

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 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) adopts amendments to §83.3002 (relating to Filing of New Application), §83.3007 (relating to Processing of Application), §83.4003 (relating to Denial, Suspension, or Revocation Based on Criminal History), and §83.6007 (relating to Consumer Disclosures) in 7 TAC Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The commission adopts the amendments to §83.3002, §83.3007, and §83.4003 without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6516). The rules will not be republished.

The commission adopts the amendments to §83.6007 with changes to the proposed figures as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6516) and the corrected figures published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6927). The rule will be republished.

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the rule changes to 7 TAC Chapter 83, Subchapter B is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 83, Subchapter B was published in the *Texas Register* on August 4, 2023 (48 TexReg 4283). The commission received no official comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Amendments to §83.3002 update requirements for filing a new CAB license application. Currently, §83.3002(1)(A)(ii) requires a CAB license application to identify a "responsible person" with substantial management responsibility for each proposed office. The adoption replaces the "responsible person" requirement in §83.3002(1)(A)(ii) with a requirement to list a "compliance offi-

cer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment will enable CABs to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each CAB lists an individual who can be contacted about compliance issues. In addition, an amendment to §83.3002(2)(A)(v) removes language suggesting that CAB license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

Amendments to §83.3007 revise provisions governing the OCCC's denial of a CAB license application. Under Texas Finance Code, §393.603(b), if the OCCC finds that a CAB license applicant has not met the eligibility requirements for a CAB license, then the OCCC will notify the applicant. Under Texas Finance Code, §393.603(c), an applicant has 30 days after the date of the notification to request a hearing on the denial. Amendments at §83.3007(d) specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §393.603(b). Amendments at §83.3007(e) revise current language to specify that an affected applicant has 30 days from the date of the notice of intent to deny to request a hearing, as provided by Texas Finance Code, §393.603(c). These amendments will ensure consistency with the license application denial process in Texas Finance Code, §393.603. The amendments are consistent with the OCCC's current practice for notifying an applicant of the intent to deny a license application.

Amendments to §83.4003 relate to the OCCC's review of the criminal history of a CAB applicant or licensee. The OCCC is authorized to review criminal history of CAB applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code, §411.095. The amendments to §83.4003 ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included a change to Texas Occupations Code, §53.022 relating to factors considered in determining whether an offense relates to the duties and responsibilities of the licensed occupation. Amendments to §83.4003(c)(2) implement this statutory change from HB 1342. An amendment to §83.4003(d) corrects an internal cross-reference in the rule.

Amendments to the figures accompanying §83.6007 revise the model forms for the consumer cost disclosure used by CABs. The amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. The amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2022 quarterly and annual reports provided by CABs to the OCCC.

Since the proposal, additional changes have been made to the figures to improve formatting and ensure that the figures can be effectively used as fillable forms on the OCCC's website.

The commission and the OCCC will allow a delayed implementation date of September 1, 2024, for all licensees to provide the amended versions of the disclosures under §83.6007. From the rule's effective date through August 31, 2024, licensees may provide consumers with either the previous versions of the disclosures or the amended versions. Starting on September 1, 2024, licensees must provide the amended versions. Regardless of which version of the forms they use, licensees must ensure that their disclosures comply with all requirements in Texas Finance Code, §393.223 and the rule text of §83.6007 and §83.6008 (relating to Permissible Changes). In particular, licensees must ensure that they: (1) use the disclosure corresponding to the correct product (e.g., multiple payment payday loan), (2) provide the disclosure at a time that is both before a credit application is provided and before a financial evaluation occurs, and (3) ensure that the disclosure is completed with all required information.

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3002, §83.3007

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2024.

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Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

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Proposal publication date: November 10, 2023

For further information, please call: (512) 936-7660



DIVISION 4. LICENSE

7 TAC §83.4003

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

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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DIVISION 6. CONSUMER DISCLOSURES AND NOTICES

7 TAC §83.6007

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.6007. *Consumer Disclosures.*

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(a)

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(b)

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(c)

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(d)

(e) Consumer disclosures required for three to five common examples. For the three to five examples of the most common loans transacted by a credit access business as utilized under §83.6004 of this title (relating to Fee Schedule Content), the business must develop a consumer disclosure for those loan amounts, including appropriate fee information. Three to five examples must be developed for each payday or auto title product sold by the business (e.g., three single payment payday examples of \$300, \$500, and \$700; three multiple payment auto title examples of \$1,000, \$1,500, and \$2,500). The credit access business should provide the consumer with the example form

for the product and amount that most closely relates to the consumer's loan request.

(f) Internet sales. A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. Access to the required disclosure must be clearly visible upon the consumer's arrival at the website. If a consumer is directed to a credit access business's website by another commercial entity that is not required to be licensed as a credit access business, then the credit access business's website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure as outlined in subsections (a) - (d) of this section. The direct link to the consumer disclosure must be provided before the consumer is required to verify previously provided information, and before the consumer is required to provide additional information.

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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.123

The Texas State Library and Archives Commission (commission) adopts amendments to §7.123, General. The amendments are adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6844). The rule will not be republished.

The amendments are necessary to correct a reference to another commission rule and to update the commission's rule regarding records destruction by local governments and elected county officers based on a recent legislative change.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.158, which directs the commission to adopt records retention schedules for each type of local government by rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 10. ARCHIVES AND HISTORICAL RESOURCES

13 TAC §10.4

The Texas State Library and Archives Commission (commission) adopts an amendment to §10.4, Reappraisal and Deaccessioning of Items. The amendment is adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6846). The rule will not be republished.

The amendment is necessary to enable commission staff to weed out duplicates of items in the State Archives when they are located within a single records series or collection, enabling staff to manage and process the collection more efficiently. The amendment to §10.4 adds a clause to subsection (b)(3) to clarify that deaccession may be an appropriate option for items that are duplicates of other items in the State Archives if the duplicates are found within records of a separate state agency or a separate non-state agency collection.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed amendment.

STATUTORY AUTHORITY. The amendment is adopted under Government Code, §441.190; which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital state records; Government Code, §441.193, which authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission; and Government Code, §441.186, which authorizes the state archivist to remove the designation of a state record as an archival state record and permit destruction of the record under rules adopted under Chapter 441, Subchapter L.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2024.

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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 I. TRANSMISSION AND
DISTRIBUTION**

**DIVISION 1. OPEN-ACCESS COMPARABLE
TRANSMISSION SERVICE FOR ELECTRIC
UTILITIES IN THE ELECTRIC RELIABILITY
COUNCIL OF TEXAS**

16 TAC §25.195

The Public Utility Commission of Texas (commission) adopts amended 16 Texas Administrative Code (TAC) §25.195, relating to Terms and Conditions for Transmission Service. The commission adopts this rule with changes to the proposed text as published in the December 15, 2023 issue of the *Texas Register* (48 TexReg 7264). The rule will be republished. The adopted rule implements Public Utility Regulatory Act (PURA) §35.004, enacted as House Bill 1500, §9, which requires the commission to develop a reasonable allowance applicable to generation resources interconnecting directly with the ERCOT transmission system at transmission voltage after December 31, 2025.

Under the adopted rule, interconnections at or below 138 kilovolts (kV) will initially have an allowance of \$14,000,000. Interconnections above 138 kV will initially have an allowance of \$20,00,000. The initial allowance amounts were determined based on the historical costs of each interconnection that became energized on or after September 1, 2019, through October 11, 2023, as disclosed by the 12 transmission service providers (TSPs) with the highest transmission cost of service for the 2022 calendar year. Each allowance tier amount will be adjusted annually on a year-over-year basis for inflation based on the national Consumer Price Index published by the United States Bureau of Economic Analysis.

The commission received comments on the proposed rule from: the Advanced Power Alliance and the American Clean Power Association (APA and ACP); AEP Texas Inc. and Electric Transmission Texas, LLC (collectively, AEP); Apex Clean Energy and Cypress Creek Renewables (ACE and CCR); CenterPoint Energy Houston Electric (CenterPoint); the City of Houston; the City of San Antonio City Public Service Board (CPS Energy); Hunt Energy Network, LLC (HEN); the Lower Colorado River Authority Transmission Services Corporation (LCRA); the Office

of Public Utility Counsel (OPUC); Oncor Electric Delivery Company, LLC (Oncor); Sharyland Utilities, LLC (Sharyland); the Lone Star Chapter of the Sierra Club (Sierra Club); the Solar Energy Industries Association (SEIA); the Texas Advanced Energy Business Alliance (TAEBBA); Texas Competitive Power Advocates (TCPA); Texas Electric Cooperatives, Inc. (TEC); Texas Industrial Energy Consumers (TIEC); Texas Public Policy Foundation (TPPF); Texas Public Power Association (TPPA); Texas Solar Power Association (TSPA); Texas-New Mexico Power Company (TNMP); WattBridge Texas, LLC (WattBridge); and Wind Energy Transmission Texas, LLC (WETT).

Generation Interconnection Allowance Methodology

Historical generation interconnection costs

To accomplish the directives of PURA §35.004, the commission studied historical generation interconnection costs including which elements of a generation project most significantly contributed toward interconnection costs. Specifically, commission staff issued a request for information to the 12 transmission service providers (TSPs) with the highest approved transmission cost of service amounts as of early 2023. The requested data related to generation interconnection projects energized on or after September 1, 2019, through October 11, 2023, the date the request was filed in project number 55566.

In the interest of transparency, the interconnection cost data received from the TSPs was compiled by commission staff and filed in project number 55566 on November 2, 2023. The following information was provided by the TSPs and reviewed by commission staff for each generation interconnection project: generator resource type (i.e., solar, wind, battery, natural gas) and capacity in megawatts (MW), the resource type and capacity in MW of any co-located generation, the interconnection voltage level, the cost uplifted to transmission cost of service (TCOS), transmission line buildout in miles, the cost of transmission line buildout, site type (whether the interconnection site was new ("greenfield") or pre-existing ("brownfield")), the county the generator was interconnected in, and energization date.

Voltage-based allowance

After compiling the data provided by the TSPs, commission staff conducted an omnibus test regression analysis to identify factors with a statistically significant impact on the total cost uplifted to TCOS. This test analyzed the following variables: interconnection voltage level, generator resource type, site type, total capacity, and miles of transmission line buildout. Three significant variables were identified: interconnection voltage level, site type, and miles of transmission line buildout. Specifically, interconnecting at a higher voltage level, constructing greenfield sites, and building out transmission lines have a statistically significant correlation with cost.

After considering each of the three significant factors in further detail, the commission determines that voltage is the only appropriate variable - other than cost - that should be considered when setting the level of the allowance. Creating an allowance based on transmission line length or site type could lead to perverse incentives to incur more cost on lengthier transmission lines or on greenfield sites, driving up costs for consumers. Conversely, an allowance based on the interconnection's voltage creates appropriate economic incentives, if set at adequate amounts, and would have other benefits, such as promoting line loss reduction and fully utilizing the state's transmission grid.

Two-tiered allowance

To incorporate voltage into the allowance, the commission sets a two-tiered allowance. The first tier is for interconnections at or below 138 kVs. The second tier is for interconnections above 138 kVs. A single allowance, depending on the amount, could artificially distort incentives to interconnect at a higher or lower voltage, or cover too great a proportion of costs for all generation interconnections, and therefore not accomplish the statute's intent. For example, the data from TSPs revealed that, on average, high-voltage interconnections are significantly more costly than low-voltage interconnections. Therefore, using a single allowance amount for all projects risks only high-voltage interconnections incurring out-of-pocket costs, thereby disincentivizing these types of projects and not incentivizing siting discipline for low voltage interconnection.

Allowance Level

As previously noted, prior to the commission's formal publication of its proposed rule, commission staff published questions for stakeholder feedback on what the commission should consider when setting the allowance. Commission staff further posted a discussion draft and hosted a workshop on November 7, 2023, to receive further public input on the design of the allowance, commission staff's discussion draft, and the TSP-provided data.

Many commenters highlighted the benefits of interconnecting within the ERCOT region compared to other independent system operators. Specifically, the efficiency and speed of ERCOT interconnection queues, incentives to participate in the energy market, and the historical precedent of ratepayers paying for interconnection costs beyond a generator's step-up transformer make a compelling business case for a generator to locate in the ERCOT region. Especially in light of the commission's current focus on resource adequacy, the commission agrees that preserving these benefits, as practicable, is important. Accordingly, the commission sets the initial allowance such that most generator interconnections should be fully covered by the allowance.

In the proposed rule, the commission set the allowance at roughly the 85th percentile of total cost for each voltage level. This corresponds approximately to a \$12,000,000 allowance for interconnections at or below 138kV and a \$22,500,000 allowance for interconnections above 138kV. As discussed in further detail below, some commenters expressed a concern that the large difference between the two tiers of the allowance would create an incentive for all generators to locate on high voltage lines. However, in the data provided by the TSPs, high-voltage interconnections have historically cost an average of approximately \$4,500,000 more than low voltage interconnections. There are also other cost differences associated with connecting at different voltage levels that are borne entirely by the generator (e.g., step-up transformer costs), further increasing the total difference in costs between low and high voltage interconnections.

However, in consideration of the comments filed in response to the proposed rule, and upon further review of updated data provided by the TSPs, the commission determines that raising the proposed allowance for interconnections at or below 138kV to \$14,000,000 and lowering the proposed allowance for interconnections above 138kV from \$22,500,000 to \$20,000,000 will achieve a more desirable outcome. Maintaining a two-tier allowance structure and raising the low voltage allowance amount will ensure that most projects are fully covered by the allowance and will adequately mitigate adverse incentives to interconnect at a higher voltage. Similarly, lowering the high voltage allowance amount to \$20,000,000 appropriately balances the

cost differential between interconnecting at the different voltage tiers with the objective of HB 1500, §9 to recognize the potential to reduce costs to consumers. Overall, this approach will achieve cost savings for customers by incentivizing economic site of generation projects, without impeding the state's pressing resource adequacy goals.

§25.195(a) - Applicability

Proposed §25.195(a) states that the section applies to transmission service providers (TSPs) in the Electric Reliability Council of Texas (ERCOT) region providing transmission service to transmission service customers.

AEP, LCRA, and TNMP recommended revising proposed §25.195(a) to be applicable to generation resources and other transmission service customers because the subject matter of the amended rule expands to the rule's application to generation resources and other transmission service customers. Similarly, TPPA recommended that §25.195(a) should reflect that the rule also applies to ERCOT because §25.195(i) imposes obligations on ERCOT. TPPA alternatively recommended the Commission either direct ERCOT to fulfill the obligations listed under §25.195(i) or open a separate rulemaking. Oncor agreed with other commenters that the applicability section should be more expansive, but alternatively recommended the rule apply to the provision of transmission service as opposed to the entities to which the rule applies.

Commission response

The commission agrees with commenters and adopts Oncor's recommendation to revise the rule such that it applies to transmission service. For clarity, adoption subsection (a) also explicitly references transmission service providers, transmission service customers, and ERCOT.

HEN recommended proposed §25.195 be amended to apply "to all generation resources seeking to participate in the ERCOT wholesale market through SCED dispatch and provision of ancillary services, not just those interconnecting at transmission voltage," namely distributed generation resources. HEN commented that "transmission service" as defined by PURA, expressly includes interconnections at distribution voltage and therefore generators interconnected in this manner should be eligible for an allowance.

Sierra Club, Oncor, TNMP, AEP, TEC and CPS Energy opposed HEN's recommendation on the basis that it is out of scope and stated that PURA §35.004(d-1)-(d-3) only applies to transmission voltage facilities interconnected to the ERCOT transmission system, which excludes distributed energy resources.

Commission response

The commission agrees with Sierra Club, Oncor, TNMP, AEP, TEC, and CPS Energy that HEN's proposal does not align with statute and declines to implement HEN's recommendation. PURA §35.004(d-1) provides that the allowance is only for "transmission-owning utility costs incurred to interconnect generation resources directly with the ERCOT transmission system at transmission voltage" (emphasis added). Distributed energy resources are interconnected at distribution voltage and PURA §35.004(d-1) through (d-3) does not apply to resources connecting at distribution voltage.

§25.195(b)(1) - Definition of "generation resource"

Proposed §25.195(b)(1) defines "generation resource" as a transmission service customer that sells generation at whole-

sale, is interconnected to a TSP's system at a voltage above 60 kV, and is required to execute a standard generation interconnection agreement under this section.

TPPA, TIEC, CPS Energy, LCRA, TCPA, CenterPoint, and OPUC objected to the proposed definition of "generation resource." TPPA, TIEC, and CPS Energy recommended that the commission use a term other than "generation resource" because the proposed term is ambiguous. Specifically, "generation resource" is identical to a term used in the ERCOT Protocols with a different definition. TPPA recommended that the commission replace "generation resource" with the term "electric generating facility" as defined under §25.5(36), relating to Definitions, or the term "generation service" under §25.5(56). TPPA alternatively recommended amending the term "generation resource" to incorporate or refer to either the defined term "electric generating facility" or "generation service." LCRA recommended, and CPS Energy supported, not defining the term "generation resource" and deleting §25.195(b)(1) from the rule for the same reasons as TPPA.

Commission response

The commission agrees with TPPA, TIEC, and CPS Energy regarding the potential for confusion surrounding usage of "generation resource" and changes the defined term to "transmission-level generator" which is not a defined term under §25.5 or the ERCOT Protocols. The commission disagrees with TPPA's recommendations to replace the definition with "electric generating facility" or "generation service" because those terms are overbroad. Specifically, those definitions involve activities beyond the scope of transmission-level generation interconnections such as distributed generation or the retail sale of electricity.

However, the commission agrees with TPPA's alternative recommendation that the defined term should refer to "electric generating facility" as defined under §25.5 in conjunction with other substantive criteria to ensure the definition is limited to entities to which the generation connection allowance applies. The commission defines "transmission-level generator" as a transmission service customer that is an electric generating facility under §25.5, is interconnected to a TSP's system at or above 60 kilovolts (kV), and is located behind one or more unique points of interconnection.

The commission declines to delete the definition as recommended by LCRA and CPS Energy because it is essential to use a defined term to specify applicability.

CenterPoint and OPUC recommended removing the requirement to execute an SGIA from the definition of "generation resource" because it is redundant to the same requirement under proposed §25.195(c). TCPA advocated for replacing the term "generation" in the proposed definition with "electricity" for consistency with PURA and commission rules. TCPA provided redlines consistent with its recommendation.

Commission response

The commission agrees with CenterPoint and OPUC and removes the condition requiring the execution of a SGIA from the definition because it is redundant with the requirement in §25.195(c). The commission accordingly declines to implement TCPA's recommendation regarding replacing "generation" with "electricity" as is unnecessary given the adopted definition.

CenterPoint requested confirmation that it is interpreting the definition of "generation resource" correctly. Specifically, CenterPoint asked whether the definition means a generator with a ca-

capacity rating of greater than one megawatt (MW) interconnecting at transmission and "intends to sell in the ERCOT wholesale market as a generation resource or settlement only generator." Oncor also requested clarification as to whether the rule applies to settlement only generators.

Commission response

The adopted definition is specific to generator interconnections to the ERCOT transmission system at transmission voltage. Therefore, the amount of energy exported in MW and the intention to sell at wholesale is irrelevant. Similarly, whether an entity meets the criteria of one of ERCOT's settlement only generator subcategories is not relevant because the definition omits the requirement to execute an SGIA.

§25.195(b)(2) - Definition of "transmission system upgrade"

Proposed §25.195(b)(2) defines "transmission system upgrade" as any additional transmission facilities or modifications beyond what is required to interconnect a transmission service customer to the transmission system, and which provide benefits to other customers that are independent of the benefit provided by interconnecting the transmission service customer alone.

LCRA, OPUC, APA and ACP, ACE and CCR, and CenterPoint objected to the proposed definition, of "transmission system upgrade." LCRA and OPUC recommended deleting the definition of "transmission system upgrade." LCRA commented that defining "transmission system upgrades" as proposed "opens the door to cost disputes about the nature or classification of benefits that a given transmission system improvement provides" and is neither necessary nor useful for applying the allowance. OPUC stated that the language regarding "provide benefits to other customers that are independent of the benefit provided by the interconnecting transmission customer alone" is ambiguous. Specifically, OPUC explained that it is unclear whether such benefits are related to the interconnecting transmission service customer, or if those benefits are distinguishable from the upgrades a generation resource is responsible for under proposed §25.195(f)(3)(E).

LCRA alternatively recommended, which APA and ACP and CenterPoint supported, abbreviating the definition in a manner that does not "quantify or segregate the benefits to specific types of customers." LCRA emphasized that the definition should focus on the objective qualities relevant to the defined term to avoid contentions over the meaning of "benefit." TIEC specifically opposed LCRA's alternative recommendation because it is appropriate and necessary for implementing the allowance that any definition of "transmission system upgrade" distinguish between benefits to a transmission customer and benefits that accrue to the entire transmission system.

Commission response

The commission declines to delete the definition of "transmission system upgrade" from the proposed rule because it is essential to the application of the allowance. The adopted definition differentiates between baseline facilities or modifications that are strictly necessary for transmission-level generation interconnections within ERCOT and any other facilities or modifications that are not essential for interconnection. For example, changes to power flows on existing transmission lines or those associated with broader transmission grid topology issues may be indirectly caused by the operations of the interconnecting generator but are not strictly necessary for interconnecting the generator. Direct costs will be the responsibility of the interconnecting generator if they exceed the allowance, but indirectly associated costs,

such as congestion-related or reliability-related upgrades, are not the responsibility of the interconnecting generator.

However, in recognition of the inherent ambiguity and difficulties involved with determining "benefit," the commission revises the definition consistent with LCRA's recommendation. The commission defines "transmission system upgrade" as any additional transmission facilities or modifications beyond what is required to interconnect a transmission service customer to the transmission system. The construction of a new substation or modifications to an existing substation is not a transmission-system upgrade under the adopted rule if necessary to interconnect a transmission-level generator.

ACE and CCR recommended, and CenterPoint supported, replacing the phrase "that are independent of" with "in addition to" because any modifications that are not strictly necessary for interconnection can be expected to benefit all transmission service customers, including the interconnecting generation resource. Therefore, such benefits cannot be "independent of" such modifications. ACE and CCR also recommended expanding the definition of "transmission system upgrade" to include modifications to the generation resource's interconnection facilities, provided that such modifications meet the criteria of the rest of the definition.

Commission response

The commission declines to implement ACE and CCR's recommendation regarding "benefits" because that portion of the definition has been removed. The commission disagrees with ACE and CCR that "transmission system upgrade" should be expanded to include the generator's interconnection facilities because this recommendation is inconsistent with the intent of a definition meant to address transmission system upgrades, which are distinct from interconnection facilities. This revision would contradict the statute's intent to limit ratepayer responsibility for excessive interconnection costs.

WETT and TIEC disagreed with other commenters and opposed changing the proposed definition of transmission system upgrade. WETT stated that, under its reading of the proposed definition, "interconnection costs will exclude any station costs that are not required to interconnect the developer, and which provide benefits to other customers independent of the benefit provided by the interconnecting developer" and therefore addresses the sharing of station costs between the initial interconnecting generator and any subsequently interconnecting generators. WETT commented that the allowance should exclude substation costs, or alternatively, account for the cost of one station bay to adequately incentivize new generation and reduce interconnection delays. CenterPoint agreed with WETT that a new substation, except for the part of the substation dedicated solely to the interconnection generation resource (such as a station bay), necessary for interconnection of a generation resource should be a "transmission system upgrade" for purposes of the rule.

TIEC specifically opposed WETT's interpretation of the definition as excluding station costs from the allowance. TIEC emphasized that any definition of "transmission system upgrade" should be narrowly and specifically defined to avoid socializing costs that benefit a single transmission service customer, otherwise the rule would neither incentivize more economic siting by generators nor reduce costs to ERCOT ratepayers.

TIEC opposed WETT's proposal and stated that substation upgrades and associated costs represent the majority of the costs

associated with interconnecting new generation facilities. TIEC noted that the exclusion of these costs from the allowance would fundamentally undermine the effectiveness of the allowance and decrease customer cost savings. TIEC recommended the commission clarify that all interconnection costs that are directly attributable to the new generation interconnection are subject to the allowance.

Commission response

The commission agrees with TIEC that the definition "transmission system upgrade" should be narrowly tailored. The adopted definition appropriately differentiates between new facilities - or modifications to existing facilities - that are not strictly necessary for interconnections within ERCOT and therefore "benefit" the broader transmission system, and those that are more appropriately considered interconnection costs. In this manner the costs of any facilities that qualify as "transmission system upgrades" will not be the responsibility of the interconnecting generator. In response to WETT and CenterPoint, interconnection-related costs exceeding the allowance and associated with a new substation, or modifications to an existing substation, will be the generator's responsibility. For any given transmission-level generation interconnection within ERCOT, the construction of a new substation or modifications to an existing substation are universally necessary to interconnect to the transmission system. Moreover, based on the historical cost data provided by the twelve TSPs with the highest transmission cost of service for the 2022 calendar year, substation costs represent the largest proportion of interconnection costs. Exclusion of such costs from the allowance would require socialization of those costs to all ERCOT ratepayers and undermine the goal of reducing interconnection costs.

§25.195(c) - Interconnection agreement

Proposed §25.195(c) requires a transmission service customer that owns electrical facilities in the ERCOT region to execute a commission-approved SGIA with the TSP to which it is physically interconnected.

AEP, Oncor, TNMP, TEC, Sierra Club, CPS Energy, CenterPoint, TIEC and LCRA recommended revising §25.195(c) to apply only to generation resources because neither the SGIA nor the allowance applies to non-generation transmission service customers such as interconnected load. TEC, Sierra Club, and CPS Energy also opposed the use of the term "transmission service customer" on the basis that it would impermissibly expand the requirement to use the SGIA to include a municipally owned utility (MOU) or electric cooperative which own both generation and transmission. TEC, Sierra Club, TIEC, and CPS Energy noted that this would lead to "absurd results" such as an MOU or electric cooperative executing an SGIA with itself. AEP and Oncor recommended replacing the term "transmission service customer" as used in the sentence requiring the usage of the SGIA in §25.195(c) with "generation resource or TSP" or "power generation companies, exempt wholesale generators, and TSPs." AEP and Oncor noted that, the defined term "transmission service customer" under §25.5(140) includes entities other than generation resources such as distribution service providers, river authorities, municipalities, and electric cooperatives. TNMP made the same recommendation as AEP and Oncor but recommended replacing "transmission service customer" with "generation resource." Similarly, TEC recommended appending "that is a generation resource" after "transmission service customer."

Commission response

The commission revises §25.195(c) as recommended by AEP and TEC. However, given the change in terminology from "generation resource" to "transmission-level generator" as described previously, the latter term is used instead.

City of Houston requested clarification regarding whether the SGIA can be modified to account for increased interconnection costs associated with "resilience criteria" and land costs that the allowance amounts in the proposal would not cover. City of Houston cited the language in proposed §25.195(c) that authorizes modifications to the SGIA upon mutual agreement of the parties to address specific facts presented by a particular interconnection request. TIEC commented that allowing modifications to the SGIA in the manner City of Houston recommends is tantamount to a good cause exception that would be unnecessarily complex to administer and is otherwise accounted for by market forces.

Commission response

The commission agrees with TIEC that allowing modifications to the SGIA to account for increased interconnection costs associated with certain interconnections would be tantamount to a good cause exception - without commission approval. Accordingly, the commission revises the rule to clarify that such modifications to the SGIA are prohibited.

§25.195(e) - Construction of new facilities

Proposed §25.195(e) requires a TSP, in response to a request for transmission service, to construct or acquire transmission facilities necessary to provide such service, if new transmission facilities or interconnections between TSPs are needed to provide transmission service unless ERCOT identifies an alternative means of providing the transmission service that is less costly, is operationally sound, and is as effective as the new transmission facilities would be at providing the requested transmission service.

Oncor recommended that proposed §25.195(e) should retain the two references to transmission constraints in the existing version of §25.195(c) to ensure the commission's authority to identify system constraints and order new facilities under §§39.157(f), 39.166(b)(1) & 39.203(e) are preserved and clearly stated.

Commission Response

The commission acknowledges its statutory authority to identify transmission constraints and require the construction of new facilities under the PURA provisions cited by Oncor, but declines to implement the recommended changes as they are unnecessary. Transmission constraints are not resolved through the generator interconnection process, but through the ERCOT Regional Planning Group as a Tier 1, Tier 2, or Tier 3 project. Section 25.195 concerns the interconnection of transmission service customers, which does not involve upgrades to the entire ERCOT transmission system, including upgrades to address constraints. Section 25.101, relating to Certification Criteria, more comprehensively enumerates the commission's authority concerning transmission constraints, particularly §25.101(b)(3)(A)(ii) regarding reliability projects.

§25.195(e)(1)(A) and (B) - Deposit or security

Proposed §25.195(e)(1)(A) and (B) specify the procedure for a TSP to return or retain a deposit or security provided by a transmission service customer to cover the costs of planning, licensing, and constructing any new transmission facilities that

will be required to provide the requested service. Proposed §25.195(e)(1)(B) requires any repayment of a cash deposit to include interest at a commercially reasonable rate based on that portion of the deposit being returned.

Oncor and LCRA recommended retaining the language from existing §25.195(c)(1)(B) concerning return of the deposit or security because the amended requirement is ambiguous on that point. Specifically, Oncor and LCRA requested the return of the deposit or security in proposed §25.195(e)(1)(A) be contingent upon the taking of transmission service rather than the completion of the project. Oncor noted that such a requirement has been historical practice and a functional standard for decades without issue. LCRA also recommended striking "new" from "new transmission service customer's" to account for modifications by an existing transmission service customer. If the commission does not re-insert the language, LCRA requested clarification on what "completed" means in the preamble of the rule. LCRA provided redlines for §25.195(e)(1)(A) consistent with its recommendation.

Commission response

The commission agrees with Oncor and LCRA and modifies the proposed rule to include existing §25.195(c)(1)(B) concerning return of the deposit or security.

Oncor and LCRA commented that the separation of proposed §25.195(e)(1)(A) and (B) makes the requirement for the TSP to pay interest on deposits ambiguous because the requirement for the TSP to refund a deposit or security with interest from the existing rule is only included in subsection (e)(1)(B) and not (e)(1)(A). Oncor recommended several alternative revisions such as merging the provisions, duplicating the requirement in proposed (e)(1)(A), or clarifying in proposed (e)(1)(B) that the requirement applies to both subparagraphs.

Commission response

The commission agrees with Oncor and modifies the rule so that the requirement for the TSP to pay interest on deposits applies to both subparagraphs §25.195(e)(1)(A) and (B).

§25.195(e)(3) - TSP cost responsibility for non-generation transmission service customers

Proposed §25.195(e)(3) provides that a TSP is responsible for the cost of installing any new transmission facilities for a transmission service customer that is not a generation resource, other than the costs specified by proposed §25.195(e)(2).

LCRA, Oncor, and AEP recommended modifying §25.195(e)(3) to reflect that TSPs bear cost responsibility for the facilities of a non-generation transmission service customer unless tariff or contractual provisions provide otherwise. LCRA and AEP noted that the TSP is not responsible for such costs due to provisions in a TSPs tariff and transmission service agreements requiring the payment of a CIAC. LCRA remarked that the addition of §25.195(e)(3) would effectively require a TSP to bear the cost of all new transmission facilities for non-generation transmission service customers, which is a significant change in policy and not required by PURA §35.004. LCRA provided redlines for §25.195(e)(3) consistent with its recommendation.

Commission response

The commission agrees with commenters that a TSP bears cost responsibility for certain facilities required to interconnect a non-generation transmission service customer to the extent those costs exceed the allowance provided for in the TSP's transmis-

sion service tariffs, and implements LCRA's recommended language with minor modifications.

§25.195(f)(2) and (3) - TSP cost responsibility prior to and after December 31, 2025

Proposed §25.195(f)(2) provides that a TSP is responsible for the cost of installing any new transmission facilities if the SGIA between the generation resource and the TSP is executed on or before December 31, 2025. Proposed §25.195(f)(3) identifies the cost responsibility of interconnection facilities between the generation resource and TSP after December 31, 2025.

CenterPoint requested confirmation regarding whether, under proposed §25.195(f)(2) and (3), a TSP is responsible for all costs for "transmission system upgrades" as defined under §25.195(b). CenterPoint also requested confirmation that, beginning with SGIAs executed after December 31, 2025, the TSP would be responsible for all transmission facility interconnection costs up to the interconnection allowance amount. Further, CenterPoint requested confirmation that the interconnecting generation resource would be responsible for all transmission facility interconnection costs above the interconnection allowance amount.

Commission response

Consistent with the previous discussion regarding the adopted definition of "transmission system upgrade," CenterPoint's understanding of §25.195(f)(2) and (3) is correct.

TSPA recommended that the rule be clarified to indicate that each point of interconnection a generator connects to is eligible for a separate allowance to "ensure that facilities that have two or more interconnection points will receive a separate allowance for each." TIEC opposed TSPA's recommendation, arguing that each electric generating facility should receive only one allowance, regardless of the number of interconnection points. TIEC continued that if developers could receive allowances for each point of interconnection, it would encourage generators to seek multiple interconnections only for the purposes of the interconnection allowance.

Commission response

The commission declines to provide a separate allowance for each point of interconnection. PURA §35.004 directs the commission to develop an allowance for "costs incurred to interconnect generation resources directly with the ERCOT transmission system." The commission agrees with TIEC, that the allowance should apply to costs associated with the interconnection of each generation resource, rather than each interconnection point.

Oncor and LCRA commented that ERCOT's review of transmission projects does not align with the requirement in §25.195(f)(3) for ERCOT to "deem [transmission system upgrades as] necessary." Accordingly, Oncor and LCRA recommended, and ACE and CCR supported, revising the provision to omit reference to ERCOT deeming transmission system upgrades that occur concurrently with the interconnection as necessary. Oncor and LCRA further recommended incorporating ERCOT's existing review process to prevent ambiguity and unnecessary work by ERCOT. Oncor and LCRA noted that in most cases ERCOT neither reviews nor approves generation interconnections because such projects are the responsibility of the interconnecting TSP. Oncor accordingly noted that the provision as proposed may "impose additional burdens on ERCOT beyond what is necessary to distinguish and review transmission system upgrades separately

from generation interconnection facilities." Oncor provided redlines for §25.195(f)(3) consistent with its recommendation.

Commission response

The commission agrees with commenters and implements Oncor's proposed deletions with minor modifications. The commission declines to refer to ERCOT's specific interconnection process as such processes may change over time and omitting ERCOT from the provision makes such revisions unnecessary.

Sierra Club recommended including language in proposed §25.195(f)(3) that would impose cost obligations on non-generation transmission customers, such as self-generators or loads with emergency backup power. Sierra Club commented that such entities should be responsible for the cost of system-wide transmission upgrades like step-up transformers and protective devices. Specifically, Sierra Club explained that such customers who have "behind-the-meter generation" and provide emergency power to the ERCOT grid should be responsible for the transmission upgrades necessary to interconnect them.

Commission response

As described above, the adopted rule contains a new defined term, "transmission-level generator." This new definition limits the application of the allowance to each "electric generation facility," as defined under §25.5, related to definitions. This approach properly identifies the entities relevant to capture "costs incurred to interconnect generation resources directly with the ERCOT transmission system," as directed by PURA §35.004. To the extent the entities referred to by Sierra Club qualify as electric generation facilities under commission rules, the allowance applies to interconnecting those entities. Entities that are not electric generation facilities are beyond the statutory mandate of PURA §35.004.

OPUC recommended, and ACE and CCR supported, revising the term "transmission system upgrade" used in proposed §25.195(f)(3) to "clarify the responsibility of the TSP for costs of transmission system upgrades that occur contemporaneously with, but are not necessary for, the installation of interconnecting facilities."

Commission response

Per the adopted definition, any facilities or modifications to the transmission system beyond what is required to interconnect a transmission service customer is a "transmission system upgrade." Accordingly, for purposes of §25.195(f)(3), the TSP is responsible for all necessary transmission upgrades, regardless of contemporaneity with the construction or modification of the interconnection.

SGIA amendments

TSPA, ACE and CCR, TCPA, SEIA, and CenterPoint recommended extending the TSP's cost responsibility for installing or modifying transmission facilities subject to an SGIA to amendments of SGIAs that were executed on or before December 31, 2025, regardless of whether the SGIA is subsequently amended after December 31, 2025. Specifically, commenters recommended that if an SGIA was executed on or before December 31, 2025, all cost responsibility for the interconnection should remain with ratepayers, regardless of whether the SGIA is subsequently amended. CenterPoint and Oncor requested clarification regarding whether the period applies to interconnections governed by SGIAs executed on or before December 31, 2025, or after December 31, 2025. TSPA explained that

because planning and financing arrangements are secured far in advance of the completion date of projects, developers should have flexibility to address necessary project changes attributable to current or future conditions. Similarly, TCPA noted that proposed §25.195(f)(3) is unclear whether "executed" includes amendments to existing SGAs. TCPA recommended the provision be clarified to explicitly exclude amendments from being covered by an allowance and only apply an allowance to new SGAs executed after December 31, 2025. TSPA, ACE and CCR, and TCPA provided redlines for §25.195(f)(2) and (3) consistent with their recommendations.

Commission response

The commission agrees with commenters and amends the provision consistent with ACE and CCR's specific recommendation, with minor modifications. Imposing potential interconnection cost responsibility on transmission-level generators for interconnections occurring after December 31, 2025, is consistent with statute. Specifically, HB 1500, §49 requires PURA §35.004, as amended by HB 1500 §9, "apply only to an electric generation facility that executes [an SGA] with a transmission-owning utility after December 31, 2025."

While amendments to an SGA are also "executed," the objective of PURA §35.004 in imposing an allowance is primarily to reduce costs to consumers by imposing generator siting discipline on interconnection costs (including considering whether any upgrades in the next ten years might create additional interconnection costs). A generation facility that has executed an SGA prior to 2026 would, at the time of any amendment, already be interconnected. Therefore, for SGAs executed prior to 2026, the commission does not impose an allowance on amendments executed after December 31, 2026.

ERCOT Full Interconnection Study (FIS) Process

ACE and CCR recommended basing the costs of interconnection facilities for purposes of the allowance on the ERCOT Full Interconnection Study (FIS) process upon completion. ACE and CCR expressed concern that costs of interconnection risk being based on regional studies or analytics that concern more than just the interconnection covered by an executed SGA. ACE and CCR provided redlines for §25.195(f)(3) consistent with its recommendation.

Commission response

The commission declines to implement ACE and CCR's request. The facilities necessary to interconnect a generator are generally determined by the TSP through the Facilities Study, which is a part of the ERCOT FIS. However, some costs in the Facilities Study may only be estimated or only identified after subsequent studies which may drive additional upgrades. It would therefore be imprudent to limit the scope of costs that may be associated with any given interconnection in this manner. Moreover, some subsequent studies such as the Quarterly Stability Analysis are a necessary part of the FIS process, but concern interconnections beyond the one identified by an executed SGA. Accordingly, it is not appropriate to restrict such costs purely on the ERCOT FIS. In any case, restricting costs to those identified in the ERCOT FIS is an unnecessary and artificial constraint that risks excluding costs that otherwise should be included.

§25.195(f)(3)(A)(i) - Generation interconnection allowance

Proposed §25.195(f)(3)(A)(i) establishes two allowance tiers based on voltage. For interconnections of 138kV or less, the proposed allowance was \$12,000,000 and for interconnections

greater than 138kV, the proposed allowance amount was \$22,500,000.

Single allowance tier and amounts

WattBridge, SEIA, TPPF, TCPA, TSPA, CenterPoint, TIEC, ACE and CCR, Sharyland, and APA and ACP recommended changing the allowance from the proposed two-tiered allowance to a single allowance amount that does not consider voltage or any other characteristic of the interconnection. APA and ACP recommended setting the allowance to "at least" \$22.5 million; WattBridge, CenterPoint, ACE and CCR, and Sharyland recommended setting the allowance at \$22.5 million; Sierra Club recommended setting the allowance at \$20 million; TCPA recommended setting the allowance at \$18 million; TIEC recommended setting the allowance at \$17.5 million; and TPPF recommended setting the allowance at \$16 million. SEIA recommended the allowance be set at \$25 million based on Lone Star's comments in response to commission staff's issued questions.

Sharyland, TSPA, and ACE and CCR also expressed that a two-tier allowance based on voltage would be a reasonable alternative. TPPA, Sierra Club, Oncor, LCRA, and AEP expressed no preference regarding whether the allowance should be a single amount regardless of voltage, or two tiers based on voltage. WETT, OPUC, and CPS Energy opposed reducing the allowance to a single amount. TPPA recommended that, if the rule utilizes two allowance tiers based on voltage, the allowance amount for interconnections of 138kV or less should be increased to offset the perverse incentive of a generator interconnecting at a higher voltage for a larger allowance. Commenters expressed varying concerns with two allowances based on voltage and generally agreed that a single allowance would be easier to apply and factor into business planning than a two-tiered allowance based on voltage. WattBridge, WETT, CenterPoint, and APA and ACP cited individual projects that would only partially be covered under the proposed allowance amounts.

Commission response

Based on the data provided by TSPs, voltage is a highly statistically significant indicator of cost that is universal to all interconnections. A single allowance amount that disregards voltage would be inadequate to effectuate the legislative intent of HB 1500, §9 for the allowance to account for "the potential to reduce the costs to consumers of generation interconnection [and] historical generation interconnection costs [emphasis added]." A single allowance at any of the recommended amounts would virtually ensure all generation interconnection costs at 138kV would be covered by the allowance, removing any incentive to economize on the costs of such interconnections. Moreover, a single allowance amount that is too low would excessively disincentivize new generation interconnections at a voltage greater than 138kV. High voltage lines are located throughout the state, including near load pockets such as Houston, and may potentially be utilized even more in the future as the electricity needs of this state grow. Conversely, a single allowance that is too high would cover most, if not all, of a generator's interconnection costs and therefore inadequately serve the goal of delivering cost savings to consumers as the statute requires, and not impose any siting discipline on interconnections to low voltage lines. Accordingly, the commission declines to adopt a single-tiered allowance.

Two-tiered voltage-based allowance amounts

In addition to its \$25 million recommendation for a single allowance, SEIA also recommended increasing the allowance

from the 85th percentile to the 95th percentile, regardless of whether the allowance is a single amount or two tiered. SEIA explained that the allowance should be increased because consumers would benefit from the addition of new generation resources. SEIA further remarked that the allowance should only cover extreme outliers to reduce costs to consumers, and inflation and supply chain issues may materially undermine the value of the allowance to generators. ACE and CCR recommended the amount of the allowance for interconnections at 138 kV or below be increased to the 90th, 95th, or 99th percentile.

SEIA, Sierra Club, TSPA, and ACE and CCR recommended that, if the commission retains a two-tier allowance structure based on voltage, the allowance amount for interconnections of 138kV or less should be increased to \$14 million from the proposed \$12 million to ensure such interconnections are adequately incentivized. CenterPoint recommended raising the 138kV allowance from \$12 million to \$17 million because, for the period covered by the TSP's historical data, that amount is approximately the 95th percentile of CenterPoint's project costs at that voltage. TPPF similarly noted that the proposed allowance amount for interconnections of 138kV or less would disadvantage natural gas generator interconnections. WattBridge, TPPF, TCPA, TSPA, and TIEC generally expressed concern that two allowance tiers could artificially bias siting decisions towards higher voltage interconnections and discussed the need for the allowance to impose siting discipline on generators while maintaining incentives for new generation. TIEC remarked that interconnections of 138kV or less have minimal impact relative to higher voltage interconnections as the primary drivers of interconnection costs per the historical TSP data, and concluded a single allowance would therefore be sufficient.

Commission response

The commission disagrees with SEIA, and ACE and CCR recommendation to increase the proposed allowance tier percentages to the 95th percentile or higher. Raising the allowance tier amounts to those thresholds would cover virtually all interconnections at those voltage tiers and therefore inadequately effectuate the purpose of PURA §35.004. The commission agrees with WattBridge, TPPF, TCPA, TSPA, and TIEC that the proposed allowance risks prejudicing lower voltage interconnections. Accordingly, the commission implements SEIA, Sierra Club, TSPA, and ACE and CCR's recommendation to increase the interconnection allowance amount for interconnections at a voltage of 138kV or less from \$12,000,000 to \$14,000,000. The commission also reduces the interconnection allowance amount for interconnections greater than 138kV from \$22,500,000 to \$20,000,000. Based on data provided by TSPs, the low voltage allowance represents approximately the 89th percentile of all interconnections at that voltage level and the high voltage allowance represents approximately the 80th percentile of all interconnections at that voltage level. As adopted, the dollar difference between the allowances better matches the actual average cost difference between the interconnections at the different voltages based upon the historical cost data received from the TSPs. More closely matching the average interconnection cost difference between the voltage levels by increasing the allowance amount for low voltage interconnections and lowering the allowance for high voltage interconnections mitigates the potential for the allowance to introduce uneconomic incentives regarding choice of interconnection voltage. This will also preserve the consumer cost savings goal of this rule because, as TIEC noted, the historical cost data from TSPs indicates

that the greatest proportion of savings will be recognized at interconnections greater than 138kV.

Statutory interpretation and policy concerns

SEIA, TPPF, ACE and CCR commented that the legislative intent and statutory language of HB 1500, §9 requires a single allowance. SEIA and ACE and CCR did not elaborate on this point. TPPF stated that the allowance should incentivize dispatchable generation and advocated for heightened cost scrutiny of intermittent generation sources.

Commission response

The commission disagrees that statutory language requires a single allowance. PURA §35.004 states that "[t]he commission by rule shall establish a reasonable allowance..." Insofar as commenters recommend a single allowance based on the singular usage of the term 'allowance,' under §311.012(b) of the Texas Code Construction Act, "[t]he singular includes the plural and the plural includes the singular." Following this rule of construction in this context and allowing a two-tiered allowance is particularly relevant considering PURA §35.004's directives that the allowance must consider "historical generation interconnection costs" and "any other factor that the commission considers reasonable to accomplish the goal of this subsection." As previously discussed, historical data shows that voltage is a statistically significant cost driver, and that it would be infeasible to design a single allowance that is meaningful for both high voltage and low voltage lines. Disincentivizing generation from interconnecting at particular voltage levels, as previously noted, would be an unintended consequence of a single-tiered allowance.

Conversely, generation resource type did not correspond with cost in a statistically significant manner. Accordingly, historical generation interconnection costs do not support increased scrutiny of the interconnection costs of intermittent renewable resources, as recommended by TPPF.

Alternative allowance proposals and methodologies

OPUC recommended replacing the proposed two allowance tier amounts with a formula using a cost sharing ratio, which would require a generator to bear 25% of the costs of an interconnection while the TSP bears the remaining 75%. As part of this formula, OPUC recommended retaining the proposed \$12 and \$22.5 million voltage tier amounts, where all costs at or below each amount would be subject to the 25/75 cost sharing formula and any costs exceeding those amounts would be the responsibility of the generator. TEC, TCPA, Oncor, LCRA, TNMP, AEP, and CPS Energy opposed OPUC's recommendation.

Commission response

The commission declines to implement OPUC's proposal as the recommendation would be administratively complex to implement and does not comport with the language of the statute. PURA §35.004(d-1) requires the commission by rule to establish "a reasonable allowance." The term "allowance" and the context in which it is used is unambiguous. Per Merriam-Webster, an "allowance" is "a sum granted as a reimbursement or bounty or for expenses...especially: a sum regularly provided for personal or household expenses" or as "a fixed or available amount."

Similarly, Black's Law Dictionary defines "allowance" as "A deduction, an average payment, a portion assigned or allowed: the act of allowing" (emphasis added). Requiring generators to assume a percentage of costs within the allowance is not consistent with the safe harbor such an allowance is intended to pro-

vide. Moreover, using a pre-determined, predictable allowance strikes an appropriate balance between protecting ratepayers from costs of the most expensive projects, while preserving the current generation-friendly interconnection process for generators that practice good siting discipline. This is especially important to avoid undermining the commission's resource adequacy goals by imposing interconnection costs and associated inconveniences on all new generation.

OPUC alternatively recommended that any given allowance be limited or "capped" by either the interconnecting TSPs "actual cost to design, procure, and construct the interconnection, or on a dollar-per-Megawatt basis." TEC, TCPA, Oncor, LCRA, TNMP, AEP, and CPS Energy opposed both of OPUC's alternative recommendations. TCPA recommended that, if an allowance methodology based on dollar per MW is adopted, the commission should consider the effective load carrying capability (ELCC) of a generator when determining the capacity that would be included in calculating the allowance. TCPA stated that using nameplate capacity could result in a generator qualifying for a higher allowance based on "having a relatively high nameplate capacity even if most of that capacity will never be delivered to load." TCPA commented that such an outcome would neither benefit Texas energy consumers nor effectuate the legislative intent of PURA §35.004. TPPF also argued that an allowance based on ELCC, generation output during peak demand, or fixing the allowance as a percentage of interconnection costs would be inferior to a single allowance amount in reining in high cost outliers.

Commission response

The commission declines to cap the allowance at a TSP's actual costs, because it is unnecessary. The allowance only applies to costs incurred to interconnect a transmission-level generator, and the rule makes it clear that other costs such as those associated with transmission system upgrades are not covered by the allowance, and those associated with generator-side step up transformers remain the responsibility of the generator in all cases.

The commission also declines to implement OPUC's dollar per MW proposal. While the motivating instinct supporting this proposal - that ratepayers should be willing to pay more to get more - is reasonable, it does not align with the statutory intent of PURA §35.004. This provision is focused on reducing costs by incentivizing generators to properly site their units, not incentivizing the interconnection of large units and disincentivizing the interconnection of small units, regardless of location.

Because, as the TSP data demonstrates, capacity of a facility is not a statistically significant cost driver for interconnecting that facility, the primary function behind a per MW allowance would be to impose higher costs on smaller units while effectively exempting large units from the requirements all together - not improve the siting decisions of all units. This is problematic because a unit's size has no relationship to its siting decisions. Furthermore, this could create a significant unintended consequence of disincentivizing new generation in dense load pockets where the construction of larger units may not be plausible.

Furthermore, evidence of the statutory intent behind PURA §35.004 can also be gleaned from the inclusion of a per MW allowance in SB 1287, the predecessor bill to HB 1500, §9. Because this per MW approach was removed from this language before it was added to HB 1500, it is evident that the Legislature considered requiring this approach and elected not to do so.

§25.195(f)(3)(A)(ii) - Generation interconnection allowance adjustment

Proposed §25.195(f)(3)(A)(ii) provides that the allowance amounts under §25.195(f)(3)(A)(i) will, beginning on January 1, 2025, be adjusted annually on or before January 1 for each calendar year. The provision also specifies that, no later than September 1, 2024, the commission will publish the new values of the allowance to be used in the subsequent calendar year.

Allowance adjustment process and public comment

TPPA and Sierra Club requested clarification on the process for adjusting the allowance and recommended allowing public comment on the allowance adjustment, even if a rulemaking is not required. Similarly, CenterPoint requested clarification regarding whether the annual adjustment will be a purely administrative action with no opportunity for comments, evidence, or hearings. CenterPoint requested the location where the adjusted allowance amount will be published, such as in the *Texas Register*, and the form the adjustment will take, such as through a commission order. CenterPoint also recommended deleting "2024" from the publication date in §25.195(f)(3)(A)(ii) and instead stating that "the annual adjustment should be published no later than September 1 of each year, beginning in 2025."

Commission response

The adjustments will be performed administratively, via commission order. Each adjustment will be initiated by a memo filed by commission staff. No hearing will be held, and the adjustment will not require any interested person to submit written statements or evidence. However, any member of the public is permitted to provide comments at the open meetings on any project being taken up at that open meeting. The adjusted allowance amounts will not be published in the *Texas Register* but will be filed by commission staff in a dedicated commission project for that purpose.

Additionally, in recognition of commenter concerns and the statutory requirement for the commission to review the adjustment every five years under PURA §35.004(d-3), the commission adds new §25.195(f)(3)(F), which describes the procedure for that review, including public comment.

Economic index for adjustment

TPPA and TIEC opposed using the NIPA index and recommended an alternative index or no index. TPPA and TIEC noted that since the NIPA index is not a state-specific index, it may not accurately reflect changing costs in Texas, and there may be further Texas-specific concerns that justify the use of a different index or method to update the allowance. TSPA, Sharyland, LCRA, AEP, and CenterPoint recommended using a recognized economic index as a benchmark for allowance adjustments. TPPA recommended using the Handy Whitman Index, which encompasses Texas, Oklahoma, Arkansas, and Louisiana, if the commission determined that a regional index is more appropriate. TIEC also opposed using the NIPA index because it only accounts for transmission structures and does not include land, labor, or equipment. Because of these omissions, TIEC asserted, the NIPA index would be inaccurate for purposes of overall interconnection costs, which involve all four factors. If the commission retains an index to adjust the allowance, TIEC alternatively recommended that the commission use the Consumer Price Index (CPI) or Gross Domestic Price Deflator Index. TIEC proposed basing any adjustment on the selected

index exceeding a certain threshold, such as 20% over a two-year period.

Commission response

The commission agrees with TIEC's alternative recommendation to adopt CPI to adjust the allowance and revises the provision accordingly. CPI is a national index that is frequently used across industries as a key financial benchmark, is free and easily available to the public, and is already referenced in commission rules. As TIEC intimated, CPI includes land, labor, and equipment, and is accordingly more appropriate to use as an index. Regarding a regional index, the commission declines to utilize the Southwest Region CPI in favor of the national CPI. The nationwide index is appropriate given the breadth and complexities involved in utilities' sourcing materials and equipment.

Timeline for adjustment

OPUC recommended adjusting that the allowance every four years to align with the four-year rule-review process under the Texas Administrative Procedure Act (Texas Government Code §2001.039). OPUC recommended adjusting the allowance every five years, per the requirement of PURA §35.004(d-3) for the commission to review the allowance every five years. OPUC stated that an annual adjustment is not needed because most generation resources interconnect at a cost below the proposed allowance amounts. TIEC similarly recommended adjusting the allowance on a three-year basis to avoid unnecessary administrative complexity. TIEC also remarked that inflation would have only a slight impact on the allowance's value and therefore not meaningfully impact interconnection costs that exceed the allowance threshold. TIEC emphasized that predictability and simplicity would help generation developers evaluate financial investments and assist TSPs implement and administer the allowance. TIEC expressed that certain significant market changes, such as hyperinflation, may justify an earlier, interim adjustment, provided that those changes are pre-defined, and interim adjustments are limited. Sierra Club, TSPA, WETT, Oncor, Sharyland, AEP, and CenterPoint opposed OPUC's and TIEC's proposals. These commenters cited concerns regarding inflation and supply chain issues, stating that such issues justify an annual adjustment, and recommended retaining the proposed annual adjustment timeframe in the final rule.

Commission response

The commission agrees with Sierra Club, TSPA, WETT, Oncor, Sharyland, AEP, and CenterPoint and declines to implement OPUC's or TIEC's proposals. The commission also disagrees with TIEC's rationale regarding inflation and declines to implement its proposals for interim updates to the adjustment for extenuating circumstances and for a three-year adjustment period. Since 2020, inflation volatility has been an issue of global concern and could drastically reduce the value of the adjustment if such volatility continues. Per the CPI Inflation Calculator published by the U.S. Bureau of Labor Statistics, a fixed allowance established in January 2019, 2020, or 2021 would have lost at least 15% of its value by December 2023. It is therefore appropriate for the adjustment to occur annually, independent of the review, to efficiently account for uncertain future circumstances that may impact the value of the allowance.

Furthermore, an annual adjustment will prevent unintended consequences that could be associated with a five-year adjustment. As noted, a minor adjustment each year is unlikely to make a material difference in the amount of the adjustment each year. However, an adjustment that is delayed for five years could merit

a 15 percent or more increase at the end of the five-year period. This difference could create an unreasonable incentive to delay construction of new facilities - especially smaller facilities - in years four or five of the review cycle in hopes of benefiting from a larger allowance.

§25.195(f)(3)(A)(ii)(I) - Mechanism for generation interconnection allowance adjustments

Proposed §25.195(f)(3)(A)(ii)(I) specifies that the allowance adjustments will be based on the proportional change from the corresponding 2023 value reflected in the National Income and Product Accounts (NIPA) Seasonally Adjusted Price Index for Private Fixed Investment-Nonresidential Structures for Power and Communication published by the United States Department of Commerce, Bureau of Economic Analysis.

TSPA, AEP, TNMP, SEIA, and CenterPoint commented that the mechanism for revising the allowance using the selected economic index under proposed §25.195(f)(3)(A)(ii)(I) is ambiguous. Specifically, TSPA, AEP, and TNMP noted that the provision is unclear as to whether the change is cumulative year-over-year or if the allowance resets to the 2023-dollar value every calendar year. TSPA also recommended revising proposed §25.195(f)(3)(A)(ii)(I) to clarify that the allowance will be adjusted separately for each year, beginning in 2024, because it is uncertain whether the rule language accounts for the initial 2023-2024 and 2024-2025 adjustments.

Commission response

The commission revises §25.195(f)(3)(A)(ii) to indicate that the adjustment is a cumulative year-over-year change and does not reset to the 2023 dollar value every year, and to account for the pre-2026 adjustments.

§25.195(f)(3)(C) - Application of allowance and CIAC

Proposed §25.195(f)(3)(C) specifies that the allowance amount is the amount that was in effect on the date that the generation resource issued the notice to proceed to the TSP, in accordance with the executed SGIA. Proposed §25.195(f)(3)(C) also requires a generator to be responsible for all costs that exceed the allowance and authorizes a TSP to collect such costs as a CIAC.

CenterPoint recommended replacing "upgrade" with "procuring" in §25.195(f)(3)(C), to be consistent with the last sentence of the provision that references "procuring," and to align with the defined term "transmission system upgrade."

Commission response

The commission agrees with CenterPoint and implements the recommended change by inserting "procure." The commission also rephrases both sentences to refer to construction "or" upgrades, in the alternative, to ensure both circumstances are identified.

§25.195(f)(3)(E) - Cost responsibility for subsequent modifications

Under proposed §25.195(f)(3)(E), a transmission-level generator is responsible costs incurred by a TSP for new or upgraded interconnection facilities required because of modifications made by the generator. However, the generator may use any of its remaining allowance for that site to cover these costs for a period of 10 years.

Sierra Club, CenterPoint, ACE and CCR, APA and ACP, TSPA, and OPUC recommended removing proposed §25.195(f)(3)(E)

because the provision is ambiguous, "resembles a delay-inducing cost-sharing model," and is unsupported by statute. Sierra Club recommended taking up the provision in a separate rule-making or reducing from a ten-year to five-year window. CenterPoint recommended the ten-year period be reduced to three years to account for TSP record retention periods. CenterPoint questioned the ten-year period and commented the provisions are unclear as to whether a generation resource modification is entitled to a new allowance or is limited to any remainder of the original allowance. CenterPoint and SEIA recommended the original allowance apply to "any interconnection facility modifications caused by any post-energization generation modification, regardless of when it occurs," for which the TSP and generation resource execute a new SGIA. Whereas if the generation resource modification does not require a new SGIA to be executed, the TSP is responsible for the cost of any new or upgraded facilities.

ACE and CCR interpreted PURA §35.004(d-1) as only contemplating an allowance applying to the "initial" generator interconnection. Specifically, ACE and CCR stated the allowance does not apply to "new or upgraded interconnection facilities due to modifications made by a generation resource" after the initial interconnection and energization as proposed §25.195(f)(3)(E) provides. ACE and CCR concluded the allowance is limited only to the construction of new facilities and the modification of existing facilities at the time of initial interconnection and energization. Oncor commented that §25.195(f)(3)(E)(ii) is ambiguous because it could be read to allow a generation resource to have all costs for new or upgraded TSP facilities be paid for by the TSP and, therefore, be socialized to the grid through TOCS. Oncor recommended amending the provision to specifically authorize a generation resource's eligibility for a new allowance after the end of the ten-year period. TSPA, ACE and CCR, and Oncor provided redlines consistent with their recommendations.

Commission response

The commission declines to omit §25.195(f)(3)(E) as recommended by Sierra Club, CenterPoint, and ACE and CCR. The provision mitigates the risk of a generator not fully building out the site at the time of the initial interconnection to ensure costs are below the allowance, and then significantly expanding the project knowing its additional costs would be paid for by the TSP and end-use consumers. Even in the absence of such strategic behavior, this provision ensures a generator fully considers the potential costs associated with its siting decision, regardless of whether those costs are immediately incurred. However, commission agrees with Oncor that this provision should be clarified and revises the rule to provide a generator with a new allowance at the end of the ten-year period. Providing a new allowance every ten years encourages economic generator siting by promoting the build-out of an existing project rather than building elsewhere solely to access the full allowance. For this reason, the commission also declines to apply the initial allowance to modifications that require an amended SGIA, regardless of when the modifications are made.

The commission disagrees with ACE and CCR that the allowance is limited only to the initial interconnection and energization due to statutory language. PURA §35.004 applies to "cost required to interconnect generation resources." The statute is silent on whether this includes costs required to keep a generation resource interconnected when the generator's own actions - potentially foreseeable at the time of the initial interconnection - require the TSP to incur additional costs

directly related to the interconnection. PURA §35.004 requires that the allowance take into account "any other factor that the commission considers reasonable to accomplish the goal of this subsection." In order to accomplish the explicit statutory goal of consumer cost savings, the commission considers it reasonable to take into account subsequent modifications made by the interconnecting generator that require TSPs to incur additional costs.

The commission revises the provision to ensure the remainder is cumulatively adjusted year-over-year in the same manner as the allowance would be adjusted under §25.195(f)(3)(A)(ii). This revision will ensure generators receive the maximum benefit of the remainder and avoids penalizing generators for delays in an inflationary environment.

Cost-sharing

TSPA, Sierra Club, SEIA, APA and ACP, ACE and CCR, and CenterPoint recommended addressing cost-sharing between an initial interconnecting generator and subsequent interconnecting generators in the rule and endorsed proposed language provided by TSPA. Oncor neither opposed nor supported the inclusion of a cost-sharing provision, while AEP and TCPA opposed the inclusion of a cost-sharing provision on the basis that it is not required by statute and presents complex and litigious issues. Oncor, AEP, and TSPA recommended that, if the rule includes such a cost-sharing provision, TSPs not be required to be involved as a party between any agreement made between generators.

TSPA recommended adding new §25.195(f), which would, if costs of the initial interconnection exceed 10% of the allowance, authorize an initial interconnecting generator to share costs and receive payments from any subsequent interconnections within a two-year period from the date of energization of the initial project. TSPA recommended establishing shared payments on a pro-rata basis, determined at the end of the two-year period between the two generators with no involvement by the TSP.

Sierra Club recommended a three-to-five-year formula that requires pro-rata contributions from subsequent generators to the initial generator, or to take up the issue in a separate rulemaking alongside proposed §25.195(f)(3)(E). ACE and CCR supported requiring contributions from interconnecting generators for the cost of a new substation or for the cost of a station bay because those costs can be determined on a pro-rata basis. TSPA remarked that requiring cost-sharing among generators is "consistent with commission precedent regarding cost sharing of contributions in aid of construction (CIAC) funded facilities." TSPA provided redlines consistent with its recommendation. WETT commented that "excluding the costs beyond those needed for an individual interconnection from the allowance will greatly assist in avoiding the problem of inequitable investment among developers and alleviate the need for burdensome and potentially contentious cost-sharing arrangements."

Commission response

The commission agrees with AEP and TCPA that a cost sharing mechanism is not required by statute and would introduce added complexity and potentially litigious issues to the interconnection process. Certain costs, such as for a new substation or substation bay, may be suitable for a pro-rata distribution between generators. However, the historical data provided by the TSPs does not provide clear insight into these circumstances. Other aspects of the cost-sharing process, such as the procedure for dispute resolution, are unclear and may create resource-inten-

sive contested cases for little benefit. Accordingly, the commission declines to implement a cost-sharing mechanism for interconnecting generators. If multiple generators seeking to interconnect at the same location are experiencing delays caused by each attempting to avoid incurring a significant interconnection cost, such as the initial construction of a substation, these parties may elect to share the costs by private agreement without the involvement of the commission or the TSP.

LCRA commented that §25.195(f)(3)(E) and its sub-provisions could be interpreted to require the initially-interconnected generator to bear the costs of subsequent interconnections by other generators due to the ambiguity of applying cost responsibility to the "current owner of the interconnected resource." LCRA recommended basing the trigger for determining "new or upgraded interconnection facilities" on whether the ERCOT Planning Guide §5.2.1(1)(c) criteria for a "Generator Interconnection or Modification (GIM) is met." LCRA explained that the cited provision of the ERCOT Planning Guide "defines the requirements and processes used to facilitate new or modified generation interconnections" within ERCOT and therefore should be referenced in this context. LCRA provided redlines consistent with its recommendation.

Commission response

Section 25.195(f)(3)(E) does not contemplate cost-sharing between separate generators. Accordingly, the commission makes clarifying edits to the rule. The commission declines to base "new or upgraded interconnection facilities" on the ERCOT Planning Guide, as requested by LCRA, because the commission has not comprehensively scrutinized the provisions of this guide to ensure it fully captures the intent of this requirement.

TCPA recommended removing §25.195(f)(3)(E) because it is not required by statute and alternatively recommended if it is retained, the allowance not include costs associated with transmission upgrades required to satisfy the obligations under ERCOT Planning Guide 4.1.1.7 relating to Minimum Deliverability Criteria because those upgrades are required by ERCOT, rather than becoming necessary due to modifications by the generation resource.

Commission response

The commission declines to omit §25.195(f)(3)(E) for the reasons stated previously and declines to amend the provision as TCPA recommends because it is unnecessary. This language specifically applies to upgrades required by generator modifications, not upgrades that are required by ERCOT.

§25.195(h) - Filing of contracts

Section 25.195(h) requires TSP to file new interconnection agreements with the commission within 30 days from the date the agreement is executed.

TPPA, TEC, Sierra Club, and CPS Energy recommended exempting municipally-owned utilities (MOUs) and electric cooperatives from the requirement to file the SGIA with the commission under §25.195(h) because the existing filing requirement only applies to "electric utilities" as defined under PURA, which does not include MOUs or electric cooperatives. Commenters noted that, for MOUs and electric cooperatives that own both transmission and generation, no SGIA will be executed because the MOU or electric cooperative is interconnecting within itself using its own system. TPPA also noted that under PURA §40.004(7) and 41.004(5), the commission has limited authority to require reports from MOUs and electric cooperatives, respectively. TPPA

also notes that implementation of PURA §35.004 does not appear to require MOUs and electric cooperatives to submit SGIAs to the commission.

Commission response

The commission agrees with TPPA that the implementation of PURA §35.004 does not require MOUs and electric cooperatives to submit SGIAs to the commission. Accordingly, the commission modifies the rule to require "electric utilities" rather than "TSPs" to file SGIAs with the commission. However, the commission encourages all TSPs to file their SGIAs with the commission, as is common practice for many that are not currently required to do so. The commission does not address the commenter's jurisdictional arguments at this time because it is unnecessary.

§25.195(i) - Generation interconnection costs report

Proposed §25.195(i) requires ERCOT, in consultation with commission staff, to regularly publish a report that includes the generation interconnection costs for each generator interconnection.

Oncor, LCRA, TNMP, AEP, and CPS Energy recommended that proposed §25.195(i) direct TSPs to provide, and ERCOT to publish, the total cost - including the total amount of CIAC paid by the generation resource - for each generator interconnection that begins taking service under an SGIA. Commenters explained it is not necessary for the interconnection cost report to be enacted via an ERCOT Nodal Protocol Revision Request, and that the report could be established more expeditiously through amending the provision. Oncor, TNMP, AEP, and CPS Energy recommended publishing the report annually, beginning in 2027, the calendar year after the allowance goes into effect in 2026. Sierra Club recommended publishing the report quarterly and including aggregated costs by resource type to identify cost differences. WETT opposed changing the report to an annual basis and stated that no additional reporting is required outside of what is provided under the pre-existing GIS report. TPPA proposed the commission direct ERCOT to develop the report at an open meeting or, alternatively, amend the rule to provide for the specifics of ERCOT's obligations surrounding the report. TSPA recommended including interconnection cost information in ERCOT's pre-existing GIS report and suggested that the SGIA should account for and indicate whether any above-allowance costs were incurred for the interconnection. Oncor and TSPA provided redlines consistent with their recommendations.

Commission response

The commission agrees with WETT and declines to change the reporting period under §25.195(i) to an annual basis as recommended by Oncor, TNMP, AEP, and CPS Energy. The pre-existing GIS report is sufficient to account for the costs relevant to the allowance. However, the commission revises the provision to require ERCOT to, on an annual basis, republish the monthly data included in the GIS report from the previous 12 calendar months in a separate report. The commission also agrees that further specificity is required for the monthly data to be included in the GIS report and revises the provision accordingly.

Good cause exception

Oncor, SEIA, ACE and CCR, TCPA, WETT, and CenterPoint recommended a good cause exception, to exceed the allowance, be included in the rule. Oncor, SEIA, and ACE and CCR noted that a good cause exception would be useful when atypically high costs of interconnection are justifiable and are not a function of uneconomic siting by the generation resource, or when unique

circumstances arise that are beyond the control of the generator or TSP. Specifically, Oncor recommended a good cause exception require a joint application between the generator and interconnecting TSP, along with a determination from the commission that extenuating circumstances justify an increased allowance for a particular interconnection project. Oncor explained such a provision is necessary to ensure incentives for certain projects that are priorities of the commission and State of Texas, such as nuclear, are preserved. Oncor provided redlines consistent with its recommendation. TCPA stated that a good cause exception would benefit interconnections that would bear higher costs in high-load service territories. WETT commented that a good cause exception for exceeding the allowance would be consistent with the intent of HB 1500, §9 to reduce interconnection costs to ratepayers and benefit reliability.

Commission response

The commission declines to add a good cause exception to the rule because such a provision would be administratively burdensome to implement, incentivize strategic behavior, and undermine the effectiveness of the allowance. Any interconnection may possess unique features that could be argued to exceed the allowance amounts, and it is unclear what criteria the commission would use to evaluate such requests. Moreover, under PURA §35.004(d-2) "(c)osts in excess of the...allowance...must be directly assigned to and collected from the generation resource...". This statutory language does not contemplate granting exceptions to the standard allowance.

The amended rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §35.004(d) and (d-1)-(d-3) which requires the commission to develop a reasonable allowance applicable to generation resources interconnecting directly with the ERCOT transmission system at transmission voltage.

Cross reference to statutes: Public Utility Regulatory Act §14.001, §14.002, PURA §35.004(d) and (d-1)-(d-3).

§25.195. *Terms and Conditions for Transmission Service.*

(a) **Applicability.** This section applies to the provision of transmission service in the Electric Reliability Council of Texas (ERCOT) region by transmission service providers (TSPs) to transmission service customers. This section also applies to ERCOT.

(b) **Definitions.** The following terms have the following meanings unless context indicates otherwise.

(1) **Transmission-level generator**--a transmission service customer that is an electric generating facility under §25.5 of this title (relating to Definitions), is interconnected to a TSP's system at or above 60 kilovolts (kV), and is located behind one or more unique points of interconnection.

(2) **Transmission system upgrade**--any additional transmission facilities or modifications beyond what is required to interconnect a transmission-level generator to the transmission system. The construction of a new substation or modifications to an existing substation is not a transmission-system upgrade if necessary to interconnect a transmission-level generator.

(c) **Interconnection agreement.** As a condition of obtaining transmission service, a transmission service customer that owns electrical facilities in the ERCOT region must execute an interconnection agreement with the TSP to which it is physically interconnected. The commission-approved standard generation interconnection agreement (SGIA) must be used for the interconnection of a new transmission service customer that is a transmission-level generator. The SGIA may be modified by mutual agreement of the parties to address specific facts presented by a particular interconnection request provided that the modifications do not frustrate the goal of expeditious, nondiscriminatory interconnection and are not otherwise inconsistent with the principles underlying the commission-approved SGIA. The SGIA must not be modified to relieve a transmission-level generator's responsibility for all costs of installing interconnection facilities that are incurred by the TSP that exceed the allowance under subsection (f) of this section.

(d) **Transmission service provider responsibilities.** The TSP must plan, construct, operate, and maintain its transmission system in accordance with good utility practice to provide transmission service customers with transmission service over its transmission system in accordance with Division 1 of this subchapter (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas). The TSP must, consistent with good utility practice, endeavor to construct and place into service sufficient transmission capacity to ensure adequacy and reliability of the network to deliver power to transmission service customer loads. The TSP must plan, construct, operate, and maintain facilities that are needed to relieve transmission constraints, as recommended by ERCOT and approved by the commission, in accordance with Division 1 of this subchapter. The construction of facilities requiring commission issuance of a certificate of convenience and necessity is subject to such commission approval.

(e) **Construction of new facilities.** If new transmission facilities or interconnections between TSPs are needed to provide transmission service in response to a request for such service, the TSPs must construct or acquire transmission facilities necessary to provide the transmission service in accordance with good utility practice, unless ERCOT identifies an alternative means of providing the transmission service that is less costly, is operationally sound, and is as effective as the new transmission facilities would be at providing the requested transmission service.

(1) An affected TSP may require the transmission service customer to pay a reasonable deposit or provide another means of security, to cover the costs of planning, licensing, and constructing any new transmission facilities that will be required in order to provide the requested service. Any repayment of a cash deposit under subparagraph (A) or (B) of this paragraph must include interest at a commercially reasonable rate based on that portion of the deposit being returned.

(A) If the new transmission service customer's interconnection is completed and the transmission service customer begins to take the requested transmission service, the TSP must return the deposit or security to the transmission service customer.

(B) If the new transmission service customer's interconnection is not completed and the new transmission facilities are not required, the TSP may retain as much of the deposit or security as is required to cover the costs the TSP incurred in planning, licensing, and construction activities related to the planned new transmission facilities.

(2) If the TSP's acquisition or construction of the new transmission facilities would impair the tax-exempt status of obligations issued by the TSP then the TSP may require a contribution in aid of construction (CIAC) from the transmission service customer to cover all

or part of the cost of acquiring and constructing the new transmission facilities.

(3) For a transmission service customer that is not a transmission-level generator, the TSP is responsible for the cost of installing any new transmission facilities, other than those provided for in paragraph (2) of this subsection, in a contractual agreement between the TSP and the customer, or in a commission-approved transmission service tariff.

(4) For a transmission-level generator, the costs of installing new transmission facilities must be borne in accordance with subsection (f) of this section.

(f) Cost responsibilities to interconnect transmission-level generators at transmission voltage.

(1) A new transmission-level generator seeking interconnection to a TSP's transmission network is responsible for the cost of installing step-up transformers and protective devices at the point of interconnection capable of electrically isolating the transmission-level generator.

(2) If the SGIA between the transmission-level generator and the TSP is executed on or before December 31, 2025, then the TSP is responsible for the cost of installing any new transmission facilities.

(3) If the SGIA between a transmission-level generator and TSP is executed after December 31, 2025, then the interconnecting transmission-level generator is responsible for all costs of installing interconnection facilities that are incurred by the TSP that exceed the allowance established in accordance with this paragraph. The TSP is responsible for the costs of installing any transmission system upgrades deemed necessary by the TSP.

(A) The allowance will be calculated by the commission as follows:

(i) For a transmission-level generator interconnecting at a transmission voltage of 138 kV or less, the allowance beginning on January 1, 2026, is based on the 2024 amount of \$14,000,000 adjusted for subsequent years consistent with clause (ii) of this subparagraph. For a transmission-level generator interconnecting at a transmission voltage higher than 138kV, the allowance beginning on January 1, 2026, is based on the 2024 amount of \$20,000,000 adjusted for subsequent years consistent with clause (ii) of this subparagraph.

(ii) The commission will increase or decrease the allowance on or before January 1 of each calendar year in accordance with this clause. The commission will publish the new values of the allowance to be used in the subsequent calendar year on or around November 1 of each calendar year.

(I) The annual adjustment will be proportional to the third quarter to third quarter percentage change in the national Consumer Price Index (CPI) published by the United States Department of Labor, Bureau of Labor Statistics.

(II) The executive director must designate a substitute index to be used as a reference for adjustments under this clause if the index referenced by subclause (I) of this clause becomes unavailable.

(B) A transmission-level generator that seeks to interconnect an energy storage resource is only eligible to receive the allowance described under this subsection and not additional allowances provided to interconnect load, such as may be provided under a tariff.

(C) The amount of the allowance that a transmission-level generator is provided to complete the interconnection is the amount that was in effect on the date the notice to proceed with

the interconnection was issued by the transmission-level generator to the TSP in accordance with the executed SGIA. A TSP's costs to procure, design, and construct or upgrade interconnection facilities that exceed the allowance must be directly billed to and collected from the transmission-level generator that caused the costs to be incurred by the TSP. The TSP may collect such costs as a contribution in aid to construction prior to procuring, designing, and constructing or upgrading the interconnection facilities.

(D) Notwithstanding any payments made by a transmission-level generator under this section, an interconnecting TSP retains ownership and control of its transmission facilities.

(E) After the completion and energization of the initial interconnection, the responsibility for costs incurred by a TSP for new or upgraded interconnection facilities due to modifications or expansions made by the interconnected transmission-level generator will be borne in accordance with this subparagraph.

(i) For the ten calendar years following the date of energization for the initial interconnection of the transmission-level generator, and to the extent that the costs of the new or upgraded interconnection facilities needed due to modifications made by the transmission-level generator exceed the remainder of the allowance calculated under paragraph (3) of this subsection, the current owner of the transmission-level generator that is listed in the new or amended SGIA is responsible for the interconnection costs incurred by the TSP, where:

(I) the allowance is the amount that was in effect on the date the notice to proceed with the initial interconnection was issued in accordance with paragraph (3) of this subsection and the executed SGIA; and

(II) the remainder is the difference between the allowance described under subclause (I) of this clause and the actual costs that a TSP incurred to construct, design, and upgrade interconnection facilities to initially interconnect the transmission-level generator. The remainder will be adjusted by the TSP in accordance with the methodology in subparagraph (A)(ii) of this paragraph.

(ii) After ten calendar years from the date of energization for the initial interconnection, the transmission-level generator is eligible for a new allowance determined in accordance with paragraph (3)(A) of this subsection for the costs of new or upgraded interconnection facilities necessary to accommodate modifications made by the transmission-level generator at the same point of interconnection.

(F) Beginning on or around May 1, 2029, and at least every five calendar years thereafter, the commission will open a project and request comments on whether the allowance or annual allowance adjustment methodology described in paragraph (3)(A) of this subsection should be modified. If the commission determines the allowance or the annual allowance adjustment methodology should be adjusted, the commission will initiate a rulemaking proceeding.

(g) Curtailment of service. In an emergency situation, as determined by ERCOT and at its direction, a TSP may interrupt transmission service on a non-discriminatory basis, if necessary, to preserve the stability of the transmission network and service to customers. Such curtailments must be carried out in accordance with §25.200 of this title (relating to Load Shedding, Curtailments, and Redispatch) and in accordance with ERCOT protocols.

(h) Filing of contracts. An electric utility must file with the commission each new, and all amendments to, interconnection agreements within 30 days of execution, including a cover letter explaining any deviations from the commission-approved SGIA. An interconnection agreement is subject to commission review and approval upon request by any party to the agreement. Appropriate portions of the filings

may be filed confidentially and be subject to provisions of confidentiality to protect competitively sensitive commercial or financial information.

(i) Transmission-level generator interconnection costs report. ERCOT must, in consultation with commission staff, include as part of the ERCOT Generation Interconnection Status report or any successor report the generation interconnection costs for each new transmission-level generator interconnected in each calendar month based on date of energization, including the total cost of the interconnection, any CIAC paid by the transmission-level generator, and any above-allowance costs incurred by the transmission-level generator.

(1) Beginning in January 2026, within 90 calendar days from the end of each calendar month the TSP must provide to ERCOT the information described in this subsection for each new transmission-level generator interconnection to the TSP's system in that calendar month.

(2) Beginning in April 2027 and every calendar year thereafter, ERCOT will publish the information described in this subsection in a separate report for each new transmission-level generator interconnection to the ERCOT transmission system in the prior calendar year. ERCOT will, at a minimum, provide the information described in this subsection and total amounts for the prior calendar year.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2024.

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



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §232.7 and §232.11, concerning general certification provisions. The amendments are adopted without changes to the proposed text as published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6322) and will not be republished. The adopted amendments provide minor technical edits to clarify the existing hardship exemption processes established in rule, implement the statutory requirements of House Bill (HB) 2929, 88th Texas Legislature, Regular Session, 2023, and update the continuing professional education (CPE) training requirements to remove the limit on certain professional development hours that can be completed by classroom teachers and school counselors every five years for the purposes of standard certificate renewal.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 232, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements, provide for rules that establish the requirements relating to types and classes of certificates issued, certificate renewal, and CPE.

As a result of the 88th Texas Legislature, Regular Session, 2023, HB 2929 amended Texas Education Code (TEC), §21.054(d) and (f), and added subsection (d-2), removing limits on the number of hours in certain specific topics that classroom teachers and school counselors can obtain in CPE every five years for purposes of certificate renewal.

Following is a description of the adopted amendments to 19 TAC Chapter 232, Subchapter A.

§232.7. *Requirements for Certificate Renewal.*

The adopted amendment to 19 TAC §232.7(b) makes a minor technical edit in the cross reference to paragraphs (1)-(4) to separate criteria in paragraphs (1)-(3) specific to hardship exemption requests due to catastrophic illnesses of the educator or family member and military service from criteria in paragraph (4) specific to a hardship exemption request made by a local education agency on behalf of an educator with an inactive standard certificate due to non-compliance with completion of CPE hours to meet certificate renewal requirements.

The adopted amendment to §232.7(b)(5) adds a cross reference to subsection (b)(4) to confirm that a fee is required only for hardship exemption requests specified in paragraph (4).

§232.11. *Number and Content of Required Continuing Professional Education Hours.*

The adopted amendment to 19 TAC §232.11(d)(3) removes the limit on CPE hours that can be completed by classroom teachers renewing certificates on or after September 1, 2023. The section was updated to align with provisions of HB 2929 that allow classroom teachers to complete at least 25 percent of training hours, including e-instruction, in specified topics and to confirm that hours completed beyond the 25 percent minimum can also be utilized for certificate renewal purposes.

The adopted new §232.11(d)(4) adds that CPE training hours on topics described in §232.11(d)(3) in excess of 25 percent will be counted toward a teacher's overall training requirements.

The adopted amendment to §232.11(f)(2) strikes the September 1, 2024 certificate renewal reference and related requirements on CPE hours for school counselors and updates language to specify that school counselors renewing on or after September 1, 2023, must complete at least 25 percent of CPE hours in specified topics, in alignment with provisions of HB 2929.

The adopted amendment to §232.11(f)(3) strikes paragraph (3), which limits the total number of CPE hours that a school counselor can complete in specific topics if renewing on or after September 1, 2024. The information is no longer applicable and/or needed based on clarifications about CPE training hours provided in HB 2929.

The adopted amendment to §232.11 preserves the discretion for educators in choosing CPE hours while still reminding educators of the significance of these topic areas.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began October 27, 2023, and ended November 27, 2023. The SBEC also provided an opportunity for registered oral and written comments on the proposal

at the December 8, 2023 meeting's public comment period in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of amendments to §232.7 and §232.11 at the February 2, 2024 SBOE meeting.

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.7

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code (TGC), Chapter 2001, and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator (AED); and TEC, §21.0543, which requires the SBEC to propose rules that provide for CPE credit related to digital technology instruction; and Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.003(a); 21.0031(f);

21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054; 21.0541; and 21.0543; and Texas Occupations Code, §55.002 and §55.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497



19 TAC §232.11

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator's contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(7)-(8), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code (TGC), Chapter 2001, and provide for the adoption, amendment, and enforcement of an educator's code of ethics; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; TEC, §21.054(d), as amended by House Bill (HB) 2929, 88th Texas Legislature, Regular Session, 2023, which specifies that subject to subsection (d-2), continuing education requirements for a classroom teacher may not require that more than 25 percent of the training required every five years include instruction in specified topics; TEC, §21.054(d-2), as added by HB 2929, 88th Texas Legislature, Regular Session, 2023, which specifies that training in a topic of instruction described by subsection (d) attended by a classroom teacher in excess of an amount of hours equal to 25 percent of the training required of the teacher every five years shall be counted towards the teacher's overall training requirements; TEC, §21.054(f), as amended by HB 2929, 88th

Texas Legislature, Regular Session, 2023, which specifies that continuing education requirements for a counselor must provide that at least 25 percent of training required every five years include instruction in specified topics; TEC, §21.0541, which requires the SBEC to propose rules that allow an educator to receive credit towards the educator's continuing education requirements for completion of an instructional course on the use of an automated external defibrillator (AED); TEC, §21.0543, which requires the SBEC to propose rules that provide for CPE credit related to digital technology instruction; and TEC, §22.0831(f), which states SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements; and Texas Occupations Code (TOC), §55.002, which states a state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that the individual failed to renew the license in a timely manner because the individual was serving as a military service member; and TOC, §55.003, which states a military service member who holds a license is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to the renewal of the military service member's license.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.003(a); 21.0031(f); 21.031; 21.041(b)(1)-(4) and (7)-(9); 21.054; 21.054(d), as amended by HB 2929, 88th Texas Legislature, Regular Session, 2023; 21.054(d-2), as amended by HB 2929, 88th Texas Legislature, Regular Session, 2023; 21.054(f), as amended by HB 2929, 88th Texas Legislature, Regular Session, 2023; 21.0541; 21.0543; and 22.0831(f); and Texas Occupations Code, §55.002 and §55.003.

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 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

19 TAC §§234.1, 234.3, 234.5, 234.6, 234.9, 234.11

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§234.1, 234.3, 234.5, and 234.6 and new §234.9 and §234.11, concerning military service members, military spouses, and military veterans. The amendments and new rules are adopted without changes to the proposed text as published in the October 27, 2023 issue of the *Texas Register* (48 TexReg 6327) and will

not be republished. The adopted revisions implement Senate Bills (SBs) 422 and 544 and House Bill (HB) 621, 88th Texas Legislature, Regular Session, 2023. The adopted revisions add military service members as being eligible to receive several of the provisions in place for military spouses; add provisions to issue a three-year temporary certificate to eligible military veterans, peace officers, fire protection personnel, and emergency medical services personnel; and also add provisions for the issuance of a one-year temporary certificate to certain instructors for the Community College of the Air Force.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 234 consolidate all military-related provisions into one chapter for all members of the military community (i.e., military service members, military spouses, and military veterans).

The adopted revisions to 19 TAC Chapter 234 implement SBs 422 and 544 and HB 621, 88th Texas Legislature, Regular Session, 2023. Following is a description of the adopted revisions.

§234.1. *Purpose.*

The adopted amendment to 19 TAC §234.1 creates a new subsection (b) that adds peace officers, fire protection personnel, emergency medical services personnel, and qualified instructors for the Community College of the Air Force to these provisions usually dedicated to members of the military community (i.e., military service members, military spouses, and military veterans). The adopted change implements legislation passed during the 88th Texas Legislature, Regular Session, 2023, in a more streamlined manner by placing all the statutory provisions into one SBEC rule chapter. Adopted new subsection (c) was relettered accordingly.

§234.3. *Definitions.*

The adopted amendment to 19 TAC §234.3 expands the section by adding the definitions of the following additional eight terms: permanent change of station order, review of credentials, peace officer, fire protection personnel, emergency medical services personnel, Texas Education Agency (TEA) staff, license, and state agency. These definitions were added to align with provisions in legislation and to offer further clarity in the review and processing of requests from members of the military community and additional groups identified in the most recent legislation passed (e.g., peace officer, fire protection personnel, emergency medical services personnel).

§234.5. *Certification of Military Service Members, Military Spouses, and Military Veterans.*

The adopted amendment to 19 TAC §234.5(a) strikes the language "as soon as practicable" to replace it with "within 30 days of receipt of a complete application" to align with specifications in SB 422 that emphasize the importance of timely review and processing of certification applications submitted by members of the military community.

The adopted amendment to §234.5(b) adds military service members and military veterans to the three-year certificate issuance provisions referenced in this section that are already in place for military spouses following completion of a successful review of out-of-state credentials.

Adopted new §234.5(f) implements provisions from SB 422 to allow a military service member to be issued a three-year temporary certificate upon successful completion of a credentials review or to declare his or her intent to teach in Texas up to three years maximum on a license issued by another state department

of education following TEA's review of his or her credentials and written confirmation of approval. These adopted changes mirror provisions reflected in §234.5(d) and §234.5(e) and established for military spouses in previous legislative sessions.

Adopted relettered §234.5(g) adds military spouses to the provisions already in rule, and the subsequent subsections were relettered, with no additional changes to the rule text.

Adopted new §234.5(m) was added to reference applicability of the permanent change of station order as an acceptable document that can be submitted by members of the military community to establish residency requirements as applicable for certificate issuance and to serve as an acceptable form of identification to approve the military-related fee exemptions and other established provisions for members of the military community.

§234.6. Review of Credentials and Issuance of Licensure to Military Service Members, Military Spouses, and Military Veterans.

The adopted amendment to 19 TAC §234.6(b)(1) adds clarification that a military service member is eligible for issuance of the Texas standard certificate following approval of an exemption from required examinations or after the required state certification examinations have been passed. The adopted amendment also confirms that completion of a criminal background check is also required prior to certificate issuance.

The adopted amendment to §234.6(b)(2)(C) adds clarification that military spouses are eligible for issuance of the Texas standard certificate following approval of an exemption from required examinations or after the required state certification examinations have been passed.

The adopted amendment to §234.6(b)(3) adds clarification that military veterans are eligible for issuance of the Texas standard certificate following approval of an exemption from required examinations or after the required state certification examinations have been passed. The adopted amendment also confirms that completion of a criminal background check is also required prior to certificate issuance.

Adopted new §234.6(c) implements a provision in SB 422 to clarify that a change in the marital status of a military spouse would not impact his or her right to utilize provisions specified in §234.6(b)(2)(A) and (B).

§234.9. Certification of Military Veterans, Peace Officers, Fire Protection Personnel, and Emergency Medical Services Personnel.

Adopted new 19 TAC §234.9(a) - (c) implements provisions of HB 621, 88th Texas Legislature, Regular Session, 2023, to identify military veterans, peace officers, fire protection personnel, and emergency medical services personnel as the population of individuals eligible to receive the three-year temporary certificate and establishes the requirements for certificate issuance.

Adopted new §234.9(d) provides guidance on the process to obtain a Texas standard certificate following expiration of the three-year temporary certificate.

§234.11. Certification of Full-Time Instructors for the Community College of the Air Force.

Adopted new 19 TAC §234.11(a) and (b) implements provisions of SB 544, 88th Texas Legislature, Regular Session, 2023, to identify full-time instructors of the Community College of the Air Force as the population of individuals eligible to receive the one-year temporary certificate and establishes the requirements for

certificate issuance. Adopted new §234.11(c) provides guidance on the process to obtain a Texas standard certificate following expiration of the one-year temporary certificate.

Technical edits were made where applicable to align the singularity of the terms *military service member*, *military spouse*, and *military veteran*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began October 27, 2023, and ended November 27, 2023. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the December 8, 2023 meeting's public comment period in accordance with the SBEC board operating policies and procedures. The following public comment was received on the proposal.

Comment: An individual commented in favor of the proposed revisions to 19 TAC Chapter 234 and recommended that the rule should be extended to all full-time instructors who teach at Texas community colleges, regardless of military service, to provide an opportunity for community college faculty to earn a Texas teaching certificate.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking as 19 TAC Chapter 234 only relates to the licensing of military service members, military spouses, and military veterans.

The State Board of Education (SBOE) took no action on the review of amendments to §§234.1, 234.3, 234.5, and 234.6 and new §234.9 and §234.11 at the February 2, 2024 SBOE meeting.

STATUTORY AUTHORITY. The amendments and new sections are adopted under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0444, as added by House Bill (HB) 621, 88th Texas Legislature, Regular Session, 2023, which creates a temporary certification to teach career and technology education for certain military service members and first responders and requires the SBEC to propose rules for certificate issuance; TEC, §21.052(b-1), which requires the SBEC to propose rules to establish procedures to establish residency and expedite processing of certification applications submitted by a military veteran or military spouse; TEC, §21.052(c), which states the SBEC can specify the term of a temporary certificate issued under this subsection; TEC, §21.052(d-1), which requires the SBEC to issue a three-year temporary certificate to eligible military spouses of active-duty service members; TEC, §21.052(f), which requires the SBEC to maintain an Internet website that outlines the procedures for military community members to obtain certification in Texas; TEC, §21.052(i), which defines active-duty service, lists the branches of the United States armed forces, and confirms the members of the military community eligible for processes established to certify educators from outside the state; TEC, §21.0525, as added by Senate Bill (SB) 544, 88th Texas Legislature, Regular Session, 2023, which creates a temporary teaching certificate for certain persons with experience as instructors for the Community Col-

lege of the Air Force and requires the SBEC to propose rules for certificate issuance; TEC, §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; and TEC, §21.458(a-2), as added by HB 621, 88th Texas Legislature, Regular Session, 2023, which specifies that a school district shall assign a mentor teacher to a classroom teacher who has been issued a temporary certificate to teach career and technology education under TEC, §21.0444, for at least two years; and Texas Occupations Code (TOC), §55.001, which defines key terms and identifies the individuals relevant to the processing and support of members of the military community; TOC, §55.002, which provides clarification and guidelines for implementing fee exemptions for members of the military community; TOC, §55.003, which states military service members are eligible to receive a two-year extension of time to complete requirements for license renewal; TOC, §55.004, which requires state agencies to adopt rules for issuance of licensure to members of the military community and provides alternatives to become eligible for licensure; TOC, §55.004(d), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023, which requires state agencies to adopt rules to allow military service members to use the same options as military spouses to meet the residency and other state-specific requirements for licensure; TOC, §55.0041, as amended by SB 422, 88th Texas Legislature, Regular Session, 2023, which updates the section title to add military service members and include them in all related provisions addressed by this section; TOC, §55.005(a), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023, which specifies that a state agency that issues a license must do so no later than 30 days following the date that a military service member, military veteran, or military spouse applies for licensure; TOC, §55.005, which requires state agencies to establish a process to expedite applications for licensure submitted by members of the military community; TOC, §55.006, which requires state agencies to determine renewal requirements for expedited licenses issued to members of the military community; TOC, §55.007, which provides state agencies authority to credit verified military service, training, or education toward licensing requirements; TOC, §55.008, which authorizes state agencies to credit verified relevant military service, training, or education relevant to the occupation toward the apprenticeship requirements for licensure; TOC, §55.009, which confirms state agencies that issue licensure shall waive license application and examination fees paid to the state for applicable members of the military community; and TOC, §55.010, which requires state agencies to prominently post notification of licensure provisions for military service members, military veterans, and military spouses on the home page of the agency's website.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement Texas Education Code, §§21.041(b)(2) and (4); 21.044(a); 21.0444, as added by HB 621, 88th Texas Legislature, Regular Session, 2023; 21.052(b-1), (c), (d-1), (f), and (i); 21.0525, as added by SB 544, 88th Texas Legislature, Regular Session, 2023; 21.054; and 21.458(a-2), as added by HB 621, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §§55.001; 55.002; 55.003; 55.004(a)-(c); 55.004(d), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023; 55.0041, as amended by SB 422, 88th Texas Legislature, Regular Session, 2023; 55.005(a), as amended by SB 422, 88th Texas Legislature, Regular Session, 2023; 55.005(b); 55.006; 55.007; 55.008; 55.009; and 55.010.

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

State Board for Educator Certification

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.66

The Texas Real Estate Commission (TREC) adopts new 22 TAC §537.66, Standard Contract Form TREC No. 59-0, Notice to Purchaser of Special Taxing or Assessment District, in Chapter 537, Professional Agreements and Standard Contracts, without changes to the rule text, but with non-substantive changes to the form adopted by reference, as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6870). The rule text will not be republished. The revised form adopted by reference is available through the Commission's website at www.trec.texas.gov.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property, although some forms are adopted by the Commission for voluntary use by license holders. Contract forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended the new rule, and the form adopted by reference, in Chapter 537 as a result of statutory changes enacted by the 88th Legislature in HB 2815 and HB 2816.

HB 2815 and 2816 replace the several different disclosure notices related to tax assessments made by water districts with a single notice and provides the language required for the notice. The bills also require the water districts to make their own notice publicly available.

37 comments were received, including from one real estate trade association. Three commenters desired a specific change to the language on the notice itself. Because the contents of the notice are dictated by statute, the committee did not believe such changes could be made and declined to do so.

25 commenters felt the notice was confusing, could be simplified, and/or had general questions or concerns about how the form

would be completed, including concerns about license holders completing the form. The committee agreed that this was a confusing area, but that this is a statutory requirement. The committee also reiterated that water districts are required to make the information in this form available to the public. However, if the district has not made the notice available, this form can be used as a backup, so that a seller can obtain the information from the district and then could use that information to complete the form. Additionally, the committee stated that this form is a seller's disclosure and agents themselves should not be completing the form on behalf of their clients.

Two commenters felt that water districts needed to make the notice available online. The committee noted that many districts are already required to post the notice online.

One commenter suggested the information be added to the Commission's Seller's Disclosure Notice, but was appreciative of the form. The committee noted that this language comes from a different statute than the Seller's Disclosure Notice, but appointed a working group to review the various disclosures offered by the Commission to see if improvements should be made.

Two comments were related to whether this form would apply to public improvement districts or PIDs. The form does not, however, in light of these comments, the committee did decide to add a notice to the top of the form that states it is not to be used for a public improvement district. Similarly, one commenter requested a list of the type of districts this form applied to. The committee agreed that this is a confusing area, but ultimately declined to include such a list because the definition of "district" itself in the statute was complicated and would likely cause more, rather than less, confusion.

Two commenters were generally in favor of the form.

Finally, the MetroTex Association of Realtors had general concerns about the form and the difficulty of obtaining such information. The Association also recommended that the committee add a URL to the Texas Commission on Environmental Quality's website (the agency that regulates water districts in the state) at the top of the form to provide more information regarding water districts. The committee agreed that the process is confusing. The committee discussed adding the link as requested, but had concerns that the information on TCEQ's website might be incomplete or outdated, and ultimately, not helpful and as a result declined to make such a change.

In addition to the changes described above, the committee made the following additional non-substantive changes:

- Reworded the paragraph below the title of the form to further emphasize the seller should use the district's form, if available;
- Added a checkbox to Paragraph 7 and note to complete only if applicable; and
- Revised the form's standard disclaimer.

The committee recommended the Commission adopt the form as modified.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The new rule is also adopted under Texas Occupations Code

§1101.155, which allows the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Broker-Lawyer Committee and adopted by the Commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1203

The Comptroller of Public Accounts adopts amendments to §3.1203, concerning approved seller training programs, without changes to the proposed text as published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 129). The rule will not be republished.

The amendments implement the portion of Senate Bill 248, 87th Legislature, 2021, that requires vendors providing comptroller approved training programs to include training on e-cigarette sales. The comptroller also adopts amendments to require the recertification of approved training programs and to make other minor updates and improve readability.

The comptroller amends the definitions in subsection (a). In paragraph (1), the comptroller removes the definition of "application," which has a plain meaning, and replaces it with the definition of "cigar" from Tax Code, Chapter 155 (Cigar and Tobacco Products Tax). In paragraph (2), the comptroller replaces a reference to the definition of "cigarette" with the actual definition from Tax Code, Chapter 154 (Cigarette Tax). The comptroller adds the definition of "e-cigarette" in paragraph (3) and the definition of "minor" in paragraph (4), both from Health and Safety Code, Chapter 161 (Public Health Provisions), Subchapter H (Distribution of Cigarettes, E-cigarettes, or Tobacco Products) and renumbers the subsequent definitions. The comptroller amends the definition of "second party sales" in renumbered paragraph (5) to prohibit the sale of cigarettes and e-cigarettes that result in the provision of such products to a minor. The comptroller updates renumbered paragraph (6) by replacing the term "this state" with the term "Texas" and to add e-cigarettes to the list of products sold by a "seller." In new paragraph (7),

the comptroller replaces a reference to the definition of "tobacco product" with the actual definition from Tax Code, Chapter 155.

The comptroller amends subsection (b) to include e-cigarette sellers in the list of sellers to whom the training curriculum must be focused.

The comptroller amends subsection (d) to clarify that the sale of cigarettes, e-cigarettes, and tobacco products must be included in the required course curriculum.

The comptroller amends subsection (g) to add that a certification expires if not recertified under new subsection (h).

The comptroller adds subsection (h) to establish recertification requirements for a comptroller approved seller course curriculum. The recertification must be renewed every two years to ensure the training includes any changes made during a legislative session. Subsequent subsections are relettered.

The comptroller amends relettered subsection (o) to remove the telephone contact numbers for class cancellations. The comptroller's webpage on Seller Training Programs is the best resource for current information of this sort.

The comptroller did not receive any comments regarding adoption of the amendment.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments to this section implement Health & Safety Code, §§161.081 (Definitions), 161.0901 (Disciplinary Action against Cigarette, E-cigarette, and Tobacco Product Retailers), and Tax Code, §155.001 (Definitions).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2024.

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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



34 TAC §3.1204

The Comptroller of Public Accounts adopts amendments to §3.1204, concerning administrative remedies for violations of Health and Safety Code, Chapter 161, Subchapter H or K, without changes to the proposed text as published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 129). The rule will not be republished.

The comptroller adopts amendments to implement the portions of Senate Bill 248, 87th Legislature, 2021, that relate to viola-

tions and to provide guidance on the process for a permit suspension or revocation that conforms with applicable laws and current agency practice.

The comptroller amends the name of this section to remove the reference to Subchapter K as this section addresses only Subchapter H violations.

The comptroller adds titles to statutory references and makes minor grammatical revisions throughout the section.

The comptroller amends subsection (a) to add definitions of cigar, cigarette, e-cigarette, e-cigarette retailer, and tobacco products from Health and Safety Code, §161.081 and Tax Code, §154.001 and §155.001. The comptroller amends the existing definitions of place of business and permit holder by replacing the statutory references with definitions, based on similar terms from Tax Code, §154.001, Tax Code, §155.001 and Health and Safety Code §161.001 with the actual statutory definitions. The comptroller amends the definition of retailer to include the concepts in Health and Safety Code, §147.001(3) and §161.081(4) and Tax Code, §154.001(17) and §155.001(14). The comptroller alphabetizes and renumbers the definitions accordingly.

The comptroller adds, as subsection (b), a non-exclusive list of violations that result in disciplinary action. The comptroller reletters subsequent subsections.

The comptroller amends the title and content of relettered subsection (c) to clarify that a violation is *reported* to the comptroller and that the list of people that may report a violation is non-exclusive.

The comptroller amends relettered subsection (d) to implement Senate Bill 248 which repealed the violation provisions in Tax Code, Chapters 154 (Cigarette Tax) and 155 (Cigars and Tobacco Product Tax) and added the updated violation provisions to Health and Safety Code, Chapter 161. The updated provisions extend the look-back violation period from 12 months to 24 months and increase the amount of the fine for each violation that occurs within a specific timeframe.

The comptroller amends relettered subsection (e) to memorialize agency practice regarding the comptroller's notification to a permit holder of a violation of Health and Safety Code, Subchapter H. The comptroller amends the subsection to reflect that the comptroller no longer sends a written notice of a violation by certified mail. The comptroller also amends the subsection to require a permit holder to respond to the written notice of violation within 20 calendar days, rather than 15 calendar days, consistent with current agency practice.

The comptroller amends relettered subsection (f) to provide information on a permit holder's procedures for requesting a hearing. The comptroller also amends the subsection to remove information related to a permit holder's failure to respond to the violation notice which is now in new subsection (g).

The comptroller deletes original subsection (f) as the information is obsolete.

The comptroller removes original subsection (g) regarding the burden of proof in an administrative hearing in its entirety. The burden of proof is addressed in §1.21 of this title (Practice and Procedures).

The comptroller did not receive any comments regarding adoption of the amendment.

The amendments are adopted under Health and Safety Code, §161.0901 (Disciplinary Action Against Cigarette, E-Cigarette, and Tobacco Product Retailers), and Tax Code, §111.002, (Rulemaking Authority), which provides the comptroller with the authority to prescribe, adopt, and enforce procedural and due process rules relating to the administration and enforcement of the provisions of regulation of the tobacco statutes.

The amendments implement Government Code, Chapter 2001 (Administrative Procedures Act); Health and Safety Code, Chapter 161, Subchapter H (Distribution of Cigarettes, E-Cigarettes, Or Tobacco Products); and conforms this section to the relevant portions of 34 TAC §§1.1-1.35 (relating to Rules of Practice and Procedure).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2024.

TRD-202400650

Jenny Burlison

Director, Tax Policy

Comptroller of Public Accounts

Effective date: March 6, 2024

Proposal publication date: January 12, 2024

For further information, please call: (512) 475-2220



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES 37 TAC §15.29

The Texas Department of Public Safety (the department) adopts amendments to §15.29, concerning Alternative Methods for Driver License Transactions. This rule is adopted without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6570) and will not be republished.

The proposed amendment adds applicants convicted of an offense under Penal Code, Chapter 20A, Trafficking of Persons, to those not eligible to renew or apply for a duplicate driver license or identification certificate using an alternative method and must do so in person consistent with Senate Bill 1527, 88th Leg., R.S. (2023).

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005,

which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2024.

TRD-202400657

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 7, 2024

Proposal publication date: November 10, 2023

For further information, please call: (512) 424-5848



CHAPTER 25. SAFETY RESPONSIBILITY REGULATIONS

37 TAC §25.8

The Texas Department of Public Safety (the department) adopts amendments to §25.8, concerning Reinstatement. This rule is adopted without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7877) and will not be republished.

The proposed amendment implements House Bill 3224, 88th Leg., R.S. (2023), by removing the reference to reinstating a suspended motor vehicle registration because the bill removed the ability to suspend a motor vehicle registration for a second conviction of failure to establish financial responsibility, and only a driver license may be suspended under that circumstance.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code and Texas Transportation Code §601.021, which authorizes the department to administer and enforce Chapter 601 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2024.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



CHAPTER 35. PRIVATE SECURITY SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §35.7

The Texas Department of Public Safety (the department) adopts amendments to §35.7, concerning Firearm Standards. This rule is adopted without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6571) and will not be republished.

The proposed amendments authorize the carrying of certain rifles by commissioned security officers and personal protection officers who are licensed Texas peace officers or honorably retired Texas peace officers and make various clarifying changes to other firearm related provisions.

The department accepted comments on the proposed amendments through December 11, 2023. The substantive comments received and the department's responses are summarized below.

COMMENT: The first commenter asks that rifles be allowed for all security officers who provide proof of valid firearm proficiency and knowledge.

COMMENT: The second commenter asks that the department consider adding training requirements that would enable anyone who is licensed as a commissioned security officer or personal protection officer be able to have access to a rifle when performing security services on the property of an educational institution.

RESPONSE: The department carefully considered this issue prior to submission of this rule and determined the changes should be limited to a licensed Texas peace officer or an honorably retired Texas peace officer. However, the department will continue to evaluate this issue and consider further changes in the future. No changes are being made based on the comments received by the department.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2024.

TRD-202400659

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 7, 2024

Proposal publication date: November 10, 2023

For further information, please call: (512) 424-5848



SUBCHAPTER L. TRAINING

37 TAC §35.143

The Texas Department of Public Safety (the department) adopts amendments to §35.143, concerning Training Instructor Approval. This rule is adopted without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6573) and will not be republished.

The proposed amendments implement House Bill 3424, 88th R.S. (2023), which requires applicants for a commissioned security officer license to obtain in-person classroom training in self-defense tactics. The amendments require prospective instructors to have the experience necessary to teach self-defense tactics. Additional changes include an alternative method by which prospective training instructors may qualify for approval to provide instruction and the removal of an outdated requirement relating to required hours of training that is inconsistent with the certifications otherwise required.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702 and §1702.1675(f), which authorizes the Commission to adopt rules necessary to administer training requirements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2024.

TRD-202400660

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 7, 2024

Proposal publication date: November 10, 2023

For further information, please call: (512) 424-5848



CHAPTER 36. METALS RECYCLING ENTITIES

SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §36.60

The Texas Department of Public Safety (the department) adopts amendments to §36.60, concerning Administrative Penalties. This rule is adopted without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7878) and will not be republished.

The proposed amendments remove obsolete language and modify the penalty schedule to implement changes made in rule §36.11 and in Senate Bill 224, 88th Leg., R.S. (2023), amending Occupations Code, Chapter 1956, Metal Recycling Entities.

The department accepted comments on the proposed amendments through January 22, 2024. Written comments relating to §36.60 were submitted by Senator Carol Alvarado, Representative Jeff Leach, and Steve Bresnen on behalf of PGM of Texas in support of the new rule. No changes were made to the proposal based on these comments.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2024.

TRD-202400661
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 7, 2024
Proposal publication date: December 22, 2023
For further information, please call: (512) 424-5848



PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.6

The Texas Board of Criminal Justice adopts amendments to §151.6, concerning Petition for the Adoption of a Rule, without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8184). The rule will not be republished.

The adopted amendments ensure that an economic impact statement will also include the projection of the impact of the rule on rural communities, which mirrors language in Gov't Code §2006.002, *Adoption of Rules with Adverse Economic Effect*.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code § 492.013, which authorizes the board to adopt rules; §492.016, which requires the board to develop and implement policies to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures; §2001.021, which requires state agencies to prescribe the form for a petition and the procedure for its submission, consideration, and disposition; and Chapter 2008, which authorizes a state agency to engage in negotiated rulemaking.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2024.

TRD-202400561
Kristen Worman
General Counsel
Effective date: March 3, 2024
Proposal publication date: December 29, 2023
For further information, please call: (936) 437-6700



37 TAC §151.25

The Texas Board of Criminal Justice adopts amendments to §151.25, concerning Tobacco and Vapor Products, without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8185). The rule will not be republished.

The adopted amendments are minor word changes.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and §494.010, which establishes requirements for designated locations for the use of tobacco products by employees.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2024.

TRD-202400564
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Effective date: March 3, 2024
Proposal publication date: December 29, 2023
For further information, please call: (937) 437-6700



37 TAC §151.71

The Texas Board of Criminal Justice adopts amendments to §151.71, concerning Marking of Texas Department of Criminal Justice Vehicles, without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8186). The rule will not be republished.

The adopted amendments provide an additional exemption to include vehicles used primarily for administrative purposes and assigned to TDCJ officials holding administrative positions, as determined by the executive director, for which confidentiality is necessary to prevent undue risk of danger or injury to TDCJ officials operating those vehicles or damage to the vehicle, and other minor word changes.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and Texas Transportation Code §§721.002-.003, which establish

guidelines and provide exemptions for inscription requirements on state-owned motor vehicles.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2024.

TRD-202400562

Kristen Worman

General Counsel

Texas Department of Criminal Justice

Effective date: March 5, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 437-6700



CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER D. OTHER RULES

37 TAC §152.51

The Texas Board of Criminal Justice (board) adopts amendments to §152.51, concerning Authorized Witnesses to the Execution of an Inmate Sentenced to Death, without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8187). The rule will not be republished.

The adopted amendments remove the requirement for witnesses to be on the approved inmate's visitor list; add a requirement that an inmate submit a request in writing to the death row unit warden to have a TDCJ chaplain or the inmate's spiritual advisor present inside the execution chamber within 30 days of being notified of an execution date and explain in writing what actions the inmate requests the spiritual advisor to perform; added that the spiritual advisor shall have an established ongoing spiritual relationship with the inmate demonstrated by regular communications or in-person visits prior to the inmate's scheduled execution date, or must be currently employed as a TDCJ chaplain; removed language that required the spiritual advisor shall be a bona fide pastor or comparable official, such as a minister, priest, or rabbi, of the condemned inmate's elected religion; and clarify other current practices.

The board received comments on the proposed amendments from one commenter.

General Comments

The commenter asserts that the proposed amendments are not within the TBCJ's authority to adopt.

Section 152.51(b)(4)

Proposed §152.51(b)(4) states that the spiritual advisor shall be a licensed or certified pastor or comparable official, such as a minister, priest, or rabbi, of the victim's or close relatives' religion.

The commenter argues that Texas law does not require any clergy to be licensed or certified, and that the amendment violates the U.S. Constitution.

TBCJ Response

TBCJ declines to modify the proposed rule because the proposed amendment replaces the terminology "bona fide" pastor or comparable official, to use more commonly understood language of "licensed or certified." This generic terminology merely recognizes that some religious organizations grant a license or certificate of their religious officials. There is no change to the intent of the rule as a result of the proposed amendment.

Section 152.51(c)(1)(D)

Proposed §152.51(c)(1)(D) adds new language requiring that the spiritual advisor must be currently employed as a TDCJ chaplain or have an established ongoing spiritual relationship with the inmate as shown by regular communications or in-person visits with the inmate prior to the inmate's scheduled execution date.

The commenter argues that the requirement of an established ongoing spiritual relationship is vague, unenforceable, and violates the Establishment Clause.

TBCJ Response

The TBCJ declines to modify the proposed amendment because this requirement allows an inmate to exercise his religious rights by having the inmate's chosen spiritual advisor attend the inmate's execution. The proposed language also specifies that an inmate may demonstrate an ongoing spiritual relationship with the inmate's spiritual advisor through regular communications or in-person visits. For these reasons, the requirement is not vague or unenforceable, and no Establishment Clause violation occurs.

All comments, including any not specifically referenced herein, were fully considered by TBCJ.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and Texas Code of Criminal Procedure Art. 43.20, which establishes persons that may be present at an execution.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2024.

TRD-202400563

Kristen Worman

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (936) 437-6700

