(B) how reoccurrence of suicidal and other self-harming behavior can be avoided; and

(C) actions the youth and staff can take if the suicidal and other self-harming behavior does occur.

(2) The mental health professional consults with the youth's case manager, as needed, to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan. The mental health professional consults with staff responsible for supervising the youth regarding the youth's progress.

(3) While the youth is on suicide alert, a mental health professional assesses the youth at least once every 48 hours, unless the youth is placed on one-to-one observation, in which case the mental health professional assesses the youth at least once every 24 hours.

(4) For each assessment, the mental health professional:

(A) reviews the contents of the suicide observation folder, as well as suicide risk assessments and progress notes from other mental health professionals as applicable;

(B) determines whether any changes should be made to the youth's observation level or other safety precautions [;] (in consultation with the designated mental health professional if the assessing mental health professional is not licensed to practice independently and recommends lowering the observation level or precautions);

(C) documents any changes in the observation level or other safety precautions in the suicide observation folder; and

(D) documents the assessment, including a sufficient description of the youth's emotional status, observed behavior, recommended observation level, justification for decision, and any special instructions for staff.

(5) Each time a change is made to the youth's observation level or other safety precautions, staff responsible for supervising the youth are notified and updated information regarding the youth is distributed to designated facility staff, including infirmary staff.

(6) During routine meetings between the psychology department and the psychiatric provider, the designated mental health professional or designee discusses information concerning youth on suicide alert who are on the psychiatric caseload.

(j) Protective Custody or Emergency Psychiatric Placement.

(1) Youth who cannot be safely managed in their assigned living units may be referred for placement in a suicide-resistant room in the protective custody program, in accordance with §380.9745 of this chapter. All treatment, reassessment, and observation requirements established in this rule will continue to apply while a youth is assigned to protective custody unless otherwise noted in §380.9745 of this chapter.

(2) If the designated mental health professional or psychiatric provider determines that a youth is in serious and imminent risk of suicidal and/or self-harming behavior and cannot be safely or appropriately managed within TJJD custody, the designated mental health professional or psychiatric provider may seek emergency psychiatric placement in accordance with §380.8771 of this chapter. The youth will be placed on one-to-one observation until received at the emergency placement.

(k) Intrasystem Transfer of Youth on Suicide Alert.

(1) Prior to transferring a youth on suicide alert to another high-restriction TJJD facility:

(A) within 24 hours prior to transfer, a mental health professional at the sending facility sends a summary of the youth's suicidal and/or self-harming behavior, assessments, and treatment to the designated mental health professional and facility administrator or their designees at the receiving facility and any stopover facilities en route to the receiving facility; and

(B) staff assigned to monitor the youth at the sending facility provide the suicide observation folder to the transporting staff.

(2) A mental health professional at the receiving facility:

(A) as soon as possible, but no later than four hours after the youth's arrival, reviews the transfer summary and initiates a suicide risk assessment;

(B) places the youth on the facility's suicide alert list;

(C) ensures the suicide observation log is provided to the staff assigned to monitor the youth; and

(D) communicates [~~consults~~] with the designated mental health professional or designee regarding the plan for treatment and assessment.

(3) Before the youth is moved to the assigned dorm or living unit at the receiving facility, staff responsible for supervising the youth and nursing staff are notified of the youth's suicide observation level.

(l) Moving a Youth on Suicide Alert to a Less Restrictive Placement.

(1) Prior to moving a youth on suicide alert to a less restrictive placement (i.e., medium-restriction facility or home placement), the mental health professional:

(A) provides the youth (or parent/guardian if the youth is under age 18) with a referral for follow-up care;

(B) coordinates with appropriate clinical staff to schedule a follow-up appointment;

(C) communicates observation level and precautions to facility staff, if applicable;

(D) identifies emergency resources, if needed; and

(E) notifies the youth's parole officer, if applicable.

(2) Mental health records are sent to the receiving mental health provider upon request.

(m) Reduction of Observation Level and Removal from Suicide Alert.

(1) The observation level for a youth on suicide alert may be lowered or discontinued only after a suicide risk assessment by a mental health professional.[;] If the assessing mental health professional is not licensed to practice independently, the decision to lower or discontinue a youth's observation level may be made only in consultation with the designated mental health professional.

(2) A mental health professional may lower a youth's suicide observation level by no more than one level every 24 hours unless otherwise approved by the designated mental health professional on a case-by-case basis.

(3) Only a mental health professional or the designated mental health professional may authorize removal of a youth's name from the suicide alert list. Only youth on the lowest available observation level may be removed from suicide alert.

(4) The mental health professional notifies appropriate staff when a youth's observation level is lowered and when a youth

is removed from suicide alert. Infirmary staff notify the psychiatric provider of all such changes for youth on the psychiatric caseload.

(5) The youth's parent or guardian is notified when the youth is removed from suicide alert (with the youth's consent if the youth is age 18 or older).

(6) Upon removal from suicide alert, the mental health professional identifies in the treatment plan any needed follow-up mental health services.

(n) Training.

(1) All staff who have regular, direct contact with youth (including, but not limited to, security, direct care, nursing, mental health, and education staff) receive initial training in suicide prevention and response during new-hire training. Training addresses topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal and/or self-harming behavior;

(B) high-risk periods for suicidal and/or self-harming behavior;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence, and precipitating factors;

(D) responding to suicidal youth and youth experiencing mental health symptoms;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior, self-harming behavior, and/or suicidal ideation.

(2) All staff who have regular, direct contact with youth receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive annual training from a mental health professional regarding suicide alert policy, suicide indicators, and suicide screening.

(4) All training described by this subsection shall be accompanied by a test or demonstration to establish competency in the subject matter.

(o) Post-Incident Debriefing and Analysis.

(1) After a completed suicide or a life-threatening suicide attempt, the facility administrator or designee coordinates a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) After a completed suicide, the executive director or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) After a completed suicide, the medical director conducts a morbidity and mortality review in coordination with appropriate clinical staff. The medical director may conduct a morbidity and mortality review after a life-threatening suicide attempt.

(4) After a completed suicide or a life-threatening suicide attempt, a critical incident review is convened to determine if the incident reveals system-wide deficiencies and to recommend improvements to agency policies, operational procedures, the physical plant, and/or training requirements.

(5) In the event of a completed suicide, all actions, notifications, and reports required under §385.9951 of this title [~~chapter~~] must be completed.

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 January 18, 2024.

TRD-202400169
Cameron Taylor
Senior Strategic Advisor
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7278

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 7. RAIL FACILITIES
SUBCHAPTER E. RAIL FIXED GUIDEWAY SYSTEM STATE SAFETY OVERSIGHT PROGRAM

The Texas Department of Transportation (department) proposes the repeal of §§7.82, 7.83, and 7.86, new §§7.82, 7.83, and 7.86, and amendments to §§7.80, 7.84, 7.85, and 7.87 - 7.95, concerning Rail Fixed Guideway System State Safety Oversight Program.

Recent changes to Federal program requirements as a result of the Infrastructure Investment and Jobs Act (IIJA) necessitate an update to department rules. The IIJA updated 49 U.S.C §5329(d) and (k) to add additional requirements related to risk-based inspections (RBI), rail agency safety committees, training requirements, and public transportation agency safety plan contents. The United States Department of Transportation (USDOT) requires each State Safety Oversight Agency (SSOA) to develop and implement a risk-based inspection (RBI) program. The Federal Transit Administration (FTA) requires the department's draft RBI program document to be incorporated into the State Safety Oversight Program Standard and submitted for review no later than May 2024, to meet the October 21, 2024, FTA approval deadline. As a result of these updates and FTA requirements, amendments to Chapter 7 which establish standards for and implement state oversight of safety practices of rail fixed guideway systems are required.

Amendments to §7.80, Purpose, update the United States Code (U.S.C) reference to §5329 from the outdated §5330 reference.

Section §7.82, System Safety Program Plan, is repealed, as the contents of the section are obsolete.

New §7.82, Public Transportation Agency Safety Plan, contains the substance of existing §7.83, which is repealed by this rulemaking. The new section deletes as unnecessary the 11

listed requirements of former §7.83, substituting a reference to 49 U.S.C. §5329(d).

New §7.83, Modifications to a Public Transportation Agency Safety Plan, contains the substance of former §7.86, which is being repealed by this rulemaking.

Amendments to §7.84, Hazard Management Process, change the heading to "Safety Risk Management Process." Amendments to subsection (a) substitutes "public transportation agency safety plan" for "safety system program plan." Amendments to subsection (b) replace "hazard management process" with "safety risk management process" to align with federal requirements, while amendments to subsection (c) clarify the reporting standard for hazards in accordance with the State Safety Oversight Program Standard.

Amendments to §7.85, New State Rail Transit Agency Responsibilities, change the heading to "Ensuring Safety In New Rail Systems." The term "system safety program plan" is replaced with "public transportation agency safety plan" throughout the section. Changes are necessary to comply with new federal requirements for public transportation agency safety plans.

New §7.86, Risk Based Inspections, lays out requirements of the risk-based inspection (RBI) program document. It details requirements for conducting inspections in accordance with the RBI, to include using proper protective and safety equipment. The new section requires immediate reporting of safety concerns revealed through inspection activities and requires the department to issue a draft inspection report within 30 days after completion of a safety inspection. It also allows for a rail transit agency to submit written comments to the department's draft inspection report and requires the department to issue a final inspection report within 10 days of the comment deadline. Further, subsection (e) of the new section details the required elements of the inspection report. New subsection (f) requires rail transit authorities to submit data to the department for purposes of detecting changes in safety performance. Requirements for data submission are based on each agency's unique public transportation agency safety plan. The data format, type of data and submission schedule for rail transit agencies to follow will be identified in the risk-based inspection program document. New subsection (g) requires the department to review each rail agency's data at least annually. New subsection (h) requires the department to conduct on-going monitoring, to include at least four on-site inspections per year and other monitoring activities under 49 C.F.R. Part 674. The contents of this new section are necessary to comply with new federal requirements for risk-based inspections in 49 U.S.C §5329.

Amendments to §7.87, Rail Transit Agency's Annual Review, change the heading to "Rail Transit Agency's Annual Internal Safety Review." References to the system safety program plan are updated to public transportation agency safety plan throughout the section. Amendments also delete subsection (f) to remove the requirement for annual reports to be submitted with a formal letter from the chief executive. Changes are necessary to align with new federal requirements in 49 C.F.R. Part 674 that remove the requirement of a formal letter from the chief executive.

Amendments to §7.88, Department System Safety Program Plan Audit, change the heading to "Triennial Review of Rail Transit Agencies." This update conforms to State Safety Oversight Program Standard terminology in 49 C.F.R. Part 674 and FTA program documentation. Amendments also include replacing system safety program plan throughout the section with public transportation agency safety plan. The timeframe for which an agency must provide corrective audit plans to the department after receipt of its final audit plan is reduced from the existing 45 days to 30 days. The timeframe is reduced from 45 to 30 days for increased clarity and to be consistent with the timeframe associated with the development of all other corrective action plans.

Amendments to §7.89, Accident Notification, changes the title to "Event Notification." In addition, amendments to §7.89 (a)(3) replace the reference to "property damage" with "substantial damage" to align the rule with FTA's clarified program guidance that details thresholds requiring reporting to the TxDOT State Safety Oversight Program. Amendments to subsection(a)(3) also delete the reporting of the derailment of a transit vehicle as derailments are already cited in subsection (a)(6). Edits to subsection (d) include reporting each incident to FTA instead of the department and replace accident with incident throughout. Subsection (f) edits clarify reference to the State Safety Oversight Program Standard. Changes are necessary due to new federal requirements in 49 C.F.R. Part 674.

Amendments to §7.90, Accident Investigations, clarify that the department will investigate any accident as required under §7.89 (a) or (b) but remove the reference to (d). Amendments also clarify that investigation personnel must be certified in accordance with the public transportation safety certification training program provided by the U.S. Department of Transportation. These amendments are necessary as a result of updates to federal rail safety requirements.

Amendments to §7.91, Corrective Action Plan, update the reference to safety reviews for clarity by removing the word "safety." These amendments are necessary as a result of updates to federal rail safety requirements.

Amendments to §7.92, Administrative Actions by the Department, remove the reference to 49 C.F.R. part 659 as this is an outdated federal reference and update the reference to system safety program plan in subsection (e) to public transportation agency safety plan. Changes are necessary to align with federal requirements in 49 C.F.R. Part 674.

Amendments to §7.93, Administrative Review, §7.94, Escalation of Enforcement Action, and §7.95, Emergency Order to Address Imminent Public Safety Concerns remove references to "system safety program plan" and replace them with "public transportation agency safety plan." Changes are necessary to align with federal requirements in 49 C.F.R. Part 674.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Eric Gleason, Director, Public Transportation Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Eric Gleason has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be enhanced safety reporting, monitoring and hazard mitigation among rail transit agencies throughout the state.

COSTS ON REGULATED PERSONS

Eric Gleason has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Eric Gleason has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Eric Gleason has determined that a written takings impact assessment is not required under Government Code, §2007.043.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:30 a.m. on February 15, 2024, in the Ric Williamson Hearing Room, First Floor, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:00 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the General Counsel Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the repeal of §§7.82, 7.83, and 7.86, new §§7.82, 7.83, and 7.86, and amendments to §§7.80, 7.84, 7.85, and 7.87 - 7.95, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line *"Rail Fixed Guideway System State Safety Oversight Program Rules."* The deadline for receipt of comments is 5:00 p.m. on March 4, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

43 TAC §§7.80, 7.82 - 7.95

STATUTORY AUTHORITY

The new sections, and amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and more specifically Transportation Code, §455.060, which authorizes the commission to adopt rules for the oversight of rail fixed guideway systems.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING Transportation Code, Chapter 455, Subchapter B.

§7.80. Purpose.

Transportation Code, Chapter 455 requires the Texas Transportation Commission to establish standards for and implement state oversight of safety practices of rail fixed guideway systems in compliance with 49 U.S.C. §5329 [~~§5330~~]. This subchapter prescribes the policies and procedures governing state oversight of rail fixed guideway systems' safety practices.

§7.82. Public Transportation Agency Safety Plan.

A transit agency, other than a small public transportation provider governed by Title 43, Chapter 31 of the Texas Administrative Code, must establish a public transportation agency safety plan that meets the requirements of 49 U.S.C. §5329(d), 49 C.F.R. Part 673, and the State Safety Oversight Program Standard.

§7.83. Modifications to a Public Transportation Agency Safety Plan.

(a) If a rail transit agency determines, or is notified by the department, that the public transportation agency safety plan needs to be modified, the rail transit agency shall submit the modified plan and any subsequently modified procedures to the department for review and approval.

(b) Except as provided by subsection (c) of this section, the rail transit agency may not implement the proposed modifications before the modified plan is approved by the department.

(c) If the rail transit agency determines that a modification is necessary to address an imminent safety hazard, the rail transit agency may make a temporary modification to its public transportation agency safety plan before that modification is approved by the department, but the modification must be approved by the department before it may become permanent.

§7.84. Safety Risk [~~Hazard~~] Management Process.

(a) Each rail transit agency shall develop, and document in its public transportation agency safety plan [~~system safety program plan~~], a process to identify and resolve hazards during its operation, including any hazards resulting from a subsequent system extension, rehabilitation, or modification, from operational changes, or from other changes within the rail transit environment.

(b) The safety risk [~~hazard~~] management process must, at a minimum:

(1) define the rail transit agency's approach to hazard management and the implementation of an integrated system-wide hazard resolution process;

(2) specify the mechanisms used for the on-going identification of hazards;

(3) define the process used to evaluate identified hazards and prioritize them for elimination or control;

(4) identify the mechanism used to track through resolution the identified hazards;

(5) define minimum thresholds for the notification and reporting of hazards to the department; and

(6) specify the process used by the rail transit agency to provide on-going reporting of hazard resolution activities to the department.

(c) A rail transit agency shall report to the department hazards in accordance with the State Safety Oversight Program Standard [~~each identified hazard within 24 hours of the time that the hazard is identified~~].

§7.85. Ensuring Safety In New Rail Systems [~~New State Rail Transit Agency Responsibilities~~].

(a) A rail transit agency may not begin operation before a public transportation agency safety plan [~~system safety program plan~~] is approved by the department.

(b) Each new rail transit agency is required to submit its public transportation agency safety plan [~~system safety program plan~~] to the department not later than 180 days before the target date of pre-revenue operations.

(c) The department will conduct an on-site pre-revenue review of each new rail transit agency's public transportation agency safety plan [~~system safety program plan~~] within 60 days after the date that the plan is received by the department under subsection (b) of this section.

(d) The department may request additional information or clarification related to, or revisions of, the public transportation agency safety plan [~~system safety program plan~~].

(e) On approval, the department will issue to the chief executive of the rail transit agency a formal letter of approval of the initial public transportation agency safety plan [~~system safety program plan~~].

§7.86. Risk Based Inspections.

(a) In addition to the generally applicable State Safety Oversight Program Standard, the department will develop and maintain an individual risk-based inspection program document in consultation with each rail transit agency in the State Safety Oversight Program. The program documents will be incorporated into the State Safety Oversight Program Standard and the rail transit agency safety plans. The program standard is detailed in the subsections below.

(b) The department will conduct inspections, with or without notice, of rail transit agency infrastructure, equipment, records, personnel, and data, including the data that the rail agency collects when identifying and evaluating safety risks, in accordance with the State Safety Oversight Program Standard. A rail transit agency shall provide access to department State Safety Oversight Program (SSOP) staff and contractors to conduct inspections as prescribed in the State Safety Oversight Program Standard.

(c) Department SSOP staff and contractors will comply with a rail transit agency's protective equipment policy and other safety requirements in the conduct of all inspections.

(d) Department personnel will immediately report safety concerns revealed through inspection activities to the rail transit agency staff upon discovery.

(e) The department will issue a draft inspection report to the rail transit agency within 30 days after the date of the completion of the inspection. The rail transit agency may submit written comments on the draft inspection report within 10 days of receiving the draft inspection report. The department will issue the final inspection report not later than 10 days after the rail transit agency's deadline to submit comments. The inspection report will contain:

(1) Date and time of inspection;

(2) Department personnel present;

(3) Inspection purpose, functional area, and locations or items inspected;

(4) Issues or deficiencies observed, if applicable;

(5) Recommendations, if applicable;

(6) Photographs, documentation, or diagrams, if available; and

(7) Corrective actions required which may include remedial actions.

(f) Rail transit agencies shall submit data to the department for qualitative and quantitative analysis to detect changes in rail transit safety performance, shifts in risk, and assure policy adherence. Data submission requirements for each rail transit agency are based on that agency's Safety Management System (SMS) hazard identification and risk assessment policies and procedures identified in the agency's public transportation agency safety plan. The type of data, format for submission, and schedule of submission shall be identified for each agency in its public transportation agency safety plan.

(g) The department will review rail transit agency data to prioritize inspection activities at least annually for each rail transit agency.

(h) The department will conduct on-going monitoring which will include at least four onsite inspections per year and other monitoring activities pursuant to 49 C.F.R. Part 674 and as described in the State Safety Oversight Program Standard.

§7.87. Rail Transit Agency's Annual Internal Safety Review.

(a) Annually, each rail transit agency shall conduct an internal review of its public transportation agency safety plan [~~system safety program plan~~] to ensure that all elements of the public transportation agency safety plan [~~system safety program plan~~] are performing as intended.

(b) The internal review process must, at a minimum:

(1) describe the process used by the rail transit agency to determine if all identified elements of its public transportation agency safety plan [~~system safety program plan~~] are performing as intended;

(2) ensure that all elements of the public transportation agency safety plan [~~system safety program plan~~] are reviewed in an ongoing manner; and

(3) include checklists or procedures that the rail transit agency will use for the review.

(c) The rail transit agency shall notify the department at least 60 days before the day of conducting the internal safety review. This notification must include any checklists or procedures that will be used during the review.

(d) The rail transit agency shall permit the department to participate in or observe the on-site portions of the rail transit agency's internal review.

(e) Before February 1 of each year, the rail transit agency shall submit a report documenting internal safety review activities that have been performed since the last report and the findings and status of corrective actions.

~~[(f) The annual report must be accompanied by a formal letter, signed by the rail transit agency's chief executive, that:]~~

~~[(1) certifies that the rail transit agency is in compliance with its system safety program plan; or]~~

~~[(2) if the rail transit agency determines that the findings from its internal safety review indicate that it is not in compliance with its system safety program plan, states that the rail transit agency is not in compliance with its system safety program plan, specifies each non-compliance issue, the activities that the rail transit agency will take to achieve compliance, the date that those activities will be completed, and the projected date that compliance with the plan will be achieved.]~~

§7.88. Triennial Review of Rail Transit Agencies [~~Department System Safety Program Plan Audit~~].

(a) The department will conduct an audit of the rail transit agency at least once every three years. The audit will evaluate whether the rail transit agency has implemented a public transportation agency safety plan [~~system safety program plan~~] that meets the requirements of [~~49 C.F.R. Part 659~~], 49 C.F.R. Part 674.27, the department's State Safety Oversight Program Standard [~~program standards~~], and the National Public Transportation Safety Plan, and whether the rail transit agency complies with the plan.

(b) The department will provide an audit checklist based on the required elements of the public transportation agency safety plan [~~system safety program plan~~].

(c) The department will verify the required elements by;

(1) interviews;

(2) document review;

(3) field observations;

(4) testing;

(5) measurements;

(6) spot checks; and

(7) demonstrations provided by the rail transit agency staff.

(d) To determine compliance with the public transportation agency safety plan [~~system safety program plan~~], the department will sample accident reports, internal review reports, and the agency's hazard management program.

(e) The audit may be conducted as a single on-site assessment or in an ongoing manner over a three-year cycle.

(f) In planning the audit the department will:

(1) develop the audit schedule in coordination with the rail transit agency;

(2) designate the audit team and an audit team lead;

(3) prepare an audit plan that includes all elements identified in the rail transit agency's public transportation agency safety plan [~~system safety program plan~~];

(4) prepare audit checklists and templates;

(5) identify methods of verification for each checklist item; and

(6) request and review the rail transit agency's safety documents.

(g) In conducting the audit, the department will:

(1) conduct an entrance meeting with the rail transit agency's administration;

(2) conduct interviews with appropriate rail transit staff;

(3) observe on-site operations;

(4) evaluate documents and data maintained on-site;

(5) take measurements and conduct spot checks;

(6) review all checklist items for compliance; and

(7) inform the rail transit agency of initial findings and observations.

(h) The rail transit agency shall cooperate with the department during the audit review and provide access to all documents, records, equipment, and property necessary to complete the audit.

(i) The department will issue a draft report to the rail transit agency within 60 days after the date of the completion of the audit.

(j) The rail transit agency may submit written comments on the draft audit report. The department will include in the final audit report any comments received within 30 days after the date that the draft report was issued.

(k) The department will prepare a final audit report and deliver a copy to the rail transit agency.

(l) Within 30 [~~45~~] days after the date of its receipt of the final audit report, the rail transit agency shall provide to the department all corrective action plans necessary to address the findings in the report.

(m) The department will notify the rail transit agency when all findings have been addressed and the audit is closed.

§7.89. Event [~~Accident~~] Notification.

(a) Each rail transit agency shall notify the department and FTA within two hours of any accident involving a rail transit vehicle or taking place on property used by rail transit agency if the accident:

(1) results in a fatality at the scene;

(2) results in one or more persons suffering serious injury;

(3) results in substantial [~~property~~] damage from a collision involving a rail transit vehicle [~~or derailment of a rail transit vehicle~~];

(4) results in an evacuation for life safety reasons;

(5) is a collision at a grade crossing resulting in serious injury or a fatality;

(6) is a main-line or yard derailment;

(7) is a collision with an individual resulting in serious injury or a fatality;

(8) is a collision with an object resulting in serious injury or a fatality;

(9) is a runaway train;

(10) is a fire resulting in a serious injury or a fatality; or

(11) is a collision between rail transit vehicles.

(b) If an accident involving a rail transit vehicle or taking place on property used by rail transit agency results in a fatality away from the scene of the accident but within 30 days after the accident, the rail transit agency shall notify the department within two hours of the confirmation of the death of the individual.

(c) A rail transit agency that shares track over the general railroad system of transportation and is subject to the Federal Railroad Administration notification requirements, shall notify the department within two hours of an incident for which the rail transit agency must notify the Federal Railroad Administration.

(d) A rail transit agency must track and report to FTA [~~and the department~~] each incident [~~accident~~] that does not qualify for reporting under subsection (a) of this section and that results in one or more non-serious injuries that require medical transportation from the incident [~~accident~~] scene or that results in non-collision related damage to equipment, rolling stock, or infrastructure that disrupts operation. The report must be filed within 30 days after the date of the incident [~~accident~~].

(e) A rail transit agency must track and make the resulting information available when requested by the department or FTA any [~~accident or~~] event that does not qualify for reporting under subsection (a), (b), or (d) of this section.

(f) Notification to the department under this section must be provided in the method specified by the department in the State Safety Oversight Program Standard [~~program standards and must contain all the information required in the program standards~~].

§7.90. Accident Investigations.

(a) The department will investigate any accident that is required to be reported under §7.89(a) or[~~,~~](b) [~~and (d)~~] of this subchapter (relating to Event [~~Accident~~] Notification).

(b) The department may authorize the rail transit agency to conduct the investigation on the department's behalf or may join the investigation being conducted by the National Transportation Safety Board through the NTSB's Party System.

(c) If the department authorizes the rail transit agency to conduct the investigation, all personnel and contractors in the investigation must be certified [~~trained~~] in accordance with the Public Transportation Safety Certification Training Program provided by the U.S. Department of Transportation, and department-approved procedures shall be followed.

(d) An investigation conducted by a rail transit agency shall be documented in a final report and submitted to the department within 30 days after the date of the accident. The final report must be in the form prescribed in the department's State Safety Oversight Program Standard [~~program standard~~].

(e) If the department does not agree with the rail safety agency's accident report, the department will conduct an accident investigation and will issue a separate accident report.

(f) The department may conduct an independent accident investigation for any accident required to be reported under §7.89(a), (b), or [~~and~~] (d) of this subchapter. The rail transit agency shall provide all information and access to all property necessary for the department to conduct the investigation. The department's investigation report will be submitted to the rail transit agency within 45 days after the date of the completion of the report.

(g) If the National Transportation Safety Board conducts the accident investigation, the department and the rail transit agency shall cooperate and provide information to the board when requested.

§7.91. Corrective Action Plan.

(a) Each rail transit agency shall develop a corrective action plan for:

(1) results from investigations in which identified causal and contributing factors are determined by the rail transit agency or the department to require corrective actions; and

(2) findings from safety [~~and security~~] reviews performed by the department that require corrective action.

(b) Each corrective action plan must identify the action to be taken by the rail transit agency, an implementation schedule, and the individual or department responsible for implementation of the plan.

(c) The department will review the corrective action plan within 30 days after the date of receipt. If a plan is not approved, the department will work with the rail transit agency to develop appropriate corrective action plans.

(d) The rail transit agency shall provide the department with verification that corrective actions have been implemented, as described in the corrective action plan, or that proposed alternate actions will be implemented, subject to department review and approval.

(e) If the rail transit agency disputes the department's decision related to a corrective action plan, the rail transit agency shall submit an application for administrative review under §7.93 of this subchapter (relating to Administrative Review) not later than 30 days after the date of receipt of the written decision.

(f) Failure to complete a corrective action plan is a violation under this subchapter.

§7.92. Administrative Actions by the Department.

(a) If the department determines that a rail transit agency violates this subchapter, [~~49 C.F.R. Part 659,~~] 49 C.F.R. Part 674.27, or Transportation Code, Chapter 455, the department may initiate an administrative action.

(b) The department will notify the rail transit agency in writing of any findings of violations.

(c) Notification under subsection (b) of this section will specify each violation identified by the department, the administrative action to be taken by the department, the compliance action needed to address the violation, and the information concerning the process for requesting administrative review of the department's determination.

(d) Within 45 days after the date of receipt of notification under subsection (b) of this section, the rail transit agency shall submit documentation showing compliance with the action needed to address the violation or shall request administrative review under §7.93 of this subchapter (relating to Administrative Review).

(e) Failure to act as required by subsection (d) of this section will lead to the escalation of an enforcement action under §7.94 of this subchapter (relating to Escalation of Enforcement Action) and may lead to the removal of the department's approval of the rail transit agency's public transportation agency safety plan [~~system safety program plan~~].

§7.93. Administrative Review.

(a) If a rail transit agency disagrees with a decision by the department regarding the corrective action plan under §7.91 of this subchapter (relating to Corrective Action Plan) or a violation finding under §7.92 of this subchapter (relating to Administrative Actions by the Department), the rail transit agency may file a request for an administrative review with the executive director.

(b) The request for administrative review must:

(1) be in writing; and

(2) specify the reasons that the department's action is in error and provide evidence that supports the rail transit agency's position.

(c) The executive director or the executive director's designee, who is not below the level of division director, will make a final determination on the appeal within 60 days after the date the executive director receives the request for the appeal and will notify the rail transit agency of the determination. If the final determination upholds the department's decision under §7.91 of this subchapter or finding under §7.92 of this subchapter, the executive director or the executive director's designee will send the final determination to the rail transit agency stating the reason for the decision and setting a deadline for compliance with the department's violation notice or the corrective action plan.

(d) The determination of executive director or the executive director's designee under subsection (c) of this section is final. The rail transit agency is not entitled to a contested case hearing and has no right to appeal the decision of the executive director or the executive director's designee.

(e) Failure of a rail transit agency to comply with a deadline provided by the executive director or the executive director's designee under subsection (c) of this section may result in the rescission of the department's approval of the rail transit agency's public transportation agency safety plan [~~system safety program plan~~] and the department may petition a court of competent jurisdiction to halt the operation of the rail transit agency's rail fixed guideway system program.

§7.94. Escalation of Enforcement Action.

(a) If a rail transit agency fails to comply with an administrative action notification, the department will notify the executive director.

(b) The executive director will notify the rail transit agency's governing body of the violation and the failure of the rail transit agency's correction of the violation.

(c) Within 45 days after the date on which the rail transit agency's governing body receives notice under subsection (b) of this section, the governing body shall provide to the executive director evidence that the violation has been resolved.

(d) If the rail transit agency's governing body is unable to show that the corrective action has been satisfactorily completed, the department shall rescind approval of the rail transit agency's public transportation agency safety plan [~~system safety program plan~~].

(e) If the department rescinds approval of a rail transit agency's public transportation agency safety plan [~~system safety program plan~~], the department may petition a court of competent jurisdiction to halt the operation of the rail transit agency's rail fixed guideway system program.

§7.95. Emergency Order to Address Imminent Public Safety Concerns.

(a) Notwithstanding §7.92 of this subchapter (relating to Administrative Actions by the Department), §7.93 of this subchapter (relating to Administrative Review), and §7.94 of this subchapter (relating to Escalation of Enforcement Action), if there is good cause for the executive director, or the executive director's designee, to believe that the operations of a rail transit agency poses an imminent threat to the safety of the general public, the executive director or the executive director's designee immediately will notify the governing body of the rail transit agency.

(b) If the rail transit agency is unable to immediately eliminate the threat identified under subsection (a) of this section, the executive director will rescind approval of the public transportation agency safety plan [~~system safety program plan~~] and order the rail transit agency to cease all operations of its rail fixed guideway public transportation system until the rail transit agency eliminates the threat.

(c) If the rail transit agency fails to cease operation of its rail fixed guideway public transportation system in accordance with an order issued under subsection (b) of this section, the department may seek a temporary injunction to enforce the executive director's order.

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

Filed with the Office of the Secretary of State on January 17, 2024.

TRD-202400152
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: March 3, 2024
For further information, please call: (512) 463-3164

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43 TAC §§7.82, 7.83, 7.86

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and more specifically Transportation Code, §455.060, which authorizes the commission to adopt rules for the oversight of rail fixed guideway systems.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING Transportation Code, Chapter 455, Subchapter B.

§7.82. System Safety Program Plan.

§7.83. Public Transportation Agency Safety Plan.

§7.86. Modifications to a System Safety Program 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 January 17, 2024.

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER B. CONTRACTS FOR HIGHWAY PROJECTS

43 TAC §§9.11, 9.12, 9.15 - 9.18, 9.23 - 9.25, 9.27

The Texas Department of Transportation (department) proposes the amendments to §§9.11, 9.12, 9.15 - 9.18, and §§9.23 - 9.25, and new §9.27 concerning Contracts for Highway Projects.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

Senate Bill (S.B.) 1021, 88th Regular Session, 2023, amended Transportation Code, Chapter 223 to increase the value of contracts for highway projects that the Texas Transportation Commission (commission) may permit a district engineer to let and award locally, from an estimated amount of less than $300,000 to less than $1 million. Similarly, S.B. 1021 increased the value of contracts for building construction projects that the commission may permit a division director to let and award locally, from an estimated amount of less than $300,000 to less than $1 million. The department's procedures for letting and awarding these contracts, given in Title 43, Part 1, Chapter 9, Subchapter B of the Texas Administrative Code, must be amended to use the additional authority provided by the changes made by S.B. 1021.

In conjunction with the increased threshold in Transportation Code, the department is making the corresponding update to the threshold for highway projects for which the highest level of bidder qualification may be waived.

Additional amendments include increasing the minimum bidding capacities granted for the differing levels of bidder qualification; removing the requirement for bids opened at the state level to be read publicly, in conformance with Transportation Code; updating Performance Review Committee rules regarding affiliates and appeal of remedial action; and aligning the rules with current business practices.

Amendments to §9.11, Definitions, repeal the definition of "routine maintenance contract," which is no longer used in these rules.

Amendments to §9.12, Qualification of Bidders, allow the highest level of bidder qualification to be waived for projects with an engineer's estimate of $1 million or less. Subsection (e) is amended to increase the minimum bidding capacity for the differing levels of bidder qualification: $2 million for qualification under a Confidential Questionnaire; $1 million for qualification under a Bidder's Questionnaire without compiled financial information; $1.5 million for qualification under a Bidder's Questionnaire with compiled financial information and at least one year of experience; $2 million for qualification under a Bidder's Questionnaire with compiled financial information and two years of experience, with additional capacity granted for additional years of experience ($6 million maximum); and $2 million for qualification under a Bidder's Questionnaire with reviewed financial information and at least three years of experience. The definition of "affiliated" is moved from §9.12 to new §9.27, Affiliated Entities. Subsection (g) is revised to clarify the process for determining whether bidders are independent from one another.

Amendments to §9.15, Acceptance, Rejection, and Reading of Bids, remove the requirement for bids opened at the state level to be read publicly, in accordance with Transportation Code §223.004, and permit highway and building contracts estimated under $1 million to be locally let by a district engineer or Division Director of the Support Services Division, respectively. The word "telegraph" is removed from subsections (c) and (d) because telegraphs are no longer used as a means for making requests to the department. This change is intended to be clean-up only and not a substantive change; telegraph requests still will not be accepted to request a change of a bid price after the bid has been manually submitted to the department. Finally, the section heading is simplified for clarity.

Amendments to §9.16, Tabulation of Bids, allow the executive director to make the determination of bid error for projects with an engineer's estimate less than $1 million.

Amendments to §9.17, Award of Contract, allow the executive director to award or reject contracts for projects with an engineer's estimate less than $1 million and allow the executive director to rescind the award of such a contract prior to execution upon a determination that it is in the best interest of the state. Allowing rescission of locally let contracts under the same authority as award or rejection, rather than requiring commission involvement, improves efficiency and will streamline the process

Amendments to §9.18, Contract Execution, Forfeiture of Bid Guaranty, and Bond Requirements, remove the requirement for the low bidder to submit a list of all quoting subcontractors and suppliers at contract execution because the department has that information from another source. The amendments also add building contracts to the types of contracts that require a bidder to provide a certificate of insurance before the date that the contractor begins work. This change reflects current department policy.

Amendments to §9.23, Evaluation and Monitoring of Contract Performance, clarify the process used for the evaluation and monitoring of highway improvement contracts. Changes to subsection (b) clarify that the Director of the Support Services Division is responsible for the evaluations related to building contracts. The changes to the section provide that district engineers for highway improvement contracts, other than building contracts, will submit final evaluation scores to the division responsible for monitoring the contract, and the division will periodically review the final evaluation scores. This change formalizes current department policy and clarifies and simplifies the rules. Changes to subsection (d) remove the reference to the Chief Administrative Officer because under subsection (c) the Director of the Support Services Division is responsible for monitoring compliance with building contracts. Because the Support Services Division is the monitor of building contracts, it will already have the evaluations, recovery plans, and associated documentation.

Amendments to the section also clarify that for a building contract, the Director of the Support Services Division may modify a proposed corrective action plan and adopt a final plan.

Amendments to §9.24, Performance Review Committee and Actions, allow the committee to recommend remedial action be applied to an entity identified as an affiliate under §9.27. This revision is intended to prevent circumvention of a remedial action by shifting bidding to an affiliated entity that is in existence before or created after the action.

Amendments to §9.25, Appeal of Remedial Action, clarify acceptable methods for delivery of an appeal to the executive director and remove the automatic stay of an imposed remedial action on a timely appeal. This revision is intended to comport with existing language in §9.24 that allows the Deputy Executive Director to take immediate action. Changes to subsection (d) clarify when notice of the executive director's final order on a remedial action is to be given.

New §9.27, Affiliated Entities, is comprised of existing language moved from §9.12 relating to the description of what make two entities affiliated.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Duane Milligan, Director, Construction Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Duane Milligan has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be clarity on the department's incorporation of the provisions of S.B. 1021 into its contract letting and awarding procedures.

COSTS ON REGULATED PERSONS

Duane Milligan has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Duane Milligan has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

GOVERNMENT GROWTH IMPACT STATEMENT

Duane Milligan has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Duane Milligan has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §§9.11, 9.12, 9.15 - 9.18, and §§9.23 - 9.25 and new §9.27 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Contracts for Highway Projects." The deadline for receipt of comments is 5:00 p.m. on March 4, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.005, which authorizes the commission to adopt rules concerning bids on a contract estimated by the department to involve an amount less than $1 million.

The authority for the proposed amendments is provided by S.B. No. 1021, 88th Regular Session, 2023. The primary author and the primary sponsor of that bill are Sen. Robert Nichols and Rep. Terry Canales, respectively.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 223, Subchapters A-C.

§9.11. Definitions.

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

(1) Advertisement--The public announcement required by law inviting bids for work to be performed or materials to be furnished.

(2) Alternate bid item--A bid item identified by the department as an acceptable substitute for a regular bid item.

(3) Apparent low bidder--The bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the department.

(4) Award--The commission's acceptance of a bid for a proposed contract that authorizes the department to enter into a contract.

(5) Bid--The offer of the bidder for performing the work described in the plans and specifications including any changes made by addenda.

(6) Bid bond--The security executed by the bidder and the surety furnished to the department to guarantee payment of liquidated damages if the bidder fails to enter into an awarded contract.

(7) Bidder--A person that submits a bid for a proposed contract.

(8) Bidder's Questionnaire--A prequalification form, prescribed by the department, that reflects detailed equipment and experience data but waives audited financial data.

(9) Bidding capacity--The maximum dollar value, as determined by the department, of all of the highway improvement contracts, other than building contracts, that a person may have with the department at any given time.

(10) Bid error--A mathematical mistake by the bidder in the unit bid price entered in the bid.

(11) Bid guaranty--The security furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

(12) Building contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the construction or maintenance of a department building or appurtenant facilities. Building contracts are considered to be highway improvement contracts.

(13) Certificate of insurance--A form approved by the department covering insurance requirements stated in the contract.

(14) Certification of Eligibility Status form--A notarized form describing any suspension, voluntary exclusion, ineligibility determination actions by an agency of the federal government, indictment, conviction, or civil judgment involving fraud, official misconduct, each with respect to the bidder or any person associated with the bidder in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds, covering the three-year period immediately preceding the date of the qualification statement.

(15) Commission--The Texas Transportation Commission or authorized representative.

(16) Confidential Questionnaire--A prequalification form, prescribed by the department, reflecting detailed financial and experience data.

(17) Department--The Texas Department of Transportation.

(18) Disadvantaged business enterprise (DBE)--Has the meaning assigned by §9.202(4) of this chapter (relating to Definitions).

(19) District engineer--The chief executive officer in each of the designated district offices of the department.

(20) Electronic Bidding System (EBS)--The department's automated system that allows bidders to enter and submit their bid information electronically.

(21) Electronic vault--The secure location where electronic bids are stored prior to bid opening.

(22) Emergency--Any situation or condition of a designated state highway, resulting from a natural or man-made cause, that poses an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the orderly flow of traffic and commerce.

(23) Executive director--The executive director of the Texas Department of Transportation or the director's designee not below the level of district engineer or division director.

(24) Highway improvement contract--A contract entered into under Transportation Code, Chapter 223, Subchapter A, for the construction, reconstruction, or maintenance of a segment of the state highway system or for the construction or maintenance of a building or other facility appurtenant to a building. The term does not include a materials contract.

(25) Historically underutilized business (HUB)--Has the meaning assigned by §9.352 of this chapter (relating to Definitions).

(26) Joint venture--Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid.

(27) Letting official--The executive director or any department employee empowered by the executive director to officially receive bids and close the receipt of bids at a letting.

(28) Maintenance contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the maintenance of a segment of the state highway system. A maintenance contract is considered to be a highway improvement contract.

(29) Materials contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the purchase of maintenance materials, traffic control devices, or safety devices, as described by Transportation Code, §223.001(b)(2) or (3).

(30) Materials supplier's questionnaire--A prequalification form, prescribed by the department, that gathers information, such as company contact, signature authority, and other requirements, to allow a person to bid on a materials contract.

(31) Materially unbalanced bid--A bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the state.

(32) Mathematically unbalanced bid--A bid containing lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

(33) Person--An individual, partnership, limited liability company, corporation, or joint venture.

(34) Regular bid item--A bid item contained in a proposal form and not designated as an alternate bid item.

~~[(35) Routine maintenance contract--A maintenance contract that is let through the routine maintenance contracting procedure to preserve and repair roadways and rights of way, with all its components to its designed or accepted configuration.]~~

(35) [~~(36)~~] Small business enterprise (SBE)--Has the meaning assigned by §9.302 of this chapter (relating to Definitions).

§9.12 Qualification of Bidders.

(a) Eligibility. To be eligible to bid on a highway improvement contract, other than a building contract, or on a materials contract, po-

tential bidders must satisfy the applicable requirements listed in this section.

(1) If the department has accepted from a person a properly completed Confidential Questionnaire, as described in subsection (c) of this section, and audited financial information, as described in subsection (b)(1) of this section, the person is eligible to bid on any project for which the person meets any necessary special technical qualification requirements, has sufficient available bidding capacity, as determined under subsection (e) of this section, and has submitted a properly completed [a] Certification of Eligibility Status form if it is a federal-aid project.

(2) A person that has submitted only a Bidder's Questionnaire, as described in subsection (d) of this section, may bid only on a specified project for which the department has waived the requirements of paragraph (1) of this subsection. Such a project is referred to as a waived project and generally has one of the following characteristics:

(A) the engineer's estimate for the project is [~~$300,000~~] less than $1 million;

(B) the project is a [~~routine~~] maintenance project;

(C) the project is an emergency project;

(D) the project contains specialty items not normal to the department's roadway projects program; or

(E) the project is for the purchase of goods that may be purchased under a materials contract.

(3) A bidder that submits only a Materials Supplier's Questionnaire is eligible to bid only on a materials contract, including a materials contract awarded under §9.19 of this subchapter (relating to Emergency Contract Procedures).

(b) Financial Information. This section refers to three types of financial information.

(1) Audited financial information is information resulting from an examination of the accounting system, records, and financial statements by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial information in conformity with generally accepted accounting principles. A bidder that submits audited financial information, as required for a Confidential Questionnaire in accordance with subsection (c) of this section, is eligible to bid on all projects for which the bidder has available bidding capacity, as determined under subsection (e) of this section.

(2) Reviewed financial information may be used in a Bidder's Questionnaire under subsection (d) of this section. The scope of reviewed financial information is substantially less than audited financial information, and the information is the result primarily of inquiries of company personnel and analytical procedures applied to financial data by an independent certified public accountant. Only negative assurance is expressed by the independent accountant, which means that the independent accountant is not aware of any material modifications that should be made in order for the financial information to conform to generally accepted accounting principles. A bidder that submits reviewed financial information is subject to the limitations described in subsections (d) and (e) of this section for a waived project.

(3) Compiled financial information also may be used in a Bidder's Questionnaire under subsection (d) of this section. Compiled financial information only presents information that is the representation of management. No opinion or other assurance is expressed by the independent accountant. A bidder that submits compiled financial information is subject to the limitations described in subsections (d) and (e) of this section for a waived project.

(c) Confidential Questionnaire. A potential bidder must satisfy the requirements of this subsection to be eligible to bid on a highway improvement contract, except as provided by subsection (d) of this section.

(1) A potential bidder must:

(A) submit to the department's Construction Division in Austin 10 days prior to the last day of bid opening a Confidential Questionnaire that includes information, as required by the department, concerning the bidder's equipment and experience as well as financial condition;

(B) have a certified public accountant firm that is licensed to practice public accountancy prepare the audited and any other financial information required by the department;

(C) satisfactorily comply with any technical qualification requirements determined by the department to be necessary for a specific project; and

(D) properly complete the Certification of Eligibility Status form contained in the Confidential Questionnaire for the purpose of bidding on federal-aid projects.

(2) Information adverse to the potential bidder contained in the Certification of Eligibility Status form will be reviewed by the department and the Federal Highway Administration, and may result in the bidder being declared ineligible to submit bids.

(3) Satisfactory audited financial information will grant a 12-month period of qualification from the date of the financial statement.

(4) A three month grace period of qualification, for the purpose of preparing and submitting current audited information, will be granted prior to the expiration date of the financial statement.

(5) The department may require current audited information at any time if circumstances develop which are factors that could alter the potential bidder's financial condition, ownership structure, affiliation status, or ability to operate as an on-going concern.

(d) Bidder's Questionnaire; Materials Supplier's Questionnaire. To be eligible to bid on a contract under this subsection or on a contract to be awarded under §9.19 of this subchapter (relating to Emergency Contract Procedures), a bidder must:

(1) submit to the department's headquarters office in Austin 10 days prior to the date the bid opens, a Bidder's Questionnaire that includes information, as required by the department, concerning a bidder's equipment and experience or for a materials contract, a bidder may submit a Materials Supplier's Questionnaire instead of a Bidder's Questionnaire;

(2) submit unaudited and other data as required in the instructions to the questionnaire submitted under paragraph (1) of this subsection;

(3) satisfactorily comply with any technical qualification requirements determined by the department to be necessary on a specific project; and

(4) for a federal-aid project, properly complete the Certification of Eligibility Status form contained in the questionnaire submitted under paragraph (1) of this subsection. Information adverse to the potential bidder contained in the certification will be reviewed by the department and by the Federal Highway Administration, and may

result in the bidder being declared ineligible to submit bids on a federal-aid project.

(e) Bidding capacity; available bidding capacity. The department will make its examination and determination based on the information submitted under subsection (c) or (d) of this section, as appropriate, and advise the bidder of its bidding capacity.

(1) For a bidder submitting a Confidential Questionnaire and audited financial information, the amount of the bidding capacity will be determined by multiplying the net working capital by a factor determined by the department based on the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. If this calculation results in a positive amount that is not greater than $2 million [~~$1,000,000~~], the bidder will receive a bidding capacity of $2 million [~~$1,000,000~~] if the bidder has positive net working capital and the bidder provides documentation of at least two years' experience and four completed projects in the field in which the bidder wishes to bid. Bidding capacity determined under this paragraph applies for any project and is not limited to waived projects.

(2) For a bidder submitting a Bidder's Questionnaire with no prior experience in construction or maintenance, or a negative working capital position (i.e., financial statements indicate that current liabilities exceed current assets), will receive a bidding capacity of $1 million [~~$300,000~~] for waived projects only.

(3) For a bidder submitting a Bidder's Questionnaire and compiled financial information if the principals of the bidder have at least one year experience in construction or maintenance and have satisfactorily completed at least two projects in these fields, the bidding capacity is $1.5 million [~~$500,000~~] for waived projects only.

(4) For a bidder submitting a Bidder's Questionnaire and compiled financial information and the principals of which have at least two years' experience in construction or maintenance and have satisfactorily completed at least four projects in these fields, the bidding capacity is $2 million [~~$1,000,000~~] for waived projects only. Those bidders possessing more than two years' experience will be granted an additional $500,000 [~~$250,000~~] in bidding capacity for each additional year of experience in construction or maintenance, with a maximum bidding capacity of $6 million [~~$3,000,000~~] for waived projects only.

(5) For a bidder submitting a Bidder's Questionnaire and reviewed financial information and the principals of which have at least three years of experience in construction or maintenance and have satisfactorily completed at least six projects in these fields, the amount of the bidding capacity will be determined by multiplying the net working capital by a factor determined by the department based upon the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. In the event that this calculation does not result in an amount greater than $2 million [~~$1,000,000~~], the bidder will receive a bidding capacity of $2 million [~~$1,000,000~~]. Bidding capacity determined under this paragraph is limited to waived projects only.

(6) A bidder's available bidding capacity is determined by the department by subtracting from the bidder's bidding capacity the amount of the estimated cost of the bidder's uncompleted work on department contracts. Bidding capacity does not apply to a materials contract or building contract and an uncompleted materials or building contract does not affect the bidding capacity or available bidding capacity of a bidder.

(f) Effect of contract performance. A person's bidding capacity or eligibility to bid on a highway improvement contract may be affected by a decision of the deputy executive director under §9.24 of this chapter (relating to Performance Review Committee and Actions).

(g) Affiliated bidders; independence exception [~~entities~~]. Bidders that the department determines in accordance with §9.27 of this subchapter (relating to Affiliated Entities) are affiliated are not eligible to submit bids for the same project. A bidder that is determined to be affiliated but that can establish independence from the other affiliated bidders may request, in accordance with this subsection, an exception to its ineligibility. Such a request may be made only once during any 12-month period.

~~[(1) For purposes of this subchapter:]~~

~~[(A) two or more bidders are affiliated if:]~~

~~*[(i)* the bidders share common officers, directors, or controlling stockholders;]~~

~~*[(ii)* a family member of an officer, director, or controlling stockholder of one bidder serves in a similar capacity in another of the bidder;]~~

~~*[(iii)* an individual who has an interest in, or controls a part of, one bidder either directly or indirectly also has an interest in, or controls a part of, another of the bidders;]~~

~~*[(iv)* the bidders are so closely connected or associated that one of the bidders, either directly or indirectly, controls or has the power to control another bidder;]~~

~~*[(v)* one bidder controls or has the power to control another of the bidders; or]~~

~~*[(vi)* the bidders are closely allied through an established course of dealings, including but not limited to the lending of financial assistance; and]~~

~~[(B) a family member of an individual is the individual's parent, parent's spouse, step-parent, step-parent's spouse, sibling, sibling's spouse, spouse, child, child's spouse, spouse's child, spouse's child's spouse, grandchild, grandparent, uncle, uncle's spouse, aunt, aunt's spouse, first cousin, or first cousin's spouse.]~~

(1) [~~(2)~~] To request the exception to the department's finding of affiliation, a bidder must submit to the executive director a written request explaining the basis for the exception accompanied by supporting evidence, including an affidavit affirming that the bidder is independent from and not coordinating with the affiliates or any other bidder. The written request must be received not later than the 30th day before the date of the bid opening for which the exception is requested.

(2) [~~(3)~~] The department will review the request and supporting evidence provided to determine whether the requester is independent from the other affiliated bidder [~~affiliation or independence of the potential bidders~~]. In determining independence, the [~~The~~] department will consider, in addition to other affiliation criteria:

(A) transactions between the potential bidders; and

(B) the extent to which the potential bidders share:

(i) equipment;

(ii) personnel;

(iii) office space; and

(iv) finances.

(3) [~~(4)~~] If the department finds that the bidders are independent, the director of the division reviewing the request will recommend to the executive director that the requesting bidder be granted an exception.

(4) [(5)] The executive director will review the request, supporting evidence, and department's recommendation and will make the final determination on the request. The executive director will send to the bidder the final written determination. An exception granted to the bidder remains in effect for future bid openings unless the exception is revoked under paragraph (5) [(6)] of this subsection.

(5) [(6)] The granting of an exception under this subsection does not remove the classification of the bidders as affiliated. The department reserves the right to conduct follow-up reviews and revoke the exception if the follow-up reviews indicate that the bidders are no longer independent. A bidder's failure to act independently of its affiliates or other bidder during the period it was granted an exception under this subsection may result in the imposition of sanctions.

(6) [(7)] If bidders classified as affiliates submit bids on the same project, the department reserves the right to reject all bids on that project and relet the contract.

(7) [(8)] Affiliated bidders that are granted an exception under this subsection and that have been sanctioned in accordance with Chapter 10 of this title must meet the exception criteria in that chapter to be eligible to bid.

(h) Building contracts. To be eligible to bid on a building contract, a potential bidder must [satisfactorily] comply only with any [financial, experience, technical, or other] requirements contained in the governing specifications applicable to the project.

§9.15. Acceptance[, Rejection, and Reading] of Bids.

(a) Public opening [reading]. Bids will be opened [and read] in accordance with Transportation Code, §223.004 and §223.005.

(1) Bids for contracts, other than building contracts, with an [engineer's] estimate of less than $1 million [$300,000] may be filed with the district engineer at the headquarters for the district[,] and opened and read at a public meeting conducted by the district engineer, or his or her designee, on behalf of the commission.

(2) Bids for a building contract with an estimate of less than $1 million may be filed with the Director of the Support Services Division at the headquarters of the division and opened and read at a public meeting conducted by the director of that division, or the director's designee, on behalf of the commission.

(b) Bids not considered.

(1) The department will not consider a bid if:

(A) the bid is submitted by an unqualified bidder;

(B) the bid is in a form other than the official bid form issued to the bidder;

(C) the certification and affirmation are not signed;

(D) the bid was not in the hands of the letting official at the time and location specified in the advertisement;

(E) the bidder modifies the bid in a manner that alters the conditions or requirements for work as stated in the proposal form;

(F) the bid guaranty, when required, does not comply with §9.14(d) of this subchapter (relating to Submittal of Bid);

(G) the proposal form was signed by a person who was not authorized to bind the bidder or bidders;

(H) the bid does not include a fully completed HUB plan in accordance with §9.356 of this chapter when required;

(I) a typed proposal form does not contain the information in the format shown on the "Example of Bid Prices Submitted by a Computer Printout" in the proposal form;

(J) the bidder was not authorized to be issued a bid form under §9.13(e) of this subchapter (relating to Notice of Letting and Issuance of Proposal Forms);

(K) the bid did not otherwise conform with the requirements of §9.14 of this subchapter;

(L) the bidder fails to properly acknowledge receipt of all addenda;

(M) the bid submitted has the incorrect number of bid items;

(N) the bidder does not meet the applicable technical qualification requirements;

(O) the bidder fails to submit a DBE commitment within the period described by §9.17(i) of this subchapter (relating to Award of Contract);

(P) the bidder fails to meet the requirements of §9.17(j) of this subchapter relating to participation in the Department of Homeland Security (DHS) E-Verify system; or

(Q) the bidder bids more than the maximum or less than the minimum number of allowable working days shown on the plans when working days is a bid item.

(2) If bids are submitted on the same project separately by a joint venture and one or more members of that joint venture, the department will not accept [and will not read] any of the bids submitted by the joint venture and those members for that project.

(3) If bids are submitted on the same project by affiliated bidders as determined under §9.27 [§9.12(g)] of this subchapter (relating to Affiliated Entities) and the executive director has not granted an affiliation exception under §9.12(g) of this subchapter (relating to Qualification of Bidders) [that subsection], the department will not accept [and will not read] any of the bids submitted by the affiliated bidders for that project.

(c) Revision of bid.

(1) For a manually submitted bid, a bidder may change a bid price before it is submitted to the department by changing the price in the printed bid form and initialing the revision in ink;

(2) For a manually submitted bid, a bidder may change a bid price after it is submitted to the department by requesting return of the bid in writing prior to the expiration of the time for receipt of bids, as stated in the advertisement. The request must be made by a person authorized to bind the bidder. The department will not accept a request by telephone [or telegraph, but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

(3) For an electronically submitted bid, a bidder may change a unit bid price in EBS and resubmit electronically to the electronic vault until the time specified for the close of the receipt of bids. Each bid submitted will be retained in the electronic vault. The electronic bid with the latest date and time stamp by the vault will be used for bid tabulation purposes.

(d) Withdrawal of bid.

(1) A bidder may withdraw a manually submitted bid by submitting a request in writing to the letting official before the time and date of the bid opening. The request must be made by a person

authorized to bind the bidder. The department will not accept telephone [~~or telegraph~~] requests[~~,~~] but will accept a properly signed facsimile request. Except as provided in §9.16(c) of this subchapter (relating to Tabulation of Bids) and §9.17(d) of this subchapter, a bidder may not withdraw a bid subsequent to the time for the receipt of bids.

(2) A bidder may withdraw an electronically submitted bid by submitting an electronic or written request to withdraw the bid. An electronic withdrawal request must be submitted using EBS. The request, whether electronic or written, must be submitted by a person who is authorized by the bidder to submit the request and received by the department before the time and date of the bid opening.

(e) Unbalanced bids. The department will examine the unit bid prices of the apparent low bid for reasonable conformance with the department's estimated prices. The department will evaluate a bid with extreme variations from the department's estimate[~~,~~] or where obvious unbalancing of unit prices has occurred. For the purposes of the evaluation[~~,~~] the department will presume the same retainage percentage for all bidders. In the event that the evaluation of the unit bid prices reveals that the apparent low bid is mathematically and materially unbalanced, the bidder will not be considered in future bids for the same project.

§9.16. Tabulation of Bids.

(a) Official bid amount. Except for lump sum building contract bid items, the official total bid amount for each bidder will be determined by multiplying the unit bid price written in for each item by the respective quantity and totaling those amounts.

(b) Department interpretations.

(1) Bids where unit bid prices have been left blank will be considered by the department to be incomplete and nonresponsive. If a bid has a regular and a corresponding alternate bid item or group of items, the bid will not be considered to be incomplete if either the regular bid item, or group of items, or the alternate bid item, or group of items, has a unit bid price entered. If both a regular bid item, or group of items, and a corresponding alternate bid item, or group of items, are left blank, the bid will be considered to be incomplete and nonresponsive. A bidder who elects to bid on a bid item group corresponding to a regular or alternate bid item, or group of items, must include unit bid prices for each bid item contained in the bid item group.

(2) Bid entries such as no dollars and no cents, zero dollars and zero cents, or numerical entries of $0.00 will be interpreted to be one-tenth of a cent ($.001) and will be entered in the bid tabulation as $.001, except as provided in paragraph (6) of this subsection. Any entry extended to more than three decimal places will be rounded to the nearest tenth of a cent and entered as such. For rounding purposes contained in this subsection, entries of five-hundredths of a cent or more will be rounded up to the next highest tenth of a cent, while entries of four-hundredths of a cent or less will be rounded down to the next lowest tenth of a cent.

(3) If the bidder submits both an electronic bid and a properly completed manual bid, the department will use the electronic bid to determine the total bid amount of the bid. If the bidder submits an electronic bid and a manual bid that is not complete, the department will use the electronic bid to determine the total bid amount of the bid.

(4) If the bidder submits two or more manual bids, all responsive manual bids will be tabulated, and the department will use the lowest bid tabulation to determine the total bid amount of the bid.

(5) If a unit bid price is illegible, the department will make a documented determination of the unit bid price for tabulation purposes.

(6) If a unit bid price has been entered for both the regular bid item, or group of items, and a corresponding alternate bid item, or group of items, the department will determine the option that results in the lowest total cost to the state and tabulate as such, except as provided in subparagraphs (A) and (B) of this paragraph. If both the regular and alternate bids result in the same cost to the state, the department will select the regular bid item or items.

(A) If both a regular bid item or a group of items, and a corresponding alternate bid item or group of items, have an entry such as no dollars and no cents, zero dollars and zero cents, or numerical entries of $0.00, the department will make two calculations using one-tenth of a cent ($.001) for each item as described in paragraph (2) of this subsection. The department will determine the option that results in the lowest total cost to the state and tabulate as such. If both the regular and alternate bids result in the same cost to the state, the department will select the regular bid item or items.

(B) If a unit bid price greater than zero has been entered for either a regular bid or corresponding alternate bid item, or a group of items, and an entry of no dollars and no cents, zero dollars and zero cents, or a numerical entry of $0.00 has been entered for the other corresponding item, or group of items, the department will use the unit bid price that is greater than zero for bid tabulation.

(c) Tie bids. In the event the official bid amount for two or more bidders is equal and those bids are the lowest submitted, each tie bidder will be given an opportunity to withdraw its bid. If two or more tie bidders decline to withdraw their bids, the low bidder will be determined by a coin toss. If all tie bidders request to withdraw their bids, no withdrawals will be allowed and the low bidder will be determined by a coin toss.

(d) Bid guaranty. Not later than 72 hours after bids are opened, the department will mail the check or money order bid guaranty of each bidder except the apparent low bidder to the address specified on the return bidder's check form included in the bid. Bid bonds will not be returned.

(e) Bid errors. The department will consider a bid error that meets the notification requirements contained in paragraph (1) of this subsection and satisfies the criteria contained in paragraph (2) of this subsection in the award of a contract.

(1) The apparent low bidder must submit written notification of an alleged bid error to the department within five business days after the date bids are opened for the project. The notification must identify the items of work involved and must include bid documentation, such as quotes received, calculations made, or other related documentation used in bid preparation that substantiates the alleged error. Once the notification is submitted to the department, it may not be revised or supplemented unless additional information is requested by the department.

(2) The department will consider the following criteria in determining whether a bid error exists:

(A) the alleged bid error relates to a material item of work contained in the bid;

(B) the alleged bid error is a significant portion of the total bid as compared to the intended bid contained in the documentation submitted by the contractor in accordance with paragraph (1) of this subsection, and other contractor bids;

(C) the alleged bid error occurred despite the contractor's exercise of ordinary care in preparing its bid; and

(D) delay in the completion of the project will not have a significant impact on the cost to and safety of the public.

(3) The department may consider an alleged bid error caused by an effort to unbalance the bid as failure to exercise ordinary care.

(4) When the engineer's estimate on a project is less than $1 million [$300,000], the executive director may determine whether a bid error exists[,] under the same conditions and criteria as provided in paragraphs (1) and (2) of this subsection.

§9.17. Award of Contract.

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this subchapter (relating to Acceptance[, Rejection, and Reading] of Bids and Tabulation of Bids, respectively). It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the lowest bid is determined to be both mathematically and materially unbalanced;

(3) the lowest bid is higher than the department's estimate and the commission determines that re-advertising the project for bids may result in a significantly lower low bid;

(4) the lowest bid is higher than the department's estimate and the commission determines that the work should be done by department forces; or

(5) the lowest bid is determined to contain a bid error that meets the notification requirements contained in §9.16(e)(1) of this subchapter and satisfies the criteria contained in §9.16(e)(2) of this subchapter.

(b) Except as provided in subsection (c), (d), (e), or (f) of this section, if the commission does not reject all bids, it will award the contract to the lowest bidder.

(c) In accordance with Government Code, Chapter 2252, Subchapter A, the commission will not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of:

(1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which:

(A) the nonresident's principal place of business is located; or

(B) the nonresident is a resident manufacturer; or

(2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

(d) For a maintenance contract for a building or a segment of the state highway system involving a bid amount of less than $300,000, if the lowest bidder withdraws its bid after bid opening, the executive director may recommend to the commission that the contract be awarded to the second lowest bidder.

(1) For purposes of this subsection, the term "withdrawal" includes written withdrawal of a bid after bid opening, failure to provide the required insurance or bonds, or failure to execute the contract.

(2) The executive director may recommend award of the contract to the second lowest bidder if he or she, in writing, determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder; and

(A) the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices;

(B) there is a specific need to expedite completion of the project to protect the health or safety of the traveling public; or

(C) delaying award of the contract would jeopardize the structural integrity of the highway system.

(3) The commission may accept the withdrawal of the lowest bid after bid opening if it concurs with the executive director's determinations.

(4) If the commission awards a contract to the second lowest bidder and the department successfully enters into a contract with the second lowest bidder, the department will return the lowest bidder's bid guaranty upon execution of that contract.

(e) If the lowest bidder is not a preferred bidder and the contract will not use federal funds, the department, in accordance with Transportation Code, Chapter 223, Subchapter B, will award the contract to the lowest-bidding preferred bidder if that bidder's bid does not exceed the amount equal to 105 percent of the lowest bid. For purposes of this subsection, "preferred bidder" means a bidder whose principal place of business is in this state or a state that borders this state and that does not give a preference similar to Transportation Code, §223.050.

(f) When additional information is required to make a final decision, the commission may defer the award or rejection of the contract until the next regularly scheduled commission meeting.

(g) Contracts with an engineer's estimate of less than $1 million [$300,000] may be awarded or rejected by the executive director under the same conditions and limitations as provided in subsections (a)-(c) of this section.

(h) The commission may rescind the award of any contract prior to contract execution upon a determination that it is in the best interest of the state. The executive director may rescind the award of a contract awarded under subsection (g) of this section prior to contract execution upon a determination that it is in the best interest of the state. If a contract is rescinded under this subsection [In such an instance], the bid guaranty will be returned to the bidder but no[. No] compensation will be paid to the bidder as a result of the rescission [this cancellation].

(i) For a contract with a DBE goal, all bidders must submit the DBE information required by §9.227 of this chapter (related to Information from Bidders) within five calendar days after the date that the bids are opened.

(j) Prior to contract award, all low bidders must be participating or provide documentation of participation in the Department of Homeland Security's (DHS) E-Verify system within five calendar days after the date that the bids are opened.

§9.18. Contract Execution, Forfeiture of Bid Guaranty, and Bond Requirements.

(a) Contract execution.

(1) Except as provided in paragraphs (2) and (3) of this subsection, within 15 days after the bidder receives written notification of the award of a contract, the bidder must execute and furnish to the department the contract with:

(A) a performance bond and a payment bond, if required and as required by Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price except as provided by subsection (c) of this section, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law. Department interpreta-

tions made in accordance with §9.16(b)(2) of this subchapter (relating to Tabulation of Bids) will be used to determine the contract amount for providing a performance bond and payment bond, if required, and as required by the Government Code, Chapter 2253;

(B) a certificate of insurance showing coverages in accordance with contract requirements; and

(C) when required, written evidence of current good standing from the Comptroller of Public Accounts.[; and

[(D) a list of all quoting subcontractors and suppliers.]]

(2) A bidder awarded a [routine] maintenance contract, [or a] materials contract, or building contract will be required to provide the certificate of insurance prior to the date the contractor begins work as specified in the department's order to begin work.

(3) The bidder selected for the award of a contract containing a DBE or SBE goal, who is not a DBE or SBE, must submit all the information required by the department in accordance with §9.227 of this chapter (relating to Information from Bidders) within the period described by §9.17(i) of this subchapter (relating to Award of Contract) for a contract containing a DBE goal, or §9.319 of this chapter (relating to Contractor's Commitment Agreement) and §9.320 of this chapter [subchapter] (relating to Contractor's Good Faith Efforts) within the period specified in the contract for a contract containing a SBE goal. The bidder must comply with paragraph (1) of this subsection within 15 days after written notification of acceptance by the department of the bidder's documentation to achieve the DBE or SBE goal.

(b) Bid guaranty. The department will retain the bid guaranty of the bidder awarded a contract until after the contract has been executed and bonded. If the bidder selected for the award of a contract with a DBE goal fails to submit the DBE information required by §9.227 of this chapter (related to Information from Bidders) within the period described by §9.17(i) of this subchapter or if the bidder awarded a contract does not comply with subsection (a) of this section, the bid guaranty will become the property of the state, not as a penalty but as liquidated damages. A bidder who forfeits a bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the bid guaranty.

(c) Performance or payment bonds for maintenance contracts. For maintenance contracts the department may require that a performance or payment bond:

(1) be in an amount equal to the greatest annual amount to be paid under the contract and remain in effect for one year from the date work is resumed after any default by the contractor; or

(2) be in an amount equal to the amount to be paid the contractor during the term of the bond and be for a term of two years, renewable biannually [annually] in two-year increments.

(d) Performance or payment bonds for materials contracts. A performance or payment bond is not required for a materials contract.

§9.23. Evaluation and Monitoring of Contract Performance.

(a) The department will develop standards used to evaluate a contractor's performance under a highway improvement contract, including standards for conformance with the project plans and specifications and recordkeeping requirements; compliance with the contract and industry standards for safety; responsiveness in dealing with the department and the public; meeting progress benchmarks and project milestones; addressing project schedule issues, given adjustments, change orders, and unforeseen conditions or circumstances; and completing project on time. The department will develop an evaluation form to be used by department employees in evaluating contract performance.

(b) The district engineer of the district in which a project under a highway improvement contract, other than a building contract, is located, or the Director of the Support Services Division for building contracts shall evaluate the contractor's performance under the contract. An interim evaluation shall be performed as necessary and on each anniversary date of the contract if the project extends for longer than one year. The district engineer for a highway improvement contract, other than a building contract, or the Director of the Support Services Division [Chief Administrative Officer] for a building contract shall approve any final evaluations on the completion of the project. Only final evaluations will be used to determine whether the contractor's contract performance meets the department's requirements.

(c) If the contractor's performance on a project is below the department's acceptable standards for contract performance, the district engineer or the Director of the Support Services Division, as applicable, may work with the contractor to establish a recovery plan for the project. The established project recovery plan will be used to correct significant deficiencies in contractor performance. The district engineer or the Director of the Support Services Division, as applicable, will monitor and document the contractor's compliance with the established project recovery plan.

(d) For [District engineers for] a highway improvement contract, other than a building contract, the district engineer [or the Chief Administrative Officer for a building contract] will submit the final evaluation scores [each evaluation] performed under this section [and each established project recovery plan and resulting documentation] to the division of the department that is responsible for monitoring the contract.

(e) The division that monitors the final evaluation scores [receives evaluations] of a contractor [under subsection (d) of this section] periodically will review the final evaluation scores [evaluations] of that contractor that were completed during the review period, or if fewer than 10 final evaluations were completed during the review period, up to 10 of the most recent final evaluations completed within the previous three-year period. If the average of the final evaluation scores [evaluations] reviewed [in this period] is below the department's acceptable standards for contract performance, the division will send a notice to the contractor and request that the contractor submit to the division for approval a proposed corrective action plan that will be used to correct significant deficiencies in the performance in all of contractor's projects. The division, in consultation with the department's Chief Engineer for a highway improvement contract, other than a building contract, or the Director of the Support Services Division [Chief Administrative Officer] for a building contract, may modify the proposed corrective action plan and adopt a final plan. The division promptly will send the adopted corrective action plan to the contractor.

(f) For the 120-day period beginning on the day that the adopted corrective action plan is sent under subsection (e) of this section, the division will monitor the contractor's active projects to determine whether the contractor is meeting the requirements of the adopted corrective action plan or if there are no active projects, the division will monitor the contractor's next available projects. Before making a determination under this subsection, the division must consider and document any events outside a contractor's control that contributed to the contractor's failure to meet the performance standards or failure to comply with the corrective action plan. If at the end of the 120-day period contract performance remains below the department's standards for contract performance, the division will notify the contractor and forward to the Performance Review Com-

mittee all of the information that it has, which includes at minimum all final evaluations, any adopted corrective action plans, and any information about events outside a contractor's control contributing to the contractor's performance.

§9.24. Performance Review Committee and Actions.

(a) If information is required to be forwarded to a Performance Review Committee under §9.23 of this subchapter (relating to Evaluation and Monitoring of Contract Performance) or if a contractor, including a contractor on a materials contract, has defaulted, the deputy executive director will appoint the members and chairman of the Performance Review Committee. The members and chairman serve at the discretion of the deputy executive director. The Performance Review Committee will review the information submitted to the committee under §9.23(f) of this subchapter, any documentation developed by the department during the evaluation process under §9.23 of this subchapter, and any documentation submitted by the contractor. For a materials contract, the Performance Review Committee will review any documentation developed by the department related to the contract and any documentation submitted by the contractor. The committee will determine whether grounds exist for action under this section. After reviewing the submitted information, the Performance Review Committee may recommend one or more of the following:

(1) take no action;

(2) reduce the contractor's bidding capacity;

(3) prohibit the contractor from bidding on one or more projects;

(4) immediately suspend the contractor from bidding for a specified period of time; or

(5) prohibit the contractor from being awarded a contract on which they are the apparent low bidder.

(b) The Performance Review Committee may recommend that one or more actions listed in subsection (a) of this section be taken immediately to ensure project quality, safety, or timeliness if:

(1) the contractor failed to execute a highway improvement contract or a materials contract after a bid is awarded, unless the contractor honored the bid guaranty submitted under §9.14(d) of this chapter (relating to Submittal of Bid);

(2) the commission, during the preceding 36-month period, rejected two or more bids by the contractor because of contractor error;

(3) the department declared the contractor in default on a highway improvement contract or a materials contract; or

(4) a district notifies the committee through the referring division that a contractor has failed to comply with a project recovery plan established under §9.23(c).

(c) If the Performance Review Committee determines that one or more actions listed in subsection (a) of this section is appropriate, the committee may recommend that the action or actions also be taken against an entity that the committee determines, in accordance with §9.27 of this subchapter (relating to Affiliated Entities), is affiliated with the contractor.

(d) [~~(c)~~] If the Performance Review Committee [~~committee~~] determines that action under subsection (a), [~~or~~] (b), or (c) of this section is appropriate, the committee, except as provided by subsection (g) [~~(e)~~] of this section, will confer with the Chief Engineer, or the Chief Administrative Officer for a building contract, on the appropriate action to be taken and applied to the contractor. The committee will send its recommendation to the Deputy Executive Director within 10 business days after the date that it determines the action to be applied.

(e) [~~(d)~~] The Deputy Executive Director will consider the Performance Review Committee's recommendation and make a determination of any action to be taken. Within 10 business days after the date of the Deputy Executive Director's determination, the department will send notice to the contractor and to appropriate department employees affected by the determination. The notice will:

(1) state the nature and extent of the remedial action;

(2) summarize the facts and circumstances underlying the action;

(3) explain how the remedial action was determined;

(4) if applicable, inform the entity of the imposition of a suspension; and

(5) state that the provider may appeal the reduction in accordance with §9.25 of this subchapter [~~(relating to Appeal of Remedial Action)~~].

(f) [~~(e)~~] A decision of the Deputy Executive Director under subsection (e) [~~(d)~~] of this section may be appealed in accordance with §9.25 of this title (relating to Appeal of Remedial Action).

(g) [~~(f)~~] If the Performance Review Committee, in the performance of its duties under this section finds information that indicates that grounds for the imposition of sanctions under Chapter 10 of this title (relating to Ethical Conduct by Entities Doing Business with the Department) may exist, the committee immediately shall provide that information to the department's Compliance Division.

§9.25. Appeal of Remedial Action.

(a) A remedial action taken under §9.24 of this subchapter (relating to the Performance Review Committee and Actions) may be appealed by delivering to the executive director a written notice of appeal within 15 working days after the effective date of the action as specified in its notice.The written notice must be sent by:

(1) United States Mail, overnight delivery, or hand delivery addressed to: Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; or

(2) email to contestedcase@txdot.gov.

(b) If a notice of appeal is timely delivered under subsection (a) of this section,[:]

[~~(1) the remedial action is automatically stayed beginning on the date that the department receives the notice of appeal until the time that a final order is entered by the executive director under subsection (d) of this section; and~~]

[~~(2)~~] the contractor will be given the opportunity for an informal hearing before the executive director.

(c) If the contractor chooses to have an informal hearing, the executive director will set a time for the hearing at the executive director's earliest convenience and will set the time allowed for oral presentations and written documents presented by the contractor.

(d) If an appeal to the executive director is not timely requested under this section, the executive director will issue a final order on the remedial action when the deadline for requesting an appeal has passed. If an appeal is timely requested, the executive director will issue a final order based on the executive director's decision of the appeal. The executive director will mail to [~~notify~~] the contractor a copy of [~~in writing of~~] the executive director's final order [~~appeal decision~~] within five working days after the date that the final order is signed [~~decision is made~~].

(e) A final order issued by the executive director under subsection (d) of this section is not subject to judicial review, except as required by law.

§9.27. Affiliated Entities.

(a) Two or more entities are affiliated if:

(1) the entities share common officers, directors, or controlling stockholders;

(2) a family member of an officer, director, or controlling stockholder of one entity serves in a similar capacity in another of the entities;

(3) an individual who has an interest in, or controls a part of, one entity either directly or indirectly also has an interest in, or controls a part of, another of the entities;

(4) the entities are so closely connected or associated that one of the entities, either directly or indirectly, controls or has the power to control another entity;

(5) one entity controls or has the power to control another of the entities; or

(6) the entities are closely allied through an established course of dealings, including but not limited to the lending of financial assistance.

(b) In this section, an individual's family member is the individual's spouse, child, child's spouse, parent, parent's spouse, step-parent, step-parent's spouse, sibling, sibling's spouse, uncle, uncle's spouse, aunt, aunt's spouse, first cousin, first cousin's spouse, the individual's grandchild, the individual's grandparent, the individual's spouse's child, or the individual's spouse's child's spouse.

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

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-3164

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CHAPTER 31. PUBLIC TRANSPORTATION
SUBCHAPTER B. STATE PROGRAMS

43 TAC §31.11, §31.13

The Texas Department of Transportation (department) proposes the amendments to §31.11 and §31.13, concerning State Programs.

Due to 2020 Census changes and increased public transportation appropriations from the 88th Legislature, amendments to Chapter 31 governing the allocation of state public transportation grant program funding to transit districts serving rural, small urban, and large urban areas of the state are needed. The 2020 Census resulted in population changes and area designations changes throughout the state.

Proposed amendments to §31.11(a) clarify that an allocation of funds for public transportation is made on an annual basis, beginning at the first fiscal year of each biennium. This change aligns with current division practice of awarding state funds on an annual basis.

Proposed amendments to §31.11(b) clarify that the state funds formula allocation will be made at the beginning of each fiscal year in an amount equal to or less than the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation. The aligns with current division practice of awarding state funds on an annual basis and allows the division flexibility to allocate certain amounts at the beginning of each fiscal year. All appropriated funding shall be allocated over the course of each biennium.

Proposed amendments to §31.11(b)(1) update appropriated funding amounts to include addition funding of $3,770,000 to mitigate Census 2020 impacts. The total appropriation amount is increased to $73,752,134 from $69,982,134. Funding allocations to large urban transit districts is amended from $7,000,000 to $10,365,694, while funding to small urban transit districts is amended to $15,927,748 from $20,118,748. Additionally, the allocation to rural transit districts is amended to $45,917,020 from $42,863,386. These changes are necessary due to the 2020 Census, which updated population figures and area designations throughout the state. The department has worked to ensure equitable funding to all district types post 2020 census, thus the updated allocation figures maintain equal per capita funding reductions across rural, small urban and large urban transit districts.

Proposed amendments to §31.11(b)(1)(A)(i) clarify the total appropriation is increased to $73,752,134 from $69,982,134. This amendment is necessary because of an increased appropriation in the amount of $3,770,000 from the 88th Legislature.

Proposed amendments to §31.11(b)(1)(A)(v) clarify that the commission may, in any year, waive or approve an alternative calculation for allocations under this paragraph to an urban transit district or group of urban transit districts based on unique conditions that negatively affect the performance of the district or group, including natural disaster, pandemic, or another event that specifically affects the service level of the district or group. This amendment clarifies unique conditions that may require an alternate calculation and specifies the department representative who can approve an alternate calculation.

Amendments to §31.11(b)(1)(B)(iii) clarify that the commission may, in any year, wave or approve an alternative calculation for allocations under this paragraph to a rural transit district or group of rural transit districts based on unique conditions that negatively affect the performance of the district or group, including natural disaster, pandemic, or another event that specifically affects the service level of the district or group. This amendment clarifies unique conditions that may require an alternate calculation and specifies the department representative who can approve an alternate calculation.

Amendments to §31.11(b)(2) delete obsolete language for a previous one-time allocation made in fiscal year 2018 to eligible urban and rural transit districts.

Amendments to §31.11(b)(3) renumber the paragraph to §31.11(b)(2). Amendments clarify that allocated funds may be used to address transit district service and capital development needs, changes in district boundaries, unforeseen funding anomalies, emergency services response and recovery needs,

changes in economic conditions or availability of assets significantly impacting current year operations expenses, or other needs as determined by the commission. These changes allow more flexibility in the use of formula funds and more clearly define the types of situations that may require targeted funds, such as emergency services response and recovery needs or changes in transit district boundaries. Proposed changes align with situation specific funding challenges that the division has witnessed over the past funding cycles.

Amendments to renumbered §31.11(d) delete the reference to money and replace it with funds. Amendments also clarify that unobligated funds not applied for before the November commission meeting in the second year of a state fiscal biennium may be administered by the commission under the discretionary program. This amendment allows maximum flexibility in use of the funds.

Amendments to §31.11(e) delete the reference to money and replace it with funds. Amendments also clarify that returned funds will be administered by the commission under the discretionary program if they are eligible for reallocation. This change clarifies that not all returned funds are eligible for reallocation.

Amendments to §31.11(f) clarify that the entire application must be certified, not just the statement regarding regional transportation planning implemented in accordance with 49 U.S.C. §5301.

Amendments to §31.13(b) clarify that if funds in excess of the amounts listed in §31.11(b)(1) are appropriated for purposes of public transportation, the commission can allocate those funds on a pro rata basis, competitively, a combination of both pro rata basis and competitively, or as a one-time award. This amendment allows more flexibility in the way funds may be awarded to entities when appropriated amounts are greater than those listed in 31.11(b).

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Eric Gleason, Director, Public Transportation Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Eric Gleason has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be mitigation of census 2020 impacts and increased funding stability to state supported rural and urban transportation districts.

COSTS ON REGULATED PERSONS

Eric Gleason has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Eric Gleason has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will noT effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Eric Gleason has determined that a written takings impact assessment is not required under Government Code, §2007.043.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on February 15, 2024, in the Ric Williamson Hearing Room, First Floor, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not

assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the General Counsel Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §31.11, §31.13, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line ""*Public Transportation State Funding Formula Rules.*" The deadline for receipt of comments is 5:00 p.m. on March 4, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §456.022, which authorizes the commission to adopt rules necessary to allocate funding among eligible public transportation providers.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Texas Transportation Code Chapter 456, Subchapters A, B, and C

§31.11. Formula Program.

(a) Purpose. Transportation Code, Chapter 456 requires the commission to allocate, at the beginning of each state fiscal year [~~biennium~~], certain amounts appropriated for public transportation. This section sets out the policies, procedures, and requirements for that allocation.

(b) Formula allocation. At the beginning of each state fiscal year [~~biennium~~], an amount that does not exceed [~~equal to~~] the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration, will be allocated to urban and rural transit districts.

(1) If the appropriated amount to which this subsection applies is at least $73,752,134 [~~$69,982,134~~], the commission will allocate $10,365,694 [~~$7,000,000~~] to large urban transit districts, $15,927,748 [~~$20,118,748~~] to small urban transit districts, and $45,917,020 [~~$42,863,386~~] to rural transit districts. If the appropriated amount is less than $73,752,134 [~~$69,982,134~~], the amounts allocated by this paragraph will be reduced proportionately.

(A) Urban funds available under this section will be allocated to urban transit districts as provided by this subparagraph.

(i) If at least $73,752,134 [~~$69,982,134~~] is appropriated as described in paragraph (1) of this subsection, an urban transit district receiving funds under Transportation Code, Section 456.006(b), will be allocated for each year of the biennium an amount equal to the amount received by that district in Fiscal Year 1997. These districts include the cities of Arlington (amount $341,663), Grand Prairie (amount $170,584), Mesquite (amount $142,455), and North Richland Hills (amount $116,134). These allocations will be assigned from the small urban transit district funds. If less than $73,752,134 [~~$69,982,134~~] is appropriated, the amounts allocated by this clause will be reduced proportionately. If more than $73,752,134 [~~$69,982,134~~] is appropriated, an urban transit district to which this clause applies is not eligible for additional funds under paragraph (2) or (3) of this subsection.

(ii) One-half of the funds allocated to small urban transit districts will be based on population by using the latest census data available from the U.S. Census Bureau for each small urbanized area relative to the sum of all small urbanized areas. One-half of the funds allocated to small urban transit districts will be performance-based allocations.

(iii) One-half of the funds allocated to large urban transit districts will be based on population by using the latest census data available from the U.S. Census Bureau for each large urbanized area relative to the sum of all large urbanized areas served by urban transit districts. A large urban transit district with an urbanized area population of 300,000 or more will have the population adjusted to reflect a population level of 299,999. One-half of the funds allocated to large urban transit districts will be performance-based allocations.

(iv) An urban transit district is eligible for a performance-based allocation under clause (ii) or (iii) of this subparagraph, as appropriate, if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the performance-based funding based on the following weighted criteria: 30 percent for local funds per operating expense, 20 percent for ridership per capita, 30 percent for ridership per revenue mile, and 20 percent for revenue miles per operating expense. These criteria may be calculated using the urban transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(v) The commission, in any year, may waive or approve an alternate calculation of an allocation under this paragraph to an urban transit district or a group of urban transit districts to mitigate unique conditions that negatively affect the performance of the district or group, including natural disaster, pandemic, or another event that specifically affects the service level of the district or group. [~~If an urban transit district experiences a negative impact in its performance factor calculations due to the acquisition or loss of service area, a natural disaster, including wind, fire, or flood, or an unforeseen anomaly, the department may mitigate that negative impact with an alternate calculation addressing the specific situation.~~] The alternate calculation may be used in subsequent years at the discretion of the department.

(B) Rural funds allocated under this paragraph will be allocated only to rural transit districts in rural areas based upon need and performance as described in clauses (i) and (ii) of this subparagraph.

(i) Sixty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a need based allocation giving consideration to population weighted at 75 percent and on land area weighted at 25 percent for each rural area relative to the sum of all rural areas.

(ii) Thirty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a performance based allocation. A rural transit district is eligible for funding under this clause if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the funding by giving equal consideration to local funds per operating

expense, ridership per revenue mile, and revenue miles per operating expense. These criteria may be calculated using the rural transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(iii) The commission, in any year, may waive or approve an alternate calculation under this paragraph to a rural transit district or a group of rural transit districts to mitigate unique conditions that negatively affect the performance of the district or group, including natural disaster, pandemic, or another event that specifically affects the service level of the district or group. [~~If a rural transit district experiences a negative impact in its performance factor calculations due to the acquisition or loss of service area, a natural disaster, as wind, fire, or flood, or an unforeseen anomaly, the department may mitigate that impact with an alternate calculation addressing the specific situation.~~] The alternate calculation may be used in subsequent years at the discretion of the department.

(C) Funds allocated under this section and any local funds may be used for any transit-related activity except that an urban transit district not included in a transit authority but located in an urbanized area that includes one or more transit authorities may use funds allocated under this section only to provide up to:

(i) 65 percent of the local share requirement for federally financed projects for capital improvements;

(ii) 50 percent of the local share requirement for projects for operating expenses and administrative costs;

(iii) 50 percent of the total cost of a public transportation capital improvement, if the urban transit district certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

(iv) 65 percent of the local share requirement for federally financed planning activities.

(D) Subject to available appropriation, no award to an urban or rural transit district under this paragraph will be less than 90 percent of the award to that transit district for the previous fiscal year. All allocations under subsection (b)(1)(A) and (B) of this section are subject to revision to comply with this standard.

[~~(2) A one-time allocation of state funds appropriated for Fiscal Year 2018 will be made to eligible urban and rural transit districts, consistent with the direction from Transportation Code, Section 456.021(a), as amended by H.B. 1140, 85th Legislature, Regular Session, 2017, to address the impacts of revisions to the state funding formula. This paragraph expires August 31, 2018.~~]

(2) [~~(3)~~] The commission will award on a pro rata basis, competitively, or using a combination of both, any appropriated amount that remains after other allocations made under this subsection. Funds awarded under this paragraph may be used to address transit district service and capital development needs, changes in transit district boundaries, unforeseen funding anomalies, emergency services response and recovery needs, changes in economic conditions or availability of assets significantly impacting current year operational expenses, or other needs determined by the commission. [~~In awarding funds under this paragraph, consideration may be given to coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, funds needed to initiate public transportation service in new designated urbanized areas, adjustment for reductions in purchasing power, reductions in air pollution, or any other appropriate factor.~~] Awards under this paragraph are not subject to subsection (b)(1)(D) of this section in succeeding fiscal years.

(c) Change in service area. If part of an urban or rural transit district's service area is changed due to declaration by the U.S. Census Bureau, or if the service area is otherwise altered, the department and the urban or rural transit district shall negotiate an appropriate adjustment in the funding awarded to that urban or rural transit district for that funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to subsection (b)(1)(D) of this section.

(d) Unobligated funds. Any funds [~~money~~] under this section that an urban or rural transit district has not applied for before the November commission meeting in the second year of a state fiscal biennium may [~~will~~] be administered by the commission under the discretionary program described in §31.13 of this subchapter (relating to Discretionary Program).

(e) Returned funds. Any funds [~~money~~] under this section that an urban or rural transit district agrees to return to the department, if eligible for reallocation, will be administered by the commission under the discretionary program described in §31.13 of this subchapter.

(f) Application. To receive funds allocated under this section, a transit district must first submit a completed and certified application, in the form prescribed by the department. The application must include [~~certification~~] a statement that the proposed public transportation project is consistent with continuing, cooperating, and comprehensive regional transportation planning implemented in accordance with 49 U.S.C. §5301. Federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met.

(g) Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

§31.13. Discretionary Program.

(a) Purpose. Transportation Code, Chapter 456 allows the commission to allocate any funds not obligated in accordance with the terms of §31.11 of this subchapter (relating to Formula Program) on a discretionary basis. This section sets out the policies, procedures, and requirements for that discretionary allocation.

(b) Discretionary allocation. In allocating funds in excess of the amounts listed in 31.11(b)(1) of under this subchapter, the commission will calculate the allocation on a pro rata basis, competitive basis, or combination of pro rata and competitive basis, or as a one-time award [~~The commission will allocate funds under this section~~] to a local public entity, other than an authority, or to a private nonprofit organization that has the power to operate or maintain a public transportation system. Funds may be used for:

(1) the same purposes as described in §31.11(b) of this subchapter; and

(2) 80 percent of the cost of capital expenditures associated with ridesharing activities.

(c) Application. To receive funds under this section, an entity must first submit a completed and certified application, in the form prescribed by the department. The application must include:

(1) a description of the project, including estimates of the population that would benefit from the project and the anticipated date of project completion;

(2) a statement of the estimated cost of the project, including estimates of the federally financed portions of the project costs; and

(3) certifications that:

(A) local funds are available for local share requirements if required and that the proposed project is consistent with comprehensive regional transportation plans (federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met);

(B) federal funds are not available under §31.11 of this subchapter;

(C) equipment furnished by the applicant in connection with ridesharing activities will be used primarily for commuting purposes;

(D) ridesharing activities will be operated on a nonprofit basis without state subsidies and with accountability in operating the van pool equipment; and

(E) any funding available through the United States Department of Transportation to participate in the capitalized portion of state and locally supported ridesharing activities will be applied for and utilized to supplement the availability of local resources for the recapitalization of van pool equipment.

(d) Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

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 January 17, 2024.

TRD-202400154
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: March 3, 2024
For further information, please call: (512) 463-3164

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS

DIVISION 3. VERIFICATION OF FOSTER HOME

26 TAC §749.2472

The Health and Human Services Commission withdraws the proposed repeal of §749.2472 which appeared in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4994).

Filed with the Office of the Secretary of State on January 18, 2024.

TRD-202400170
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 18, 2024
For further information, please call: (512) 438-3269

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DIVISION 4. TEMPORARY, TIME-LIMITED, AND PROVISIONAL VERIFICATIONS

26 TAC §749.2533

The Health and Human Services Commission withdraws proposed amended §749.2533 which appeared in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4994).

Filed with the Office of the Secretary of State on January 18, 2024.

TRD-202400171
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 18, 2024
For further information, please call: (512) 438-3269

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SUBCHAPTER W. KINSHIP FOSTER HOMES

DIVISION 1. DEFINITIONS

26 TAC §749.4401

The Health and Human Services Commission withdraws proposed new §749.4401 which appeared in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4994).

Filed with the Office of the Secretary of State on January 18, 2024.

TRD-202400172
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 18, 2024
For further information, please call: (512) 438-3269

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DIVISION 2. PROVISIONAL KINSHIP FOSTER HOME VERIFICATION

26 TAC §§749.4411, 749.4413, 749.4415, 749.4417, 749.4419, 749.4421, 749.4423, 749.4425, 749.4427, 749.4429, 749.4431, 749.4433

The Health and Human Services Commission withdraws proposed new §§749.4411, 749.4413, 749.4415, 749.4417, 749.4419, 749.4421, 749.4423, 749.4425, 749.4427, 749.4429, 749.4431, and 749.4433, which appeared in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4994).

Filed with the Office of the Secretary of State on January 18, 2024.

TRD-202400173
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 18, 2024
For further information, please call: (512) 438-3269

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DIVISION 3. NON-EXPIRING KINSHIP FOSTER HOME VERIFICATION

26 TAC §§749.4451, 749.4453, 749.4455

The Health and Human Services Commission withdraws proposed new §§749.4451, 749.4453, and 749.4455 which appeared in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4994).

Filed with the Office of the Secretary of State on January 18, 2024.

TRD-202400174
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 18, 2024
For further information, please call: (512) 438-3269

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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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts amendments 10 Texas Administrative Code, Chapter 80, §80.41 and adopts repeal of §80.92 relating to the regulation of the manufactured housing program. The rules are revised to comply with House Bill 2706 (88th Legislature, 2023 regular session) that amends the Manufactured Housing Standards Act and for clarification purposes. The amendments to §80.41 and repeal of §80.92 are adopted without changes to the proposed text as published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5795). The rule and repeal will not be republished.

The adoption of the rules are effective thirty (30) days following the date of publication in the *Texas Register.*

The rules as proposed on October 6, 2023, are adopted as final rules.

No comments were received and there were no request for a public hearing to take comments on the rules.

The following is a restatement of the rules' factual basis:

10 Texas Administrative Code §80.41(c)(2)(A) - (C) is adopted without changes to assist in enforcement of §1201.551(a)(7) when an individual attempts to cheat or assist an individual with cheating on any of the Manufactured Housing Division Licensing exams.

10 Texas Administrative Code §80.41(g)(1) and (2) is adopted without changes to update the requirements for an exemption for a retailers license and the circumstances under which an exemption is granted.

10 Texas Administrative Code §80.92 is adopted as repealed because the inventory finance liens are no longer required to be submitted to the Department.

SUBCHAPTER D. LICENSING

10 TAC §80.41

The amendments are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

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

Filed with the Office of the Secretary of State on January 19, 2024.

TRD-202400205
Jim R. Hicks
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 3, 2024
Proposal publication date: October 6, 2023
For further information, please call: (512) 475-2206

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP

10 TAC §80.92

The repeal is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption.

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

Filed with the Office of the Secretary of State on January 19, 2024.

TRD-202400206
Jim R. Hicks
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 3, 2024
Proposal publication date: October 6, 2023
For further information, please call: (512) 475-2206

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.62

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.62, relating to Transmission and Distribution Resiliency Plans. The commission adopts the rule with changes to the proposed text as published in the September 29, 2023 issue of the *Texas Register* (48 TexReg 5600). The proposed rule will implement Public Utility Regulatory Act (PURA) §38.078 as enacted by House Bill 2555 during the Texas 88th legislative session (R.S.). The proposed rule establishes the requirements and procedures for an electric utility to submit a resiliency plan to enhance the resiliency of its transmission and distribution systems. Additionally, the rule delineates the commission review process for the plans.

The commission received comments on the proposed rule from AEP Texas Inc. (AEP), the Alliance for Retail Marketers (ARM), CenterPoint Energy Houston Electric, LLC (CenterPoint), the City of Houston (Houston), Don K Brown, the Electric Reliability Council of Texas, Inc. (ERCOT), Electric Transmission Texas, LLC (ETT), Entergy Texas Inc. (ETI), Grid Assurance, LLC (Grid Assurance), Hunt Energy Network, LLC (HEN), Microgrid Resource Coalition (MRC), Office of Public Utility Council (OPUC), Oncor Electric Delivery Company, LLC (Oncor), RPower LLC (RPower), Secure the Grid Coalition (SGC), South Central Partnership for Energy Efficiency as a Resource (SPEER), Southwestern Electric Power Company (SWEPCO), Southwestern Public Service Company (SPS), the Steering Committee of Cities served by Oncor and Texas Coalition for Affordable Power (OCSC & TCAP), Texas Advanced Energy Business Alliance (TAEBA), Texas Consumer Association and Alison Silverstein Consulting (TCA & ASC), Texas Electric Cooperatives Inc. (TEC), Texas Energy Association for Marketers (TEAM), Texas Industrial Energy Consumers (TIEC), and Texas New Mexico Power Company (TNMP).

Oncor requested a hearing on October 6, 2023 and withdrew the request on October 12, 2023. No other parties requested a hearing for this rulemaking.

General Comments

Don K. Brown filed comments in support of the rule but did not recommend any specific modifications to the text of the rule as proposed.

Proposed §25.62(a) - Applicability

Subsection (a) describes the applicability of the rule.

ETT recommended clarifying that the rule applies to both electric utilities that own and operate transmission and distribution systems, as well as transmission only entities such as itself.

SPS recommended clarifying in the proposed rule that a utility may, but is not required to, file a resiliency plan.

Commission Response

The commission agrees with ETT's comments and modifies the rule language to clarify that the rule applies to entities that own and operate transmission and distribution systems as well as entities that own transmission only systems. The commission declines to modify the rule to clarify that a utility is not required to submit a resiliency plan, because it is unnecessary. There are no provisions in the rule that require a utility to file a resiliency plan. The use of the term 'may' in proposed subsection (c) indicates the submission of a resiliency plan is permissive.

Purpose Language

The commission further modifies proposed subsection (a) to include additional purpose language. This language provides additional clarity on the intended interpretation of several provisions of the rule. Specifically, it emphasizes that certain rule provisions are not intended to limit the flexibility with which a utility can appropriately tailor its resiliency plan to its system. This will be discussed in further detail below.

Proposed §25.62(b) - Definitions

Proposed subsection (b) defines certain terms used in the rule.

TNMP recommended to either add definitions for the terms "resiliency," "resiliency measures," and "resiliency methods" or clarify that each utility can define resiliency and the related terms based on its service territory. TCA & ASC and SGC also recommended adding a definition of "resiliency." SGC provided specific language to add to the definition of 'resiliency'.

Oncor recommended defining the term "resiliency-related regulatory asset" to specify the categories of costs eligible for recovery through the deferred regulatory asset.

TAEBA and SPEER recommended that a definition for "Distributed Energy Resource (DER) Integration Measures" and "Distributed Energy Resource" be included.

Commission Response

The commission declines to add definitions of the terms resiliency, resiliency measures, resiliency methods, or resiliency-related regulatory asset at this time. However, modifications are made throughout the rule to clarify the intended meaning of these terms in context. The commission also declines to add distributed energy resources (DER)-related definitions, because the commission did not accept related recommendations to modify the substantive provisions of the rule to use these words.

Proposed §25.62(b)(1) - Definition of 'Distributed Invested Capital'

Subsection (b)(1) defines the term "Distributed invested capital" and provides details about the types of costs that are and are not allowed to be categorized as distributed invested capital.

Houston recommended the commission remove references to Federal Energy Regulatory Commission (FERC) Uniform System of Accounts 352 and 353 because these accounts are for transmission structures and transmission station equipment and must be recovered in the utility's transmission cost of service (TCOS) rates.

AEP, CenterPoint, ETI, Oncor, and TNMP recommended the definition include FERC Uniform System of Accounts 303 (Miscellaneous Intangible Plant), 391 (Office Furniture and Equipment), and 397 (Communication Equipment) to align it with the existing definition of the term in 16 TAC §25.243, relating to Distribution Cost Recovery Factor (DCRF). AEP, TNMP and Oncor recom-

mended the commission also include language related to defining distribution invested capital as invested capital that is categorized or functionalized as distribution plant, distribution-related intangible plant, and distribution-related communication equipment and networks, as added by SB1015 (enacted by the 88th Texas Legislature).

Commission Response

The commission disagrees with Houston regarding removing references to FERC accounts 352 and 353 in the definition of the term distributed invested capital. A portion of the costs in those accounts may primarily serve and be properly functionalized to the distribution function and, therefore, not qualify for inclusion in transmission service rates under 16 TAC §25.192. The commission agrees with the other commenters, modifies the proposed definition to align it to the definition in 16 TAC §25.243, and adds statutory language to reflect the changes in the definition as described in Senate Bill 1015 (88th Legislature, R.S.).

Proposed §25.62(b)(3) - Definition of Resiliency Event

Subsection (b)(3) defines the term "resiliency event" as a low frequency, high impact event that poses a material risk to the safe and reliable operation of an electric utility's transmission and distribution systems.

ETI, ETT, SWEPCO, Oncor, and TNMP recommended the commission remove the phrase "low frequency" from the definition. ETI, Oncor, and TNMP further recommended the removal of the phrase "high impact," and ETI and Oncor recommended additional modifications to the proposed definition. Oncor recommended replacing the term "resiliency event" with "resiliency risk" and proposed listing the major categories of resiliency risks as part of the definition. SPS proposed adding language to the definition to clarify that specific utility system and service territory conditions may inform a utility's consideration of "low frequency" as well as "high impact."

SPEER recommended redefining resiliency events to include historical data on prolonged heat and cold events.

SWEPCO recommended replacing the word 'mitigated' in the definitions with more descriptive words and CenterPoint recommended striking the word "mitigated" from the definition.

Commission Response

The commission modifies the rule to include the major categories of resiliency events as recommended by Oncor but declines to replace the term with "resiliency risk." The commission instead includes purpose language in subsection (a)(1) that requires a pragmatic construal of the term resiliency event. Some resiliency events, such as hurricanes, may pose multiple types of resiliency risks. In other instances, such as with a lightning strike, the occurrence might be characterized as an event, or a risk associated with a larger event. The diverse nature of resiliency threats that a system can face requires that each utility be given the flexibility to characterize and analyze these threats in a way that makes sense for its system. This emphasis on flexibility should address Oncor's concerns.

The commission agrees that system resiliency may not always be limited to the ability to withstand only low frequency, high impact events and removes these phrases from the proposed definition. Further, the intended contribution of these phrases is captured by the portion of the definition that reads: "(a) resiliency event is not primarily associated with resource adequacy or an electric utility's ability to deliver power to load under normal operating conditions." In essence, the focus should be on resiliency, and not reliability.

The commission also agrees with the commenters and replaces the term mitigate with more descriptive terminology throughout the rule, as appropriate, despite having removed the term from this definition. The commission declines to amend the definition of "resiliency event" to include historical data on prolonged heat and cold events. Subsection (c)(2)(B) establishes sufficiently broad requirements for detailed descriptions of a resiliency event.

Proposed §25.62(b)(4) Resiliency-related Distribution Invested Capital and (b)(5) Resiliency-related Net Distribution Invested Capital.

Subsection (b)(4) defines the term "resiliency-related distribution invested capital" as distributed invested capital associated with the resiliency plan that is not included in a utility's rates. Subsection (b)(5) defines the term "resiliency-related net distribution invested capital" as resiliency-related invested capital that is adjusted for depreciation and changes in taxes.

TIEC recommended the addition of clarifying language to the definition of "resiliency-related distribution invested capital" that would limit a utility to recovery of the incremental cost of resiliency measures to prevent double recovery of invested capital through a resiliency plan. TIEC contended that utilities should be allowed to recover only the incremental costs of resiliency measures that are not already being recovered through existing delivery rates. TIEC explained that resiliency plans may involve replacing or retiring existing infrastructure that was included in setting base rates. If the costs associated with the retired or replaced facilities are not removed from base rates, the utilities will continue recovering on the retired facilities until their next full rate review.

TIEC also recommended that the commission add language to the proposed definition of "resiliency-related net distribution invested capital" to remove accumulated depreciation and accumulated deferred federal income taxes associated with distribution invested capital included in a utility' s rates that is retired or replaced, to prevent double recovery of invested capital through a resiliency plan.

Commission Response

The commission modifies the definition of "resiliency-related net distribution invested capital" to require an offset equal to the amount of net plant investment included in a utility's rates that is retired or replaced by resiliency-related distribution invested capital. The commission also modifies the definition to remove accumulated depreciation and accumulated deferred federal income taxes associated with distribution invested capital that is retired or replaced by resiliency-related distribution invested capital. This will allow a utility to continue to recover the costs associated with any retired assets replaced by resiliency-related distribution investments, but will not provide a return on those retired investments. This approach strikes the right balance by encouraging utilities to invest in resiliency without fear of losing recovery of assets previously deemed prudent by the commission, and protecting ratepayers from providing utilities a return on investments that are no longer used and useful and, therefore, the ratepayers are no longer benefitting from. This is also consistent with precedent allowing a return of, but not on, rate base amounts associated with assets that are no longer used and useful in providing service.

Proposed §25.62(c)(1) - Resiliency measures and methods

Subsection (c)(1) specifies that a resiliency plan can consist of one or more resiliency measures designed to mitigate the risks posed by a resiliency event and lists the methods that an electric utility can utilize as a resiliency measure in its resiliency plan.

SWEPCO recommended removing the term "mitigate" and provided other modifications to subsection (c)(1), explaining that an event cannot be mitigated but only the impact of the event can be mitigated, and the purpose of a resiliency measure is to "prepare for, adapt to, respond to, or recover from" a disruptive event or risk. SWEPCO and TNMP recommended making the same clarification for subsection (c)(2)(A).

Commission Response

The commission agrees the term "mitigate" is imprecise and does not fully capture the breadth of possible resiliency measures. The commission modifies the rule to indicate that the measures must be designed to prevent, withstand, mitigate, or more promptly recover from the risks associated with a resiliency event. The commission applies this change uniformly throughout the rule.

Both TAEBA and HEN recommended adding additional methods to the list to enable greater utilization of DER resources for resiliency purposes. Specifically, HEN recommended adding the segmentation of distribution facilities for improved load shed management and expediting the interconnection of DER resources to the list of methods that resiliency measures may utilize.

SPS recommended adding a new method, "promoting public safety," to the list of methods. TCA & ASC recommend consideration of third party and private non-wires measures and non-utility-initiated investments to be included as resiliency methods.

Grid Assurance recommended modifying the rule to include the phrases "at least" and "including but not limited to" in subsection (c)(1) to reflect statutory intent and clarify that the methods included in the plan are not limited to the ten methods listed in both the statute and the proposed rule. ETI and AEP agreed with Grid Assurance's interpretation. All three commenters provided language to clarify their interpretation of statutory intent. Grid Assurance also advocated for utilities to have the flexibility to engage in activities and methods for system resiliency that are not part of the ten methods listed, such as electric utilities' access to resources for replacements of key equipment.

Commission Response

The commission declines to modify the rule to add resiliency methods beyond those that are included in the statute. The commission interprets the statutory language "through at least one of the following methods" as permitting the use of one or more of the listed methods. If the list were intended to be nonexclusive, it would have contained a term of expansion such as "including." This rule provides access to novel cost recovery mechanisms, and it is beyond the scope of this rulemaking to consider whether additional methods other than those listed in statute should be included.

ERCOT recommended that an electric utility be required to coordinate with ERCOT concerning any transmission facility outages that may result from an electric utility installing transmission upgrades as part of its resiliency plan. ERCOT also argued transmission upgrades that are part of a resiliency plan and that require a change in the modeled characteristics of any transmission facility in the ERCOT region should also be coordinated. ERCOT further recommended that an electric utility not be required to comply with the implementation schedule of an approved resiliency plan if ERCOT has not approved an outage that would be required to timely implement the plan.

Commission Response

The commission agrees with ERCOT's recommendations. Subsection (c)(2)(A)(vi) is added to require a utility to include, in its resiliency plan, details about coordination with the utility's independent system operator (ISO) for any transmission system outages that may be required to implement an approved resiliency plan. Subsection (c)(2)(F) is added to allow a utility to revise the implementation schedule specified in an approved resiliency plan if the utility's ISO has not approved an outage that would be required to timely implement the plan. Lastly, subsection (d)(1)(D) is added to include the utility's ISO as an entity that must be notified and that receives a copy of a resiliency plan when it is submitted by an electric utility.

Proposed §25.62(c)(2) - Contents of the resiliency plan

Subsection (c)(2) outlines the supporting documentation required in a resiliency plan.

SWEPCO recommended that subsection (c)(2) use "or" instead of "and" to clarify that not all listed items are applicable to all resiliency plan measures. Similarly, TNMP stated that the listed items are broad and ambiguous and suggested either striking the list or adding the phrase "to the extent applicable" to the end of the list.

Commission Response

The commission agrees with SWEPCO and modifies the rule language to replace "and" with "or" to clarify that all items listed do not necessarily need to be part of all resiliency measures that are part of a resiliency plan. This modification should also address TNMP's concerns.

Proposed §25.62(c)(2)(A)

Subsection (c)(2)(A) lists the information that must be included for each measure of a resiliency plan.

TEAM recommended adding a clause to subsection (c)(2)(A) that would require a utility filing a resiliency plan to identify the expected method of cost recovery for each resiliency measure but would not make the expected method of cost recovery binding. TEAM explained that the anticipated cost recovery mechanism would provide insight into when the rate changes associated with a resiliency plan would take effect. TEAM provided redlines consistent with its recommendation.

Commission Response

The commission declines to require the inclusion of nonbinding expectations for which cost recovery mechanism will be used for each resiliency measure. Nonbinding suggestions should not be relied upon, and the commission has implemented other requested modifications that will provide REPs with more foresight into the timing of rate changes, as discussed elsewhere in this order.

HEN recommended adding a clause to subsection (c)(2)(A) that would require a utility's resiliency plan to include an analysis of the potential integration of DER and microgrid solutions and develop "non-discriminatory metrics" to allow market participants to determine system adequacy for the interconnection of demand-side energy resilience solutions.

Commission Response

The commission declines to require every resiliency plan to include an analysis of potential integration of DER and microgrid solutions because such a mandatory requirement is beyond the noticed scope of this rulemaking.

Proposed §25.62(c)(2)(A)(i) - Prioritization of resiliency events

Subsection (c)(2)(A)(i) requires an electric utility to explain the prioritization of the identified resiliency events and, if applicable, the particular geographic area, system, or facilities where the measure will be implemented.

TNMP requested clarification of the term "prioritization," noting that the term is used in HB 2555 only in relation to areas of lower performance. TNMP alternatively requested deletion of this clause.

Commission Response

A transmission or distribution system may face a multitude of potential resiliency events across its service territory. It is unlikely that a resiliency plan will contain measures to address all of these risks. Further, a resiliency plan may implement these measures in specific geographic locations or in a particular order. Subsection (c)(2)(A)(i) requires a utility to provide an explanation for why it prioritized the selection of each event for inclusion in the plan and any context necessary to assist the commission in evaluating the plan's systematic approach. It does not require, for instance, a rank-ordering of where each proposed measure falls in the utility's priorities. If, however, a utility utilized tiers of risks or another organizational framework in designing its plan, it should provide an explanation of where each measure falls in that framework. The commission declines to accept TNMP's suggestion to delete the clause for the reasons explained above.

Proposed §25.62(c)(2)(A)(ii) Evidence of effectiveness of a resiliency measure

Subsection (c)(2)(A)(ii) requires an electric utility to provide evidence of effectiveness of the resiliency measures included in its resiliency plan. This clause also specifies that greater weight is given to evidence that is quantitative, performance based or provided by an independent entity.

Houston recommended modifying the rule to require an electric utility to include quantitative or performance-based evidence for the activities within the plan. Houston explained that this evidence is necessary to justify the activities and to set measurable benefits up front so evaluation of these activities at the third anniversary of the plan is possible.

SPS advocated for creating flexibility for electric utilities to submit evidence of effectiveness. SPS stated that although it is reasonable to ask the utility to provide quantitative, performance-based evidence to support its resiliency strategy, it is more difficult to provide such evidence for a new resiliency investment. TNMP also advocated for removing the clause for similar reasons as SPS.

AEP commented that the proposed language was overly prescriptive because types of evidence available for each measure may vary depending on the unique set of circumstances presented by each case.

Commission Response

The commission agrees that different types of evidence will be available to support the effectiveness of different types of resiliency measures. The commission modifies the rule to include a new paragraph is subsection (a) that clarifies that a utility bears the burden of proof on all aspects of its plan, that the utility is not restricted in the types of evidence that it can provide to support its plan, and that the commission will evaluate this evidence on a case-by-case basis. However, the commission declines to remove the rule text that supports the use of quantitative and performance-based evidence because this provides useful guidance that this type of evidence should be provided, when available. When such information is not available, other evidence such as qualitative evidence, predictive models, or attribute-based evidence may be provided.

AEP and ETI recommended removing language related to an independent entity providing evidence of effectiveness of resiliency measures, stating that the commission is capable of appropriately weighing evidence based on facts and circumstances.

Oncor commented that the proposed language related to an independent entity is ambiguous and recommended revisions so that it refers to "an entity or consultant that is not employed by (but may be retained as a consultant by) the utility and that has relevant expertise."

Commission Response

The commission declines to remove this provision. The language is advisory and intended to provide guidance to a utility in preparing its plan.

The commission further declines to modify the rule as requested by Oncor because Oncor's suggestion is too narrow. The commission agrees that paid consultants may still be considered independent entities, but evidence "provided by an independent entity" may also refer to studies conducted by national labs, case studies conducted in other service territories, or other similar sources. The intent of this language is merely to highlight the value that independent evaluation or expertise can provide. In many instances, a utility will be able to support the effectiveness of a measure without relying upon independent entities.

Proposed §25.62(c)(2)(A)(iii) - Explanation of benefits of resiliency measures

Subsection (c)(2)(A)(iii) requires an electric utility to explain the benefits of a proposed resiliency measure, including system restoration costs, frequency and duration of outages, and overall service reliability for customers, including critical load customers.

AEP stated that the benefit of a resiliency measure may not be limited to system restoration cost and frequency and duration of outages. AEP explained that reduced exposure to resiliency events is also a benefit and provided related rule language.

Commission Response

The commission declines to modify the proposed rule because modification is unnecessary. Under the Texas Code Construction Act, "including" is a term of expansion. Accordingly, the list of potential benefits is nonexclusive, and a utility may include information on other benefits a proposed resiliency measure will provide.

Proposed §25.62(c)(2)(A)(v) - Selection of resiliency measure over alternatives

Subsection (c)(2)(A)(v) requires a resiliency plan to explain the selection of a resiliency measure over any reasonable and readily identifiable alternatives.

SWEPCO, AEP, ETI, and TNMP suggested deleting subsection (c)(2)(A)(v). ETI, AEP and CenterPoint explained that, given that utilities bear the burden of proof in these proceedings, they have an incentive to include such information, when available. CenterPoint added that such a requirement is unnecessary because the commission conducts a prudence analysis after the electric utility has incurred costs. TNMP commented that the proposed language is unclear and ambiguous, explaining that although some measures may have no alternatives, other measures may have innumerable "reasonable and readily-identifiable alternatives."

Oncor commented that the requirement to provide alternatives will lead to unnecessary controversy during the evaluation of resiliency plans given the impossibility of assessing the complete universe of potential alternatives for certain measures, and the fact that there may not be any reasonable, readily identifiable alternatives for other measures. Oncor proposes that the requirement be an explanation of the selection of each measure over reasonable and readily identifiable alternatives, but only in those cases where there are any such reasonable and apparent alternatives.

Commission Response

The commission declines to modify the rule as requested by the commenters. To determine the appropriateness of a resiliency measure, the commission requires information related to alternatives. Including, as part of the filed plan, justification for why available alternative measures were not chosen will facilitate the commission's review within the 180 days provided by statute.

The commission does not share commenters' concerns regarding the terms "any" and "reasonable and readily-identifiable". The language itself provides that, in many instances, there may not be any alternatives to evaluate. Further, the rule does not require an assessment of the complete universe of potential alternatives. As CenterPoint notes, the utility does have the burden of proof, which may even require the utility to support its measures over alternatives that are not reasonable or readily-identifiable. However, the intent of this requirement is to introduce evidence of known alternatives at the outset of the proceeding. To mitigate prolonged controversy over whether a particular alternative is "reasonable and readily-identifiable," the commission modifies the rule to allow a sufficiency recommendation from commission staff only.

MRC, RPower and HEN recommended adding rule language that requires the utilities to consider customer-owned or third party-owned microgrids or distributed energy resources to increase distribution system resiliency, reduce frequency or duration of outages, or lower costs to customers. HEN recommended an addition to clause (v) that would require utilities to analyze and explain the selection of each resiliency measure over alternatives that could be provided by "non-regulated, competitive entities." MRC recommended that modernizing of electric utilities' facilities, including digitization of distribution circuits, be included in every approved resiliency plan.

Commission Response

The commission declines to explicitly require a resiliency plan to evaluate any customer-owned generation resources as alternatives to the measures proposed in a resiliency plan. Neither electric utilities nor the commission have the authority to require customers to utilize any form of generation to improve system resiliency. Accordingly, these are not alternatives that a utility is capable of implementing. However, if existing distributed generation resources or potential future distributed generation resources might reduce the risks posed by resiliency events, the commission may take this into account when evaluating the necessity of the proposed measure. Further, if a potential resiliency measure could be expected to result in a change in demand-side behavior, this may also be considered, as appropriate.

Proposed §25.62(c)(2)(B)(i) and §25.62(c)(2)(B)(ii) - Defining resiliency events

Subsection (c)(2)(B)(i) requires an electric utility to define a resiliency event, the impact of which the resiliency plan is designed to mitigate. Subsection (c)(2)(B)(ii) allows the utility to include magnitude thresholds for a resiliency event in the definition to conduct a granular analysis of the risk.

TNMP recommended altering the language of subsection (c)(2)(B)(i) to note that the risks from resiliency events are what is mitigated, rather than the resiliency events themselves.

Commission Response

The commission modifies the rule to also require the utility to define any associated resiliency risks the plan is designed to address. Further, under subsection (a)(2), terms such as "event" and "risk" are to be construed pragmatically to alleviate concerns over whether something precisely qualifies as an event, a risk, or an impact of a risk. The essence of the requirement is that the utility defines the problem that is being addressed in a manner that will allow the commission to evaluate and track the effectiveness of the solution.

AEP recommended identifying the resiliency event instead of defining it because the term "define" suggests a level of precision that is not possible or desirable. SWEPCO recommended deleting language that requires resiliency events to be defined with sufficient detail.

Commission Response

The commission declines to modify the rule to replace the term "define" with "identify." The resiliency events and risks faced by each utility are different, so this rule is structured to provide a utility with flexibility in identifying and characterizing these issues. In light of this flexibility, it will be impossible for the commission to evaluate these events and risks if what constitutes each type of event is not defined as precisely as possible. These definitions need not resemble a legal or dictionary definition. Rather, they must identify the key parameters that establish whether an event has occurred or not (e.g., how deep does running water have to be to present flood-related risks). Further, subsection (a)(1) acknowledges that the precision with which these events can be defined will vary, and the commission will take a pragmatic approach to evaluating whether enough detail has been provided.

Proposed §25.62(c)(2)(B)(iv) - Evidence to support presence of risk

Subsection (c)(2)(B)(iv) requires an electric utility to provide evidence to support the presence of a risk posed by an identified resiliency event. The rule clause also clarifies that the commission will give weight to studies conducted by an ISO or an independent entity with relevant experience.

TAEBA recommended that utilities be allowed to submit historical evidence and results from predictive models as evidence of the presence of risk. Oncor, AEP, and ETI recommended deleting the clause because it was duplicative of subsection (c)(2)(A)(ii), and it is too prescriptive. AEP asserted that commissioners are in the best position to weigh the evidence. TCA & ASC recommended requiring a utility to use credible

forward-looking threat analyses and sources in addition to historical data.

SPS suggested striking language referring to historical data related to resiliency events and reducing the weight given to studies conducted by independent entities. SWEPCO stated that evidence from an ISO or independent entity should not be required because a utility can provide evidence to support presence of risk without additional information from a third party.

Commission Response

The commission declines to modify the rule to either explicitly allow or explicitly require a utility to provide a particular type of evidence in support of its plan. The utility has the burden of proof and may rely upon the evidence of its choice in attempting to satisfy that burden. The commission also declines to strike the language giving great weight to studies conducted by independent entities or ISOs, because this language is advisory and intended to provide guidance to a utility in preparing its plan.

Proposed §25.62(c)(2)(C) - Evaluation Metric or Criteria

Subsection (c)(2)(C) requires a metric or criteria for evaluating the effectiveness of each resiliency measure proposed in the resiliency plan.

SWEPCO and AEP recommended deleting subsection (c)(2)(C). SWEPCO clarified that quantification of a resiliency measure's effectiveness (such as restoration cost dollars saved, or customer outage minutes avoided) in such circumstances would be speculative. SWEPCO conjectured that speculative estimates of effectiveness might trigger intervenors recommending disallowance of costs based on conclusions drawn from such information. Further, SWEPCO asserted, this could also prompt the commission to bring an enforcement action against a utility for its resiliency measures' performance during an event. SWEPCO stated that such uncertainty may cause hesitance among utilities to propose a resiliency plan, due to the inherent risk that doing so would create.

AEP recommended deleting the word "metric" throughout the rule because the concept of a metric suggests that the effectiveness of a resiliency measure depends on how a utility recovers from a resiliency event. AEP explained that resiliency is largely about what does not happen, which is inherently difficult to measure.

Commission Response

The commission declines to delete the word "metric" or remove this requirement from the rule. However, the commission does modify the rule to include language in subsection (a)(1) indicating that the terms "metric" and "criteria" are to be construed pragmatically. Further, the commission agrees that some intended resiliency benefits will be difficult to measure. This requirement is designed to give utilities the ability to articulate the benefits of a resiliency measure in a manner suited to that measure. If a particular measure cannot be evaluated quantitatively, the utility must explain why. A lack of quantifiability does not necessarily disqualify a measure from approval.

TNMP recommended removing subsection (c)(2)(C)(iii) because of lack of clarity on how to estimate "expected effectiveness" of various measures. TNMP also argues this would limit the application of new technologies, because "there would be no ability to estimate their 'expected effectiveness.'"

Commission Response

The commission disagrees that this provision lacks clarity on how effectiveness is supposed to be estimated. The effectiveness will be determined according to the criteria or metric proposed by the utility. This gives the utility flexibility to align the assessment of effectiveness with the utility's objective in proposing the resiliency measure.

The commission also disagrees that this requirement limits the use of new technologies or methods. The utility is merely required to provide its best assessment of what improvements it expects if the proposed measure is implemented. Whether the commission finds that assessment compelling enough to consider the measure will vary on a case-by-case basis.

If a new technology or strategy is so untested that the utility is completely unable to make any sort of assessment, projection, or explanation of the benefits it will provide, the commission will take that into account when analyzing the measure. This requirement is essential for providing the commission with insight into why a utility is proposing the measure and how speculative the benefits are.

ETI and Oncor recommended modifications to the proposed rule that would allow the utilities the flexibility to choose an evaluation metric. ETI recommended that utilities be permitted to apply an evaluation metric to their plan as a whole, to certain groups of measures, and individual measures, as appropriate. Oncor recommended concluding the subparagraph with "if applicable" to make the requirement conditional.

CenterPoint recommended replacing the subparagraph with a requirement for retrospective evaluation of a resiliency measure. CenterPoint suggested that a utility conduct a post-resiliency event analysis that analyzes the impact of a resiliency measure on service restoration times and costs, wherever possible. Oncor provided language to compare the expected effectiveness of a measure in an updated resiliency plan with actual results achieved by the utility from implementation of the measure.

Commission Response

The commission agrees with ETI that the same evaluation metric may be used to evaluate a group of measures or the entire resiliency plan. The proposed rule allows each utility to propose how each measure should be evaluated, which may include that it should be evaluated in conjunction with one or more other measures included in the plan. This evaluation strategy is most appropriate when each measure functions as a component of a larger strategy to achieve a single resiliency-related objective.

However, if a utility proposes that a group of measures be evaluated together, the commission may not be able to evaluate the contribution that each measure makes to the effectiveness of that group of measures. This may result in undesirable outcomes, such as the commission rejecting multiple measures when it might have otherwise determined that one or more of the measures merited approval. To avoid this outcome, if appropriate, an electric utility could provide a primary evaluation of a group of measures and a supplemental evaluation of any individual measures that could provide standalone value.

The commission declines to make the modifications suggested by Oncor. The submission of an evaluation metric or criteria cannot be conditional for the reasons discussed above. However, the commission does modify subsection (g) of the rule to require evidence of the effectiveness of prior resiliency measures to be provided as part of any updated resiliency plans that include measures designed to address similar resiliency events.

SPS commented that subsection (c)(2)(C)(i) requires the resiliency plan to include documentation necessary to support the use of the selected evaluation metric but provides no guidelines regarding what will be deemed as sufficient documentation.

Commission Response

The commission agrees and modifies the rule to require only an explanation of the appropriateness of the selected metric or criteria. However, a utility does have the burden of proof regarding the appropriateness of the metric or criteria, so some evidence may need to be provided if the appropriateness is not a simple metric such as restoration time or number of outages. This may be of particular importance in areas such as cybersecurity, which may contain risks and concepts that are less familiar to those without special expertise in that area.

Proposed §25.62(c)(2)(D) - Distinction between the proposed resiliency measure and similar existing programs or measures

Subsection (c)(2)(D) requires an electric utility to distinguish the resiliency measures proposed in the resiliency plan from similar existing programs required by law, such as §25.95 and §25.96. The provision also requires an explanation of how existing measures or programs similar to the proposed resiliency related measures or programs will work in conjunction with one another.

SWEPCO recommended removing the references to §25.95 and §25.96 as examples of other requirements that are required by law, because these are only reporting requirements.

Commission Response

The commission agrees with SWEPCO's comments and clarifies the proposed rule to reflect that these programs are not required by law. However, the commission retains the references as examples of existing programs that must be distinguished from proposed resiliency measures.

CenterPoint recommended revising the rule to make the requirement to distinguish resiliency measures from existing general resiliency projects permissive.

Commission Response

The commission disagrees with CenterPoint's recommendation and declines to modify the proposed rule. Clear distinction between existing and proposed resiliency activities is necessary for the commission's review of proposed plans. The commission will use the information to evaluate the potential for double recovery of investments, as well as duplicative investments.

OCSC & TCAP recommended requiring the electric utility to provide both existing measures or programs that are similar to resiliency related measures and programs' FERC accounts, investments, equipment, and objectives to distinguish between both resiliency measures and existing programs.

Commission Response

The commission modifies the proposed rule text to clarify that the electric utility is required to distinguish between resiliency measures that are similar to the existing programs and measures currently being undertaken and those that are otherwise required by law. The commission declines to modify the proposed rule to specify which precise information is required, such as FERC accounts of existing expenses, to distinguish between current and proposes programs.

Houston cautioned that utilities may seek to move standard maintenance programs, storm hardening programs, or cyber and physical security programs mandated by NERC as resiliency measures, into a resiliency plan. Houston recommended that only new programs or specifically expanded programs beyond the utilities' storm hardening measures described in their current filings for §25.95 or vegetation management be included in the Resiliency Cost Recovery Rider.

Commission Response

The commission shares Houston's concerns. The existing rule expressly requires utilities to distinguish its proposed resiliency measures from any existing measures and program, and any measures are programs that are required by law. Further, utilities are only permitted to recovery incremental expenses incurred in implementing resiliency plans.

Proposed §25.62(c)(2)(F) - Contents of the resiliency plan

Subsection (c)(2)(F) requires an executive summary of the resiliency plan.

TCA & ASC commented that "the rule should require the (resiliency) plan to list all proposed resilience measures in a table with associated resilience events and prioritize those measures that constructively address multiple threats."

Commission Response

The commission agrees that such a chart could be beneficial, and modifies adopted subsection (c)(2)(G) to allow the utility to present the information required in the executive summary or in the form of a chart. Additional modifications are made to clarify the commission's intent. The commission declines to require the utility to prioritize measures that address multiple threats. Such a uniform requirement would undermine the utility's ability to prioritize particularly acute resiliency risks or otherwise tailor a reliability plan to the resiliency risks faced by that system.

Proposed §25.62(d)(1) - Notice and intervention deadline

Subsection (d)(1) prescribes the notice and intervention deadlines for an electric utility upon filing a resiliency plan with the commission.

Houston and ERCOT commented that subsection (d)(1) should be revised to require utilities in the ERCOT region to provide ERCOT with notice and a copy of the application for a resiliency plan. ERCOT further recommended language authorizing ERCOT to obtain, upon request, a complete copy of the resiliency plan filing within the same scope of disclosure afforded to OPUC. Houston also recommended subsection (d)(1) be amended to require non-ERCOT utilities to provide the same information to the applicable ISO.

Commission Response

The commission agrees that notice to the appropriate independent system operator is beneficial and adds new §25.62(d)(1)(E). The commission also modifies the rule to require the utility to provide its independent system operator with a complete copy of its resiliency plan, upon request.

AEP recommended notice by e-mail be permitted under subsection (d)(1) because doing so would be consistent with the commission's order suspending rules in Project Number 50664 in 2020 and has proven to be a cost-effective alternative to notice by mail.

Oncor recommended subsection (d)(1) to be revised to match the notice and intervention deadline provision in §25.243(e)(2). In contrast, OPUC recommended the deadline to intervene be

consistent with §22.51(a)(1)(F), which is "45 days after the filing of a complete application," and that an application be considered complete when commission staff makes a sufficiency determination regarding notice and the completeness of the application.

Commission Response

The commission modifies the notice language to match §25.243. Under this modification, the utility may provide notice using "a reasonable method of notice," which in most instances includes email notice, and for some parties, includes a market notice.

The commission also modifies the rule to extend the intervention deadline from 20 days after the filing of the application to 30 days from the date service of notice is complete.

Proposed §25.62(d)(1)(C) - Notice to OPUC

Subsection (d)(1)(C) requires that OPUC be provided notice of the filing of a resiliency plan, which must include a complete copy of the resiliency plan.

AEP recommended §25.62(d)(1)(C) be revised to exclude providing Critical Energy/Electric Infrastructure Information (CEII) automatically through notice to OPUC. AEP provided redlines consistent with its recommendation.

Commission Response

The commission agrees and modifies the rule accordingly.

New §25.62(d)(1)(C) - Notice to REPs of RCRR effective date

TEAM recommended adding a new subparagraph to subsection (d)(1), which would require a utility to provide notice directly to REPs of the filing of a resiliency application as it would serve as an "advanced signal" to REPs in advance of a possible rate change.

Commission Response

The commission agrees and modifies the rule to notify REPs of a new resiliency plan application.

Proposed §25.62(d)(2) - Sufficiency of resiliency plan

Subsection (d)(2) specifies the criteria for sufficiency of a resiliency plan and the timeline, requirements, and procedures for such a review by the commission, which includes allowing parties to file motions of deficiency.

To account for concerns raised by commenters throughout the rule, such as the definition of resiliency event or whether alternative measures are reasonable and readily-identifiable and, thus, need to be evaluated in the plan, the commission streamlines the sufficiency determination process by modifying the rule to remove the ability of parties to file motions of deficiency and replaces it with a commission staff recommendation on sufficiency. Under this process, commission staff will have 28 days from the date a resiliency plan is filed to provide a recommendation on sufficiency, and the utility will have seven days to respond. If the presiding officer determines the plan is deficient, the utility may amend its plan, and staff will have 10 days to provide an updated recommendation. Finally, if the presiding officer has not ruled on sufficiency within 14 days after a deadline for a sufficiency recommendation, the plan is deemed sufficient. This process is consistent with the process utilized in several other commission rules.

ETI recommended the timeline in subsection (d)(2) to respond to a deficiency motion on an initial application be extended from five working days to 10 calendar days. ETI also recommended that the timeline in subsection (d)(2) for an automatic determination of sufficiency be extended from 35 calendar days to 40 calendar days.

Commission Response

As noted in the above discussion, the commission modifies response deadline from five working days to seven calendar days. The commission declines to extend the deadline to ten calendar days because the shift to a commission staff-led sufficiency review process ensures that the utility will have to respond to only one filing on sufficiency. The commission also declines to extend the automatic sufficiency determination to 40 days, because this is no longer applicable to the structure of the rule.

Proposed §25.62(d)(3) - Approval, modification, or denial of a resiliency plan

Subsection (d)(3) specifies the procedure and timeline for commission approval, modification, or denial of a resiliency plan.

Houston stated it would be "more efficient" if the procedural schedule for deadlines in a resiliency plan proceeding were similar to the procedural schedule of a general rate case proceeding. Further, Houston recommended a staggered filing schedule for utilities to submit their resiliency plans, such as assigning certain utilities even-numbered years or odd-numbered years to file, to avoid stressing the resources of commission staff and OPUC.

Commission Response

The commission declines to modify the rule to mirror the procedural schedule for rate cases or establish a staggered filing schedule for resiliency plans. Until the commission has experience with evaluating resiliency plans, it is unclear to what extent these cases will resemble rate cases or what level of resources will be required to evaluate them. Further, improving the resiliency of our electric system is an important priority across the state, and the commission does not have any basis to determine priorities or how to stagger the filing of these plans.

Proposed §25.62(d)(3)(A) - Denial of a resiliency plan

Subsection (d)(3)(A) states that denial of a resiliency plan is not a finding on the prudence or imprudence of a measure and that an electric utility may file a revised resiliency plan upon denial. Upon adoption, this provision was renumbered as §25.62(d)(5).

TEC recommended adding "denial or approval" to subsection (d)(3)(A) to ensure consistency with the reconciliation process under subsection (f)(4). TEC stated that its requested addition would ensure that the estimated costs in an approved resiliency plan are subject to reconciliation. Without this addition, utilities might argue that the estimated costs in a resiliency plan have been deemed prudent, nullifying the purpose of a full rate case to review the prudence of costs actually incurred during the prior rate period.

Commission Response

The commission declines to modify the rule because it is unnecessary. As TEC points out, all costs associated with the implementation of an approved resiliency plan are subject to prudency review. A utility must implement resiliency plans prudently, even if that requires the utility to implement it at a cost that is below the costs estimated in the resiliency plan.

By contrast, the rule language stating that a denied resiliency plan is not a determination on the prudency of the measure is necessary to reflect statutory language. Further, a utility is per-

mitted to enact most potential resiliency measures outside of the context of a resiliency plan, subject to other applicable legal requirements. That a proposed measure was deemed inappropriate for inclusion in a resiliency plan - which could be determined for reasons unrelated to cost - does not necessarily mean that measure cannot be prudently implemented otherwise.

SPS recommended that the commission's approval of a resiliency plan carry a presumption of prudence of need and cost estimates for all projects detailed in the plan, including the distribution and transmission O&M. SPS asserted that presumptions of prudence are reasonable because the commission's pre-approval of a plan establishes functional authorization to implement projects without creating ambiguity around potential cost recovery on those approved projects, while also retaining a more formal review of recovery of costs that exceed those estimates, if needed.

Commission Response

The commission declines to modify the rule to include a presumption of the prudence of need. Unless the conditions for a good cause exception under subsection (e) are met, a utility is required by that subsection to implement the measures in its approved resiliency plan. Generally, complying with applicable legal requirements is presumed to be prudent. However, the inclusion of explicit language establishing a presumption of prudence may create uncertainty as to which aspects of the plan carry the presumption. For example, the commission does not agree with SPS's argument that any costs incurred up to the cost estimates in an approved plan can be presumed to be prudent. A utility has an obligation to ensure that all costs of implementing its resiliency plan are prudently incurred, even if that means implementing a measure at a lower cost than the cost estimate included in the resiliency plan. Similarly, if an approved resiliency measure is to spend a predetermined amount of money on a certain action, the utility still has an obligation to use that pre-determined amount of money prudently. For example, if an approved resiliency measure is to spend $50,000 on additional vegetation management, whether the utility was able to complete a reasonable amount of vegetation management with those funds is subject to review.

Implementing any resiliency plan will require the utility to make many post-approval implementation decisions. Whether these decisions are made prudently is subject to review.

SPS provided, without discussion, language that would, in the event of a denial, require the commission to provide to the utility "a summary of the topics of concern that resulted in the resiliency plan denial."

Commission Response

The commission declines to require a summary of the topics of concern that resulted in the resiliency plan's denial. The order denying some or all of the measures in a resiliency plan will provide guidance to the utility. The utility can also seek informal feedback from commission staff or individual commissioners after the contested proceeding is over.

Proposed §25.62(d)(3)(B) - Modification of a resiliency plan

Subsection (d)(3)(B) allowed a utility to withdraw a modified resiliency plan without prejudice until the deadline for a motion for rehearing.

The commission removes this provision. If a utility disagrees with a modification made by the commission it may challenge that decision or request a rehearing using existing procedures.

Proposed §25.62(d)(4) - Commission Review of Resiliency Plan

Proposed subsection (d)(4) outlines the factors the commission will consider when reviewing a resiliency plan.

HEN recommended that the commission's review include an analysis of the extent to which the plan incorporates the statutory policy set forth in PURA §39.001(d) to authorize competitive, rather than regulatory, methods to the greatest extent feasible.

Commission Response

The commission disagrees that the statutory policy set forth in PURA §39.001(d) is applicable to the evaluation of resiliency plans. PURA §39.001(a) explicitly excludes transmission and distribution services from the list of what should be determined by customer choices and the normal forces of competition. Further, PURA §38.078 specifically applies to regulated entities increasing the resiliency of their own systems, and also directs the commission to adopt rules to implement this statute. This more specific statutory mandate clearly takes precedence over the general language of PURA §39.001(d).

SWEPCO and ETI recommended striking all factors from the list of factors to be considered by the commission when reviewing the plan other than the ones mentioned in the statute, to more closely align the rule to the statute. Both also suggested replacing "may" with "shall" to reflect that the commission's consideration of the list of factors is mandatory and not discretionary.

Commission Response

The commission declines to modify the rule as suggested by SWEPCO and ETI. PURA §38.078(e) specifically states that the "commission may approve a plan only if the commission determines that approving the plan is in the public interest." This is a completely separate statutory requirement from the two statutory factors listed in PURA §38.078(e). The commission is not limited in what it may consider when evaluating the public interest, but the additional criteria provided in the rule provide some insight into what the commission may consider when evaluating public interest. This is also consistent with the commission's general authority under PURA, which vests the commission with broad authority to oversee and supervise the electric utilities in the State of Texas. Specifically, PURA §14.001 grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything that is necessary and convenient to the exercise of that power and jurisdiction.

Further, the commission also declines to modify the rule to replace "may" with "shall." The use of "may" is intentional to indicate that consideration of these factors is permissive.

However, the commission does modify the rule to specifically identify which factors the commission is required to consider by statute and which factors are discretionary considerations of its public interest determination.

SPS stated that proposed subsection (d)(4) may create unintended consequences in the commission's determination of whether a utility's proposed resiliency plan is in the public interest. SPS explained that hardening a high-performing feeder may not directly "improve overall service reliability for customers," at least in normal operating conditions. Therefore, SPS recommended separating the resiliency-based evaluation

criteria related to mitigating system restoration costs from reliability-based criteria related to improvement in overall service reliability for customers. Similarly, AEP suggested striking subsection (d)(4)(C) because it refers to a reliability issue, not a resiliency issue. SPS noted that use of the word "and" in subsection (d)(4)(B) implies that all four of the evaluation criteria must be met and recommended replacing "and" with "or."

Commission Response

The commission disagrees that any of the provisions of subsection (d)(4) will create unintended consequences in how the commission evaluates resiliency plans. This is a nonexclusive and permissive list of considerations. The commission retains discretion to assess the public interest as appropriate based on the facts and circumstances involved with any proposed resiliency measure.

The commission agrees with SPS and modifies the rule to replace "and" with "or," and makes other modifications to reflect commission intent.

TAEBA recommended the commission "define or require utilities to define 'areas of lower performance' as it relates to subsection (d)(4)." Additionally, TAEBA recommended that this definition "include areas with relatively high interruptions of service, consumer costs, and curtailment and congestion."

Commission Response

The commission declines to define areas of lower performance. Subsection (c)(2)(A)(i) requires the utility to explain whether it prioritized measures based on geographic region, and subsection (c)(2)(B)(iv) requires the utility to indicate whether the risks associated with resiliency events are specific to particular systems or geographic regions. These requirements provide some insight into whether areas of lower performance are prioritized. However, what constitutes lower performance will vary on a case-by-case basis and can best be determined in the context of a contested case.

Proposed §25.62(d)(4)(F) Consideration of more efficient and cost-effective means of addressing a resiliency event

Subsection (d)(4)(F) provides that the commission may consider whether there are other more efficient and cost-effective means of addressing a resiliency event during a resiliency plan review.

SWEPCO recommended deleting this subparagraph because these requirements are "unduly onerous" and would make the process of preparation and review of resiliency plans "burdensome" and result in "over-loading the commission with potentially redundant information."

Commission Response

The commission retains discretion to assess the public interest as appropriate based on the facts and circumstances involved with any proposed resiliency measure. This list merely serves to provide insight in what factors may be deemed relevant during this evaluation.

The commission disagrees with SWEPCO that this requirement would make resiliency plan preparation or review unduly burdensome. An essential consideration in whether a plan is in the public interest is whether there are superior options available. The commission broadens the language of this requirement to clarify intent.

Proposed §25.62(e) - Good cause exception

Under subsection (e), the commission will grant a good cause exception to the requirement that a utility must implement approved resiliency measures if the electric utility demonstrates that operational needs, business needs, financial conditions, or supply chain or labor conditions dictate the exception. The commission may also grant a good cause exception allowing the electric utility to delay implementation of one or more measures in its resiliency plan if the electric utility has a pending application for a revised resiliency plan that addresses the same resiliency events.

AEP commented that the commission should not limit the possible reasons for granting a good cause exception in its proposed rule because resiliency plan filings are new to Texas and a relatively new concept in general. AEP provided suggested language that would allow the commission to grant a good cause exception for any reason the commission deems appropriate.

Commission Response

The commission declines to modify the proposed rule to expand the reasons for which a good cause exception can be granted. PURA §38.078(f) provides the basis for the list of situations in which an electric utility may request a good cause exception. The only non-statutory situation listed--that the electric utility has a pending application for a revised resiliency plan that addresses the same resiliency events--is a logical extension of the commission's authority. Requiring a utility to implement a resiliency measure when it is preparing to implement an alternative measure would be unreasonable. The commission modifies the rule to reflect that the commission's ability to grant a good cause exception is permissive.

Proposed §25.62(f)(1) - Resiliency Cost Recovery Rider (RCRR) - Recovery of Operation and Maintenance Cost (O&M)

Proposed subsection (f)(1) establishes the resiliency cost recovery rider as a mechanism through which a utility can recover costs associated with a resiliency plan outside a base-rate proceeding.

SPS recommended the commission revise proposed subsection (f) to reflect eligibility of O&M cost recovery in the RCRR. Specifically, SPS recommended that the rule language specify that O&M, which is authorized to be deferred into a regulatory asset, and the amortization of the regulatory asset can be recovered through the DCRF or TCRF.

SPS also recommended the commission revise subsection (f) to authorize a utility to recover resiliency plan costs up to the commission-approved estimated costs included in the plan.

ETI and SWEPCO recommended the commission clarify that all costs eligible to be recovered include O&M costs and provided language consistent with their recommendation.

Commission Response

The commission modifies subsection (f) to reflect that a utility that does not request an RCRR may defer all or a part of the costs associated with implementing its plan for future recovery using a regulatory asset. The commission agrees with commenters that resiliency-related distribution O&M costs in an approved resiliency plan are eligible for deferral, but does not include the requested language, because it is unnecessary and may cause confusion regarding whether other unenumerated categories of expenses are eligible for deferral.

Houston recommended addressing reimbursement of rate case expenses in the proposed rule to allow parties participating in the

Resiliency Cost Recovery Rider (RCRR) proceedings to receive reimbursement for reasonable rate case expenses.

Commission Response

The commission disagrees with Houston that the proposed rule must include language that addresses reimbursement of rate case expenses for parties participating in the RCRR cases. The statutory language does not require such a provision, and the commission's other rider-related rules do not include such provisions. For consistency among rules, the commission declines to include language that addresses rate case expense recovery in the RCRR.

ARM and TEAM proposed a change to subsection (f)(1) to require electric utilities to provide REPs with notice no later than 45 days before a new or updated RCRR is effective, and that new or updated RCRRs have effective dates that are coordinated with other rate changes by a utility implementing a new or updated RCRR. ARM explained that a 45-day notice requirement is historical standard practice for implementing incremental revisions to tariff riders such as the DCRF and EECRF and should be employed with the RCRR to ensure REPs have sufficient time and certainty to implement RCRR-related rate changes so that customer pricing remains accurate. Similarly, TEAM remarked that such a filing is necessary because the commission is statutorily prohibited from approving an RCRR that authorizes cost recovery before a utility's resiliency-related investments are used and useful. Because of this prohibition, TEAM asserted, at the time a resiliency plan is approved, it is unlikely that a proposed utility plan would include, or that the commission could approve, "a date-certain for the RCRR."

Commission Response

The commission agrees with ARM and TEAM that providing sufficient notice to REPs before a new or updated RCRR is effective is important, so REPs have sufficient time to implement any related changes. The commission adds the relevant language to the rule accordingly.

TCA & ASC recommended that proposed subsection (f) authorize "non-utility options" to be eligible for utility cost recovery, such as contracting with third parties and customers to acquire and implement resiliency measures.

Commission Response

The commission declines to modify the rule as proposed by TCA & ASC because providing ratepayer dollars to support the activities of entities that are not regulated by the commission is beyond the scope of this rulemaking.

Proposed §25.62(f)(1)(A)(ii) - Provision to amend RCRR

Proposed subsection (f)(1)(A)(ii) authorizes an electric utility with an existing RCRR to apply to amend the RCRR to include additional costs associated with an updated resiliency plan under PURA §38.078(g).

CenterPoint and TNMP recommended that proposed subsection (f)(1)(A)(ii) be revised to authorize an electric utility to apply to amend the RCRR once a year to include additional costs incurred by the utility in the prior year.

ETI recommended that utilities be authorized to update the RCRR up to twice a year, similar to the process for the DCRF and TCRF, to recover additional invested capital. ETI explained that if the rule does not authorize more frequent updates to the RCRR, a utility would be forced to forego recovery until an amendment is permitted at the end of the three-year period prescribed by proposed subsection (c). ETI asserted that such an outcome is contrary to the intent of PURA §38.078(i) that allows for recovery of distribution investments made by electric utilities to implement a resiliency plan via a rider. ETI also suggested including language limiting the scope of proceedings for such an amendment to whether the additional resiliency-related distribution invested capital will be placed in service within 90 days of the application and whether the electric utility has correctly calculated the new rider rates.

ETI also recommended procedural additions that would require an electric utility to make an update filing within 90 days after the application and would require commission review of the update within 30 days from the date the update was filed. The update filing would state the final amount of incremental resiliency-related distribution invested capital and the resulting rider rates to be implemented.

Commission Response

The commission declines to modify the rule to permit a utility to update its resiliency rider multiple times, because PURA §38.078(i) only allows for a utility to request an RCRR as part of its resiliency plan. Unlike PURA §§36.210(d), 35.004(d), and 39.905(b-1), PURA §38.078 does not authorize updates or amendments to a resiliency rider. However, at the time a resiliency plan is approved, a utility has not yet incurred any resiliency-related expenses. To facilitate the use of this rider, the commission adds subsection (f)(1)(A)(iv), which establishes a process to allow a utility to apply for approval of RCRR rates.

Concurrent with the adoption of HB 2555, the Texas Legislature also adopted SB 1015, which increased the frequency with which a utility can file a DCRF update to twice a year. If the commission also allowed a utility to update its RCRR once or twice a year, as requested by commenters, this would result in three or more proceedings every year for each utility related to recovery of distribution expenses. This would impose an unnecessary burden on commission staff and the participants in utility rate proceedings, and on REPs required to implement these rate changes.

The combined result of this rule and the new statutory provisions related to DCRFs provides ample opportunities for a utility to recovery resiliency-related distribution expenses. A utility can seek recovery of resiliency-related expenses twice per year in its DCRF, in a base-rate case proceeding, and either one additional time every three years with an RCRR address or it may record its costs in a regulatory asset for future recovery.

Proposed §25.62(f)(1)(A)(iii) - Effective date of RCRR

Proposed subsection (f)(1)(A)(iii) prohibits an RCRR from taking effect until all facilities with costs included in the RCRR begin providing service to the electric utility's customers.

Oncor stated that the proposed language establishes a process where a RCRR would not go into effect until all facilities associated with a resiliency plan are in service. Resiliency plan implementation could span a multi-year period, which would delay timely recovery of resiliency-related costs. Oncor recommended revising proposed subsection (f)(1)(A)(iii) to align with the statutory language of PURA §38.078(i).

SWEPCO and SPS recommended deleting proposed subsection (f)(1)(A)(iii), because resiliency projects may be implemented on transmission and distribution assets that are already in service. SWEPCO and SPS commented that, as proposed, the language limits application and recovery to new

infrastructure only, which is contrary to the intent of the rule. SPS further noted that, because the proposed rule provides for "a prudency finding in advance" and a reconciliation process after implementation of a resiliency plan, cost recovery should therefore be concurrent with investment to both prevent regulatory lag and provide the electric utility with adequate funding to make incremental investments.

OPUC commented that a utility should not be eligible for recovery until the utility has incurred some costs in implementing a plan that has been deemed prudent by the commission.

Commission Response

The commission agrees that resiliency measures are not limited to new facilities and modifies the rule accordingly.

The commission disagrees that the rule provides for a "prudence finding in advance." While the implementation of approved resiliency measures is legally required (and, therefore, reasonable to implement), a utility must implement those measures prudently. PURA §38.078(h) expressly states that an "electric utility's implementation of a plan may be reviewed...(and)...costs to implement an approved plan (that are) imprudently incurred or otherwise unreasonable...are subject to disallowance."

Proposed §25.62(f)(1)(A)(iv) - Provision to include RCRR costs in a DCRF or base-rate proceeding

Subsection (f)(1)(A)(iv) authorizes an electric utility to include its RCRR costs as part of its next DCRF or base-rate proceeding, provided that the electric utility requests that RCRR rates be set to zero as of the effective date of rates resulting from that proceeding.

AEP recommended subsection (f)(1)(A)(iv) be revised to clarify when "the rider continues and when rider rates are zeroed out." Specifically, AEP provided language that would make more explicit the requirement for an electric utility requesting RCRR costs to be included in its next DCRF or base-rate proceeding to also request its RCRR rates be set to zero as of the effective date of the DCRF or base-rate proceeding. Moreover, if such a request is not made, the RCRR cost recovery would "continue through the rider factors." AEP provided redlines consistent with its recommendations.

Commission Response

The commission declines to make the requested changes. The proposed language properly requires that RCRR rates be set to zero upon the effective date of subsequent DCRF or base rates. Establishment of a new RCRR allows a utility to reduce the regulatory lag associated with recovering resiliency-related costs. However, no public interest is served by allowing multiple riders to remain in effect that recover the same types of costs where such cost recovery can be reasonably consolidated into existing rates. Requiring that RCRR rates be zeroed out, while allowing the utility to include unrecovered RCRR costs in its base rates or DCRF rates, does not impair a utility's ability to recover resiliency-related costs. Further, doing so provides benefits in the form of reduced administrative costs for the REPs that must implement the rates, and the reduced potential for customer confusion due to a proliferation of otherwise unnecessary rate riders.

Proposed §25.62(f)(1)(B) - Calculation of RCRR Rates

Proposed subsection (f)(1)(B) prescribes the RCRR rate methodology for each rate class.

Houston recommended the commission adopt RCRR rate filing instructions and required schedules and workpapers to ensure uniformity in RCRR applications. Alternatively, if the commission declines to adopt more specific and uniform filing requirements for an RCRR, Houston recommended the proposed RCRR and resiliency-related DCRF formulas in the proposed rule be made clearer with more detailed definitions of the inputs, as has been done previously under 16 TAC §25.239 and §25.243.

OPUC recommended the commission use the formula included in the Ernest Orlando, Lawrence Berkeley National Laboratory's report, "Updated Value of Service Reliability Estimates for Electric Utility Customers in the United States," for calculating the cost of an outage to the residential customer class when developing a reasonable budget to use when the commission reviews an electric utility's RCRR.

Commission Response

The commission declines to add rule language addressing an RCRR rate filing package because it is beyond the scope of this rulemaking. The commission may develop a rate filing package at a later time. The commission also declines to modify the rule as requested by OPUC. The considerations involved in evaluating the cost and value of different resiliency measures may vary, and the commission will not limit this evaluation to a single formula at this time.

Proposed §25.62(f)(1)(B)(ii)(II) and (IV) and (f)(1)(B)(iii) - Load growth adjustment

Proposed subsection (f)(1)(B)(ii)(II) prescribes the methodology for calculating the value of the total RCRR Texas retail revenue requirement. Proposed subsection (f)(1)(B)(ii)(IV) prescribes the methodology for calculating the incremental distribution capital cost recovery value. Proposed subsection (f)(1)(B)(iii) describes the terms used in the calculation.

TNMP AEP, CenterPoint, and ETI recommended removing load growth adjustment as a component of the cost calculation provisions within proposed subsection (f)(1)(B)(ii) and (iii). TNMP, AEP, SWEPCO, CenterPoint and ETI asserted that the statute does not contemplate such an adjustment to be included in the RCRR unlike the reference for such an inclusion that is explicit in PURA §36.210 for the DCRF. Specifically, TNMP recommended the incremental distribution capital cost recovery and growth in billing determinants variables, IDCCR and $\%GROWTH_{CLASS}$ respectively, be omitted from the rule. TNMP explained that including a load growth adjustment in the RCRR prevents an electric utility from recovering all applicable costs permitted by PURA §38.078. TNMP also commented that there is no statutory or other basis for including a load growth adjustment in the RCRR.

ETI explained that when similar cost recovery statutes did not include a load growth adjustment, the corresponding commission rules correctly did not include one either. ETI referenced PURA §36.209 and 16 TAC §25.239, relating to Transmission Cost Recovery Factor for Certain Electric Utilities for the non-ERCOT TCRF; PURA §35.004(d) and 16 TAC §25.192(h), relating to Transmission Service Rates, for ERCOT TCOS; and PURA §36.214 and 16 TAC §25.248, relating to Generation Cost Recovery Rider. In contrast, ETI pointed out that 16 TAC §25.243, relating to Distribution Cost Recovery Factor (DCRF) appropriately includes a load growth adjustment because one is required under the DCRF enabling statute, PURA §36.210. ETI contended that the intent of a load growth adjustment, which is to ensure that a utility can provide the same level of service to new customers, is contrary to the intent of resiliency plans, which is

to enhance the level of electric service provided to customers through resiliency measures implemented over a period of years. Accordingly, the recovery of incremental revenues attributable to load growth would be insufficient to recover resiliency plan costs. ETI reasoned a resiliency plan application proceeding is not the appropriate venue to assess whether a utility is recovering excessive revenues. Instead, such an analysis should be reserved for a base-rate case, where all of a utility's revenues and costs are reviewed. Lastly, ETI noted that the use of "up-to-date billing determinants" in calculating RCRR rates coupled with the reconciliation proceeding in the proposed rule should be sufficient to mitigate temporary over-recovery of these costs.

SWEPCO stated that a load growth adjustment is not appropriate for an RCRR because costs recovered for a resiliency plan are a new category of costs that are not currently being recovered in a utility's base rates. Similarly, CenterPoint noted that the formula for establishing the RCRR would be set to recover costs associated with new facilities and equipment placed into service under the resiliency plan and were not included in the utility's most recent base-rate proceeding. Upon amendment of an RCRR any remaining costs associated with the initial investments under the resiliency plan, including incremental investments such as load growth, would be recovered over an increased amount of billing determinants and therefore making a load growth adjustment unnecessary.

Similar to ETI, Oncor recommended proposed subsection (f)(1)(B)(ii)(II) be reviewed to ensure there is no double counting of any load growth adjustments due to potential "timing or synchronization issues associated with moving a growth adjusted RCRR into a subsequent DCRF application, which will then also be growth adjusted." Oncor explained the proposed rule does not include the process of accounting for the RCRR in a DCRF proceeding which, depending on the manner of execution, could lead to such overlap.

Commission Response

The commission declines to modify the rule to remove the load growth adjustment in the RCRR for the following reasons. PURA §38.078(l) provides that the commission may only include "costs that are not already being recovered". Therefore, the commission cannot ignore the fact that load growth subsequent to a base-rate proceeding may lead to a utility recovering significant revenues associated with costs beyond the level of costs used to establish base rates or DCRF rates. Further, the requirement in PURA §36.051 that a utility's "overall revenues" be considered in establishing rates requires a consideration of the growth in billing units and associated revenues. Failure to do so would result in rates that exceed the level necessary to provide the utility a reasonable opportunity to earn a reasonable return in excess of its reasonable and necessary expenses. ETI's assertion regarding the intent of load growth adjustments adopted by the commission is therefore incorrect. Load growth is accounted for in establishing DCRF rates under 16 TAC §25.243, PCRF rates under 16 TAC §25.238, and interim TCOS rates under 16 TAC §25.192, contrary to ETI's assertion. Since resiliency-related costs may be included in DCRF rates and interim TCOS rates, failing to include a load growth adjustment in establishing RCRR rates would lead to an unreasonable discrepancy between resiliency cost recovery methods.

The use of up-to-date billing determinants in calculating RCRR rates is reasonable and appropriate. However, such an approach does not fully account for the fact that incremental rate revenues may be available to the utility to recover some portion of incremental resiliency costs. SWEPCO's and CenterPoint's assertions regarding the fact that resiliency-related costs are a new category of costs are similarly inapposite, as incremental rate revenues are fungible, and may be used to recover any category of incremental utility costs. Regarding Oncor's concerns, the reconciliation of resiliency costs in a subsequent base-rate proceeding may reasonably include a review of the accounting for any RCRR costs into subsequent DCRF rates. The commission adds language to subsection (f)(4)(D) requiring reconciliation information be included as part of a base-rate application to facilitate such review. The commission further modifies subsection (f)(1)(B)(ii)(VI) for consistency with the load growth adjustment provision included in 16 TAC §25.243, noting that a utility may apply for a base rate increase in the event that it is under-recovering base rate-related costs.

Proposed §25.62(f)(1)(B)(ii)(III) - RCRR class allocation factor

Proposed subsection (f)(1)(B)(ii)(III) prescribes the methodology for calculating the RCRR class allocation factor for a rate class.

Oncor recommended that the commission revise the formula in proposed subsection (f)(1)(B)(ii)(III) to $ALLOC_{C\text{-}CLASS} = ALLOC_{RC\text{-}CLASS}$ for administrative efficiency and to reduce potential disputes. Oncor noted that, as proposed, the formula for the RCRR class allocation factor reflects growth after the electric utility's most recent base-rate case, which may be a different methodology used for allocation in the base rate case itself.

Commission Response

The commission declines to make the requested modification. The proposed adjustment is consistent with a similar provision adopted in 16 TAC §25.248. The adjustment to class allocation factors is important to reasonably account for changes in relative load growth between classes subsequent to the utility's most recently completed base-rate proceeding. Failing to make such an allocation adjustment could lead to the potential for significant rate shock in a subsequent base-rate proceeding when allocation factors are updated based on then-current load.

Proposed §25.62(f)(1)(B)(ii)(V) - Calculation of RCRR Rates

Proposed subsection (f)(1)(B)(ii)(V) prescribes the methodology for calculating distribution revenues by rate class based on net distribution invested capital from the most recently completed comprehensive base-rate proceeding.

ETI, TNMP, AEP, and CenterPoint noted that the formula in proposed subsection (f)(1)(B)(ii)(V) incorrectly refers to §25.239(d)(1), the non-ERCOT TCRF rule, as the cross-reference for variable definitions. Commenters stated the correct citation is the DCRF rule under §25.243(d)(1).

Commission Response

The commission agrees and corrects the reference accordingly.

Proposed §25.62(f)(1)(B)(iii)(III)(-d-) - DCRFLGA - Distribution Cost Recovery Factor

Proposed subsection (f)(1)(B)(iii)(III)(-d-) defines the DCRF load growth adjustment value as the value in the most recent DCRF proceeding for the utility since its most recently completed base-rate proceeding, or zero if there are no DCRF proceedings since the utility's most recently completed base-rate proceeding.

AEP recommended deleting subsection (f)(1)(B)(iii)(III)(-d-) because it is reflective of a load growth adjustment which is neither required by PURA §38.078 nor appropriate for an RCRR due

to the availability of the reconciliation process and because the rider already requires the use of up-to-date billing determinants.

Commission Response

The commission declines to make the requested modification because the proposed load growth adjustment is retained in the adopted rule.

Proposed §25.62(f)(1)(C) - Class allocation factors

Proposed subsection (f)(1)(C) provides that, for calculating RCRR rates, the baseline rate class allocation factors used to allocate distribution invested capital in the most recently completed base-rate proceeding will be used.

OPUC stated that the use of the baseline class allocation factor referenced in subsection (f)(1)(C) may not be the most appropriate standard because residential ratepayers are more likely to bear a greater cost burden for resiliency plans that benefit all transmission and distribution customers.

OPUC further remarked that "residential customers under such (a) model would pay in recovery the same percentages that they pay in the base-rate for their electricity usage for these resiliency plans."

Commission Response

The commission declines to modify the rule language. The baseline class allocation factor is the appropriate starting basis for allocating resiliency-related distribution costs because it is the most recent commission-approved determination as to class responsibility for distribution costs. Resiliency-related transmission costs will not be included in the RCRR.

New §25.62(f)(1)(E) and (F) - Notice to REPs of RCRR effective date

TEAM recommended subsection (f)(1) be revised to add new subparagraphs (E) and (F) which would require an electric utility to file its RCRR tariff pages with the commission with a notice of the effective date for the Rider at least 45 days before the stated effective date. TEAM provided redlines consistent with its recommendation.

Commission Response

The modifications made to subsection (f)(1)(A)(v) requiring utilities to provide notice of the approved rate and effective date of the approved rates to retail electric providers should address TEAM's concerns.

Proposed §25.62(f)(2) - Resiliency Cost Recovery Factor

Proposed subsection (f)(2) prescribes a mechanism for an electric utility to recover certain resiliency-related costs deferred as a regulatory asset through an RCRF rate as part of a TCRF proceeding.

ETI recommended subsection (f)(2) be deleted on the basis that it is unnecessary complex and misinterprets PURA §38.078(i). ETI observed that the proposed language authorizes a utility that elects to not apply for an RCRR and instead defers distribution-related resiliency plan costs, to apply for a different rider, the TCRF, which is a transmission-related proceeding. ETI interpreted the authorization under PURA §38.078(k) to use cost-recovery alternatives such as the DCRF or TCRF for recovery of eligible resiliency-related costs to not include distribution-related resiliency costs deferred under PURA §38.078(i). ETI asserted that, aside from a base-rate proceeding, PURA §38.078(i) provides for only two alternative recovery alternatives for distribution-related resiliency plan implementation costs: the RCRR under PURA §38.078(i) and the deferral of distribution-related resiliency costs under PURA §38.078(k). ETI accordingly concluded that deferred distribution-related resiliency plan costs should neither be eligible for another rider, nor be undertaken in a transmission-related proceeding.

Commission Response

The commission agrees with ETI and removes proposed subsection (f)(2).

Proposed §25.62(f)(3) and (f)(3)(A) - Deferral of resiliency plan costs in a regulatory asset

Subsection (f)(3) prescribes a mechanism for an electric utility to request to recover certain resiliency-related costs deferred as a regulatory asset as part of a DCRF proceeding. Subsection (f)(3)(A) authorizes an electric utility that is eligible to request a DCRF, to request to include in its DCRF application the resiliency-related costs deferred as a regulatory asset in its DCRF rates, notwithstanding the existing requirements of §25.243.

ETI noted that the proposed rule refers to the potential of cost deferral through a regulatory asset but neither explicitly addresses the circumstances for authorization of a regulatory asset nor prescribes the scope of such a deferral. ETI and SWEPCO requested to revise this subsection to authorize a utility that does not apply for RCRR to defer all or a portion of distribution-related costs including distribution related operation and maintenance expenses for future recovery as a regulatory asset. ETI and SWEPCO stated that such costs would include, in a manner consistent with PURA §38.078(k), depreciation expenses and carrying costs at the utility's weighted average cost of capital established in the utility's most recent base-rate proceeding. Both commenters provided redlines consistent with their recommendation.

TNMP recommended subsection (f)(3)(A) be revised to include the depreciation expense and carrying costs at the utility's weighted average cost of capital established in utility's most recently completed base-rate proceeding as part of resiliency-related costs eligible to be deferred as a regulatory asset.

AEP, SWEPCO, and CenterPoint recommended the references to §25.234 in §25.62(f)(3)(A) be revised to correctly refer to §25.243.

Commission Response

The commission agrees and has modified the rule language accordingly. The commission further clarifies the language in proposed subsection (f)(3)(A), that a utility with a resiliency-related regulatory asset must include a request for recovery of the asset as part of any DCRF proceeding. This subparagraph is renumbered as (f)(2)(A).

Proposed §25.62(f)(4)(A) - Reconciliation of RCRR

Subsection (f)(4)(A) establishes the process in which resiliency-related amounts recovered through rates are subject to reconciliation and commission review in the electric utility's next base-rate proceeding after the effective date of the rates.

TNMP requested for §25.62(f)(4)(A) to be amended to clarify that actual costs incurred in implementing a resiliency plan will not be deemed unreasonable on the sole basis that actual costs are different from estimates provided in an electric utility's resiliency plan. TNMP reasoned that since actual costs that equal estimated costs are not automatically deemed to be reasonable,

a presumption of unreasonableness should not be established when actual costs differ from estimated costs. TNMP also noted that, because future estimates are inherently uncertain, it is impossible to know with absolute confidence what the actual costs are until they are incurred.

SPS provided draft language to suggest that the commission only consider whether costs in excess of those in the utility's approved plan are reasonable, necessary, and prudent.

Commission Response

The commission agrees that the fact that actual resiliency-related costs may differ from estimated costs is not a sufficient basis, on its own, to deem such costs as unreasonable. However, additional rule language is not necessary.

Proposed §25.62(f)(4)(B) - Refund of unreasonable, unnecessary, or imprudent rates

Subsection (f)(4)(B) provides that any amounts recovered through rates previously approved under §25.62 that are found to have been unreasonable, unnecessary, or imprudent, must be refunded with carrying costs plus the corresponding return and taxes.

OPUC recommended a cost cap for resiliency plans be introduced in proposed subsection (f)(4)(B) to avoid unnecessary cost overruns and exponential rate increases to ratepayers. OPUC also recommended the commission impose "monetary restrictions" and other requirements when an electric utility implements resiliency measures as necessary pre-conditions for commission approval of a resiliency plan. Specifically, such requirements would be aimed to "ensure that the measures included in their plans actually function as intended to prevent the emergencies they are intended to mitigate."

Commission Response

The commission declines to modify the rule to require cost caps. However, the rule does not prevent a resiliency plan from including cost caps or other preconditions for the implementation of a particular resiliency measure. Further, the commission has discretion to modify resiliency plans, which includes the ability to impose costs caps or other preconditions, where appropriate.

OPUC also recommends that the commission should modify the rule to require that any expenses associated with resiliency measures that fail to provide their intended resiliency benefits be refunded to customers with carrying costs. OPUC argued that this will incentivize utilities to ensure that the methodologies and technologies included in their resiliency plans are the best suited to mitigate the actions they are intended to prevent. OPUC further argues that without a definable consequence a utility resiliency measure may fail, and yet the utility will be allowed to recover rates from ratepayers for inadequate measures included in a plan.

Commission Response

The commission declines to modify the rule to require utilities to refund any expenses associated with resiliency measures that fail to provide their intended resiliency benefits. Such a requirement would serve as a strong disincentive for utilities to propose resiliency plans or to design their plans to address the most extreme resiliency challenges their systems face, because attempts to address these challenges have an inherently higher chance of failure. This is contrary to the legislative intent of HB 2555, which indicates a strong state interest in encouraging utilities to design resiliency plans.

According to the legislative findings of the uncodified portions of HB 2555, "it is in the state's interest to promote the use of resiliency measures...(and) for each electric utility to seek to mitigate system restoration costs to and outage times for customers." The Legislature further found that "all customers benefit from reduced system restoration costs."

However, the commission does agree that each proposed resiliency measure needs to be scrutinized carefully before it is approved to ensure that it relies upon methodologies and technologies that are well-suited to address the risks it is designed to address. If the commission had determined that it is in the public interest to implement a resiliency measure - which by its very nature requires some amount of speculation - it would be unjust to deny recovery if the measure fails to perform as expected. This is particularly true, because once a resiliency plan is approved, a utility is required to implement its measures.

New §25.62(f)(4)(C) - Reasonableness of actual costs when different from estimated costs

Given the future-oriented nature of resiliency plan measures, Oncor recommended new subsection (f)(4)(C) be added to the rule to make clear that a utility's costs will not be disallowed simply for executing the approved plan. Specifically, new subsection (f)(4)(C) would state that actual costs will not be deemed unreasonable by the commission solely on the basis of actual costs differing from estimated costs provided in the resiliency plan. Oncor noted that this addition would merely prevent higher than estimated actual costs from being the sole, determinative factor for a disallowance of costs incurred in implementing resiliency plan measures. Oncor provided redlines consistent with its recommendation.

Commission Response

As previously noted, the commission agrees that the fact that actual resiliency-related costs may differ from estimated costs is not a sufficient basis, on its own, to deem such costs as unreasonable. However, additional rule language is not necessary.

New §25.62(f)(5) - RCRR's effect on electric utility's financial risk and rate of return

TIEC and OPUC recommended that the proposed rule mirror provisions in the TCRF and DCRF rules that explicitly allow the commission to account for the impact of interim recovery mechanisms on the utility's financial risk and rate of return when settling base rates. TIEC commented that the rule should explicitly address this relationship to account for the reduced risk associated with the RCRR in conjunction with option for a utility to defer costs to future proceedings. TIEC provided redlines consistent with its recommendation.

Commission Response

The commission agrees that the reduced regulatory risk and reduced regulatory lag associated with the rule may provide a reasonable basis to establish base rates using a lower-than-otherwise rate of return for the utility. However, such considerations are within the commission's broader authority to establish just and reasonable rates, and no specific rule language is necessary.

New §26.52(f)(5) - Recovery of and on assets prudently retired in furtherance of a commission-approved plan

ETI recommended adding language to allow utilities to recover on undepreciated assets prudently retired or replaced as part

of a resiliency plan. ETI provided redlines consistent with its recommendation.

Commission Response

The commission declines to add the recommended language to the rule because this is contrary to the precedent. Refer to the commission response under subsection (b)(4) resiliency-related distribution invested capital that explains the precedent and provides details of the modifications made to the definition of RD-DEPR in subsection (f)(1)(B)(iii)(II)(-c-) to clarify commission's intent.

Proposed §25.62(g) Reporting requirements

Proposed subsection (g) establishes reporting requirements for utilities with a resiliency plan approved by the commission.

HEN recommended adding a reporting requirement related to the implementation of resiliency measures that will removing barriers to entry for DERs, microgrids, and other competitive solutions.

Commission Response

The commission declines to add a reporting requirement to specifically track measures that remove barriers to DERs, microgrids, and other competitive resiliency solutions. Removing barriers for these technologies is not a primary objective of this rulemaking, and it would be inappropriate and unduly burdensome to impose this requirement on every resiliency plan.

Oncor, TNMP, and SWEPCO suggested modifying the date by which a report must be filed. Oncor and TNMP suggested that the annual resiliency plan report be due by May 1 of each year, "beginning the year after the plan is approved," while SWEPCO suggested that the due date of the annual resiliency plan report be tied to the anniversary of the plan's approval by the commission.

Commission Response

The commission agrees with Oncor and TNMP that the annual report should be due the year after the plan is approved and modifies the rule language accordingly.

Proposed §25.62(g)(2) and (g)(2)(B) - Resiliency Benefit Update

Proposed subsection (g)(2) requires a utility to provide an update on the resiliency benefits until the third anniversary of a fully implemented plan. Proposed subsection (g)(2)(B) requires a utility to evaluate the effectiveness of each implemented resiliency plan measure in addressing resiliency events by comparing the actual performance of the measure to projected performance.

SWEPCO recommended removing subsection (g)(2) completely, and Oncor recommended removing the last sentence of subsection (g)(2)(B). Both commenters indicated that the probability of certain resiliency events cannot be accurately predicted, and the effectiveness of steps taken to mitigate risks from those events cannot be accurately measured. Oncor offered the example of a foot patrol intended to provide security against physical attacks. Oncor indicated that it is impossible to evaluate how many potential attackers were potentially deterred by these foot patrols.

Commission Response

The commission declines to remove the rule language as recommended by SWEPCO and Oncor. The rule provides a utility broad discretion to recommend whatever metric or criteria is believes is best suited for the evaluation of each resiliency risk, including indicating that a particular measure cannot be evaluated quantitatively. Consistent with subsection (a)(1), the commission will evaluate any proposed criteria or metrics, and how they can be reported on, pragmatically.

Proposed §25.62(g)(2)(C) Expected impact on system restoration costs, outages, and service reliability

Proposed subsection (g)(2)(C) requires a utility to report annually on the expected impact of implemented resiliency plan measures on system restoration costs, outages, and service reliability for customers.

SPS commented that the term "reliability" in this subparagraph conflates resiliency and reliability issues and recommended removing most of the requirement.

Commission Response

The relevance of overall service reliability to each resiliency measure will vary. The commission modifies the rule to apply the requirements of subsection (g)(2)(C) "as appropriate for each measure."

Houston stated that the SAIDI, SAIFI, and CAIDI information described in subparagraph (C) should be included in a utility's resiliency benefit update. Accordingly, Houston requested the word may in subparagraph (C) be changed to must.

Commission Response

The commission declines to require SAIDI, SAIFI, and CAIDI information in the annual report. This information may not be appropriate for the evaluation of every type of resiliency measure. For instances in which this information is relevant for one or more proposed resiliency measures, the utility may include these as evaluation metrics in their resiliency plan or commission may modify the resiliency plan to require those indices as evaluation metrics for those measures. Accordingly, the commission removes this permissive language from the rule. If SAIDI, SAIFI, and CAIDI statistics are added to a resiliency plan as an evaluation metric, if appropriate, these statistics will be required to be reported at the feeder level, include all interruption classifications, and include the number of critical and chronic customers on each feeder.

Adopted §25.62(g)(3) - Resiliency plan updates

The commission adds a provision requiring a utility to include in an application to update a resiliency plan any information contained in resiliency benefit update related to any previously approved resiliency measures designed to address the same or similar resiliency risks.

Proposed §25.62(g)(3) - Reporting requirements

Proposed subsection (g)(3) requires utilities to maintain records associated with resiliency plans.

AEP suggested that the commission set a time limit of five years on retention of records associated with resiliency plans, noting that five years is consistent with other record retention requirements and policies.

Commission Response

The commission agrees with the commenter and modifies the rule text to require records be retained for five years, beginning the year after the approval of the plan. The commission also renumbers this requirement as subsection (g)(4).

The amended rule is adopted under PURA §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction and §38.078 which allows electric utilities to submit to the commission, plans to enhance transmission and distribution system resiliency.

Cross reference to statutes: Public Utility Regulatory Act §§14.002, and 38.078.

§25.62. Transmission and Distribution System Resiliency Plans.

(a) Purpose and applicability. This section allows an electric utility that owns and operates a transmission or distribution system to file a resiliency plan to enhance the resiliency of the electric utility's transmission and distribution system. The requirements of this section will be construed, to the extent practicable, to reflect the following:

(1) Each transmission and distribution system has different system characteristics and faces different resiliency events and resiliency-related risks. The ability to precisely define, measure, and address these events and risks varies. Terms such as "event," "risk," "criteria," and "metric" will be construed pragmatically to provide each utility with the flexibility to develop a well-tailored and systematic approach to improving the resiliency of its system.

(2) A utility seeking approval of a resiliency plan bears the burden of proof on each aspect of its resiliency plan. Nothing in this section categorically limits the type of evidence that a utility may use to meet this burden. The weight given to each piece of evidence will be determined by the commission on a case-by-case basis based on the relevant facts and circumstances. Provisions contained in this section addressing the weight of certain types of evidence are advisory only.

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

(1) Distribution invested capital -- The parts of the electric utility's invested capital that are categorized or properly functionalized as distribution plant and, once they are placed into service, are properly recorded in Federal Energy Regulatory Commission (FERC) Uniform System of Accounts 303, 352, 353, 360 through 374, 391, and 397. Distribution invested capital includes only costs: for plant that has been placed into service or will be placed into service prior to rates going into effect; that comply with PURA, including §36.053 and §36.058; and that are prudent, reasonable, and necessary. Distribution invested capital does not include: generation-related costs; transmission-related costs, including costs recovered through rates set pursuant to §25.192 of this title (relating to Transmission Service Rates), §25.193 of this title (relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)), or §25.239 of this title (relating to Transmission Cost Recovery Factor for Certain Electric Utilities); indirect corporate costs; capitalized operations and maintenance expenses; and distribution invested capital recovered through a separate rate, including a surcharge, tracker, rider, or other mechanism.

(2) Resiliency cost recovery rider (RCRR) billing determinant -- Each rate class's annual billing determinant (kilowatt-hour, kilowatt, or kilovolt-ampere) for the most recent 12 months ending no earlier than 90 days prior to an application for a Resiliency Cost Recovery Rider, weather-normalized and adjusted to reflect the number of customers at the end of the period.

(3) Resiliency event -- an event involving extreme weather conditions, wildfires, cybersecurity threats, or physical security threats that poses a material risk to the safe and reliable operation of an electric utility's transmission and distribution systems. A resiliency event is not primarily associated with resource adequacy or an electric utility's ability to deliver power to load under normal operating conditions.

(4) Resiliency-related distribution invested capital -- Distribution invested capital associated with a resiliency plan approved under this section that will be placed into service before or at the time the associated rates become effective under this section, and that are not otherwise included in a utility's rates.

(5) Resiliency-related net distribution invested capital -- Resiliency-related distribution invested capital that is:

(A) adjusted for accumulated depreciation and any changes in accumulated deferred federal income taxes, including changes to excess accumulated deferred federal income taxes, associated with all resiliency-related distribution invested capital included in the electric utility's RCRR;

(B) reduced by the amount of net plant investment associated with any distribution invested capital included in a utility's rates that is retired or replaced, at the time the associated rates become effective under this section, by resiliency-related distribution invested capital; and

(C) further adjusted to remove accumulated depreciation and accumulated deferred federal income taxes associated with distribution invested capital included in a utility's rates that is retired or replaced, at the time the associated rates become effective under this section, by resiliency-related distribution invested capital.

(6) Weather-normalized -- Adjusted for normal weather using weather data for the most recent ten-year period prior to the year from which the RCRR billing determinants are derived.

(c) Resiliency Plan. An electric utility may file a plan to prevent, withstand, mitigate, or more promptly recover from the risks posed by resiliency events to its transmission and distributions systems. A resiliency plan may be updated, but the updated plan must not take effect earlier than three years from the date of approval of the electric utility's most recently approved resiliency plan.

(1) Resiliency measures. A resiliency plan is comprised of one or more measures designed to prevent, withstand, mitigate, or more promptly recover from the risks posed to the electric utility's transmission and distribution systems by resiliency events, as described in subsection (d) of this section. Each measure must utilize one or more of the following methods:

(A) hardening electric transmission and distribution facilities;

(B) modernizing electric transmission and distribution facilities;

(C) undergrounding certain electric distribution lines;

(D) lightning mitigation measures;

(E) flood mitigation measures;

(F) information technology;

(G) cybersecurity measures;

(H) physical security measures;

(I) vegetation management; or

(J) wildfire mitigation and response.

(2) Contents of the resiliency plan. The resiliency plan must be organized by measure, including a description of any activities, actions, standards, services, procedures, practices, structures, or equipment associated with each measure.

(A) The resiliency plan must identify, for each measure, one or more risks posed by resiliency events that the measure is intended to prevent, withstand, mitigate, or more promptly recover from.

(i) The resiliency plan must explain the electric utility's prioritization of the identified resiliency event and, if applicable, the prioritization of the particular geographic area, system, or facilities where the measure will be implemented.

(ii) The resiliency plan must include evidence of the effectiveness of the measure in preventing, withstanding, mitigating, or more promptly recovering from the risks posed by the identified resiliency event. The commission will give greater weight to evidence that is quantitative, performance-based, or provided by an independent entity with relevant expertise.

(iii) A resiliency plan must explain the expected benefits of the resiliency measures including, as applicable, reduced system restoration costs, reduction in the frequency or duration of outages for customers. and any improvement in the overall service reliability for customers, including the classes of customers served and any critical load designations.

(iv) The electric utility must identify if a resiliency measure is a coordinated effort with federal, state, or local government programs or may benefit from any federal, state, or local government funding opportunities.

(v) The resiliency plan must explain the selection of each measure over any reasonable and readily-identifiable alternatives. The resiliency plan must contain sufficient analysis and evidence, such as cost or performance comparisons, to support the selection of each measure. In selecting between measures, whether a measure would support the plan's systematic approach may be considered.

(vi) The resiliency plan must identify any measures that may require a transmission system outage to implement. The electric utility must coordinate with its independent system operator before implementing these measures. Upon request, the electric utility must provide its independent system operator, using mutually-agreed to transfer and data security procedures, a complete copy of its resiliency plan.

(B) Resiliency events.

(i) A resiliency plan must define identify and describe each type of resiliency event and any associated resiliency-related risks the plan is designed to prevent, withstand, mitigate, or more promptly recover from. A resiliency event may be defined using an established definition (e.g., a hurricane) or a plan- or measure-specific definition based on the risks posed by that type of event to the electric utility's systems (e.g. flooding of a specified depth). Each type of resiliency event must be defined with sufficient detail to allow the electric utility or commission to determine whether an actual set of circumstances qualifies as a resiliency event of that type.

(ii) If appropriate, one or more magnitude thresholds must be included in the definition of a resiliency event type based on the risks posed to the electric utility's systems by that type of event. A resiliency plan may establish multiple magnitude thresholds for a single type of resiliency event (e.g., categories of hurricanes) when necessary to conduct a more granular analysis of the risks posed by the event and the options available to prevent, withstand, mitigate, or more promptly recover from them.

(iii) The resiliency plan must include a description of the system characteristics that make the electric utility's transmission and distribution systems susceptible to each identified resiliency event type.

(iv) A resiliency plan must provide sufficient evidence to support the presence of and risk posed by each identified resiliency event. The resiliency plan must provide historical evidence of the electric utility's experience with, if applicable, and forecasted risk of the identified event type, including whether the forecasted risk is specific to a particular system or geographic area. In assessing the presence and risk posed by each resiliency event, the commission will give great weight to any studies conducted by an independent system operator or independent entity with relevant expertise.

(C) Evaluation metric or criteria. Each measure in the resiliency plan must include a proposed metric or criteria for evaluating the effectiveness of that measure in preventing, withstanding, mitigating, or more promptly recovering from the risks associated with the resiliency event it is designed to address.

(i) The resiliency plan must explain the appropriateness of the selected evaluation metric or criteria.

(ii) For an evaluation metric or criteria that is not quantitative, the resiliency plan must explain why quantitative evaluation of the effectiveness of that measure is not possible.

(iii) The resiliency plan must also include an estimate or analysis of the expected effectiveness of each measure using the selected evaluation metric or criteria.

(D) If a resiliency plan includes measures that are similar to other existing programs or measures, such as a storm hardening plan under §25.95 of this title (relating to Electric Utility Infrastructure Storm Hardening) or a vegetation management plan under §25.96 of this title (relating to Vegetation Management), or programs or measures otherwise required by law, the electric utility must distinguish the measures in the resiliency plan from these programs and measures and, if appropriate, explain how the related items work in conjunction with one another.

(E) A resiliency plan must be implemented using a systematic approach over a period of at least three years. The resiliency plan must explain this systematic approach and provide implementation details for each of the plan's measures, including estimated capital costs, estimated operations and maintenance expenses, an estimated timeline for completion, and, when practicable and appropriate, estimated net salvage value (value of the retired asset less depreciation and cost of removal) and remaining service lives of any assets expected to be retired or replaced by resiliency-related investments. The resiliency plan should identify relevant cost drivers (e.g., line miles, frequency of inspections, frequency of trim cycles, etc.) that would affect the estimates.

(F) A utility may deviate from the implementation schedule specified in an approved plan if its independent system operator has not approved an outage that would be required to timely implement the plan.

(G) The resiliency plan must include an executive summary or comprehensive chart that explains the plan objectives, the resiliency events or related risks the plan is designed to address, the plan's proposed resiliency measures, the proposed metrics or criteria for evaluating the plans' effectiveness, the plan's cost and benefits, and how the overall plan is in the public interest.

(3) An electric utility may designate portions of the resiliency plan as critical energy infrastructure information, as defined by applicable law, and file such portions confidentially.

(d) Commission processing of resiliency plan.

(1) Notice and intervention deadline. By the day after it files its application, the electric utility must provide notice of its filed

resiliency plan, including the docket number assigned to the resiliency plan and the deadline for intervention, in accordance with this paragraph. The intervention deadline is 30 days from the date service of notice is complete. The notice must be provided using a reasonable method of notice, to:

(A) all municipalities in the electric utility's service area that have retained original jurisdiction;

(B) all parties in the electric utility's base-rate proceeding;

(C) if the resiliency plan is filed by an electric utility operating in an area in Texas that is open to competition and includes a request for a resiliency cost recovery rider, each retail electric provider that is authorized by the registration agent to provide service in the electric utility's service area;

(D) the Office of Public Utility Counsel. Notice delivered to the Office of Public Utility Counsel must include a copy of the resiliency plan, excluding critical energy infrastructure information; and

(E) the independent system operator. Notice delivered to the utility's independent system operator must include a copy of the resiliency plan, excluding critical energy infrastructure information.

(2) Sufficiency of resiliency plan. An application is sufficient if it includes the information required by subsection (c) of this section and the electric utility has filed proof that notice has been provided in accordance with this subsection.

(A) Commission staff must review each resiliency plan for sufficiency and file a recommendation on sufficiency within 28 calendar days after the resiliency plan is filed. If commission staff recommends the resiliency plan be found deficient, commission staff must identify the deficiencies in its recommendation. The electric utility will have seven calendar days to file a response.

(B) If the presiding officer concludes the resiliency plan is deficient, the presiding officer will file a notice of deficiency and cite the particular requirements with which the resiliency plan does not comply. The presiding officer must provide the electric utility an opportunity to amend its resiliency plan. Commission staff must file a recommendation on sufficiency within 10 calendar days after the filing of an amended resiliency plan, when the amendment is filed in response to an order concluding that material deficiencies exist in the resiliency plan.

(C) If the presiding officer has not filed a written order concluding that material deficiencies exist in the resiliency plan within 14 working days after a deadline for a recommendation on sufficiency, the resiliency plan is deemed sufficient.

(3) The commission will approve, modify, or deny a resiliency plan not later than 180 days after a complete resiliency plan is filed. A resiliency plan is complete once it is deemed sufficient in accordance with this subsection. The presiding officer must establish a procedural schedule that will enable the commission to approve, modify, or deny the plan not later than 180 days after a complete plan is filed. If the resiliency plan is determined to be materially deficient, the presiding officer must toll the 180-day deadline until a complete application is filed.

(4) Commission review of resiliency plan. In determining whether to approve, deny, or modify a plan, the commission will consider:

(A) the extent to which the plan is expected to enhance system resiliency, including whether the plan prioritizes areas of lower performance;

(B) the estimated costs of implementing the measures proposed in the plan; and

(C) whether the plan is in the public interest. The commission will not approve a plan that is not in the public interest. In evaluating the public interest, the commission may consider:

(i) the extent to which the plan is expected to enhance system resiliency, including:

(I) the verifiability and severity of the resiliency risks posed by the resiliency events the resiliency plan is designed to address;

(II) the extent to which the plan will enhance resiliency of the electric utility's system, mitigate system restoration costs, reduce the frequency or duration of outages, or improve overall service reliability for customers during and following a resiliency event;

(III) the extent to which the resiliency plan prioritizes areas of lower performance;

(IV) the extent to which the resiliency plan prioritizes critical load as defined in §25.52 of this title (relating to Reliability and Continuity of Service);

(ii) the estimated time and costs of implementing the measures proposed in the resiliency plan;

(iii) whether there are more efficient, cost-effective, or otherwise superior means of preventing, withstanding, mitigating, or more promptly recovering from the risks posed by the resiliency events addressed by the resiliency plan; or

(iv) other factors deemed relevant by the commission.

(5) The commission's denial of a resiliency plan is not a finding on the prudence or imprudence of a measure or estimated cost in the resiliency plan. Upon denial of a resiliency plan, an electric utility may file a revised resiliency plan for review and approval by the commission.

(e) Good cause exception. An electric utility must implement each measure in its most recently approved resiliency plan unless the commission grants a good cause exception to implementing one or more measures in the plan. The commission may grant a good cause exception if the electric utility demonstrates that operational needs, business needs, financial conditions, or supply chain or labor conditions dictate the exception, or if the electric utility has a pending application for a revised resiliency plan that addresses the same resiliency events.

(f) Resiliency Plan Cost Recovery. A utility may request cost recovery for costs associated with a resiliency plan approved under this section that are not otherwise included in the utility's rates. If a utility that files a resiliency plan with the commission does not apply for a rider or rates to recover resiliency plan costs under paragraph (1) of this subsection, after commission review and approval of the resiliency plan, the utility may defer all or a portion of the distribution-related costs relating to the implementation of the resiliency plan for recovery as a regulatory asset under paragraph (2) of this subsection, or in a base-rate proceeding. The regulatory asset may include associated depreciation expense and carrying costs at the utility's weighted average cost of capital established in the commission's final order in the utility's most recent base-rate proceeding in a manner consistent with PURA Chapter 36.

(1) Resiliency Cost Recovery Rider. This paragraph provides a mechanism for an electric utility to request to recover certain resiliency-related costs through a resiliency cost recovery rider (RCRR) outside of a base-rate proceeding or a distribution cost recovery proceeding as part of a resiliency plan approved under this section, consistent with Public Utility Regulatory Act (PURA) §38.078(i).

(A) RCRR Requirements. The RCRR rate for each rate class, and any other terms or conditions related to those rates, will be specified in a rider to the utility's tariff.

(i) An electric utility must not have more than one RCRR.

(ii) An electric utility with an existing RCRR may apply to amend the RCRR to include additional costs associated with an updated resiliency plan under PURA §38.078(g).

(iii) An electric utility may request an RCRR established under this section take effect at any time, except that before an RCRR established under this section may take effect:

(I) all distribution investment included in the RCRR must be providing service to the electric utility's customers, and

(II) the commission must approve RCRR rates in accordance with clause (iv) of this subparagraph.

(iv) An electric utility must submit a separate application requesting RCRR rates.

(I) The utility must provide notice of its application, using a reasonable method of notice, to the parties listed in subsection (d)(1) of this section.

(II) The RCRR rate request must include: the final amount of resiliency-related distribution invested capital closed to plant and in service to be included in the RCRR rates, values necessary to calculate RCRR rates, attachments demonstrating the calculation of RCRR rates consistent with this section, and workpapers supporting the application.

(III) The commission will enter a final order on the application for RCRR rates under this section not later than the 60th day after the date the complete updated request is filed. The commission may extend the deadline for not more than 30 days for good cause.

(v) An electric utility must provide notice, using a reasonable method of notice, of the approved rates and effective date of the approved rates to retail electric providers that are authorized by the registration agent to provide service in the electric utility's distribution service area not later than the 45th day before the date the rates take effect.

(vi) As part of its next base-rate proceeding or distribution cost recovery factor proceeding for the electric utility, the electric utility may request to include its remaining unrecovered costs included in its RCRR in that proceeding and must request that RCRR rates be set to zero as of the effective date of rates resulting from that proceeding.

(B) Calculation of RCRR Rates. The RCRR rate for each rate class must be calculated according to the provisions of this subparagraph and subparagraphs (C) and (D) of this paragraph.

(i) The RCRR rate for each rate class will be calculated using the following formula: $RCRR_{CLASS} = RR_{CLASS} / BD_{C\text{-}CLASS}$

(ii) The values of the terms used in this paragraph will be calculated as follows:

(I) $RR_{CLASS} = RR_{TOT} * ALLOC_{C\text{-}CLASS}$

(II) $RR_{TOT} = ((RND\text{-}C\text{-} * ROR_{RC}) + RDDEPR + RNDCFIT + RDOT) - IDCCR$

(III) $ALLOC_{C\text{-}CLASS} = ALLOC_{RC\text{-}CLASS} * (BD_{C\text{-}CLASS} / BD_{RC\text{-}CLASS}) / Î£ (ALLOC_{RC\text{-}CLASS} * (BD_{C\text{-}CLASS} / BD_{RC\text{-}CLASS}))$

(IV) $IDCCR = Î£ (DISTREV_{RC\text{-}CLASS} * \%GROWTH_{CLASS}) - DCRFLGA$

(V) $DISTREV_{RC\text{-}CLASS} = (DIC_{RC\text{-}CLASS} * ROR_{AT}) + DEPR_{RC\text{-}CLASS} + FIT_{RC\text{-}CLASS} + OT_{RC\text{-}CLASS}$ with the variables in this formula as defined in §25.243 of this title.

(VI) $\%GROWTH_{CLASS}$ = The greater of $((BD_{C\text{-}CLASS} - BD_{RC\text{-}CLASS}) / BD_{RC\text{-}CLASS})$ or zero.

(iii) The terms used in this paragraph represent or are defined as follows:

(I) Descriptions of calculated values.

(-a-) $RCRR_{CLASS}$ -- RCRR rate for a rate class.

(-b-) RR_{CLASS} -- RCRR class revenue requirement.

(-c-) RR_{TOT} -- Total RCRR Texas retail revenue requirement.

(-d-) $ALLOC_{C\text{-}CLASS}$ -- RCRR class allocation factor for a rate class.

(-e-) IDCCR -- Incremental distribution capital cost recovery.

(-f-) $DISTREV_{RC\text{-}CLASS}$ -- Distribution Revenues by rate class based on Net Distribution Invested Capital from the most recently completed comprehensive base-rate proceeding.

(-g-) $\%GROWTH_{CLASS}$ - Growth in billing determinants by class.

(II) RCRR billing determinants and distribution investment values.

(-a-) $BD_{C\text{-}CLASS}$ -- RCRR billing determinants.

(-b-) RNDC -- Resiliency-related net distribution invested capital.

(-c-) RDDEPR -- Resiliency-related distribution invested capital depreciation expense.

(-d-) RNDCFIT -- Federal income tax expense associated with the return on the resiliency-related net distribution invested capital.

(-e-) RDOT -- Other revenue-related tax expense associated with the resiliency-related net distribution invested capital as well as appropriate associated ad valorem tax expense.

(III) Baseline values. The following values are based on those values used to establish rates in the electric utility's most recent base-rate proceeding or distribution cost recovery factor proceeding, or if an input to the RCRR calculation from the electric utility's most recently completed base-rate proceeding is not separately identified in that proceeding, it will be derived from information from that proceeding:

(-a-) $BD_{RC\text{-}CLASS}$ -- Rate class billing determinants used to establish distribution base rates in the most recently completed base-rate proceeding. Energy-based billing determinants will be used for those rate classes that do not include any demand charges, and demand-based billing determinants will be used for those rate classes that include demand charges.

(-b-) ROR_{RC} -- After-tax rate of return approved by the commission in the electric utility's most recently completed base-rate proceeding.

(-c-) $ALLOC_{RC\text{-}CLASS}$ -- Rate class allocation factor value determined under the provisions of subparagraph (C) of this paragraph.

(-d-) DCRFLGA -- The value of Î£(DISTREV$_{RC\text{-}CLASS}$ * %GROWTH$_{CLASS}$) in the most recent distribution cost recovery factor proceeding for the utility since its most recently completed base-rate proceeding, or zero if there are no distribution cost recovery factor proceedings since the utility's most recently completed base-rate proceeding.

(C) Class allocation factors. For calculating RCRR rates, the baseline rate-class allocation factors used to allocate distribution invested capital in the most recently completed base-rate proceeding will be used.

(D) Customer classification. For the purposes of establishing RCRR rates, customers will be classified according to the rate classes established in the electric utility's most recently completed base-rate proceeding.

(2) Distribution Cost Recovery Factor. This paragraph provides a mechanism for an electric utility to request to recover certain resiliency-related costs deferred as a regulatory asset as part of a distribution cost recovery factor proceeding under §25.243 of this title (relating to Distribution Cost Recovery Factor (DCRF)), consistent with PURA §38.078(k).

(A) Notwithstanding the existing requirements of §25.243 of this title, a utility eligible to request a distribution cost recovery factor under §25.243 of this title must, as part of an application under §25.243 of this title, request to include any resiliency-related costs deferred as a regulatory asset under this subsection in its DCRF rates.

(B) DCRF rates established consistent with this paragraph must be calculated in a manner identical to the DCRF rates described in §25.234 of this title, with the exception that the DCRF rate for each rate class must be calculated using the following formula: ((DIC$_C$ - DIC$_{RC}$) * ROR$_{AT}$) + (DEPR$_C$ - DEPR$_{RC}$) + (FIT$_C$ - FIT$_{RC}$) + (OT$_C$ - OT$_{RC}$) + RAMORT - Î£ (DISTREV$_{RC\text{-}CLASS}$ * %GROWTH$_{CLASS}$)] * ALLOC$_{CLASS}$ / BD$_{C\text{-}CLASS}$ Where the value of RAMORT must be equal to a reasonable annual amortization amount of the resiliency-related regulatory asset.

(C) Upon the establishment of an DCRF rate under this paragraph, the resiliency-related regulatory asset balance will be reduced at an annual rate by the value of RAMORT.

(3) Reconciliation.

(A) Resiliency-related amounts recovered through rates approved under this subsection are subject to reconciliation in the first base-rate proceeding for the electric utility that is filed after the effective date of the rates. As part of the reconciliation, the commission will determine if the resiliency-related costs are reasonable, necessary, and prudent.

(B) Any amounts recovered through rates approved under this subsection that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return and taxes, must be refunded with carrying costs. In any proceeding in which the commission determines that a utility has included in rates any amounts deemed unreasonable, unnecessary, or imprudent, the commission may order a compliance proceeding to determine the amounts and manner of any necessary refunds to ratepayers, including carrying costs. Carrying costs will be determined as follows:

(i) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the electric utility's base rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the same rate of return that was applied to the resiliency costs included in rates.

(ii) For the time period beginning with the effective date of the electric utility's rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the electric utility's rate of return authorized in that base-rate proceeding.

(D) In any base-rate proceeding in which resiliency-related costs are being reconciled, the electric utility must separately include as part of its base-rate application testimony, schedules and workpapers sufficient to enable a comprehensive review of all resiliency-related costs included in each and every rider under this subsection that have not yet been reconciled. Such information must include, but is not limited to, the dates when the individual resiliency-related projects began providing service to the public, as well as the costs associated with the individual resiliency-related projects.

(g) Reporting requirements. An electric utility with a commission-approved resiliency plan must file an annual resiliency plan report by May 1 of each year, beginning the year after the plan is approved. The annual resiliency plan report must include the following information:

(1) until the resiliency plan is fully implemented, an implementation status update consisting of:

(A) a list of each resiliency plan measure completed in the prior calendar year, and the actual capital costs and operations and maintenance expenses incurred in the prior year attributable to each measure;

(B) a list of each resiliency plan measure scheduled for completion in the upcoming year, and an estimate of capital costs and operations and maintenance expenses for each resiliency plan measure scheduled for completion in the upcoming calendar year; and

(C) an explanation for any material changes in the implementation timeline or costs associated with implementing the resiliency plan; and

(2) until the third anniversary of the plan being fully implemented, a resiliency benefit update consisting of:

(A) a report on the occurrence of any resiliency events the resiliency plan or a previously-implemented resiliency plan was intended to address, including a comparison of the frequency and magnitude of these events with any projections contained in the resiliency plan or a resiliency plan previously-implemented by the electric utility;

(B) an evaluation of the effectiveness of each implemented resiliency plan measure in preventing, withstanding, mitigating, or more promptly recovering from the risks posed by any resiliency events that measure was implemented to address. This evaluation must include an analysis using the metric or criteria contained in the resiliency plan for that measure, and a comparison of the measure's actual effectiveness with its projected effectiveness.

(C) an update on the expected impact of implemented resiliency plan measures, as appropriate for each measure, on system restoration costs, reduction in the frequency or duration of outages for customers at the location for which a resiliency plan was implemented, and any improvement in the overall service reliability for customers.

(3) When submitting an updated resiliency plan, the utility must include in the evidence supporting the plan, any information from prior resiliency benefit updates related to previously-approved measures designed to address the same or similar resiliency risks.

(4) An electric utility is required to maintain records associated with the information referred to in this subsection for five years, beginning the year after the plan is approved. Upon request by commission staff an electric utility must provide any additional information and updates on the status of the resiliency plan submitted.

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

Filed with the Office of the Secretary of State on January 19, 2024.

TRD-202400202
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: September 29, 2023
For further information, please call: (512) 936-7322

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING OPTIONS FOR LOCAL REVENUE LEVELS IN EXCESS OF ENTITLEMENT

19 TAC §62.1072

The Texas Education Agency (TEA) adopts an amendment to §62.1072, concerning options and procedures for local revenue in excess of entitlement. The amendment is adopted without changes to the proposed text as published in the November 3, 2023 issue of the *Texas Register* (48 TexReg 6450) and will not be republished. The amendment adopts as a part of the Texas Administrative Code (TAC) the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2023-2024 School Year* and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2024-2025 School Year.* The manuals contain the processes and procedures that TEA will use in the administration of the provisions of Texas Education Code (TEC), Chapter 49, and the fiscal, procedural, and administrative requirements that school districts subject to TEC, Chapter 49, must meet.

REASONED JUSTIFICATION: The procedures contained in each yearly manual for districts determined to have local revenue in excess of entitlement are adopted as part of the TAC. The intent is to biennially update §62.1072 to refer to the most recently published manuals for the current and upcoming school years. Manuals adopted for previous school years will remain in effect with respect to those school years.

The adopted amendment to §62.1072 adopts in rule the official TEA publications *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2023-2024 School Year* as Figure: 19 TAC §62.1072(a) and *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2024-2025 School Year* as Figure: 19 TAC §62.1072(b). The section title is updated to reflect the manuals adopted in the rule.

Each school year's options and procedures for districts determined to have local revenue in excess of entitlement explain how districts subject to excess local revenue are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The options and procedures also provide information on using the online Foundation School Program System to fulfill certain requirements.

The following significant changes are addressed in the updated publications.

In *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2023-2024 School Year,* dates were changed throughout the manual, and a new date was added to the calendar to reflect when the agency will provide official notification to districts with local revenue in excess of entitlement after review notification for the 2022-2023 school year in accordance with TEC, §49.0041. Non-substantive, technical edits were also made.

In *Options and Procedures for Districts with Local Revenue in Excess of Entitlement 2024-2025 School Year,* information related to TEC, §48.278, Equalized Wealth Transition Grant, was removed since the statute expires on September 1, 2024.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 3, 2023, and ended December 4, 2023. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §49.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §49.006.

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

Filed with the Office of the Secretary of State on January 17, 2024.

TRD-202400147
Cristina De La Fuente-Valdez
Director, Rulemaking
Texas Education Agency
Effective date: February 6, 2024
Proposal publication date: November 3, 2023
For further information, please call: (512) 475-1497

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CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL

SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1002, §150.1004

The Texas Education Agency (TEA) adopts amendments to §150.1002 and §150.1004, concerning teacher appraisal. The amendment to §150.1002 is adopted without changes to the proposed text as published in the August 11, 2023 issue of the *Texas Register* (48 TexReg 4377) and will not be republished.

The amendment to §150.1004 is adopted with changes to the proposed text as published in the August 11, 2023 issue of the *Texas Register* (48 TexReg 4377) and will be republished. The adopted amendments allow districts to begin using the Alternate Domain I rubric as part of the Texas Teacher Evaluation and Support System (T-TESS) beginning with the 2024-2025 school year.

REASONED JUSTIFICATION: Section 150.1002 defines the requirements a school district must meet each school year regarding the assessment of teacher performance. Section 150.1004 defines the requirements for a teacher's response and appeal to a written observation summary or any other written documentation related to appraisal ratings.

The adopted amendment to §150.1002 adds language that allows districts to use the Alternate Domain I rubric as part of the T-TESS beginning with the 2024-2025 school year. The adopted amendment to §150.1004 adds language that allows teachers to respond or appeal written documentation for Alternate Domain I ratings. At adoption, a technical edit was made to add a closing parenthesis to §150.1004(a)(2).

The Alternate Domain I rubric was developed to address the shift in teacher responsibilities from lesson planning to lesson internalization. The adopted changes allow districts to use either the current Domain I rubric or the Alternate Domain I rubric to assess teacher performance.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 11, 2023, and ended September 11, 2023. Based on public comments received, the public comment period was extended an additional 30 days beginning on October 13, 2023, and ending on November 13, 2023.

Comment: The Texas Classroom Teachers Association, Texas American Federation of Teachers (Texas AFT), and Texas State Teachers Association (TSTA) expressed concern that the Alternate Domain 1 rubric referenced in the proposed rule text was not accessible during the public comment period and requested the proposed rule be republished with a link to the Alternate Domain 1 rubric.

Response: The agency agrees that it would be beneficial for the Alternate Domain 1 rubric to be made accessible during the public comment period. Therefore, the public comment period was extended for an additional 30 days and a link to the Alternate Domain 1 rubric was made available.

Comment: Texas AFT noted additional clarification is needed within the proposed rule regarding when it is appropriate to use the Alternate Domain 1 rubric, including a definition of lesson internalization.

Response: The agency disagrees that the inclusion of a definition and guidance regarding implementation of this requirement are needed within the Texas Administrative Code. All T-TESS appraisers must attend a 3-day certification training to effectively implement all components of the rubric. The agency will continue to provide guidance for implementation of the T-TESS rubric, including the Alternate Domain 1 rubric, via T-TESS trainings and updates on the Teach For Texas website.

Comment: TSTA commented that the proposed rubric included several recommendations made by the development committee but expressed concern that the committee's general sentiment is not reflected in the proposed language.

Response: This comment is outside the scope of the current rule proposal. However, the agency provides the following clarification. The Alternate Domain 1 rubric was developed in response to a shift in practice from teachers designing lessons to teachers internalizing lessons. The current Domain 1 rubric will coexist with the Alternate Domain 1 rubric, providing appraisers and teachers an opportunity to select the rubric that best aligns with the teachers' current responsibilities. Teachers designing lessons should be evaluated with the current Domain 1 rubric, and teachers internalizing lessons should be evaluated with the Alternate Domain 1 rubric. Lesson internalization is not intended as a process to be used solely by teachers of record who have not completed an educator preparation program or had the benefit of high quality field experience.

Comment: A Texas educator preparation program employee questioned the process of lesson internalization and the language used within the Alternate Domain 1 rubric and made suggestions accordingly.

Response: This comment is outside the scope of the current rule proposal.

Comment: A school district administrator expressed appreciation and support for the rule proposal.

Response: The agency agrees that this rule proposal is beneficial and aligns to the shift in teacher responsibilities for lesson preparation.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code, §21.351, which requires the commissioner of education to adopt a state-recommended appraisal process for teachers.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §21.351.

§150.1004. Teacher Response and Appeals.

(a) A teacher may submit a written response or rebuttal at the following times:

(1) for Domain I or Alternate Domain I, Domain II, and Domain III, as identified in §150.1002(a) of this title (relating to Assessment of Teacher Performance), after receiving a written observation summary or any other written documentation related to the ratings of those three domains; or

(2) for Domain IV, as identified in §150.1002(a) of this title, and for the performance of teachers' students, as defined in §150.1001(f)(2) of this title (relating to General Provisions), after receiving a written summative annual appraisal report.

(b) Any written response or rebuttal must be submitted within 10 working days of receiving a written observation summary, a written summative annual appraisal report, or any other written documentation associated with the teacher's appraisal. A teacher may not submit a written response or rebuttal to a written summative annual appraisal report for the ratings in Domain I or Alternate Domain I, Domain II, and Domain III, as identified in §150.1002(a) of this title, if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to submit a written response or rebuttal.

(c) A teacher may request a second appraisal by another certified appraiser at the following times:

(1) for Domain I or Alternate Domain I, Domain II, and Domain III, as identified in §150.1002(a) of this title, after receiving a written observation summary with which the teacher disagrees; or

(2) for Domain IV, as identified in §150.1002(a) of this title, and for the performance of teachers' students, as defined in §150.1001(f)(2) of this title, after receiving a written summative annual appraisal report with which the teacher disagrees.

(d) The second appraisal must be requested within 10 working days of receiving a written observation summary or a written summative annual appraisal report. A teacher may not request a second appraisal by another certified appraiser in response to a written summative annual appraisal report for the ratings of dimensions in Domain I or Alternate Domain I, Domain II, and Domain III, as identified in §150.1002(a) of this title, if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to request a second appraisal.

(e) A teacher may be given advance notice of the date or time of a second appraisal, but advance notice is not required.

(f) The second appraiser shall make observations and walkthroughs as necessary to evaluate the dimensions in Domain I or Alternate Domain I, Domain II, and Domain III or shall review the Goal-Setting and Professional Development Plan for evidence of goal attainment and professional development activities, when applicable. Cumulative data may also be used by the second appraiser to evaluate other dimensions.

(g) Each school district shall adopt written procedures for determining the selection of second appraisers. These procedures shall be disseminated to each teacher at the time of employment and updated annually or as needed.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

19 TAC §153.1011

The Texas Education Agency (TEA) adopts an amendment to §153.1011, concerning the mentor program allotment. The amendment is adopted with changes to the proposed text as published in the September 8, 2023 issue of the *Texas Register* (48 TexReg 4976) and will be republished. The adopted amendment modifies the rule to further define the mentor program allotment as governed by Texas Education Code (TEC), Chapter 21.

REASONED JUSTIFICATION: Section 153.1011 describes the requirements for the Mentor Program Allotment, an optional, grant funded program to support mentorship as governed by TEC, §21.458, and detailed in TEC, §48.114. This allotment is for eligible districts that implement a mentorship program in accordance with TEC, §21.458.

The proposed amendment to subsection (a)(1), which would have modified the definition of beginning teacher to a teacher of record, was removed at adoption based on public comment. The definition of a beginning teacher remains a classroom teacher. To provide clarification, the definition of classroom teacher in subsection (a)(2) has also been modified at adoption so that uncertified beginning teachers may also be assigned mentors.

The adopted amendment to subsection (a)(3) extends the definition of a mentor teacher to include individuals who serve or have served as teachers. This change addresses the mentor teacher shortage concerns reported by districts. At adoption, the term "classroom teacher" was changed to "teacher."

New subsection (a)(5) is added at adoption to define a teacher for the purpose of this rule. This addition was in response to public comment to strike the word "classroom" before "teacher" in the definition of mentor teacher in subsection (a)(3). The removal of "classroom" introduces a new term ("teacher"), which needed to be defined.

The adopted amendment to subsection (b)(1) updates the mentor selection requirements for districts. New subsection (b)(1)(A) requires districts to prioritize the selection of current classroom teachers and retain documentation of selection processes in order to ensure that districts are prioritizing the selection of qualified mentors who have the most recent classroom experience.

Adopted new subsection (b)(1)(B) introduces requirements that mentor teachers have instructional expertise in the area the beginning teacher is assigned and have classroom experience in the past three years. These changes ensure that beginning teachers are matched with mentor teachers with recent instructional experience in their content areas.

To alleviate the workload of mentor teachers who currently serve as teachers of record, the adopted amendment to subsection (b)(2)(A) and (B) reduces the average number of hours a mentor must serve as a teacher of record to be assigned a certain number of beginning teachers.

At proposal, new subsection (b)(2)(C) would have allowed mentors who are not currently classroom teachers to be assigned no more than six beginning teachers. Public comment was received suggesting that districts be allowed to determine the number of beginning teachers to be assigned to a mentor. However, TEC, §21.458(b), requires the commissioner to set in rule the number of classroom teachers that may be assigned a mentor. Therefore, at adoption, subsection (b)(2)(C) was modified to specify that no more than 15 beginning teachers may be assigned to a full-time mentor. Full-time mentors who are not currently classroom teachers have more time and flexibility to be able to support more beginning teachers.

The adopted amendment to subsection (b)(5)(A) allows a beginning teacher to observe a highly effective teacher other than their mentor teacher. This change allows beginning teachers oppor-

tunities for observation even if their mentor is not a current classroom teacher.

The adopted amendment to subsection (b)(5)(B)(i)(IV) adds lesson internalization to the topics a mentor teacher may address with a beginning teacher. This addition supports mentor and beginning teachers in districts that have adopted high quality instructional materials (HQIM).

The adopted amendment to subsection (c) removes the requirement for the commissioner to adopt a funding formula to determine the amount to which approved districts are entitled. Since this requirement is included in TEC, §48.114, this amendment eliminates redundancy.

The adopted amendment to subsection (d)(1)(B) increases the number of surveys administered from one to no more than two yearly. This provides the agency, mentor training providers, and districts more data points throughout the year to continuously improve the implementation of mentoring programs.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 8, 2023, and ended October 9, 2023. Following is a summary of public comments received and agency responses.

Comment: An individual suggested that the proposed rule should include expected, measurable outcomes and financial results.

Response: The agency provides the following clarification. To monitor school district and charter school outcomes, §153.1011(d)(1)(A) and (B) require districts to participate in ongoing verification of compliance with program requirements via a yearly compliance report and surveys. TEA shares with school districts and charter schools survey data as well as guidance on how to analyze and act on the outcomes of the data. The program goals are also included in the Mentor Program Allotment guidelines.

Comment: An individual asked, regarding the qualifications of a mentor teacher, if substitute teaching experience and higher education teaching experience count toward the three years of recent teaching experience.

Response: The agency provides the following clarification. According to TEC, §21.458(b)(3), to serve as a mentor, a teacher must have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance. TEA has determined that substitute teaching and higher education teaching do not meet this requirement.

Comment: The Texas Classroom Teachers Association (TCTA) questioned the change in the definition of a beginning teacher from a "classroom teacher" to a "teacher of record" in subsection (a)(1). TCTA suggested striking the amendment and reinstating "classroom teacher."

Response: The agency agrees. In review of the enabling statute, TEA has removed the proposed amendment and maintained subsection (a)(1) as it currently exists in rule. Subsection (a)(2) and (a)(2)(A) and (B) have been modified adoption to clarify that a classroom teacher may not yet hold a certificate under TEC, Chapter 21, Subchapter B. The justification of the proposed amendment to subsection (a)(1) was so that uncertified beginning teachers may also be assigned mentors, and these modifications achieve that outcome.

Comment: TCTA disagreed with the change in the definition of a mentor from a "classroom teacher" to "an individual who serves or has served as a classroom teacher" in subsection (a)(3). TCTA suggested striking "or has served as" and striking the word "classroom" before "teacher" in subsection (a)(3). TCTA supported a separate provision and suggested a slight change that would allow part-time teachers, including retirees, to be able to serve as mentors.

Response: The agency agrees with the suggestion to strike the word "classroom" before teacher, and subsection (a)(3) has been modified at adoption by removing the word "classroom" before teacher. In addition, new subsection (a)(6) was added at adoption to define "teacher" given TCTA's suggested revision introduces a new term to this section. The agency disagrees with striking "or has served as" because it extends the definition of the mentor teacher to address mentor teacher shortage concerns reported by school districts.

Comment: TCTA supported the amendment to prioritize the selection of current classroom teachers as mentors using clear selection criteria, protocols, and hiring processes that align with TEC, §21.458.

Response: The agency agrees. Prioritizing the selection of current classroom teachers as mentors ensures that current classroom teachers receive leadership opportunities and beginning teachers receive mentoring on current best instructional practices.

Comment: TCTA suggested changing the criteria for mentor teacher selection in proposed subsection (b)(1)(B)(vi) from experience as a classroom teacher in the past three years to experience as a teacher of record in the past three years.

Response: The agency disagrees. The changes within this section allow for more school district flexibility in the selection of mentor teachers to address reported mentor shortages. However, recent experience as a classroom teacher, as required by subsection (b)(1)(B)(vi) and defined in subsection (a)(3) create some additional assurance for mentor teacher selection. For example, if a mentor is a rehired retired teacher, or works only as a part-time teacher, subsection (b)(1)(B)(vi) would require them to have experience teaching at least four hours per day within the past three years.

Comment: TCTA supported the changes that seek to ensure that the number of teachers to be mentored corresponds to the amount of noninstructional time a mentor teacher has available to engage in mentoring duties.

Response: The agency agrees that this amendment recognizes the importance of consideration of the workload of mentor teachers in making decisions regarding the number of beginning teachers to be assigned a given mentor teacher.

Comment: TCTA supported increasing the number of survey opportunities for beginning teachers and mentors involved in the mentoring program in order for TEA to gain the most accurate understanding of the strengths and weaknesses of the program.

Response: The agency agrees and provides the following clarification. The amendment to increase the number of survey opportunities will also be expanded to include district and campus leadership as well as beginning teachers and mentors.

Comment: The Texas Public Charter Schools Association (TPCSA) and an individual suggested removing the requirement

for mentors to have classroom experience within the last three years.

Response: The agency disagrees. Stakeholder input highlighted the importance of recent classroom experience to successfully serve in a mentoring role, especially given the educational disruptions and changes as a result of the COVID-19 pandemic.

Comment: TPCSA suggested removing the requirement for full-time mentors to be assigned no more than six beginning teachers and allowing local school systems to determine the number of beginning teachers that a full-time mentor can support.

Response: The agency provides the following clarification. TEC, §21.458(b), requires the commissioner to establish in rule the number of classroom teachers that may be assigned a mentor. Subsection (b)(2)(C) has been modified at adoption so that school districts may determine the number of beginning teachers assigned to a full-time mentor not to exceed 15 beginning teachers.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers, provides requirements around mentor program design and delivery, and requires the commissioner to adopt rules necessary to administer this statute; and TEC, §48.114, which provides a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible uses of mentor program allotment funds, which include mentor teacher stipends, scheduled release time for mentoring activities, and mentor support through providers of mentor training; and requires the commissioner to adopt a formula to determine the amount to which eligible school districts are entitled.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.458 and §48.114.

§153.1011. Mentor Program Allotment.

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

(1) Beginning teacher--A classroom teacher in Texas who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned.

(2) Classroom teacher--An educator who is employed by a school district in Texas and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. The term does not include a teacher's aide or a full-time administrator. For purposes of this section, a classroom teacher includes an educator who may not yet hold a certificate issued under Texas Education Code (TEC), Chapter 21, Subchapter B.

(3) Mentor teacher--An individual who serves or has served as a teacher in Texas who provides effective support to help beginning teachers successfully transition into the teaching assignment. The term does not include an appraiser as defined by TEC, §21.351.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter schools.

(5) Teacher--A superintendent, principal, supervisor, classroom teacher, school counselor, or other school district employee who provides direct instructional support to other teachers.

(6) Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting and is responsible for evaluating student achievement and assigning grades.

(b) Program requirements. In order for a district mentor program to receive funds through the mentor program allotment, as described in TEC, §48.114, the program must be approved by the commissioner of education using the application and approval process described in subsection (c) of this section. To be approved by the commissioner, district mentor programs must comply with TEC, §21.458, and commit to meet the following requirements.

(1) Mentor selection. A district must:

(A) prioritize the selection of current classroom teachers as mentor teachers using clear selection criteria, protocols, and hiring processes that align with requirements of this paragraph and TEC, §21.458, and retain documentation of such processes locally; and

(B) select mentor teachers who:

(i) complete a research-based mentor and induction training program approved by the commissioner;

(ii) complete a mentor training program provided by the district;

(iii) have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance. Districts may use the master, exemplary, or recognized designations under TEC, §21.3521, to fulfill this requirement;

(iv) demonstrate interpersonal skills, instructional effectiveness, and leadership skills;

(v) have expertise, to the extent practicable, in effective instructional practices specifically for the grade levels and subjects to which the beginning teacher is assigned; and

(vi) have experience as a classroom teacher in the past three years.

(2) Mentor assignment. School districts must agree to assign no more than:

(A) two beginning teachers to a mentor who serves as a teacher of record for, on average, four or more hours per instructional day;

(B) four beginning teachers to a mentor who serves as a teacher of record for, on average, less than four hours per instructional day; or

(C) fifteen beginning teachers to an individual who serves as a full-time mentor.

(3) District mentor training program. A school district must:

(A) provide training to mentor teachers and any appropriate district and campus employees, including principals, assistant principals, and instructional coaches, who work with a beginning teacher or supervise a beginning teacher;

(B) ensure that mentor teachers and any appropriate district and campus employees are trained before the beginning of the school year;

(C) provide supplemental training that includes best mentorship practices to mentor teachers and any appropriate district and campus employees throughout the school year, minimally once per semester; and

(D) provide training for a mentor assigned to a beginning teacher who is hired after the beginning of the school year by the 45th day of employment of the beginning teacher.

(4) District roles and responsibilities. A school district must designate a specific time during the regularly contracted school day for meetings between mentor teachers and the beginning teachers they mentor, which must abide by the mentor and beginning teachers' entitled planning and preparation requirements in TEC, §21.404, and the provisions of paragraph (5)(A) of this subsection.

(5) Meetings between mentors and beginning teachers. A mentor teacher must:

(A) meet with each beginning teacher assigned to the mentor not less than 12 hours each semester, with observations of the mentor teacher or other highly effective teachers by the beginning teacher being mentored or observations of the beginning teacher being mentored by the mentor teacher counting toward the 12 hours each semester; and

(B) address the following topics in mentoring sessions with the beginning teacher being mentored:

(i) orientation to the context, policies, and practices of the school district, including:

(I) campus-wide student culture routines;

(II) district and campus teacher evaluation systems;

(III) campus curriculum and curricular resources, including formative and summative assessments; and

(IV) campus policies and practices related to lesson planning or lesson internalization;

(ii) data-driven instructional practices;

(iii) specific instructional coaching cycles, including coaching regarding conferences between parents and the beginning teacher;

(iv) professional development; and

(v) professional expectations.

(c) Application approval process. The Texas Education Agency (TEA) will provide an application and approval process for school districts to apply for mentor program allotment funding. Funding will be limited based on availability of funds. The application shall address the requirements of TEC, §21.458, and include:

(1) the timeline for application and approval;

(2) approval criteria, including the minimum requirements necessary for an application to be eligible for approval; and

(3) criteria used to determine which districts would be eligible for funding.

(d) Ongoing verification of compliance with program requirements.

(1) Each year, participating districts will be required to submit or participate in a verification of compliance with program requirements through a process to be described in the application form. The verification of compliance will include:

(A) an annual compliance report, submitted by the district, attesting to compliance with authorizing statute and commissioner rule. The report is to include the number of beginning teachers for whom the district used funds received under TEC, §48.114; and

(B) surveys administered not more than twice yearly that may include the district's beginning teachers, mentor teachers, and any appropriate district and campus employees who work with beginning teachers for whom funds were used under TEC, §48.114. The surveys will be used to gather data on program implementation and teacher perceptions.

(2) Failure to comply with TEC, §21.458, and this section after receiving an allotment may result in TEA rescinding eligibility of a district's current or future mentor program allotment funding.

(e) Allowable expenditures. Mentor program allotment funds may only be used for the following:

(1) mentor teacher stipends;

(2) release time for mentor teachers and beginning teachers limited to activities in accordance with this section; and

(3) mentoring support through providers of mentor training.

(f) District mentor program review. School districts awarded mentor program allotment funds must agree to submit all information requested by TEA through periodic activity/progress reports, which will occur at least once per year. Reports will be due no later than 45 calendar days after receipt of the information request and must contain all requested information in the format prescribed by the commissioner.

(g) Final decisions. Commissioner decisions regarding eligibility for mentor program allotment funds are final and appeals to the commissioner regarding such decisions will not be considered.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY
SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.52

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.52 concerning Recognized Institutions of Higher Education, with changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6852) and will be republished. The change capitalizes the letter "L" in StraighterLine.

There are business entities and other organizations that offer courses which do not meet the minimum standards to be approved by the board to sit for the Uniform CPA Exam. The rule revision identifies a specific entity that offers courses that are not approved by the board.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§511.52. Recognized Institutions of Higher Education.

(a) The board recognizes institutions of higher education that offer a baccalaureate or higher degree, that either:

(1) are accredited by one of the following organizations:

(A) Middle States Commission on Higher Education (MSCHE);

(B) Northwest Commission on Colleges and Universities (NWCCU);

(C) Higher Learning Commission (HLC);

(D) New England Commission of Higher Education (NECHE);

(E) Southern Association of Colleges and Schools, Commission on Colleges (SACS); and

(F) WASC Senior College and University Commission; or

(2) provide evidence of meeting equivalent accreditation requirements of SACS.

(b) The board is the final authority regarding the evaluation of an applicant's education and has received assistance from the reporting institution in the State of Texas, the University of Texas at Austin, in evaluating:

(1) an institution of higher education;

(2) organizations that award credits for coursework taken outside of a traditional academic environment and shown on a transcript from an institution of higher education;

(3) assessment methods such as credit by examination, challenge exams, and portfolio assessment; and

(4) non-college education and training.

(c) The following organizations and assessment methods may not be used to meet the requirements of this chapter:

(1) American Council on Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES);

(4) Defense Subject Standardized Test (DSST); and

(5) StraighterLine.

(d) The board may accept courses completed through an extension school, a correspondence school or continuing education program provided that the courses are offered and accepted by the board approved educational institution for a business baccalaureate or higher degree conferred by that educational institution.

(e) Except as provided in subsection (d) of this section, extension and correspondence schools or programs and continuing education courses do not meet the criteria for recognized institutions of higher education.

(f) The requirements related to recognized community colleges are provided in §511.54 of this chapter (relating to Recognized Texas Community Colleges).

(g) The board may recognize a community college that offers a baccalaureate degree in accounting or business, provided that the applicant is admitted to a graduate program in accounting or business offered at a recognized institution of higher education that offers a graduate or higher degree.

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

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General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §511.53

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.53 concerning Evaluation of International Education Documents, with changes to the proposed text as published in the November 24, 2023 issue of the *Texas Register* (48 TexReg 6853) and will be republished. The change capitalizes the letter "L" in StraighterLine.

There are business entities and other organizations that offer courses which do not meet the minimum standards to be approved by the board to sit for the Uniform CPA Exam. The rule revision identifies a specific entity that offers courses that have been evaluated and determined to not meet minimum standards to be used as credit to sit for the Uniform CPA Exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§511.53. Evaluation of International Education Documents.

(a) It is the responsibility of the board to confirm that education obtained at colleges and universities outside of the United States (international education) is equivalent to education earned at board-recognized institutions of higher education in the U.S.

(b) The board shall use, at the expense of the applicant, the services of the University of Texas at Austin, Graduate and International Admissions Center, to validate, review, and evaluate interna-

tional education documents submitted by an applicant to determine if the courses taken and degrees earned are substantially equivalent to those offered by the board-recognized institutions of higher education located in the U.S. The evaluation shall provide the following information to the board:

(1) Degrees earned by the applicant that are substantially equivalent to those conferred by a board-recognized institution of higher education in the U.S. that meets §511.52 of this chapter (relating to Recognized Institutions of Higher Education);

(2) The total number of semester hours or quarter hour equivalents earned that are substantially equivalent to those earned at U.S. institutions of higher education and that meet §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE);

(3) The total number of semester hours or quarter hour equivalents earned in accounting coursework that meets §511.57 of this chapter (relating to Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE);

(4) An analysis of the title and content of courses taken that are substantially equivalent to courses listed in §511.57 or §511.60 of this chapter; and

(5) The total number of semester hours or quarter hour equivalents earned in business coursework that meets §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE).

(c) The University of Texas at Austin, Graduate and International Admissions Center, may use the American Association of Collegiate Registrars and Admissions Officers (AACRAO) material, including the Electronic Database for Global Education (EDGE), in evaluating international education documents.

(d) Other evaluation or credentialing services of international education are not accepted by the board.

(e) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES);

(4) Defense Subject Standardized Test (DSST); and

(5) StraighterLine.

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

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Texas State Board of Public Accountancy
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22 TAC §511.58

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.58 concerning Definitions of Related Business Subjects to take the UCPAE, with changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6854) and will be republished. The change capitalizes the letter "L" in StraighterLine.

The revision identifies course work from an organization that the board will not accept for purposes of qualifying to take the Uniform CPA Exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§511.58. Definitions of Related Business Subjects to take the UCPAE.

(a) Related business courses are those business courses that a board recognized institution of higher education accepts for a business baccalaureate or higher degree by that educational institution.

(b) An individual who holds a baccalaureate or higher degree from a recognized educational institution as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) may take related business courses from four-year degree granting institutions, or recognized community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54 of this chapter (relating to Recognized Texas Community Colleges). Related business courses taken at a recognized community college are only the courses that the board has reviewed and approved to meet this section.

(c) The board will accept no fewer than 24 semester credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas.

(1) No more than 6 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

(A) business law, including study of the Uniform Commercial Code;

(B) economics;

(C) management;

(D) marketing;

(E) business communications;

(F) statistics and quantitative methods;

(G) information systems or technology; and

(H) other areas related to accounting.

(2) No more than 9 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

(A) finance and financial planning; and

(B) data analytics, data interrogation techniques, cyber security and/or digital acumen in the accounting context, whether taken in the business school or in another college or university program, such as the engineering, computer science, information systems, or math programs (while data analytic tools may be used in the course, application of the tools should be the primary objective of the course).

(d) The board requires that a minimum of 2 upper level semester credit hours in accounting communications or business communications with an intensive writing curriculum be completed. The semester hours may be obtained through a standalone course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the accounting communications or business communications content. The course may be used toward the 24 semester credit hours of upper level business courses listed in subsection (c)(1) of this section.

(e) Credit for hours taken at recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(f) Related business courses completed through and offered by an extension school, correspondence school, or continuing education program of a board recognized educational institution may be accepted by the board, provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(g) The board may review the content of business courses and determine if they meet the requirements of this section.

(h) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES);

(4) Defense Subject Standardized Test (DSST); and

(5) StraighterLine.

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

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22 TAC §511.59

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.59 concerning Definition of 120 Semester Hours to take the UCPAE, with changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6856) and will be republished. The change capitalizes the letter "L" in StraighterLine.

The revision identifies course work from an organization that the board will not accept for purposes of qualifying to take the Uniform CPA Exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§511.59. Definition of 120 Semester Hours to take the UCPAE.

(a) To be eligible to take the UCPAE, an applicant must hold at a minimum a baccalaureate degree, conferred by a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education), and have completed the board-recognized coursework identified in this section:

(1) no fewer than 21 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter (relating to Qualified Accounting Courses) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE);

(2) no fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE); and

(3) academic coursework at an institution of higher education as defined by §511.52 of this chapter, when combined with paragraphs (1) and (2) of this subsection meets or exceeds 120 semester hours.

(b) An individual holding a baccalaureate degree conferred by a board-recognized institution of higher education, as defined by §511.52 of this chapter, and who has not completed the requirements of this section shall meet the requirements by taking coursework in one of the following ways:

(1) complete upper level or graduate courses at a board recognized institution of higher education as defined in §511.52 of this chapter that meets the requirements of subsection (a)(1) and (2) of this section; or

(2) enroll in a board recognized community college as defined in §511.54 of this chapter (relating to Recognized Texas Community Colleges) and complete board approved accounting or business courses that meet the requirements of subsection (a)(1) and (2) of this section. Only specified accounting and business courses that are approved by the board will be accepted as not all courses offered at a community college are accepted.

(c) The following courses, courses of study, certificates, and programs may not be used to meet the 120-semester hour requirement:

(1) any CPA review course offered by an institution of higher education or a proprietary organization;

(2) remedial or developmental courses offered at an educational institution; and

(3) credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of

higher education may not be used to meet the requirements of this chapter:

(A) American College Education (ACE);

(B) Prior Learning Assessment (PLA);

(C) Defense Activity for Non-Traditional Education Support (DANTES);

(D) Defense Subject Standardized Test (DSST); and

(E) StraighterLine.

(d) The hours from a course that has been repeated will be counted only once toward the required 120 semester hours.

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

Filed with the Office of the Secretary of State on January 18, 2024.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §511.60

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.60 concerning Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE, with changes to the proposed text as published in the November 24, 2023 issue of the *Texas Register* (48 TexReg 6857) and will be republished. The change capitalizes the letter "L" in StraighterLine.

The revision identifies course work from an organization that the board will not accept for purposes of qualifying to take the Uniform CPA Exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§511.60. Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE.

(a) An applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) and present valid transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 21 semester credit hours of upper division accounting courses as defined in subsection (e) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter, and after obtaining the degree, complete the requisite 21 semester credit hours of upper division accounting courses, as defined in subsection (e) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 of this chapter, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 21 semester credit hours of accounting courses from the courses listed in subsection (e)(1) - (14) of this section. The hours from a course that has been repeated will be counted only once toward the required 21 semester hours. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript.

(d) A non-traditionally-delivered course meeting the requirements of this section must have been reviewed and approved through a formal, institutional faculty review process that evaluates the course and its learning outcomes and determines that the course does, in fact, have equivalent learning outcomes to an equivalent, traditionally delivered course.

(e) The subject-matter content should be derived from the UCPAE Blueprints and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include:

(A) up to nine semester credit hours of intermediate accounting;

(B) advanced accounting; or

(C) accounting theory;

(2) managerial or cost accounting (excluding introductory level courses);

(3) auditing and attestation services;

(4) internal accounting control and risk assessment;

(5) financial statement analysis;

(6) accounting research and analysis;

(7) up to 12 semester credit hours of taxation (including tax research and analysis);

(8) financial accounting and reporting for governmental and/or other nonprofit entities;

(9) up to 12 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(10) up to 12 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting (while data analytics tools may be

taught in the courses, application of the tools should be the primary objective of the courses);

(11) fraud examination;

(12) international accounting and financial reporting;

(13) at its discretion, the board may accept up to three semester credit hours of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (12) of this subsection (for any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content); and

(14) at its discretion, the board may accept up to three semester credit hours of independent study in accounting selected or designed by the student under faculty supervision (the curriculum for the course shall not repeat the curriculum of another accounting course that the student has completed).

(f) The board requires that a minimum of two semester credit hours in research and analysis relevant to the course content described in subsection (e)(6) or (7) of this section be completed. The semester credit hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the institution of higher education must advise the board of the course(s) that contain the research and analysis content.

(g) The following types of introductory courses do not meet the accounting course definition in subsection (e) of this section:

(1) elementary accounting;

(2) principles of accounting;

(3) financial and managerial accounting;

(4) introductory accounting courses; and

(5) accounting software courses.

(h) Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(i) CPE courses shall not be used to meet the accounting course definition.

(j) Accounting courses completed through an extension school of a board recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(k) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES);

(4) Defense Subject Standardized Test (DSST); and

(5) StraighterLine.

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

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SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.80

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.80 concerning Granting of Credit, without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6859) and will not be republished.

Events occur beyond the control of individuals attempting to become licensed CPAs which interfere with the individual's ability to take or pass the uniform CPA exam. The rule revision recognizes unavoidable and unforeseeable events that create hardships to individuals deserving of a fair opportunity to become CPAs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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22 TAC §511.87

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.87 concerning Loss of Credit, without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6860) and will not be republished.

Events occur beyond the control of individuals attempting to become licensed CPAs which interfere with the individual's ability to take or pass the uniform CPA exam. The rule revision recognizes unavoidable and unforeseeable events that create hardships to individuals deserving of a fair opportunity to become CPAs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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SUBCHAPTER H. CERTIFICATION

22 TAC §511.164

The Texas State Board of Public Accountancy (Board) adopts an amendment to §511.164 concerning Definition of 150 Semester Hours to Qualify for Issuance of a Certificate, with changes to the proposed text as published in the November 24, 2023 issue of the *Texas Register* (48 TexReg 6862) and will be republished. The change capitalizes the letter "L" in StraighterLine.

The revision requires at least two hours of course work in research and analysis in order to be certified as a CPA. This is an existing provision that has been relocated to this rule to make it a requirement for certification and not to sit for the exam at 120 hours.

The revision also identifies coursework completed at an identified business entity that may not qualify an applicant seeking to sit for the CPA exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§511.164. Definition of 150 Semester Hours to Qualify for Issuance of a Certificate.

(a) To qualify for the issuance of a CPA certificate, an applicant must hold at a minimum a baccalaureate degree, conferred by a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education), and have completed the board-recognized coursework identified in this section:

(1) no fewer than 27 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter (relating to Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE) to include a minimum of two semester credit hours in research and analysis;

(2) no fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE);

(3) a three semester hour board-approved standalone course in accounting or business ethics. The course must be taken at a recognized educational institution and should provide students with a framework of ethical reasoning, professional values, and attitudes for exercising professional skepticism and other behavior in the best interest of the public and profession. The ethics course shall:

(A) include the ethics rules of the AICPA, the SEC, and the board;

(B) provide a foundation for ethical reasoning, including the core values of integrity, objectivity, and independence; and

(C) be taught by an instructor who has not been disciplined by the board for a violation of the board's rules of professional conduct, unless that violation has been waived by the board; and

(4) academic coursework at an institution of higher education as defined by §511.52 of this chapter, when combined with paragraphs (1) - (3) of this subsection meets or exceeds 150 semester hours, of which 120 semester hours meets the education requirements defined by §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE). An applicant who has met paragraphs (1) - (3) of this subsection may use a maximum of 9 total semester credit hours of undergraduate or graduate independent study and/or internships as defined in §511.51(b)(4) or §511.51(b)(5) of this chapter (relating to Educational Definitions) to meet this paragraph. The courses shall consist of:

(A) a maximum of three semester credit hours of independent study courses; and

(B) a maximum of six semester credit hours of accounting/business course internships.

(b) The following courses, courses of study, certificates, and programs may not be used to meet the 150 semester hour requirement:

(1) any CPA review course offered by an institution of higher education or a proprietary organization;

(2) remedial or developmental courses offered at an educational institution; and

(3) credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirement of this chapter:

(A) American College Education (ACE);

(B) Prior Learning Assessment (PLA);

(C) Defense Activity for Non-Traditional Education Support (DANTES);

(D) Defense Subject Standardized Test (DSST); and

(E) StraighterLine.

(c) The hours from a course that has been repeated will be counted only once toward the required semester hours.

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

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CHAPTER 515. LICENSES

22 TAC §515.5

The Texas State Board of Public Accountancy (Board) adopts an amendment to §515.5 concerning Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct, without changes to the proposed text as published in the November 24, 2023 issue of the *Texas Register* (48 TexReg 6863) and will not be republished.

The revision recognizes the relocation of the rule providing accommodations to military service members, spouses and veterans to a new chapter and to implement the provisions of Texas Occupation Code § 55.004 and § 55.0041.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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22 TAC §515.11

The Texas State Board of Public Accountancy (Board) adopts the repeal of §515.11 concerning Licensing for Military Service Members, Military Veterans, and Military Spouses, without changes to the proposed text as published in the November 24, 2023 issue of the *Texas Register* (48 TexReg 6864) and will not be republished.

The repeal recognizes the relocation of the rule providing accommodations to military service members, spouses and veterans to a new chapter.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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CHAPTER 516. MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

22 TAC §516.1

The Texas State Board of Public Accountancy (Board) adopts new rule §516.1 concerning Definitions, without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6865) and will not be republished.

Texas Occupation Code 55.0041 directs state agencies to accommodate military service members, military spouses and military veterans in practicing accounting in Texas.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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22 TAC §516.2

The Texas State Board of Public Accountancy (Board) adopts new rule §516.2 concerning Licensing for Military Service Members and Spouses, without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6866) and will not be republished.

Texas Occupation Code 55.004 directs a state agency that issues a license to military service members and military spouses to adopt rules that provide accommodations for their practice of public accounting in Texas.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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22 TAC §516.3

The Texas State Board of Public Accountancy (Board) adopts new rule §516.3 concerning Licensing for Military Veterans, without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6868) and will not be republished.

Texas Occupation Code § 55.004 directs state agencies to accommodate military veterans in obtaining a license to practice public accounting in Texas.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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22 TAC §516.4

The Texas State Board of Public Accountancy (Board) adopts new rule §516.4 concerning Accounting Practice Notification by Military Service Members and Spouses, with changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6869) and will be republished. The change revises subsections (e) and (f) to (c) and (d).

Texas Occupation Code § 55.0041 directs state agencies to accommodate military service members and military spouses in practicing accounting in Texas while serving in the armed services. It allows military service members and military spouses to practice public accounting in Texas without a license and fees for up to three years so long as they have a license from a jurisdiction with substantially equivalent requirements. They may also practice in Texas without a license if they held a license in Texas within five years preceding the application date.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§516.4. Accounting Practice Notification by Military Service Members and Spouses.

(a) This section applies to all board regulated public accountancy practice requirements, other than the examination requirement, by a military service member or military spouse not requiring a license.

(b) A military service member or military spouse:

(1) may practice accounting in Texas during the period the military service member or military spouse is stationed at a military installation in Texas for a period not to exceed the third anniversary of the date the military service member or military spouse receives confirmation of authorization to practice by the board, if the military service member or military spouse:

(A) notifies the board of an intent to practice public accountancy in this state;

(B) submits proof of residency in this state along with a copy of their military identification card;

(C) receives from the board confirmation that the board has verified the license in the other jurisdiction and that the other jurisdiction has licensing requirements that are substantially equivalent to the board's licensing requirements; and

(D) receives confirmation of authorization to practice public accountancy in Texas from the board;

(2) may not practice in Texas with a restricted license issued by another jurisdiction nor practice with an unacceptable criminal history according to Chapter 53 of the Texas Occupations Code (relating to Consequences of Criminal Conviction); and

(3) shall comply with all other laws and regulations applicable to the practice of public accountancy in this state including, but not limited to, providing attest services through a licensed accounting firm.

(c) The board, in no less than 30 days following the receipt of notice of intent, will provide confirmation of authorization to practice to a military service member or military spouse, who has satisfied the board's rules.

(d) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the confirmation described by subsection (b)(1)(D) of this section.

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

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TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD
SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.11

The Texas Bond Review Board (BRB) adopts new rule §181.11 within Texas Administrative Code Title 34, Part 9, Chapter 181, Subchapter A. The new rule is adopted without changes as published in the August 18, 2023, issue of the *Texas Register* (48 TexReg 4474). The rule will not be republished.

Reasoned Justification for the Adoption of the New Rule

The adoption of this new rule within Texas Administrative Code, Title 34, Part 9, Chapter 181 implements the requirements of House Bill (HB) 1038 enacted by the 88th Legislature (2023 Regular Session). HB 1038 amends Chapter 1231 of the Texas Government Code by adding §1231.064 related to a biennial report on state lending and credit support programs.

HB 1038 calls for transparency, and this new rule facilitates the gathering of relevant information from state agencies or political subdivisions regarding lending and credit support programs within the state to enable the BRB to prepare a biennial report due by December 31 of each even-numbered year as mandated by §1231.064 of the Texas Government Code.

New rule §181.11, as adopted, requires the report to include but not be limited to the following: For each state lending and credit support program, a state agency or political subdivision shall provide a description of the program, the total amount of state money lent through or debt supported by the program, as applicable, a citation to the law authorizing each program, a reasonable estimate of the cost of default associated with each program computed in accordance with private-sector accounting standards for credit or other losses, and policies and procedures in place for each program to mitigate the risk of future default in the programs. Consistent with the legislative directive to increase fiscal transparency for state lending and credit support programs, the new rule requires affected entities to provide to BRB information determined to be necessary to enable the BRB to provide the report mandated by §1231.064 of the Government Code.

Public Comment and BRB Responses

The public comment period on the proposed new rule opened on August 18, 2023, and extended through midnight on Sunday, September 17, 2023.

The BRB held two public meetings to consider comments on the proposed new rule on Thursday, September 21, 2023, and Tuesday, October 10, 2023, at 10:00 a.m. in the Capitol Extension Room E2.028 at 1100 Congress Ave., Austin, Texas 78701. No public comments were made about the proposed rule at these meetings.

During the public comment period, the BRB received written comments from the Texas Water Development Board (TWDB). Specific comments are addressed below.

TWDB Comments

The TWDB provided written comments on new §181.11 in its letter addressed to Mr. Rob Latsha, the Executive Director of the BRB, dated September 15, 2023. Below are the TWDB's comments and the BRB's responses.

TWDB's Comments regarding §181.11(a) and the term "state lending program"

The TWDB comments that §181.11(a) directs state agencies to file with the Board an electronic report on state lending or credit programs within timeframes as determined by the rule and that HB 1038 defines "lending program" as a program through which "state money" is loaned, or otherwise provided with the expectation of repayment, to a public or private entity, but the phrase "state lending program" is not further defined in the proposed rule or added to the list of applicable definitions elsewhere in Chapter 181. TWDB asks the BRB to clarify whether "state lending program" as used in the proposed rule includes loans evidenced by the purchase of obligations including, bonds, notes, other instruments of indebtedness. The TWDB comments that "state lending program" should include only those monies or funds derived from state appropriations, as evidenced in its later comments on proposed subsection (b)(6).

BRB Response

The BRB disagrees and declines to make any changes based on these comments. Nothing in §1231.064 of the Government Code suggests that the term "state lending program" should be narrowly construed. Pursuant to §1231.064, BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment.

TWDB's Comments to §181.11(b)(6) and the term "state money"

The TWDB comments that §181.11(b)(6) requires each report prepared by a state agency to include information related to the "[t]otal amount of state money lent through the lending program." The TWDB notes that as with the term "state lending program" in subsection (a), the phrase "state money" is also undefined in the proposed rule; it is undefined in HB 1038; and it is undefined in other statute. In addition, TWDB comments that the proposed rule through several subsequent paragraphs interchangeably uses the terms "loan" and "debt" without making references to whether a loan is made, or a debt was incurred, through the provision of "state money." The TWDB states that it does not have a definition of "state money" in its rules or enabling statutes, and "state money" is undefined in statute or the proposed rule by the Board. The TWDB comments that it is unsure how state agencies can report accurate information and sufficiently comply with the Act without this term being defined.

If the term "state money" remains undefined at adoption of the rule, the TWDB further comments that it must presume a broad application of the phrase. Because the TWDB is not the state of Texas, but merely an agency operating within the executive branch of state government, it argues that it must apply a plain reading of the statute and define "state money" to mean money appropriated by the state to a state agency, to be lent through an applicable "state lending program," with the expectation of repayment. The TWDB further comments that the term "state money" should exclude any provision of assistance administered by a state agency where the money to be lent is federal dollars. The TWDB also comments that the term "state money" should exclude the lending of "local funds" provided by state agencies, which include (without limitation) proceeds obtained from the sale of state general obligation or revenue bonds to investors or from the accumulation of repayments, or otherwise funds known to be held outside the Treasury of the state. The TWDB comments that on occasion, it receives appropriations from the Legislature to lend money to program participants through the General Appropriations Act (GAA) (most recently in its state flood programs and its state revolving fund programs for "state match" dollars) and that the TWDB understands that this appropriated money would be considered "state money."

The TWDB proposes to clarify the rule, commenting that "state money" should be expressly defined as those monies, funds, or dollars specifically appropriated by the Legislature through appropriate budget riders in the GAA and directed for use by the Legislature to state agencies to be used by program participants in a lending or credit support program with the expectation of repayment. The TWDB comments that the proposed rule, where applicable, should make clarifying references to appropriately separate the concept of "state money" lent or "debt" supported by the state through applicable credit support programs.

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. Nothing in §1231.064 of the Government Code suggests that the term "state money" should be narrowly construed. This is consistent with how Chapter 1231 of the Government Code does not limit "state security" to those paid only from appropriated general revenues. *See* Gov't Code §§1231.001(2); 1231.061(a). Pursuant to §1231.064, BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment.

TWDB's Comments regarding §181.11(b)(7)

The TWDB comments that §181.11(b)(7) requires each report prepared by a state agency to include information related to the "[t]otal amount of debt supported by the lending program" and that HB 1038 does not use the term "debt" in its definition of "lending program." In addition, the TWDB comments that the preceding subsection (b)(6) requires state agencies to report the "amount of *state money* lent (emphasis added)." Therefore, the TWDB assumes that the word "debt" used in subsection (b)(7) means the debt issued by the reporting agency or political subdivision.

The TWDB further states that if their assumption is incorrect, the TWDB would comment that subsection (b)(7) should only be applied to credit support programs and not applied to lending programs which are concerned with reporting the amounts of *state money lent* (emphasis added) and not debt supported by a credit support program.

Additionally, the TWDB asks:

Does the word "debt" as used in subsection (b)(7) refer to debt issued by the reporting agency of political subdivisions? And if it doesn't, how is it distinguishable from the phrase "state money" in subsection (b)(6)?

Does the information required to be reported under proposed subsection (b)(7) include debt *not* repaid with "state money"?

The TWDB also comments as follows:

The timeframe that state agencies are required to consider when providing information for the report is unclear. The TWDB comments that to meet the purposes of the Act, the "total amount of debt supported by the lending program," should be a current look at the agency's programs at the time the report is due and not a historical overview which could include extinguished debt.

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. §1231.064(a)(2) defines "Lending Program" to mean "a program through which state money is loaned, *or otherwise provided with the expectation of repayment,* to a public or private entity." (emphasis added). When a state agency lends by issuing its own debt and using those proceeds to purchase the debt of a qualifying entity, the BRB believes that information on the debt of both the state agency making the loan and the underlying entity receiving the loan is necessary for the board to provide the information required by §1231.064 of the Government Code. BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment. With respect to reporting timeframes, §1231.064(b) requires the BRB to report on state lending and credit support programs no later than December 31 of each even-numbered year. To enable it to prepare the required biennial report by December 31, the rule requires the data for the report to be filed by the state agency or political subdivision no later than September 15 of each even-numbered year, covering the immediately preceding two fiscal year periods ending August 31.

TWDB's Comments regarding §181.11(b)(8)

TWDB comments that §181.11(b)(8) requires each report prepared by a state agency to include information related to the "[t]otal dollar amount of outstanding loans separated by

program" and that HB 1038 appears to limit the information required to be reported by state agencies under their applicable lending programs to "state money" and that, therefore, it would be appropriate to read proposed subsection (b)(8) to be limited to only those lending programs that lend "state money."

The TWDB asks the BRB to clarify whether this dollar amount is meant to include all loans separated by program or only those loans made under a lending program with "state money" as contemplated by preceding subsection (b)(6).

Similarly, to the comments provided for subsection (b)(7), the TWDB comments that the timeframe that state agencies are required to consider when providing information for the report is unclear. The TWDB comments that to meet the purposes of the Act "the total amount of outstanding loans," to be reported should not be a historical accounting through all of the TWDB's financial assistance programs and instead should report a "total dollar amount," due at the time the report to the Board is due.

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. Consistent with the fiscal transparency purposes of HB 1038, BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment. HB 1038 requires the BRB to report on state lending and credit support programs no later than December 31 of each even-numbered year. To enable it to prepare the required biennial report by December 31, the BRB is therefore requiring the data for the report to be filed by the state agency or political subdivision no later than September 15 of each even-numbered year covering the immediately preceding two fiscal year periods ending August 31.

TWDB's Comments on §181.11(b)(9)

The TWDB comments that §181.11(b)(9) requires each report prepared by a state agency to include a reasonable estimate of the costs of default associated with the program, computed in accordance with private-sector accounting standards for credit or other losses, and that the words "default" and "private-sector accounting standard," are undefined terms in 34 TAC, Chapter 181; in statute enacted by HB 1038; and in the proposed rule. In addition, the TWDB notes that certain affected state agencies may have a statute-derived definition of "default," but that the TWDB does not. The TWDB states that default, or an event of default, is a term that varies from one set of financial documents to another and may not be consistent from even one state agency to another, and that events of default are thusly definitive events, typically defined in financial documents pertaining to and related contracts on a transaction-by-transaction basis.

The TWDB comments that for state agencies to comply with the proposed rule, "default" should be defined based on the types of financial assistance programs administered by a state agency.

The TWDB proposes to clarify the rule, commenting that for those agencies with state lending programs that utilize "state money" (which TWDB asserts is limited to debt service or direct lending funded by state appropriations), "default" should be defined as an unresolved failure to receive repayments of principal and interest owed on an obligation entered pursuant to an applicable lending program. The TWDB argues that this definition of "default" is the most concordant reading of compliance with the rest of the proposed rule, specifically paragraph (13) of subsection (b), and that it takes into consideration the effect and impact of all of the words used in statute and rule e.g., "state money," "lending program," and "default" and results in a plain reading interaction between those terms.

In the alternative, the TWDB comments that for those state agencies with financial assistance programs supported by general obligation (GO) or revenue bonds (and funded with "local funds"), the term "default" should be defined to follow the "material events" standard used by EMMA (the Electronic Municipal Market Access website). The TWDB argues that this will ensure that Legislators and bond buyers (two expressly enumerated stakeholders of the Act) will receive the same reporting information from state agencies. However, the TWDB strongly comments that "local funds" are clearly not within the scope of the Act, and that the Act strongly is focused on "state money," which local funds are not.

Lastly, the TWDB comments that those agencies should be allowed to use their own statutory or administrative definitions of "default," if they have one.

Additionally:

The TWDB comments that the proposed rule does not provide a definition of the "private-sector accounting standard" that state agencies are required to use. TWDB comments state agencies are not private sector financial institutions. The TWDB argues that the TWDB and state agencies should use the same accounting standard that the state itself uses. The TWDB comments that the proposed rule should define "private-sector accounting standard" as "generally accepted accounting principles" so that state agencies have one set of recognizable and easily obtainable accounting standards to use when forming initial reports.

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment. HB 1038 requires, for each lending program or credit support program, a reasonable estimate of the costs of default associated with the program, computed in accordance with private sector accounting standards for credit or other losses. The entity should identify the standard(s) used to complete the report, whether it be generally accepted accounting principles or other private-sector accounting standard, as §181.11(b)(9) of the rule requires that the report include all assumptions, factors, formulas, and analysis used to calculate the cost of default. Further, as it relates to the requirements of the rule, BRB's intent is to collect information on payment defaults in which a public or private entity borrower fails to repay any part of the principal or interest on the loan or obligation when due.

TWDB's Comments regarding §181.11(b)(10)

Section 181.11(b)(10) requires each report prepared by a state agency to include a current default rate of the lending program. The TWDB comments that "default rate" is undefined in 34 Texas Administrative Code Chapter 181 and in the proposed rule. In addition, the TWDB comments that the requirement to calculate a "default rate" does not appear to be required by HB 1038 and further comments that for state agencies to comply with the proposed rule, a methodology for calculating a "default rate" should be proposed with the proposed rule.

TWDB comments that it is unclear how requiring this information from state agencies relates to information expressly listed as a requirement of HB 1038 or other statutory authority relied upon for the proposed rulemaking. The TWDB asks the BRB to clarify how state agencies are required to comply with the provisions of this rule.

The TWDB asks the BRB to clarify the rule to provide a definition of "default rate" as used in the proposed rule.

The TWDB asks the BRB to clarify the rule to provide a methodology for calculating a "default rate" as contemplated by the rule.

The TWDB further comments that providing a definition of "default rate" and an appropriate methodology to calculate that default rate with a required numerator and denominator will allow state agencies to provide consistent reporting information to the Board.

The TWDB additionally comments that, notwithstanding the foregoing, the TWDB is broadly permitted by law to hold closed meetings to consider and discuss financial matters related to the investment or potential investment of the Board's funds, citing to §6.0601, Texas Water Code. The TWDB comments that it is imperative that the TWDB follow federal securities laws when making public statements, such as in the report required by the proposed rule, as evidenced by the Legislature granting the TWDB the specific authority to discuss financial matters in closed meetings to avoid violating federal securities law. The TWDB argues that publicly making statements about the current default rate of the lending program falls into the realm of said financial matters related to the investments or potential investments of the TWDB's lending programs. The TWDB additionally comments that it may not be able to comply with this provision of the rule as proposed to avoid violating federal securities laws.

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. Consistent with the fiscal transparency requirements of HB 1038, the BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment. HB 1038 requires, for each lending program or credit support program, a reasonable estimate of the costs of default associated with the program, computed in accordance with private sector accounting standards for credit or other losses. The entity should identify the standard(s) used to complete the report, whether it be generally accepted accounting principles or other private-sector accounting standard, as §181.11 (b)(9) of the rule requires that the report include all assumptions, factors, formulas, and analysis used to calculate the cost of default. The current default rate of each lending program is requested in §181.11(b)(10) to accompany the cost of default requirement stated in §181.11(b)(9). The requested "current default rate" in subsection (b)(10) is relevant because such information is necessary to enable the board to provide a "reasonable estimate" of the costs of default in its report, as required by §1231.064(b)(3)(C) of the Government Code. Moreover, if a public or private entity defaults on the loan it receives from state money, such information is also relevant and necessary for the BRB to prepare the report required by §1231.064.

TWDB's Comments regarding §181.11(b)(11) and (b)(13)

Section 181.11(b)(11) requires each report prepared by a state agency to include the highest default rate experienced in the lending program. The TWDB comments that HB 1038 does not appear to require state agencies to report a "highest default rate" in a lending program as proposed by the rule.

The TWDB states that it is unclear how requiring this information from state agencies relates to information expressly listed as a requirement of HB 1038 or other statutory authority relied upon for the rulemaking. The TWDB asks the BRB to please clarify how state agencies are required to comply with the provisions of the rule.

As previously stated, the TWDB comments that state agencies need a definition for "default," and "default rate," to provide accurate reporting of information required by the rule. The TWDB re-submits its proposed definition of "default," and requests a definition of "default rate."

The TWDB further comments that subsequent subsection (b)(13) seems to indicate that an event of default with respect to the lending of "state money" is limited to the unresolved failure to repay principal and interest repayments.

The TWDB states that it would appreciate any clarification on complying with subsection (b)(11) that the Board could provide that will allow the TWDB to report accurate, non-speculative information to the Legislators and bond buyers.

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment. HB 1038 requires, for each lending program or credit support program, a reasonable estimate of the costs of default associated with the program, computed in accordance with private sector accounting standards for credit or other losses. The entity should identify the standard(s) used to complete the report, whether it be generally accepted accounting principles or other private-sector accounting standard, as §181.11 (b)(9) of the rule requires that the report include all assumptions, factors, formulas, and analysis used to calculate the cost of default. The highest default rate experienced in each lending program is requested in §181.11(b)(11) to accompany the cost of default requirement stated in §181.11(b)(9). The request in the new rule for the highest default rate experienced in each program and the total amount of principal and interest payments in default in subsections (b)(11) and (b)(13) is relevant because such information is necessary to enable the board to provide a "reasonable estimate" of the costs of default in its report, as required by §1231.064(b)(3)(C) of the Government Code. Further, as it relates to the requirements of the rule, BRB's intent is to collect information on payment defaults in which a public or private entity borrower fails to repay any part of the principal or interest on the loan or obligation when due.

TWDB's Comments regarding §181.11(b)(12)

Section 181.11(b)(12) requires state agencies to report the total amount of principal and interest payments received from borrowers for each applicable lending program.

The TWDB asks if the information to be reported is limited to repayments of principal and interest received from loans of "state money"?

The TWDB re-submits its prior comments on this rulemaking requesting additional clarification from the Board about the applicable timeframe the TWDB would be required to consider in its report.

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. Consistent with the fiscal transparency requirements of HB 1038, BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment. Nothing in §1231.064 of the Government Code suggests that the term "state money" should be narrowly construed. HB 1038 requires, for each lending program or credit support program, the total amount of state money lent through or debt supported by the program, as applicable. The total amount of principal and interest payments received from borrowers is requested in §181.11(b)(12) to accompany the data requested in §181.11(b)(6) (total amount of state money lent through the lending program). §1231.064(c) requires a state agency or political subdivision to provide to the board in the manner provided by board rule any information necessary for the board to prepare the report required by §1231.064. The information requested in subsection (b)(12) is necessary to enable the board to prepare its legislatively mandated report. Regarding the reporting timeframe, §1231.064 requires the BRB to report on state lending and credit support programs no later than December 31 of each even-numbered year. To enable it to prepare the required biennial report by December 31, the BRB is therefore requiring the data for the report to be filed by the state agency or political subdivision no later than September 15 of each even-numbered year covering the immediately preceding two fiscal year periods ending August 31.

TWDB's Comments regarding §181.11(b)(13)

Regarding the requirement in §181.11(b)(13) to report the total amount of principal and interest payments in default, the TWDB re-submits its prior comments related to the need for a consistent definition of "default."

The TWDB asks if default is limited to the failure of a recipient of funds under a lending program to repay principal and interest?

The TWDB asks if default is limited to the failure of a recipient of funds under a lending program to repay principal and interest of only "state money"?

Additionally, the TWDB comments that regular reporting through EMMA applies to those events deemed to be "material." The TWDB offers that the Board could clarify that the information to be reported pursuant to proposed subsection (b)(13) would be similarly limited to material events, consistent with the standard of EMMA reporting.

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment. HB 1038 requires, for each lending program or credit support program, a reasonable estimate of the costs of default associated with the program, computed in accordance with private sector accounting standards for credit or other losses. §181.11(b)(9) states the estimate should include all assumptions, factors, formulas, and analysis used to calculate the cost of default. The total amount of principal and interest payments in default is requested in §181.11(b)(13) to accompany the cost of default requirement stated in §181.11(b)(9). Further, as it relates to the requirements of the rule, BRB's intent is to collect information on payment defaults in which a public or private entity borrower fails to repay any part of the principal or interest on the loan or obligation when due.

TWDB's Comments regarding §181.11(b)(14)

Section 181.11(b)(14) requires state agencies to report on the "[a]ssets, if any, pledged as collateral to secure existing loans".

The TWDB asks the BRB to clarify whether the Board means assets held by the lending program participant or assets pledged by the Board to support the debt it has issued?

The TWDB asks the BRB to clarify how this information should be presented and whether this information should be presented as the value of the assets or specific detail related to the nature of the assets?

If the Board means assets held by the lending program participant, the TWDB comments that some of the information requested is not updated from year-to-year on an entity-by- entity basis and any information submitted could result in inaccurate reporting.

The TWDB comments that the rule be revised to eliminate proposed subsection (b)(14).

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment. HB 1038 requires, for each lending program or credit support program, the total amount of state money lent through or debt supported by the program, as applicable. The assets, if any, pledged as collateral to secure existing loans is requested in §181.11(b)(14) to accompany the data requested for each lending program. This information is necessary because it addresses the security for the loan and, therefore, the source of funds from which the state has an "expectation of repayment", as provided in the definition of "Lending Program" in §1231.064(2), if a public or private entity were to default on the loan.

TWDB's Comments regarding §181.11(b)(15)

Section 181.11(b)(15) requires state agencies to report "for each of the items" in "paragraphs (6) through (14)" a "total amount broken down by each entity in the lending structure, if the public or private entity receiving funds also lends the money to another public entity or private entity."

The TWDB comments that applying subsection (b)(15) on an entity-by-entity basis for all of the paragraphs listed in the rule is unclear. The TWDB re-submits its comment that information for how some of the categories in subsections (b)(6) through (b)(14) is not updated, which may result in inaccurate reporting. As one example, the TWDB usually holds a deed of trust for real property owned by its water supply corporation borrowers and may receive an appraisal before making financing available, but the

TWDB does not, as a matter of course, get a real property appraisal every other year while the loan is in repayment.

The TWDB comments that the rule be revised to eliminate proposed subsection (b)(15).

In the alternative and notwithstanding the forgoing, the TWDB comments that only the proposed paragraphs in the rule that are not expressly program specific should apply as follows:

In subsection (b)(6), the TWDB comments that state agencies would report a "total amount of state money lent" to each entity in a lending structure.

The TWDB asks the BRB to clarify that the rule requires state agencies to report the total amount of principal or par amount of state money lent to each entity in a lending structure.

The TWDB re-submits its comments about the definition of "state money."

In subsection (b)(8), the TWDB comments that state agencies would report a "total dollar amount of outstanding loans separated by" each entity.

The TWDB asks the BRB to clarify that the rule requires state agencies to report the sum of each loan owed by an entity on an individual basis.

If that is the case, the TWDB asks what is the substantive difference between subsections (b)(7) and (b)(8)?

In subsection (b)(9), the TWDB comments that state agencies would report a "reasonable estimate of the costs of default associated with the program..."

The TWDB asks the BRB to clarify that the rule requires state agencies to report a reasonable estimate of the costs of default for each individual loan held by an entity at the state agency level.

In other words, the TWDB asks whether the rule requires state agencies to report the *agency's* costs to cure a default experienced on an individual basis based on the amount of funds each lending program participant has received?

The TWDB re-submits its comments that it is broadly permitted by law to hold closed meetings to discuss financial matters related to the investment or potential investments of the TWDB's funds.

In subsection (b)(10), the rule requires state agencies to report the "current default rate of the program."

The TWDB asks the BRB to clarify that the rule requires state agencies to report the current default rate of an individual program participant.

The TWDB re-submits its prior comments regarding the undefined terms of "default" and "default rate."

The TWDB re-submits its prior comment that the requirement to calculate a "default rate" does not appear to be required by HB 1038.

The TWDB states that state agencies currently report unresolved defaults of the repayment of principal and interest through several channels, including EMMA or preliminary official statements. In addition, the TWDB re-submits its prior comments about its broad authority permitting it to discuss certain financial matters in a closed meeting, and potentially actionable as a violation of federal securities laws, if the rule requires state agencies to publicly make statements through an analysis of the potentiality of a program participant defaulting.

In subsection (b)(11), the rule requires state agencies to report the "highest default rate experienced in the program."

The TWDB asks the BRB to clarify that the rule requires state agencies to report the historical "highest default rate" of an individual program participant.

The TWDB asks the BRB to clarify how subsection (b)(10) is distinguishable from subsection (b)(11). A "current default rate," appears to be identical to a "highest default rate" from a plain reading of the proposed rule. The TWDB asks the BRB to define the difference for state agencies.

The TWDB re-submits its prior comment that HB 1038 does not appear to require state agencies to report a "highest default rate" in a lending program as proposed by the rule.

In subsection (b)(12), the rule requires state agencies to report the "[t]otal amount of principal and interest payments received from borrowers."

The TWDB asks the BRB to clarify how subsection (b)(12) is distinguishable from subsections (b)(7) and (b)(8).

The TWDB re-submits its prior comments on whether the information to be reported limited on an individual program participant basis is repayments of principal and interest received from loans of "state money."

In subsection (b)(13), the rule requires state agencies to report the "[t]otal amount of principal and interest payments in default."

The TWDB re-submits its prior comments related to the definition of "default" and offers that the Board could clarify that the information to be reported pursuant to this proposed paragraph would be limited to material events.

In subsection (b)(14), the rule requires state agencies to report the assets, if any, pledged as collateral to secure existing loans on an individual program participant basis.

The TWDB re-submits its prior comments on this provision of the proposed rule.

BRB's Response

The BRB disagrees and declines to make any changes based on these comments. BRB's intent is to collect data on state lending programs that consist of monies that are or were in the custody or control of a state agency or subject to the direction of a state agency and that are loaned or otherwise provided to a public or private entity with the expectation of repayment. HB 1038 requires, for each lending program or credit support program, the total amount of state money lent through or debt supported by the program, as applicable. Section 181.11(b)(15) requests the items described in paragraphs (6) through (14) be broken down for each entity in the lending structure if the public or private entity receiving funds also lends the money to another public entity or private entity. This section also requests the total amounts for each entity. BRB's intent is to collect data on state lending programs to determine if various lending arrangements exist. If a public or private entity receiving state money is also lending the same funds it received to another public or private entity, this information is necessary for the BRB to determine the final disposition of state money lent. This requirement is consistent with the fiscal transparency objectives of HB 1038. Regarding TWDB's renewed comments to subsections (b)(6), (8), (9), (10), (11), (12), (13), and (14), please see BRB's response to the comments to those subsections, above.

Statutory Authority

The new rule is adopted under Texas Government Code §1231.022(1), which authorizes the board to adopt rules relating to reporting requirements, and §1231.064(c), which provides that a state agency or political subdivision of this state shall provide to the board in the manner provided by board rule any information necessary for the board to prepare the biennial report on state lending and credit support programs.

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

Filed with the Office of the Secretary of State on January 18, 2024.

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Rob Latsha
Executive Director
Texas Bond Review Board
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For further information, please call: (512) 463-1741

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 16. PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts amendments to §16.105 and §16.154, related to the Unified Transportation Program (UTP). The amendment to §16.105 and §16.154 are adopted with changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5969) and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

Amendments to §16.105, Unified Transportation Program (UTP), provide clarification and flexibility. Changes to subsection (e) and (f) provide clarification that major changes and changes to funding allocations in Category 12 Strategic Priority require adoption by the commission. The proposed changes also clarify that the redistribution of carryover does not constitute a major change.

Amendments to §16.154, Transportation Allocation Funding Formulas, provide flexibility and efficiencies in federal fund utilization and management of UTP allocations. Subsection (a)(2) is amended to provide clarity that the intent of the Commission is for Category 2 funding to be allocated to priority projects as determined by the MPO. This subsection (a)(2) is also amended to add "districts" to the Category 2 Metropolitan and Urban Corridor Projects formula allocation and specifies funding is specific to projects within the Metropolitan Planning Organizations' boundaries.

Amendments to §16.154(a)(4) clarify the department will determine the final distribution of the allocation of Category 5 Congestion Mitigation and Air Quality funds between the district and MPO to ensure the timely use of funds and requires the MPO to obtain the district's concurrence on the projects the MPO intends to use Category 5 funds.

Amendments to §16.154(i) refine the definition of carryover for UTP categories and adds references for the adjustments to carryover in Category 5 Congestion Mitigation and Air Quality and Category 2 Metropolitan and Urban Corridor Projects based on new subsections (j) and (k), respectively.

New §16.154(j) prescribes an annual review of carryover in Category 5 Congestion Mitigation and Air Quality. This review allows the department to better manage federal funds, mitigate the risks of a funding lapse or rescission, and addresses potential underutilization of Category 5 funding. Pending the review, if a district or MPO carries over more than 200 percent of its allocation in Category 5 Congestion Mitigation and Air Quality Improvement from the previous year, the department may reduce the district's carryover to 200 percent and assign the excess to projects in other eligible districts or MPOs as authorized by law. The department will report to the commission all proposed redistributions and notify any impacted MPO prior to the department making a redistribution under this subsection.

New §16.154(k) prescribes an annual review of carryover in Category 7 Metropolitan Mobility and Rehabilitation. This review allows the department to better manage federal funds, mitigate the risks of a funding lapse or rescission, and addresses potential underutilization of Category 7 funding. Pending the review, if an MPO carries over more than 200 percent of its allocation in Category 7 Metropolitan Mobility and Rehabilitation (TMA) from the previous year, the department may reduce the district and MPO's Category 2 Metropolitan and Urban Corridor Projects carryover and transfer the excess to the district's Category 11 District Discretionary allocation for use on the district's safety program. The department will report to the commission all proposed redistributions and notify any impacted MPO prior to the department making a redistribution under this subsection.

SUBMITTAL OF COMMENTS

The department posted the rules for comment in the October 13, 2023, issue of the *Texas Register.* The department received comments through November 13, 2023. In total the department received written comments from five different entities and individuals. The Capital Area Metropolitan Planning Organization provided comments in support of the rules. The El Paso Metropolitan Planning Organization, the Regional Transportation Council for the North Central Texas Council of Governments, the Houston-Galveston Area Council Metropolitan Planning Organization, and the Texas Transit Association each filed comments in opposition to the proposed rules.

The department received three comments concerning §16.105. Those comments requested that the department consider a carryover redistribution to be a major change under §16.105(e), which would require commission adoption. The department chose not to revise the proposed rule addressing major changes. In response to the comments, the department has revised subsections §16.154(j)&(k) to require the department to report to the commission and notify any impacted MPO before making a carryover redistribution from Category 5 Congestion Mitigation and Air Quality or Category 2 Metropolitan and Urban Corridor Projects.

The department received 19 comments concerning §16.154. One comment requested revisions to §16.154(j) to enable the transfer of Category 5 Congestion Mitigation and Air Quality

funds to Category 7 Metropolitan Mobility and Rehabilitation to be used in non-attainment areas. The department is committed to maintaining these funds on CMAQ eligible projects and has decided to retain the proposed language.

One comment concerned whether department staff should consult with affected MPOs prior to redistributing a carryover amount. In response to this comment, revisions were made to the proposed subsections §16.154(j)&(k) to require the department to report to the commission and notify any impacted MPO before making a carryover redistribution from Category 5 Congestion Mitigation and Air Quality or Category 2 Metropolitan and Urban Corridor Projects. The department has also implemented a routine review process to coordinate with MPOs regarding funding usage in Category 5 Congestion Mitigation and Air Quality and Category 7 Metropolitan Mobility and Rehabilitation to ensure the MPO is fully informed of their funding requirements.

Three comments raised concerns that the proposed rules do not provide for an appeal process for MPOs subject to carryover redistribution under §16.154(j) and §16.154(k). Revisions were made to the proposed subsections §16.154(j)&(k) to require the department to report to the commission and notify any impacted MPO before making a carryover redistribution from Category 5 Congestion Mitigation and Air Quality or Category 2 Metropolitan and Urban Corridor Projects. The department also has a review process in place to coordinate with MPOs regarding funding usage in Category 5 Congestion Mitigation and Air Quality and Category 7 Metropolitan Mobility and Rehabilitation, and the department believes this process gives MPOs adequate opportunity to provide input prior to the department's decisions about carryover redistribution.

Two comments proposed increasing the carryover threshold under §16.154(j) and §16.154(k) from 200 percent to 300 percent to allow MPOs more flexibility for transportation project planning. The proposed rules, however, do not mandate carryover redistribution above the 200 percent threshold but rather give the department the option to redistribute funds after consultation with the affected MPOs. No related revisions were made to the proposed rules.

One comment requested that the department add a process to the proposed rules to outline how Category 5 Congestion Mitigation and Air Quality carryover amounts would be redistributed equitably to other MPOs. The department intends to redistribute the funds to eligible Category 5 projects in non-attainment areas that can best utilize the funds. No related revisions were made to the proposed rules.

One comment raised concerns about the department's authority to impose limitations on an MPO's use of federal funds allocated through Category 7 Metropolitan Mobility and Rehabilitation, particularly the number of years in which an MPO must utilize the funds. Through the 200% threshold, the department intends to provide a means to initiate a review process before funds would lapse at a federal level. The redistribution of carryover will not shorten the time frame in which federal funds may be used and ensures the federal funds do not lapse. No related revisions were made to the proposed rules.

One comment raised concerns about data quality in the department's project management system, which the department would use to make decisions about carryover redistribution under §16.154(j) and §16.154(k). The department understands the concern and is working to ensure data is current and correct. No related revisions were made to the proposed rules.

One comment requested a carve-out in the proposed rules for MPOs that maintain low carryover amounts in Category 5 Congestion Mitigation and Air Quality and Category 7 Metropolitan Mobility and Rehabilitation. The department believes this is unnecessary, since MPOs that maintain low carryover amounts and do not exceed the 200 percent threshold under §16.154(j) and §16.154(k) would not be affected by the proposed rules.

One comment requested the removal of the reference to department districts from §16.154(a)(2) so that funding in Category 2 Metropolitan and Urban Corridor Projects is only formula allocated to MPOs. The department believes the inclusion of districts in the Category 2 allocation will provide flexibility and ensure coordination between MPOs and districts related to project selection. No related revisions were made to the proposed rules.

One comment requested the removal of the requirement under §16.154(a)(4) that the department districts provide concurrence on MPO-selected projects in Category 5 Congestion Mitigation and Air Quality. The department believes the inclusion of districts in the Category 5 project selection process will ensure the coordination between MPOs and districts to improve project delivery and efficient utilization of funds. No related revisions were made to the proposed rules.

One comment requested that the department define "encumbered" and "unencumbered" in §16.154(i) to avoid confusion about how carryover amounts are determined. The department agrees this clarification is beneficial and has revised the proposed rules to change the terminology to "committed" and "uncommitted" and include a definition of "committed" under §16.154(i).

One comment requested that the proposed rules require the department and affected MPOs to concur on the amount of carryover each MPO accumulates annually in Category 5 Congestion Mitigation and Air Quality and Category 7 Metropolitan Mobility and Rehabilitation. The department believes the revisions within §16.154(i) to clarify when funds are committed clarify when funds would be subjected to carryover redistribution. Additionally, the department has a review process in place to coordinate with MPOs about funding usage in Category 5 Congestion Mitigation and Air Quality and Category 7 Metropolitan Mobility and Rehabilitation. The department believes this process gives MPOs adequate opportunity to provide input prior to the department's decisions about carryover redistribution. No other revisions were made to the proposed rules.

One comment requested, to allow for planning larger projects, that the proposed rules allow MPOs to seek commission approval to accumulate over a period of years a carryover amount that would be excluded from the carryover redistribution. The department believes this is unnecessary since the proposed rules do not mandate carryover redistribution but rather give the department the option to redistribute funds in the event an MPO maintains an excessive carryover balance. This flexibility means the department may allow the accumulation of carryover amounts greater than the 200 percent threshold if it is warranted. No related revisions were made to the proposed rules.

One comment requested that the department implement a process for MPOs and the department to evaluate projects with potential development delays that may in turn cause increased carryover amounts in Category 5 Congestion Mitigation and Air Quality and Category 7 Metropolitan Mobility and Rehabilitation.

Additionally, the comment requested improved procedures to avoid project development delays related to department oversight. The department acknowledges the needs presented by the comment and is developing solutions to be coordinated with affected MPOs. No related revisions were made to the proposed rules.

One comment stated that the department's determination that the proposed rules would not impose a cost on a regulated person and as a result Government Code §2001.0045 does not apply to this rule making was incorrect. The commentor argues that ensuring they do not exceed the carryover threshold amounts will require additional staff to manage their budget. While the department applauds the MPO's plan to proactively manage their budget to ensure timely use of the funds, the department's rules do not directly impose any particular cost upon a regulated entity and §2001.0045 does not apply. No related revisions were made to the proposed rules.

One comment described actions taken by an affected MPO to proactively reduce its carryover amounts in Category 5 Congestion Mitigation and Air Quality and Category 7 Metropolitan Mobility and Rehabilitation without the need for the proposed rules. The department acknowledges and appreciates the efforts of the individual MPO but believes the proposed rules are necessary to optimize utilization of those funding categories statewide. No related revisions were made to the proposed rules.

SUBCHAPTER C. TRANSPORTATION PROGRAMS

43 TAC §16.105

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.991, which requires the commission to adopt rules related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.991 and §201.996.

§16.105. Unified Transportation Program (UTP).

(a) General. The department will develop a unified transportation program (UTP) that covers a period of ten years to guide the development and authorize construction and maintenance of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. In developing the UTP, the department will collaborate with local transportation entities and public transportation operators as defined by 23 C.F.R. Part 450.

(b) Requirements. The UTP will:

(1) be financially constrained for planning and development purposes based on the planning cash flow forecast prepared and published in accordance with §16.152(a) of this subchapter (relating to Cash Flow Forecasts);

(2) list estimated funding levels and the allocation of funds to each district, metropolitan planning organization (MPO), and other authorized entity for each year in accordance with Subchapter D of this chapter (relating to Transportation Funding);

(3) list all projects and programs that the department intends to develop, or on which the department intends to initiate construction or maintenance, during the UTP period, and the applicable funding category to which a project or program is assigned, after consideration of the:

(A) statewide long-range transportation plan (SLRTP);

(B) metropolitan transportation plans (MTP);

(C) transportation improvement programs (TIP);

(D) MPO annual reevaluations of project selection in MTPs and TIPs, if any, in accordance with subsection (c) of this section;

(E) statewide transportation improvement program (STIP);

(F) recommendations of rural planning organizations (RPO) as provided in this subchapter; and

(G) list of major transportation projects in accordance with §16.106 of this subchapter (relating to Major Transportation Projects); and

(4) designate the priority ranking within a program funding category of each listed project in accordance with subsection (d)(2) of this section.

(c) MPO annual reevaluation of project selection. An MPO may annually reevaluate the status of project priorities and selection in its approved metropolitan transportation plan (MTP) and transportation improvement program (TIP) and provide a report of any changes to the department at the times and in the manner and format established by the department. The reevaluation must be consistent with criteria applicable to development of the MTP and TIP in accordance with federal requirements.

(d) Project selection.

(1) The commission will consider the following criteria for project selection in the UTP as applicable to the program funding categories described in §16.153 of this chapter (relating to Funding Categories):

(A) the potential of the project to meet transportation goals for the state, including efforts to:

(i) maintain a safe transportation system for all transportation users;

(ii) optimize system performance by mitigating congestion, enhancing connectivity and mobility, improving the reliability of the system, facilitating the movement of freight and international trade, and fostering economic competitiveness through infrastructure investments;

(iii) maintain and preserve system infrastructure; and

(iv) accomplish any additional transportation goals for the state identified in the statewide long-range transportation plans as provided in §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP));

(B) the potential of the project to assist the department in attainment of transportation system strategies, the measurable targets for the transportation goals identified in subparagraph (A) of this paragraph, and other related performance measures; and

(C) adherence to all accepted department design standards as well as applicable state and federal law and regulations.

(2) The commission may also consider the potential for project delivery based on other factors such as funding availability and project readiness, after consideration of the criteria described in paragraph (1) of this subsection.

(3) With respect to Category 12 Strategic Priority, the commission may also consider if the district and MPO will commit funding from other categories to the project or as a condition for project selection, may require the district and MPO to commit funds from other categories to the project.

(4) The department will coordinate project selection criteria relating to the transportation goals identified in paragraph(1)(A) of this subsection with the MPOs for the purpose of achieving consistent, common goals, particularly with respect to mobility projects using a mix of several funding sources.

(5) The department will consider performance metrics and measures to evaluate and rank the priority of each project listed in the UTP based on the transportation needs for the state and the goals identified in paragraph (1)(A) of this subsection. A project will be ranked within its applicable program funding category, using a performance-based scoring system, and classified as tier one, tier two, or tier three for ranking purposes. The scoring system will be used for prioritizing projects for which financial assistance is sought from the commission and must account for the diverse needs of the state so as to fairly allocate funding to all regions of the state. Major transportation projects will have a tier one classification and be designated as the highest priority projects within an applicable funding category. A project that is designated for development or construction in accordance with the mandates of state or federal law or specific requirements contained in other chapters of this title may be prioritized in a funding category as a designated project in lieu of a tier one, tier two, or tier three ranking.

(6) The commission will determine and approve the final selection of projects and programs to be included in the UTP, except for the selection of federally funded projects by an MPO serving in an area designated as a transportation management area (TMA) as provided in §16.101(n) of this subchapter (relating to Transportation Improvement Program (TIP)). A federally funded project selected by an MPO designated as a TMA will be approved by the commission, subject to:

(A) satisfaction of the project selection criteria in paragraph (1) of this subsection;

(B) compliance with federal law; and

(C) the district's and MPO's allocation of funds for the applicable years.

(e) Approval of unified transportation program (UTP). Not later than August 31 of each year, the commission will adopt the unified transportation program for the next fiscal year. The commission may update the UTP at any time. A change in the UTP to project funding allocations in Category 12 Strategic Priority as described in §16.153(a) of this subchapter (relating to Funding Categories) or a major change to one or more funding allocations or project listings in the most recent UTP must be adopted by the commission. For the purpose of updating the UTP, the term "major change" refers to the authorization of new projects or the revision of project funding allocations which exceed 10 percent of the project cost or $500,000, whichever is greater, occurring in non-allocation program categories, excluding revisions to local funding contributions and projects designated under miscellaneous state and federal programs. The redistribution of a carryover under §16.154(i) of this subchapter (relating to Transportation Allocation Funding Formulas) does not constitute a major change, regardless of the amount of the redistribution.

(f) Administrative revisions. The UTP may be administratively revised at any time if the revision does not constitute a major change as described in subsection (e) of this section, does not change project funding allocations in Category 12 Strategic Priority as described in subsection (e), or does not affect the total amount of funding allocated to a district for specific corridors in Category 4 Statewide Connectivity Corridor Projects as described in §16.153(a) of this subchapter (relating to Funding Categories).

(g) Public involvement for the unified transportation program.

(1) The department will seek to effectively engage the general public and stakeholders in development of the UTP and any updates to the program.

(2) The department will hold at least one statewide public meeting to present the draft UTP as early as the department determines is feasible to assure public input into the program prior to its final adoption. The department will also hold at least one statewide public meeting to present each proposed update to the program. The department will publish notice of each public meeting as appropriate and use communications strategies to maximize attendance at the meeting. The department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants.

(3) The department will report its progress on the program and provide an opportunity for a free exchange of ideas, views, and concerns relating to project selection, funding categories, level of funding in each category, the allocation of funds for each year of the program, and the relative importance of the various selection criteria.

(4) The department will hold at least one statewide hearing on its project selection process including the UTP's funding categories, the level of funding in each category, the allocation of funds for each year of the program, and the relative importance of the various selection criteria prior to:

(A) final adoption of the UTP and any updates; and

(B) approval of any adjustments to the program resulting from changes to the allocation of funds under §16.160 of this chapter (relating to Funding Allocation Adjustments).

(5) The department will publish a notice of the applicable hearing in the *Texas Register* a minimum of 15 days prior to its being held and will inform the public where to send any written comments. The department will accept written public comments for a period of at least 30 days after the date the notice appears in the *Texas Register.* The department may also accept public comments by other means, as specified in the notice. A copy of the proposed project selection process, the UTP, and any adjustments to the program, as applicable, will be available for review at the time the notice of hearing is published on the department website and, on request, will be available at district offices and at the department's Transportation Planning and Programming office in Austin.

(6) The department will present information regarding the development of the UTP and any updates to the commission not later than the month prior to final adoption of the UTP and any updates.

(h) Publication. The department will publish the entire approved unified transportation program, updates, adjustments, and administrative revisions together with any summary documents highlighting project benchmarks, priorities, and forecasts on the department's website. The documents will also be available for review, on request, at district offices and at the department's Transportation Planning and Programming Division office in Austin.

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

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-3164

SUBCHAPTER D. TRANSPORTATION FUNDING

43 TAC §16.154

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.991, which requires the commission to adopt rules related to the department's unified transportation program and §201.996, which requires the commission to adopt rules that specify the formulas for allocating funds to districts and metropolitan planning organizations.

§16.154. Transportation Allocation Funding Formulas.

(a) Formula allocations. The commission will, subject to the mandates of state and federal law, allocate funds from program funding Categories 1, 2, 4, 5, 7, 9, and 11, as described in §16.153 of this subchapter (relating to Funding Categories), to the districts and metropolitan planning organizations (MPO) as follows:

(1) Category 1 Preventive Maintenance and Rehabilitation - will be allocated to all districts as an allocation program according to the following formulas:

(A) Preventive maintenance.

(i) Ninety-eight percent for roadway maintenance with 65 percent based on on-system lane miles, and 33 percent based on the pavement distress score Pace factor; and

(ii) Two percent for bridge maintenance based on square footage of on-system span bridge deck area;

(B) Rehabilitation. Thirty-two- and one-half percent based on three-year average lane miles of pavement distress scores less than 70, 20 percent based on on-system vehicle miles traveled per lane mile, 32.5 percent based on equivalent single axle load miles on-system, and 15 percent based on the pavement distress score Pace factor;

(2) Category 2 Metropolitan and Urban Corridor Projects - It is the commission's intent that Category 2 funds be used efficiently on priority projects as determined by the MPOs. Category 2 funds will be allocated to districts and MPOs for specific projects within the MPOs' boundaries in the following manner:

(A) 87 percent to MPOs operating in areas that are transportation management areas, according to the following formula: 30 percent based on total vehicle miles traveled on and off the state highway system, 17 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 10 percent based on lane miles on-system, 14 percent based on truck vehicle miles traveled on-system, 7 percent based on percentage of census population below the federal poverty level, 15 percent based on congestion, and 7 percent based on fatal and incapacitating vehicle crashes;

(B) 13 percent to MPOs operating in areas that are not transportation management areas, according to the following formula: 20 percent based on total vehicle miles traveled on and off the state highway system, 25 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 8 percent based on lane miles on-system, 15 percent based on truck vehicle miles traveled on-system, 4 percent based on percentage of census population below the federal poverty level, 8 percent based on centerline miles on-system, 10 percent based on congestion, and 10 percent based on fatal and incapacitating vehicle crashes;

(3) Category 4 Statewide Connectivity Corridor Projects - will be allocated to districts as an allocation program for specific corridors selected by the commission based on engineering analysis of three corridor types and, if applicable to the particular corridor type, considering the formula specified in subsection (a)(2) of this section:

(A) Mobility corridors - congestion considerations throughout the state;

(B) Connectivity corridors - two-lane roadways requiring upgrade to four-lane divided roadways to connect the urban areas of the state; and

(C) Strategic corridors - strategic corridors on the state highway network that provide statewide connectivity;

(4) Category 5 Congestion Mitigation and Air Quality Improvement - will be allocated to districts and MPOs as an allocation program for projects in a nonattainment area population weighted by ozone and carbon monoxide pollutant severity. The department will determine the final distribution of the allocation between the district and MPO to ensure timely use of funds. Before the MPO's use of the Category 5 funds, the MPO must obtain the district's concurrence on the project for which the funds are to be used;

(5) Category 7 Metropolitan Mobility and Rehabilitation (TMA) - will be allocated to MPOs operating in areas that are transportation management areas as an allocation program based on the applicable federal formula;

(6) Category 9 Transportation Alternatives - a portion of the funds in this category will be allocated to MPOs serving urbanized areas with populations over 200,000 as an allocation program based on the areas' relative share of population, unless FHWA approves a joint request from the department and the relevant MPOs to use other factors in determining the allocation; and

(7) Category 11 District Discretionary - will be allocated to all districts as an allocation program based on state legislative mandates, but if there is no mandate or the amount of available funding in this category exceeds the minimum required by a mandate, the funding allocation for this category or the excess funding, as applicable, will be allocated according to the following formula: 70 percent based on annual on-system vehicle miles traveled, 20 percent based on annual on-system lane miles, and 10 percent based on annual on-system truck vehicle miles traveled. The commission may supplement the funds allocated to individual districts on a case-by-case basis to cover project cost overruns.

(b) Pace factor calculation. For purposes of subsection (a)(1) of this section, the Pace factor is a calculation used to adjust funding among districts according to increases or decreases in a district's need to improve its pavement distress scores. It will slow the rate of improvement for districts with the highest condition scores and accelerate the rate of improvement for districts with the lowest condition scores. The Pace factor is calculated by:

(1) determining the district with the highest distress score;

(2) determining the deviation of a district's distress score from the highest score;

(3) totaling the deviations for all districts as determined by paragraph (2) of this subsection.

(c) Non-formula allocations. The commission, subject to the mandates of state and federal law and specific requirements contained in other chapters of this title for programs and projects described in subsection (a) of this section, will determine the amount of funding to be allocated to a district, metropolitan planning organization, political subdivision, governmental agency, local governmental body, recipient of a governmental transportation grant, or other eligible entity from each of the following program funding categories described in §16.153 of this subchapter:

(1) Category 3 Non-Traditionally Funded Transportation Projects for specific projects;

(2) Category 6 Structures Replacement and Rehabilitation as an allocation program;

(3) Category 8 Safety Projects generally funded as an allocation program with some specific projects designated under the Safety Bond Program;

(4) Category 9 Transportation Alternatives - of the remaining funds in this category, a portion will be allocated to certain areas of the state, for specific projects, based on the areas' relative share of the population, and a portion may be allocated in any area of the state for specific projects or transferred to other eligible federal programs, as authorized by law;

(5) Category 10 Supplemental Transportation Projects generally funded as an allocation program with some specific projects designated under miscellaneous federal programs;

(6) Category 12 Strategic Priority for specific projects;

(7) Aviation Capital Improvement Program;

(8) Public transportation;

(9) Rail; and

(10) State waterways and coastal waters.

(d) Allocation program. For the purposes of this chapter, the term "allocation program" refers to a type of program funding category identified in the unified transportation program for which the responsibility for selecting projects and managing the allocation of funds has been delegated to department districts, selected administrative offices of the department, and MPOs. Within the applicable program funding category, each district, selected administrative office, or MPO is allocated a funding amount and projects can be selected, developed, and, subject to the base cash flow forecast prepared and published in accordance with §16.152(b) of this subchapter (relating to Cash Flow Forecasts), let to contract with the cost of each project to be deducted from the allocated funds available for that category.

(e) Listing of projects. The department will list the projects being funded from funds allocated under subsections (a)(2) and (3) and (c)(6) of this section (categories 2, 4, and 12, respectively) that the department intends to develop and let during the ten-year unified transportation program (UTP) under §16.105 of this chapter (relating to Unified Transportation Program (UTP)), and reference for each listed project the program funding category to which it is assigned. If a program funding category is an allocation program, the listing is for informational purposes only and contains those projects reasonably expected at the time the UTP is adopted or updated to be selected for development or letting during the applicable period. For the purpose of listing projects in the UTP, "project" means a connectivity or new capacity roadway project. The term does not include a safety project, bridge project, federal discretionary project, maintenance project, preservation project, transportation alternatives project, or locally funded project.

(f) Limitation on distribution. In distributing funds to the districts, metropolitan planning organizations, and other entities described in subsections (a) and (c) of this section, the department may not exceed the planning cash flow forecast prepared and published in accordance with §16.152(a) of this subchapter (relating to Cash Flow Forecasts). In developing and distributing funds for purposes of letting, the department may not exceed the base cash flow forecast prepared and published in accordance with §16.152(b) of this subchapter.

(g) Formula revisions. The commission will review and, if determined appropriate, revise both the formulas and criteria for allocation of funds under subsections (a) - (c) of this section at least as frequently as every four years.

(h) Supplemental allocations. The commission may supplement the funds allocated to individual districts under subsections (a)(1) and (7) of this section in response to special initiatives, safety issues, or unforeseen environmental factors. Supplemental funding under this subsection is not required to be allocated proportionately among the districts and is not required to be allocated according to the formulas specified in subsections (a)(1) and (7) of this section. In determining whether to allocate supplemental funds to a particular district, the commission may consider safety issues, traffic volumes, pavement widths, pavement conditions, oil and gas production, well completion, or any other relevant factors.

(i) Carryover. If at the beginning of a fiscal year an amount allocated in a category to an entity in the preceding fiscal year is not committed during the preceding fiscal year, that uncommitted amount plus any uncommitted amount carried over to the preceding fiscal year carries over in that category to that entity for use in the fiscal year. As used in this section, carryover refers to the amount carried over from one fiscal year to the next fiscal year and is not considered as an allocation for the fiscal year to which it is carried over. For the purpose of this section, an amount of funds is considered to be committed if the transportation project with which the amount is programmed is in the department's project management system and is progressing towards letting. The department may adjust the amount of the carryover, subject to subsections (j) and (k) of this section.

(j) Carryover in Category 5 Congestion Mitigation and Air Quality. To ensure that the state does not lose the ability to commit allocated funds and other federal funds, the department annually will review the use and programming of Category 5 funds. If at the beginning of a fiscal year a district and MPO has a carryover equal to more than 200 percent of the previous fiscal year's Category 5 allocation, the department may decrease the amount of the Category 5 carryover to an amount that is not less than 200 percent of the previous fiscal year's Category 5 allocation. The department may redistribute any amount of the reduction to another district and MPO but only for an eligible project in a non-attainment area, as authorized by law. The department will report to the commission all proposed redistributions and notify

any impacted MPO before the department makes a redistribution under this subsection.

(k) Carryover in Category 2 Metropolitan and Urban Corridor Projects. To ensure that the state does not lose the ability to commit allocated funds and other federal funds, the department annually will review the use and programming of Category 7 funds. If at the beginning of a fiscal year an MPO has a carryover equal to more than 200 percent of the previous fiscal year's Category 7 allocation, the department may decrease the amount of the Category 2 carryover, if any, by an amount equal to the difference between the amount of the Category 7 carryover and 200 percent of the previous fiscal year's Category 7 allocation. The department may redistribute that amount from Category 2 to the corresponding district's Category 11 District Discretionary allocation for use on the district's safety program. The department will report to the commission all proposed redistributions and notify any impacted MPO before the department makes a redistribution under this subsection.

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

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Texas Department of Transportation
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For further information, please call: (512) 463-3164


Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 13, Health Planning and Resource Development

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 13, Health Planning and Resource Development, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 13" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202400227
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: January 24, 2024

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC), on behalf of Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 421, Health Care Information

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 421, Health Care Information, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 421" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202400226
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: January 24, 2024

♦ ♦ ♦

Texas Juvenile Justice Department

Title 37, Part 11

The Texas Juvenile Justice Department (TJJD) proposes the review of Title 37, Texas Administrative Code, Chapter 380, Subchapter B, Treatment, in accordance with §2001.039, Texas Government Code.

An assessment will be made by TJJD to determine whether the reasons for adopting or readopting the rules in the subchapter continue to exist and whether the rules reflect current legal and policy considerations and current TJJD procedure.

Comments on the review may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

TRD-202400158
Cameron Taylor
Senior Strategic Advisor
Texas Juvenile Justice Department
Filed: January 17, 2024

♦ ♦ ♦

Texas Department of Transportation

Title 43, Part 1

Notice of Intention to Review

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, Chapter 1, Management, Chapter 5, Finance, Chapter 11, Design, Chapter 15, Financing and Construction of Transportation Projects, Chapter 21, Right of Way, and Chapter 27 Toll Projects.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Rule Review." The deadline for receipt of comments is 5:00 p.m. on March 4, 2024.

In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

TRD-202400159
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: January 17, 2024

♦ ♦ ♦

Adopted Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 386, Disaster Assistance Program

Notice of the review of this chapter was published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6751). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 386 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 386. Any appropriate amendments to Chapter 386 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 386 as required by the Texas Government Code, §2001.039.

TRD-202400203
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: January 19, 2024

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State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 230, Professional Educator Preparation and Certification, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 230 in the August 18, 2023 issue of the *Texas Register* (48 TexReg 4527).

Relating to the review of 19 TAC Chapter 230, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following provides a summary of public comments received on the proposal.

Comment: One individual commented neither in support nor against the proposed review of 19 TAC Chapter 230, suggesting additional wording to 19 TAC, §230.21, to minimize the impact of revised exams on candidates. The commenter suggested the following to 19 TAC §230.21(f): (1) Once a candidate receives a passing score on an examination, the scores cannot be invalidated due to a revision of the content exam or due to a new content exam being created. (2) A candidate's passing score on an exam will remain in effect so the candidate may activate their teaching certificate at the appropriate time.

The individual noted that when TExES exams are phased out, an inadvertent burden of having to pass multiple exams is created. This individual shared their experience spending time and money studying for two tests when the Generalist EC-6 (191) exam was revised in 2017, and they had to retake the Core Subjects EC-6 (291) exam as they had not been hired for a teaching position, yet. The individual proposes these changes to ensure that the scores for candidates who pass their exams will remain and candidates will not have to duplicate their efforts by taking another exam.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking, however, Texas Education Agency (TEA) staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Comment: One individual commented against the regulation set forth in Chapter 230, Subchapter B, General Certification Requirements, specifically regarding the "proficiency in the English language" requirement, which is stated as being "evidenced by completion of an undergraduate or graduate degree at an accredited institution of higher education in the United States." The individual shared their experience of being previously certified in 1998 and now, upon reentering the teaching field, has been denied certification due to the English proficiency requirements.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking, however, TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Comment: One individual commented neither in support nor against the proposed review of 19 TAC Chapter 230, stating that the certification test limitation for Principal candidates be 10 years, not five years post graduate degree.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking, however, TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

This concludes the review of 19 TAC Chapter 230.

TRD-202400252
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: January 24, 2024

♦ ♦ ♦

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 239, Student

Services Certificates, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 239 in the August 18, 2023 issue of the *Texas Register* (48 TexReg 4527).

Relating to the review of 19 TAC Chapter 239, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following provides a summary of public comments received on the proposal.

Comment: One individual commented in support of the proposed review of 19 TAC Chapter 239, stating that classroom experience plays a vital background role in working with students one on one. The individual stated that as a teacher, one learns how to communicate with students and parents and to understand the academic needs that arise, whereas as a counselor, having the classroom setting background helps one advocate for, not only students, but for teachers as well, who may be having difficulty.

Response: The SBEC agrees; however, due to Senate Bill 798, 88th Texas Legislature, Regular Session, 2023, effective September 1, 2023, the SBEC can no longer require that candidates for School Counselor certification have classroom teaching experience. Certificate issuance rules in 19 TAC Chapter 239, Subchapter A, School Counselor Certificate, must be updated to reflect the new requirement in Texas Education Code (TEC), §21.0462, Qualifications for Certification as School Counselor.

Comment: One individual commented neither in support nor against the proposed rule review of 19 TAC Chapter 239. The commenter stated that school districts across the state of Texas are having a difficult time filling vacancies for school counselor positions. The commenter stated that graduate level counseling students typically choose the clinical counseling degree due to the classroom teaching experience requirement associated with the School Counselor certification and that if the classroom experience requirement were to be lifted as a requirement for certification, this would allow people who gain the graduate level knowledge and experience to be able to get a School Counselor certificate to work with students in the school setting without having to go into teaching first or to gain a teacher certification, which requires more education and training for teaching. The individual further commented that lifting the teaching requirement would also help to fill the current shortage of school counselors that the state of Texas is currently facing. Texas Education Agency (TEA) may want to consider making it a requirement that, during a student's graduate counseling program, a certain number of hours are required to complete counseling practicum and internship hours within the school setting as an option to implement for certification purposes.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking; however, TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC. The requirement of two years of classroom teaching experience will be repealed from 19 TAC Chapter 239, Subchapter A, School Counselor Certificate, per new requirements in TEC, §21.0462, Qualifications for Certification as School Counselor, wherein effective September 1, 2023, classroom teaching experience can no longer be required for School Counselor certification.

Comment: One individual commented against the proposed review of 19 TAC Chapter 239 stating disagreement that one should have to hold a master's degree to be a school librarian. While supporting proper training, the individual stated that a strong preparation program, coupled with a background in teaching, will adequately prepare one to serve in this position more than simply having a master's degree will and that the requirement is more of an obstacle than it is helpful.

Response: The SBEC disagrees. This requirement is based on recommendations by the SBEC-approved advisory committee whose members are current educators and experts in the field and whose charge is to improve outcomes for educators in these classes of certificates.

This concludes the review of 19 TAC Chapter 239.

TRD-202400253
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: January 24, 2024

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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 357.

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 chapter was published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6223). 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. 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 this chapter. This concludes TWDB's review of 31 TAC, Title 31, Part 10, Chapter357.

TRD-202400180
Ashley Harden
General Counsel
Texas Water Development Board
Filed: January 18, 2024

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The Texas Water Development Board (TWDB) files the adoption of its review of rules in 31 Texas Administrative Code, Title 31, Part 10, Chapter 358.

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 chapter was published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6223). 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. 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 this chapter. This concludes TWDB's review of 31 TAC, Title 31, Part 10, Chapter 358.

TRD-202400182

Ashley Harden
General Counsel
Texas Water Development Board
Filed: January 18, 2024

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The Texas Water Development Board (TWDB) files the adoption of its review of rules in 31 Texas Administrative Code, Title 31, Part 10, Chapter 360.

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 chapter was published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6223). 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. 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 rules. This concludes TWDB's review of 31 TAC, Title 31, Part 10, Chapter 360. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking.

TRD-202400184
Ashley Harden
General Counsel
Texas Water Development Board
Filed: January 18, 2024

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The Texas Water Development Board (TWDB) files the adoption of its review of rules in 31 Texas Administrative Code, Title 31, Part 10, Chapter 377.

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 chapter was published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6225). 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. 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 rules. This concludes TWDB's review of 31 TAC, Title 31, Part 10, Chapter 377.

TRD-202400186
Ashley Harden
General Counsel
Texas Water Development Board
Filed: January 18, 2024

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33rd and 424th District Court

CSCD Director Position

Announcement 33rd & 424th Judicial Districts CSCD Director Position

Closing Date: March 2, 2024

Salary: Will be commensurate with experience.

General Information

The 33rd and 424th Judicial Districts CSCD serves two (2) District Courts, one (1) County Court at Law and three (3) County Courts in four (4) counties (Blanco, Burnet, Llano and San Saba). The District is also served by a Drug Court, three (3) specialized caseloads and one (1) Bond Supervision caseload. CSCD staff consists of 18 full time positions, one (1) part time position and two (2) contract substance abuse counselor positions. The CSCD also allows its field officers to be certified to carry a weapon during the performance of their duties. The CSCD also operates an Intermediate Sanctions Facility with a staff of 22 full time positions and one (1) part time position, with two (2) contract counselors. The CSCD has seven (5), operating budgets totaling $3,468,180.00. The CSCD supervises a total of 1863 probationers and 257 pre-trial defendants as of September 1, 2023.

Minimum Qualifications

Texas Government Code 76.004, 76.005, as well as Texas Administrative Code Title 37 Part 6 Rules 163.21 & 163.33 require the Judges to appoint a CSCD Director who must meet, at minimum, the eligibility requirements for officers.

--A bachelors' degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

--Cannot be employed as a peace officer, or work as a reserve or volunteer peace officer; and

--Cannot currently be on community supervision, parole or serving a sentence for a criminal offense.

--Must possess a valid Driver License.

--Must pass a background investigation.

Ideal Experience, Skills, and Abilities

--Ten years of experience with a CSCD with at least five years of experience in administration or supervisory position.

--Demonstrated leadership abilities and experience in successfully directing or assisting with the building of effective community supervision.

--High level of communication and interpersonal skills used with the public, employees, elected and appointed officials; ability to speak effectively in public.

--A working knowledge of techniques and procedures in best practices for effective community supervision.

--Computer skills with working knowledge of spreadsheets, word processing, databases and programming.

--Knowledge of grant preparation, process, and maintenance.

--Experience in working in a multi-county jurisdiction.

--Working knowledge of Community Corrections Facility (Residential) Standards and issues.

--Working knowledge of CJAD Weapons policy and Standards (163.34).

--Willingness to continue working in direct contact with probationers, as the need arises.

--Willingness

Essential Duties and Responsibilities

--Maintain department's full compliance with all standards, statutes and ethics as detailed in the Texas Administrative Code, Government Code, TDCJ-CJAD Standards and Financial Management Manual as well as all other state and federal statutes.

--Provide leadership and day to day management of the operations of the department.

--Employ officers, assistants and other employees to carry on the core services of the department including but not limited to conducting presentence investigations, supervise and rehabilitate defendants placed under supervision, enforce the conditions of supervision and serve the local Courts. Responsible for the cost effective development, coordinate the preparation and implement the department budgets with fiscal responsibility.

--Attend all related trainings for the duties and responsibilities.

--Continue to develop and implement the Strategic Plan for the department including reducing recidivism and revocations.

--Responsible for the continued development of administration and for standards, procedures and policies related to personnel, including staff development, interns/volunteers, training, budget and physical facilities. Interprets department policies, job responsibilities and assignments to staff. Establishes or adjusts work procedures to achieve goals.

--Initiate and be responsible for all personnel actions such as promotions, discharges, grievances and disciplinary measures for staff personnel.

--Negotiate and enter into contracts on behalf of and benefitting the department in accordance with state laws and requirements of TDCJ-CJAD.

--Submit all required and or requested reports timely to TDCJ-CJAD. Insure all program records and statistical data is consistent with the requirements of the law and TDCJ-CJAD standards.

--Prepare reports for local Judges.

--Professionally represent the department in meetings and committees with TDCJ-CJAD, other government entities, other CSCDs, Civic and Social Service organizations, and the public.

--Perform other duties as identified, needed and including those required by statute.

Send resume, copies of transcripts reflecting degree conferred (employment offer will be contingent on official transcripts being submitted), and three (3) references to:

The Honorable Allan Garrett; Judge, 33rd Judicial District Court

c/o Lisa Bell

1701 E. Polk

Burnet, Texas 78611

Email: 33coordinator@gmail.com

TRD-202400228
Judge Allan Garrett
Judge
33rd and 424th District Court
Filed: January 24, 2024

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Office of the Attorney General

Request for Applications (RFA) for the Sexual Assault Prevention and Crisis Services Program (SAPCS) State: Rural and Border County Service Enhancement

The Office of the Attorney General (OAG) is soliciting applications from programs with an active SAPCS-State grant contract who provide (or request to provide) services to victims of sexual assault in a rural or border county.

Applicable Funding Source: The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Current FY 2024 SAPCS-State grantees who provide (or request to provide) services in a rural or border county. For the purposes of this grant, rural counties are defined as counties having a population of 150,000 or less and border counties are any county designated as such by the Texas Department of Public Safety. The OAG reserves the right to make final classification of rural counties. Applicant must be a current FY 2024 SAPCS-State grantee. A current SAPCS-State grantee is a Sexual Assault Program with an active (September 1, 2023 - August 31, 2024) SAPCS-State grant contract.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible Applicant; the application is not submitted in the manner and form required by the Application Kit; the application is submitted after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at https://www.texasattorneygeneral.gov/divisions/grants. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. *If an on-line account is not created, the Applicant will be unable to apply for funding.* To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

--First Name

--Last Name

--Email Address *(It is highly recommended to use a generic organization email address if available)*

--Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline and the manner and form established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will not consider an Application if it is not submitted by the due date. The OAG will not consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding for all programs is $60,000 per fiscal year. The maximum amount of funding for all programs is $125,000 per fiscal year.

Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The OAG is not obligated to fund a grant at the amount requested.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to two years from April 1, 2024 through August 31, 2025, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address the required purpose area(s) as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; indirect costs; fees to administer a subcontract; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Information: If additional information is needed, contact the Grants Administration Division at Grants@oag.texas.gov, or (512) 936-0792.

TRD-202400212

Justin Gordon
General Counsel
Office of the Attorney General
Filed: January 22, 2024

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - December 2023

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period December 2023 is $53.58 per barrel for the three-month period beginning on September 1, 2023, and ending November 30, 2023. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of December 2023, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period December 2023 is $1.61 per mcf for the three-month period beginning on September 1, 2023, and ending November 30, 2023. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of December 2023, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of December 2023 is $72.12 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of December 2023, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of December 2023 is $2.54 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of December 2023, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

Issued in Austin, Texas, on January 24, 2024.

TRD-202400251
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: January 24, 2024

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Notice of Eligibility of Appraised Value

In compliance with Property Tax Code, §6.425(g), the Comptroller of Public Accounts has determined that a property's minimum appraised value for the 2024 tax year, as determined by the local appraisal district, must be $59,562,331 to be eligible for a protest hearing in front of a local appraisal review board special panel for that tax year.

Inquiries may be submitted to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov.

Issued in Austin, Texas, on January 22, 2024.

TRD-202400214
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Filed: January 22, 2024

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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 01/29/24 - 02/04/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/29/24 - 02/04/24 is 18.00% for commercial[2] credit.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202400235
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 24, 2024

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Credit Union Department

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Members Choice Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work, or attend school and businesses and other legal entities located in Fort Bend County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202400204
Michael S. Riepen
Commissioner
Credit Union Department
Filed: January 19, 2024

♦ ♦ ♦

Texas Council for Developmental Disabilities

Request for Applications: Increasing Employment Opportunities for Adult Texans with DD in South Texas

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for activities to increase opportunities for employment for early career adult Texans with DD of Hispanic origin who live in the deep south area of Texas through outreach, training, and inter-agency communication post-transition. Applicants will investigate barriers to employment in the region and create programs that are culturally and linguistically responsive aimed at increasing employment opportunities for people with disabilities. Applications must be submitted by an organization established and working in Cameron, Hidalgo, Willacy, and Starr counties in Texas.

TCDD has approved funding for one organization for up to two years. Funding is approved for up to $125,000 per year. Funds available for this project are provided to TCDD by the Administration for Community Living (ACL), U.S. Department of Health and Human Services, with 100% federal funding pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds at a reduced rate of 10% of the total project costs are required for project activities conducted in these four designated poverty counties.

Additional information concerning this Request for Applications (RFA) and TCDD is available at https://tcdd.texas.gov/grants-rfas/funding-available-for-grants/. All questions pertaining to this RFA should be directed in writing to TCDD via email at apply@tcdd.texas.gov or via telephone at (512) 437-5432.

Deadline: Proposals must be submitted through https://tcdd.smapply.org/prog/lst/. Proposals are due by 11:59 p.m. on March 15, 2024. Proposals will not be accepted outside of these due dates.

TRD-202400225
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: January 23, 2024

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Education Service Center, Region 16

Official Notice for Election of Places 1, 2 and 7 on the Board of Directors of Region 16 Education Service Center

Persons interested in filing for positions on the Board of Directors of Region 16 Education Service Center, an organization that provides educational services to 61 school districts and three charter schools in the north 26 counties of the Texas Panhandle, may do so at the office of the Executive Director (5800 Bell Street, Amarillo, Texas) during regular office hours (8:00 a.m. to 5:00 p.m.) Monday through Thursday, (8:00 a.m. to 4:00 p.m.) Friday, beginning Thursday, February 1, 2024. Deadline for filing is Tuesday, February 20, 2024, at 5:00 p.m.

Interested persons may file in person or, upon request, may receive a filing form by mail with the return by certified mail postmarked no later than 4:00 p.m., February 20, 2024. Phone: (806) 677-5015; Mailing address: 5800 Bell Street, Amarillo, Texas 79109-6230.

The Board of Directors shall be elected by place. The following places (by counties) that are up for election are described as follows:

Place 1: Counties of Armstrong, Briscoe, Carson, Donley, Randall, and Swisher

Place 2: Counties of Castro, Deaf Smith, and Parmer

Place 7: Counties of Childress, Collingsworth, Gray, Hall, and Wheeler

To hold the office of an Education Service Center Board of Director, one must:

--Be a United States of America citizen;

--Be at least 18 years of age;

--Be a resident of the region served and of the geographic area included in the place designated outlined above;

To hold the office of Board member, one may not:

--Be engaged professionally in education;

--Be a member of a board of any educational agency or institution.

Should there be an uncontested election; the Region 16 ESC Board has determined that no election will be held.

TRD-202400208
Dr. Tanya Larkin
Executive Director
Education Service Center, Region 16
Filed: January 22, 2024

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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 **March 5, 2024.** 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 **March 5, 2024.** 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: A RAHMAN HOLDINGS, LLC; DOCKET NUMBER: 2023-0982-PST-E; IDENTIFIER: RN105572192; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store

with retail sales of gasoline; RULE VIOLATED: 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 underground storage tanks; PENALTY: $2,998; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Arimak Water Supply Corporation (Arimak); DOCKET NUMBER: 2022-0552-PWS-E; IDENTIFIER: RN101264380; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's Well Number 2; and 30 TAC §290.46(m)(4), by failing to maintain all water system treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: $812; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: City of Galveston; DOCKET NUMBER: 2021-1589-MWD-E; IDENTIFIER: RN101613925; LOCATION: Gavleston, Galveston County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010688005, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $20,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $16,500; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: FIVE RIVERS INCORPORATED dba Graham Food Mart; DOCKET NUMBER: 2023-0888-PST-E; IDENTIFIER: RN102348828; LOCATION: Graham, Young County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,493; ENFORCEMENT COORDINATOR: Jalan Jefferson, (512) 239-2527; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: HINO GAS SALES, INCORPORATED dba Hino Gas; DOCKET NUMBER: 2023-0748-PST-E; IDENTIFIER: RN101678647; LOCATION: Port Isabel, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline and fleet refueling station; RULES VIOLATED: 30 TAC §334.48(g)(1)(A)(ii) and TWC, §26.3475(c)(2), by failing to test the spill prevention equipment and containment sumps at least once every three years; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 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; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for a Class A, Class B, and Class C operator for the facility; PENALTY: $20,302; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Nilmah Investment Incorporated dba 1 Pitt Stop; DOCKET NUMBER: 2023-0983-PST-E; IDENTIFIER: RN102269503; LOCATION: Pittsburg, Camp County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; 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: $14,957; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: PINCO INCORPORATED dba Thelma Food Store; DOCKET NUMBER: 2022-0982-PST-E; IDENTIFIER: RN102828944; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Post Granada, LP; DOCKET NUMBER: 2022-0390-WQ-E; IDENTIFIER: RN103769592; LOCATION: Uvalde, Uvalde County; TYPE OF FACILITY: privately owned lift station; RULES VIOLATED: 30 TAC §317.3(e)(5), by failing to provide an audiovisual alarm system for the lift station; 30 TAC §327.3(b) and TWC, §26.039(b), by failing to notify the TCEQ as soon as possible but not later than 24 hours after the occurrence of a spill or discharge; 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: $33,602; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(9) COMPANY: Quadvest, L.P.; DOCKET NUMBER: 2023-0969-MWD-E; IDENTIFIER: RN106514979; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015061001, by failing to prevent the unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: $11,875; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(10) COMPANY: STUDY BUTTE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1002-PWS-E; IDENTIFIER: RN101207504; LOCATION: Terlingua, Brewster County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: $225; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202400216
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 23, 2024

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Cancellation of Public Meeting

This is notice that the public meeting previously scheduled for February 1, 2024, for Martin Marietta Materials Southwest, LLC; Proposed Permit No. 55353, has been cancelled and will be rescheduled for a later date. Notice of the rescheduled meeting will be sent by mail. If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

TRD-202400245
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 24, 2024

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Enforcement Orders

An order was adopted regarding Corey Morrell, Docket No. 2021-0787-MSW-E on January 24, 2024, assessing $6,750 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.

A default order was adopted regarding Charles Patrick Patterson, Docket No. 2019-1447-MSW-E on January 24, 2024, assessing $1,250 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 Energy Transfer GC NGL Fractionators LLC f/k/a Lone Star NGL Fractionators LLC, Docket No. 2021-0408-AIR-E on January 24, 2024, assessing $83,200 in administrative penalties with $6,240 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Kansas City Southern Railway Company, Docket No. 2021-0593-WQ-E on January 24, 2024, assessing $45,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mistie Gonzales, 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 Juan Maltos, Docket No. 2021-0789-MSW-E on January 24, 2024, assessing $12,500 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.

A default order was adopted regarding Rickey Evans, Jr., Docket No. 2021-1263-WQ-E on January 24, 2024, assessing $4,987 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 ExxonMobil Pipeline Company, Docket No. 2021-1370-AIR-E on January 24, 2024, assessing $67,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 FARMERS COOPERATIVE SOCIETY NO. 1 OF JAYTON, TEXAS, Docket No. 2021-1451-PST-E on January 24, 2024, assessing $12,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jennifer Peltier, 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 Ash Grove Cement Company, Docket No. 2021-1507-IWD-E on January 24, 2024, assessing $27,082 in administrative penalties with $5,416 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Apple Springs Independent School District, Docket No. 2021-1595-MWD-E on January 24, 2024, assessing $13,750 in administrative penalties with $2,750 deferred. Information concerning any aspect of this order may be obtained by contacting Taylor Williamson, 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 McMullen County Water Control and Improvement District No. 1 and McMullen County, Docket No. 2022-0720-MWD-E on January 24, 2024, assessing $12,937 in administrative penalties with $2,587 deferred. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, 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 RAYLEE TRUCKING SERVICES, INC., Docket No. 2022-0764-MSW-E on January 24, 2024, assessing $2,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, 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 Pearland, Docket No. 2022-0781-MWD-E on January 24, 2024, assessing $83,375 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 Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC, Docket No. 2022-0795-AGR-E on January 24, 2024, assessing $17,213 in administrative penalties with $3,442 deferred. 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 Joe Bland Construction, L.P., Docket No. 2022-0995-EAQ-E on January 24, 2024, assessing $15,000 in administrative penalties with $3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding ALAUDDIN INVESTMENTS, INC. dba Kwik Trip Food Store, Docket No. 2022-1014-PST-E on January 24, 2024, assessing $4,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting

Taylor Pack Ellis, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202400246
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 24, 2024

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Notice of Declaration of Administrative Completeness Radioactive Material License Number R04100

Notice Issued on January 19, 2024

APPLICATION. Waste Control Specialists LLC (WCS), P.O. Box 1129, Andrews, Texas 79714, has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Radioactive Material License R04100. Radioactive Material License R04100 authorizes commercial disposal of low-level radioactive waste and commercial storage and processing of radioactive waste. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas, and is the licensed operator of the Compact Waste Disposal Facility and Federal Waste Disposal Facility for commercial and federal low-level radioactive waste disposal.

The facility is located at 9998 West Highway 176, Andrews, Texas 79714 in Andrews County, Texas. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For exact location, refer to application: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-103.063055%2C32.4425&level=12.
The TCEQ received the application on August 25, 2023. The license application is available for viewing and copying at the TCEQ's central office in Austin, Texas and at Andrews Public Library at 109 NW 1st Street, Andrews, Texas 79714.

ADDITIONAL NOTICE. The TCEQ Executive Director has determined that the application is administratively complete and will conduct a technical review of the application. After completion of the technical review, the Executive Director may prepare a draft license, technical summary, compliance summary, and if applicable, an environmental analysis and submit them to the chief clerk of the TCEQ for issuance of additional public notice. Notice of the Completion of Technical Review will be published and mailed to adjacent landowners, those who are on the county-wide mailing list, and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments and requests for a contested case hearing.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments.

OPPORTUNITY FOR A CONTESTED CASE HEARING. A contested case hearing is a legal proceeding similar to a civil trial in state district court. The TCEQ may grant a contested case hearing on this application if a written hearing request is timely submitted.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, mailing address, phone number; applicant's name and license number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the license and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments a request for contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the license number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at https://www.tceq.texas.gov/agency/decisions/cc/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this license application or the licensing process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from WCS at the address stated above or by calling Mr. Jay Cartwright at (432) 525-8698.

TRD-202400244

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 24, 2024

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Notice of District Petition

Notice issued January 17, 2024

TCEQ Internal Control No. D-09272023-036; 45 Maple Woods Development, LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of Waller County Municipal Utility District No. 47 (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 is one lienholder, Joe C. Smith, on the property to be included in the proposed District and information provided indicates that the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 142.479 acres located within Waller County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $33,700,000 ($19,500,000 for water, wastewater, and drainage, $7,800,000 for roads, and $6,400,000 for recreation).

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-202400238
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 24, 2024

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Notice of District Petition

Notice issued January 18, 2024

TCEQ Internal Control No. D-08212023-037; Lackland Gunter Development, LLC, a Texas limited liability company, ("Petitioner") filed a petition for creation of Gunter Crossing Municipal Utility District of Grayson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article III, Section 52 and Article XVI, Section 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 owns a majority in value of the land to be included in the proposed District; (2) there is one lienholder, PlainsCapital Bank, on the property to be included in the proposed District, and the aforementioned entity has consented to the creation of the District and inclusion of all of the land in the District; (3) the proposed District will contain approximately 48.978 acres of land, located entirely within Grayson County, Texas; and (4) a portion of the land to be included in the district is located within the extraterritorial jurisdiction of the City of Gunter, Texas (City). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of their Property into the District. The petition further states that the proposed District will: (1) construct a water distribution system for domestic purposes, (2) construct a sanitary sewer system, (3) control, abate and amend the harmful excess of waters and reclaim and drain overflowed lands within the District, (4) construct and finance macadamized, graveled or paved roads, or improvements in aid of those roads, and (5) construct, install, maintain, purchase and operate such additional facilities, systems, plants and enterprises as shall be consistent with the purposes for which the District is organized, all to the extent authorized by law from time to

time. It is specifically proposed that the District be granted the authority to design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to this state, a county, or a municipality, for operation and maintenance a road or any improvement in aid of the road, pursuant to Texas Water Code, Section 54.234. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $9,850,000 ($7,500,000 for water, wastewater and drainage and $2,350,000 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-202400240
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 24, 2024

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Notice of Opportunity to Comment on an Agreed Order 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 Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. 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 **March 5, 2024.** 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 the 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 March 5, 2024.** The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: SIRBAN USA ENTERPRISE INC dba SK Quick Mart; DOCKET NUMBER: 2021-0381-PST-E; TCEQ ID NUMBER: RN102873395; LOCATION: 5904 Farm-to-Market Road 1765, Texas City, Galveston County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the USTs at the station; 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)(A)(i)(III), by failing to test the line leak detectors at least once per year for performance and operational reliability; and 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; PENALTY: $7,875; STAFF ATTORNEY: Benjamin Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202400217
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 23, 2024

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of HAQUE SALMA ENTERPRISE INC dba Poppy Food Mart SOAH Docket No. 582-24-08279 TCEQ Docket No. 2021-0193-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom videoconference:

10:00 a.m. - February 22, 2024

To join the Zoom meeting via computer or smart device:

https://soah-texas.zoomgov.com

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition mailed October 23, 2023 concerning assessing administrative penalties against and requiring certain actions of HAQUE SALMA ENTERPRISE INC dba Poppy Food Mart, for violations in Bexar County, Texas, of: Texas Water Code § 26.3475(a), (c)(1), and (d) and 30 Texas Administrative Code §§334.10(b)(2), 334.49(c)(2)(C) and (c)(4)(C), 334.50(b)(1)(A) and (b)(2), 334.602(a), and 334.606.

The hearing will allow HAQUE SALMA ENTERPRISE INC dba Poppy Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford HAQUE SALMA ENTERPRISE INC dba Poppy Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of HAQUE SALMA ENTERPRISE INC dba Poppy Food Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's First Amended Report and Petition, attached hereto and incorporated herein for all purposes.** HAQUE SALMA ENTERPRISE INC dba Poppy Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code § 7.054 and Texas Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Cynthia Sirois, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: January 18, 2024

TRD-202400242
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 24, 2024

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Notice of Public Meeting

APPLICATION. Vulcan Construction Materials, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Air Quality Permit Number 52357L001, which would authorize continued operation of an Asphalt Plant located at 600 Lockwood Drive, Houston, Harris County, Texas 77011. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en espanol está disponible en *https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits-pendingpermit-apps.* This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. *https://gisweb.tceq.texas.gov/LocationMapper/?marker=-95.321023,29.753616&level=13.* The existing facility and/or related facilities are authorized to emit the following air contaminants: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide. This application was submitted to the TCEQ on September 18, 2023.

The executive director has determined the application is administratively complete and will conduct a technical review of the application. In addition to the renewal, this permitting action includes the incorporation of permits by rule related to this permit. The reasons for any changes or incorporations, to the extent they are included in the renewed permit, may include the enhancement of operational control at the plant or enforceability of the permit. **The TCEQ may act on this application without seeking further public comment or providing an opportunity for a contested case hearing if certain criteria are met.**

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response

to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, February 22, 2024 at 7:00 p.m.

HCC Felix Fraga Campus

301 N. Drennan, 3rd Floor, Room 360

Houston, Texas 77003

INFORMATION. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/.* If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at *www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.*

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at *www.tceq.texas.gov/goto/cid.* Once you have access to the CID using the link, enter the permit number at the top of this form.

The application will be available for viewing and copying at the TCEQ central office, TCEQ Houston regional office, and the Stanaker Neighborhood Library, 611 South Sergeant Macario Garcia Drive, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review in the Houston regional office of the TCEQ. Further information may also be obtained from Vulcan Construction Materials, LLC, P.O. Box 791550, San Antonio, Texas 78279-1550 or by calling Mrs. Melissa Fitts, Westward Environmental, Inc. at (830) 829-8284.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: January 18, 2024

TRD-202400241
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 24, 2024

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016243001

APPLICATION. Circle S Midlothian, LLC, 5940 South West McGee Road, Lane, Oklahoma 74555, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016243001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. TCEQ received this application on October 26, 2022.

The facility will be located approximately one-mile northeast of the intersection of Murr Road and Farm-to-Market Road 157, in Ellis County, Texas 76084. The treated effluent will be discharged to Spring Branch, thence to Armstrong Creek, thence to Cottonwood Creek, thence to North Fork Chambers Creek, thence to Chambers Creek Above Richland-Chambers Reservoir in Segment No. 0814 of the Trinity River Basin. The unclassified receiving water use is limited aquatic life use for Spring Branch and Armstrong Creek. The designated uses for Segment No. 0814 are primary contact recreation, public water supply, and high aquatic life use.

In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.05469,32.38909&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices. El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, March 4, 2024 at 7:00 p.m.

Venus Civic Center

210 S. Walnut Street

Venus, Texas 76084

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Nicholas P. Sims Library & Lyceum, 515 West Main Street, Waxahachie, Texas. Further information may also be obtained from Circle S Midlothian, LLC at the address stated above or by calling Mr. Rick Miskimom at (214) 546-5366.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: January 18, 2024

TRD-202400239
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 24, 2024

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Notice of Water Quality Application

The following notice was issued on January 18, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

Frito-Lay, Inc., which operates Frito-Lay Rosenberg Facility, a facility that produces snack food, including potato chips, corn chips, and tortilla chips, has applied for a major amendment of Texas Pollutant Discharge Elimination System Permit No. WQ0002443000 to Change sampling locations for Outfalls 003; merge effluent limits at Outfall 103 to Outfall 003 and then remove Outfall 103 in phase IV. The draft permit authorizes the discharge of process wastewater, stormwater runoff, and utility wastewater on an intermittent and flow-variable basis via Outfall 001; domestic wastewater at a daily average flow not to exceed 18,000 gallons per day (gpd) via Outfall 002; and process wastewater, stormwater runoff, and utility wastewater at a daily average flow not to exceed 1,100,000 gpd in phases I, II, III, and IV via Outfall 003. The facility is located at 3310 State Highway 36 North, near the City of Rosenberg, in Fort Bend County, Texas 77471.

TRD-202400243
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 24, 2024

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 8, 2024 to January 19, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, January 26, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday February 25, 2024.

Federal License and Permit Activities:

Applicant: Buckeye Texas Hub, LLC

Location: The project site is located within the Corpus Christi Ship Channel, specifically the Viola Channel and the Tule Lake Turning Basin, in Nueces County, Corpus Christi, Texas. Twenty Dredge Material Placement Area (DMPA) locations are scattered throughout the Corpus Christi Bay area.

Latitude and Longitude: 27.831718, -97.499751

Project Description: The applicant proposes to perform dredging operations and construct both previously authorized, but never constructed, and new proposed structures at the Buckeye Texas Hub Terminal. The applicant proposes to construct one ship dock (proposed Ship Dock 5), one barge dock (proposed Barge Dock 1), two bulkheads, one loading dock, thirty-eight mooring dolphins, perform dredging operations, and perform maintenance dredging and bed leveling for 10 years.

The ship and barge dock structures and maintenance dredging were previously authorized on September 24, 2014 and expired on December 31, 2019. During the authorized permit period, the dock structures were not constructed, and dredging was not undertaken before permit expiration. Due to the previous permit being expired, this permit analysis will be conducted as if all work is newly proposed.

Specifically, the proposed ship dock, consists of a pier supported 34' x 16' access trestle and 34' x 16' pipe rack leading to a 60' x 90' cast in place dock with six 84" mooring dolphins, six 96" breasting dolphins, and four 66" protection dolphins. Additionally, the proposed barge dock consists of a pier supported 156' x 16' access trestle and 156' x 16' pipe rack leading to a 40' x 60' cast in place dock with four 42" mooring dolphins and sixteen 48" breasting dolphins, and two 96" mooring dolphins at an existing dock structure immediately adjacent to the dock.

Associated dredging for the ship dock structure consists of a 6.2-acre area (275,000 cubic yards) dredged to -60 feet mean low-lower water and associated dredging for the barge dock structure consists of a 0.90-

acre (2,500 cubic yards) dredged to -15 feet mean low-lower water. The applicant requests to use previously authorized upland DMPAs to place the 277,500 cubic yards of dredged material. The applicant requests to perform maintenance dredging and bed leveling for 10 years.

Additionally, two proposed bulkheads, a loading platform, and associated fill, related to the installation of the ship dock and barge dock, are planned to be placed immediately adjacent to tidal waters, but above the high-tide line. The bulkhead, landing dock structure, and upland fill will serve as stabilized access points for the in-water structures and prevent damage from larger than average high tides associated with tropical storm and king tide events. The bulkhead for the barge dock will extend an existing sheet-pile structure 770 linear feet; additionally, minimal amounts of rip-rap currently below the high-tide line (adjacent to the existing bulkhead) will be removed permanently. The bulkhead for the ship dock will be a new 1,465 linear foot combi-wall system. The landing dock structure will consist of a 30' x 580' pad within the uplands. The applicant has not proposed compensatory wetland mitigation for the project.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2008-00904. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1111-F1

Applicant: Enterprise Products Operating LLC

Location: The project site is located in the Houston Ship Channel at the Enterprise Houston Terminal, 15602 Jacintoport Boulevard, in Houston, Harris County, Texas.

Latitude and Longitude: 29.737892, -95.126816

Project Description: The applicant proposes to modify Department of the Army Permit SWG-2008-00073 to construct a 20-foot by 20-foot gangway platform, supported by four 20-inch-diameter pipe piles. The gangway platform will serve as an extension to the existing barge dock adjacent to the Houston Ship Channel. The piles will be driven to a depth that ensures structural integrity and obtains an elevation of +12 feet above mean lower low water for the proposed gangway platform.

The applicant stated that the purpose of the project is to provide the infrastructure and space necessary to improve berthing and vessel engagement capabilities at the applicant's existing facility. The applicant has not proposed to mitigate for the proposed impacts.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2008-00073. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 24-1122-F1

Applicant: City of Corpus Christi

Location: The project site is located the Industrial/Main Turning Basin of the Port of Corpus Christ Authority's Inner Harbor, Corpus Christi, Nueces County, Texas.

Latitude and Longitude: 27.814146, -97.418478

Project Description: The applicant proposes to construct a seawater desalination plant with intake structures and outfall structures/diffusers and pipelines within the waters of the Inner Harbor, onshore pipeline within adjacent wetlands, and an onshore processing facility. The seawater desalination project would involve an intake structure in the Inner Harbor with waterlines that lead to a pump station on land. From the pump station, waterlines would then lead further inland to the main project components associated with treatment facilities. Treated water would then be stored in a ground storage tank and distributed into the city's potable water system. Discharge water would exit via waterlines to the discharge/diffuser structure located in the Inner Harbor. The components of the project are:

-- Permanent placement of an intake structure consisting of a 48-inch diameter intake pipe and three 30 MGD wedgwire intake screens within 0.22 acre of the waters of Inner Harbor.

-- The intake structure will be placed at a depth of -33 feet below mean high water at a distance of 332 feet from the channel centerline.

-- Permanent placement of two 54-inch diameter intake pipelines for a distance of 116 feet at a maximum depth of -7 feet mean high water within the waters of the Inner Harbor.

-- Temporarily impact a total of 0.19 acre of wetlands, Wetlands 3 and 4, during the open cut trench installation of two 54-inch diameter intake pipelines for a distance of 589 linear feet and 612 linear feet, respectively.

-- Permanent placement of a discharge/outfall structure consisting of a 48-inch diameter header pipe and four 16-inch diffuser nozzles within 0.40 acre of the waters of the Inner Harbor.

-- Hydraulically dredge a total of 508 cubic yards to a depth of -40 feet below mean high water for placement of the discharge/outfall structure. Placement of the dredged material would be utilized as fill within the pump station, facility, or placed on property located at 27.804128° N, 97.401218° W.

-- The discharge/outfall structure would be placed at a depth of -35 feet below mean high water at a distance of 316 feet from the channel centerline.

-- Permanent placement of a 54-inch diameter discharge/outfall pipeline along 2,142 linear feet (4.2 acres) of the shoreline (2,087 linear feet in the water and 55 linear feet from water to onshore) at a maximum depth of -17 feet below mean high water within the waters of the Inner Harbor.

-- Permanent impact of 0.07 acre of Ditch 1 and a total of 0.77 acre of Wetlands 1 and 2 during the construction of a permanent intake pump station pad.

The applicant's stated purpose of the proposed project is to construct a drought-proof seawater desalination plant located near the City of Corpus Christi and improve the reliability of the Corpus Christi regional water system. The project is needed to accommodate present and future growth of the City of Corpus Christi region and to reduce the vulnerabilities and risks of the City's current water supply in the uncertainty of climate change. No mitigation is proposed.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2014-00850. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1125-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202400231
Mark Havens
Chief Clerk
General Land Office
Filed: January 24, 2024

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Department of State Health Services

Correction of Error

The Department of State Health Services proposed amendments to 25 TAC §157.2 in the January 19, 2024, issue of the *Texas Register* (49 TexReg 199). Due to an error by the Texas Register, some of the rule text in new paragraph (133) is incorrect. The corrected language reads as follows:

(133) Stroke activation--The process of mobilizing the stroke care team when a patient screens positive for stroke symptoms; may be referred to as a "stroke alert" or "code stroke."

TRD-202400215

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Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking-100-Mile Non-State Resident Tuition Waiver (Texas Public Universities, Health-Related Institutions, and State Colleges)

The Texas Higher Education Coordinating Board (THECB) intends to engage in negotiated rulemaking to amend 19 Texas Administrative Code, Chapter 21, Subchapter SS, §21.2264, to provide public universities, health-related institutions, and state colleges with greater clarity when administering the 100-mile waiver program. The amendments to 19 Texas Administrative Code, Subchapter SS, are authorized by Texas Education Code, §54.0601.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas public university, health-related, and state college institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process or nominate a representative from their system/campus.

From this effort, 12 individuals responded (out of approximately 60 affected entities) and expressed an interest to participate or nominated a representative from their system/institution to participate on the negotiated rulemaking committee. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee:

1. Public universities;

2. Public health-related institutions;

3. Public state colleges; and

4. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following nine individuals to the negotiated rulemaking committee for the 100-mile non-state resident tuition waiver to represent affected parties and the agency:

Public Universities

Donna C. Lang, Associate Vice President, Academic Operations, Texas A&M University at Galveston (Texas A&M University System)

Jordan Stevenson, Assistant Vice President, Enrollment Management, Texas A&M University-Commerce (Texas A&M University System)

Christine Blakney, Senior Managing Director, Student Business Services, Texas Tech University (Texas Tech University System)

Amanda Withers, Chief Financial Officer, and Senior Vice President, Operations, Sam Houston State University (Texas State University System)

Matthew Aschenbrener, Vice President, Strategic Enrollment Management, University of Houston-Clear Lake (University of Houston System)

Chris Foster, Associate Vice President, Student Accounting, University of North Texas (University of North Texas System)

Kristine A. Velasquez, Director, Admissions and Recruitment, and Residency Official, The University of Texas at El Paso (The University of Texas System)

Public Health-Related Institutions

Griselda Castilla, Associate Vice President, Strategic Enrollment, The University of Texas Rio Grande Valley-Medical School (The University of Texas System)

Texas Higher Education Coordinating Board

Charles Contero-Puls, Assistant Commissioner, Student Financial Aid Programs

If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

1. Name and contact information of the person submitting the application;

2. Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;

3. Name and contact information of the person being nominated for membership; and

4. Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for the 100-mile non-state resident tuition waiver. Comments and applications for membership on the committee must be submitted by February 11, 2024, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at Laurie.Frederick@highered.texas.gov.

TRD-202400247
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: January 24, 2024

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Notice of Intent to Engage in Negotiated Rulemaking-Nursing Scholarship Program (Texas Public and Independent Institutions of Higher Education)

The Texas Higher Education Coordinating Board (THECB) intends to engage in negotiated rulemaking to develop new rules for the Nursing Scholarship Program in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter R. The new rules in 19 Texas Administrative Code, Subchapter R, are authorized by Senate Bill 25, 88th Texas Legislature, Regular Session (2023).

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas public and independent institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process or nominate a representative from their system/campus.

From this effort, 29 individuals responded (out of approximately 211 affected entities) and expressed an interest to participate or nominated a representative from their system/institution to participate on the negotiated rulemaking committee. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee:

1. Public community colleges;

2. Public universities;

3. Public health-related institutions;

4. Public technical colleges;

5. Public state colleges;

6. Independent institutions; and

7. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 17 individuals to the negotiated rulemaking committee for the nursing scholarship program to represent affected parties and the agency:

Public Community Colleges

Janena Norris, Associate Vice President, Healthcare Professions, and Chief Nursing Officer, Lee College

Jayson Valerio, Dean, Nursing and Allied Health, South Texas College

Jason Smith, Associate Vice President, Health Science Center, Trinity Valley Community College

Public State Colleges

Melanie James, Nursing Faculty, Lamar State College-Port Arthur (Texas State University System)

Public Technical Colleges

Brandon Hernandez, Dean, Health Sciences, Texas State Technical College

Public Universities

Angela Phillips, Director, Family Nurse Practitioner Program, and Professor, Nursing, West Texas A&M University (Texas A&M University System)

Kathryn Tart, Founding Dean and Professor, College of Nursing, University of Houston (University of Houston System)

Beth Merwin, Dean, College of Nursing and Health Innovation, The University of Texas at Arlington (The University of Texas System)

Public Health-Related Institutions

Lori Franco, Associate Dean, Finance and Administration, School of Nursing, Texas Tech University Health Sciences Center (Texas Tech University System)

Cindy Weston, Founding Dean and Professor, College of Nursing, University of North Texas Health Science Center (University of North Texas System)

Angela Watts, Director, Student Success, School of Nursing, The University of Texas Health Science Center at San Antonio (The University of Texas System)

Independent Institutions

Marcia Straughn, Director, School of Nursing, McMurry University

Claudine Dufrene, Executive Dean and Associate Professor, School of Nursing, University of St. Thomas

Rebekah Grigsby, Dean, Mieth School of Nursing, Wayland Baptist University

Texas Nurses Association

Jack Frazee, General Counsel, Director, Government Affairs

Western Governors University

LaDana Badger, State Director of Nursing

Texas Higher Education Coordinating Board

Charles Contero-Puls, Assistant Commissioner, Student Financial Aid Programs

If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

1. Name and contact information of the person submitting the application;

2. Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;

3. Name and contact information of the person being nominated for membership; and

4. Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for the nursing scholarship program. Comments and applications for membership on the committee must be submitted by February 11, 2024, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at Laurie.Frederick@highered.texas.gov.

TRD-202400248

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: January 24, 2024

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Notice of Intent to Engage in Negotiated Rulemaking-Professional Nursing Shortage Reduction Program (Texas Public and Independent Institutions of Higher Education)

The Texas Higher Education Coordinating Board (THECB) intends to engage in negotiated rulemaking to amend definitions for the Professional Nursing Shortage Reduction Program in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter S, to better align with the General Appropriations Act, House Bill 1, 88th Texas Legislature, Regular Session (2023). The amendments to 19 Texas Administrative Code, Subchapter S, are authorized by Texas Education Code, §61.9624.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas public and independent institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process or nominate a representative from their system/campus.

From this effort, 30 individuals responded (out of approximately 211 affected entities) and expressed an interest to participate or nominated a representative from their system/institution to participate on the negotiated rulemaking committee. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee:

1. Public community colleges;

2. Public universities;

3. Public health-related institutions;

4. Public technical colleges;

5. Public state colleges;

6. Independent institutions; and

7. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 17 individuals to the negotiated rulemaking committee for the professional nursing shortage reduction program to represent affected parties and the agency:

Public Community Colleges

Tetsuya Umebayashi, Vice Provost, School of Health Sciences, Dallas College

Agapito Flores, Dean, Health and Human Service Pathway, Hill College

Tyrone Sharp, Interim Dean, Nursing, Houston Community College

Jayson Valerio, Dean, Nursing and Allied Health, South Texas College

Darla Strother, Dean, Allied Health, Victoria College

Public Technical Colleges

Brandon Hernandez, Dean, Health Sciences, Texas State Technical College

Public Universities

Dean Horsley, Dean and Professor, School of Nursing, Texas A&M University (Texas A&M University System)

Collette Loftin, Associate Department Head, and Professor of Nursing, West Texas A&M University (Texas A&M University System)

Paula Clutter, Interim Dean, School of Nursing, Texas Woman's University

Beth Merwin, Dean, College of Nursing and Health Innovation, The University of Texas at Arlington (The University of Texas System)

Barbara Haas, Dean, School of Nursing, The University of Texas at Tyler (The University of Texas System)

Public Health-Related Institutions

Linda Lane, Assistant Dean, Finance and Administration, School of Nursing, Texas Tech University Health Sciences Center (Texas Tech University System)

Cindy Weston, Founding Dean and Professor, College of Nursing, University of North Texas Health Science Center (University of North Texas System)

Kristen Starnes-Ott, Vice Dean, Academic Affairs, and Professor, School of Nursing, The University of Texas Medical Branch at Galveston (The University of Texas System)

Independent Institutions

Linda Plank, Dean, School of Nursing, Baylor University

Lisa Washington, Chair, Patty Hanks Shelton School of Nursing, McMurry University

Texas Higher Education Coordinating Board

Elizabeth Mayer, Assistant Commissioner, Academic and Health Affairs

If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

1. Name and contact information of the person submitting the application;

2. Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;

3. Name and contact information of the person being nominated for membership; and

4. Description of the qualifications of the nominee to represent the person’s interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for the professional nursing shortage reduction program. Comments and applications for membership on the committee must be submitted by February 11, 2024, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at Laurie.Frederick@highered.texas.gov.

TRD-202400249

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: January 24, 2024

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Notice of Intent to Engage in Negotiated Rulemaking-Rural Resident Physician Grant Program (Texas Public Institutions of Higher Education)

The Texas Higher Education Coordinating Board (THECB) intends to engage in negotiated rulemaking to amend rules for graduate medical education positions in Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter B, to better align with Texas Education Code Chapter 58A, Subchapter E, and the General Appropriations Act, House Bill 1, 88th Texas Legislature, Regular Session, Section 63 (III-69), (2023). The amendments to 19 Texas Administrative Code, Subchapter B, are authorized by Texas Education Code, §58A.081.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas public institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process or nominate a representative from their system/campus.

From this effort, 13 individuals responded (out of approximately 169 affected entities) and expressed an interest to participate or nominated a representative from their system/institution to participate on the negotiated rulemaking committee. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee:

1. Public universities;

2. Public health-related institutions;

3. Public technical colleges;

4. Public state colleges; and

5. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 10 individuals to the negotiated rulemaking committee for the rural resident physician grant program to represent affected parties and the agency:

Public Universities

Courtney Dodge, Associate Dean, Graduate Medical Education, Texas A&M University (Texas A&M University System)

Thomas Mohr, Dean and Professor of Internal Medicine, College of Osteopathic Medicine, Sam Houston State University (Texas State University System)

J. Kevin Langford, Director, Rural Health Initiative, and Associate Professor, Stephen F. Austin State University (The University of Texas System)

Public Health-Related Institutions

J. Edward Bates, Assistant Dean, Graduate Medical Education and Resident Affairs, School of Medicine, Texas Tech University Health Sciences Center (Texas Tech University System)

Lisa Nash, Senior Associate Dean, Graduate Medical Education, University of North Texas Health Science Center (University of North Texas System)

Jonathan E. MacClements, Senior Associate Dean and DIO, Graduate Medical Education, The University of Texas at Austin Dell Medical School (The University of Texas System)

Emmanuel Elueze, Vice President, Medical Education and Professional Development; Designated Institutional Officer; and Professor of Medicine, The University of Texas at Tyler Health Science Center (The University of Texas System)

John P. Walker, Vice Chair, Clinical Operations-General Surgery; Medical Director Perioperative Services; and Professor, Surgery, The University of Texas Medical Branch at Galveston (The University of Texas System)

Michael Hocker, Dean, School of Medicine, and Senior Vice President, The University of Texas Rio Grande Valley-Medical School (The University of Texas System)

Texas Higher Education Coordinating Board

Elizabeth Mayer, Assistant Commissioner, Academic and Health Affairs

If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

1. Name and contact information of the person submitting the application;

2. Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;

3. Name and contact information of the person being nominated for membership; and

4. Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for the rural resident physician grant program. Comments and applications for membership on the committee must be submitted by February 11, 2024, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at Laurie.Frederick@highered.texas.gov.

TRD-202400250
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: January 24, 2024

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Texas Department of Insurance

Company Licensing

Application for OnStar National Insurance Company, a foreign fire and/or casualty company, to change its name to GM National Insurance Company. The home office is in Naperville, Illinois.

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-202400233
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: January 24, 2024

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Texas Lottery Commission

Scratch Ticket Game Number 2554 "50X THE WIN"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2554 is "50X THE WIN". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2554 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2554.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, 10X SYMBOL, 50X SYMBOL, $5, $10, $20, $50, $100, $250, $500, $1,000, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2554 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
50X SYMBOL	WINX50
$5	FIV$
$10	TEN$
$20	TWY$
$50	FFTY$
$100	ONHN
$250	TOFF
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2554), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2554-0000001-001.

H. Pack - A Pack of the "50X THE WIN" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "50X THE WIN" Scratch Ticket Game No. 2554.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "50X THE WIN" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "50X" Play Symbol, the player wins 50 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

D. KEY NUMBER MATCH: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

J. KEY NUMBER MATCH: The "50X" (WINX50) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "50X THE WIN" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "50X THE WIN" Scratch Ticket Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "50X THE WIN" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "50X THE WIN" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "50X THE WIN" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2554. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2554 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	755,200	9.38
$10.00	660,800	10.71
$20.00	188,800	37.50
$50.00	94,400	75.00
$100	23,600	300.00
$250	5,605	1,263.16
$500	1,534	4,615.38
$1,000	120	59,000.00
$5,000	10	708,000.00
$100,000	5	1,416,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.09. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2554 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2554, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202400230
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 24, 2024

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Panhandle Regional Planning Commission

Region 1 Canadian-Upper Red Regional Flood Planning Group Request for Qualifications - 2028 Regional Flood Plan

The Region 1 Canadian-Upper Red Regional Flood Planning Group (RFPG) acting through the Panhandle Regional Planning Commission (PRPC) is seeking proposals to provide professional services to assist in the development of the region's second Regional Flood Plan by January 2028 for the Canadian-Upper Red Flood region (FPR). The successful firm(s) will demonstrate knowledge of large-scale flood planning in general, the specific requirements of flood planning as defined by 31 TAC Chapters 361 and 362.

The Canadian-Upper Red flood planning region (FPR) is one of fifteen across the state of Texas. It is comprised of 44 counties including the entirety of Armstrong, Briscoe, Carson, Childress, Collingsworth, Cottle, Dallam, Deaf Smith, Donley, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Motely, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Wheeler, Wichita, and Wilbarger and partially includes Archer, Baylor, Castro, Clay, Cooke, Crosby, Dickens, Floyd, Hale, King, Knox, Montague, Parmer, Swisher, and Young.

I. Statement of Qualifications - The Canadian-Upper Red RFPG, through the PRPC, is seeking to contract with a competent firm(s) or individual(s), with the necessary credentials and qualifications, that has specific experience and knowledge in providing technical services including research, analysis, and documentation in the field of large- scale flood planning. Please provide with your statement of qualifications including the approach to executing the work associated with this project, a list of at least five (5) projects with a similar scope of work, resumes for team members associated with the project should you receive the contract award, and a list of proposed sub-consultants or team members who are or may be involved in your proposal.

II. Scope of Services - Regional Flood Plan Development a. Consultant will provide all required planning services in accordance with the developed Scope of Work for the Regional Flood Plan except those services that have been specifically exempted. The Scope of Work may be reviewed here: https://www.twdb.texas.gov/flood/planning/doc/2023DraftSOW.pdf?d=9534.899999976158

b. Consultant will provide, at a minimum, monthly reporting to the Region 1 Canadian- Upper Red RFPG on the progress of the regional flood planning effort.

c. Consultant will assist with the adoption of the Regional Flood Plan.

d. Consultant will ensure the Regional Flood Plan adheres to the guidance principles and requirements as defined by 31 TAC Chapters 361 and 362.

III. Submission a. Proposals will only be accepted from firms or individuals having requested an RFQ package. RFQ Packages are available by written request from the Panhandle Regional Planning Commission, contact information below. Faxed or e-mailed requests will be accepted; however, the requesting entity must verify receipt. All inquiries and requests must be directed to the attention of: Jarian Fred, Local Government Services Program Coordinator.

b. The deadline for responses to this request is 5:00 PM, Thursday, February 22, 2024. The statement of qualifications should be no more than 30 pages in length, including cover letter and resumes of project team members. One (1) electronic copy in PDF format of each submittal shall be emailed to Jarian Fred, administrative agent of the RFPG, at the following email address:

Panhandle Regional Planning Commission

Attn: Jarian Fred

Jfred@theprpc.org

Proposals received after the stated deadline will not be considered.

The Canadian-Upper Red RFPG reserves the right to negotiate with any and all individuals and firms that submit proposals and to award more than one contract or to award no contracts. All potential contracts and tasks arising from this RFQ are subject to approval by the Texas Water Development Board and are contingent upon receiving funding from the Texas Water Development Board for the approved tasks.

TRD-202400207
Jarian Fred
Local Government Services Program Coordinator
Panhandle Regional Planning Commission
Filed: January 19, 2024

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Public Utility Commission of Texas

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 18, 2024, to adjust the high-cost support received from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to current rates.

Docket Title and Number: Application of West Texas Rural Telephone Cooperative, Inc. to Adjust High Cost Support Under 16 TAC §26.407(h), Docket Number 56145.

West Texas Rural Telephone Cooperative, Inc. requests a high-cost support adjustment increase of $422,367 in annual high-cost support. According to West Texas Rural Telephone, the requested adjustment complies with the cap of 140% of the annualized support the provider was authorized to receive in the 12 months ending December 31, 2023, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 56145.

TRD-202400232
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 24, 2024

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Texas Water Development Board

Request for Application

Fiscal Year 2024 Agricultural Water Conservation Grants

The Texas Water Development Board requests applications for Fiscal Year 2024 Agricultural Water Conservation Grants. The Texas Water Development Board plans to award up to $1,500,000 in grants from the Agricultural Water Conservation Fund. The rules governing the Agricultural Water Conservation Program may be found in 31 Texas Administrative Code Chapter 367. Due Date (Closing): 2:00 p.m., Wednesday, April 3, 2024. Anticipated Award Date: July 2024. For more information on the Request for Applications and Application Instructions visit:

https://www.twdb.texas.gov/about/contract_admin/request/index.asp

TRD-202400177
Ashley Harden
General Counsel
Texas Water Development Board
Filed: January 18, 2024

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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 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

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 "49 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 49 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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