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 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 51. DEPARTMENT ADMINISTRATION

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts rule changes in Chapter 51: repeals in Subchapter A (§§51.1 - 51.4), Subchapter D (§§51.300 - 51.304), Subchapter E (§§51.400 - 51.405), and Subchapter F (§§51.500 - 51.506); amendments in Subchapter B (§51.100) and Subchapter C (§51.200); and new rules in Subchapter A (§§51.1 - 51.5). The commission's proposal was published in the May 9, 2025, issue of the *Texas Register* (50 TexReg 2735). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The adopted rules are the product of SML's rule review of 7 TAC Chapter 51, Department Administration, conducted in accordance with Government Code §2001.039. The preexisting rules in Chapter 51 establish various requirements concerning SML's administrative processes and procedures.

Changes Concerning the Reorganization of Chapter 51

SML has determined it should reorganize its rules in 7 TAC Chapter 51 by relocating the preexisting rules in Subchapter E, Mortgage Grant Fund, to Chapter 52, a vacant chapter. SML has further determined it should relocate the preexisting rules in Subchapter D, Recovery Fund, and Subchapter F, Mortgage Grant Fund: Recovery Claims for Unlicensed Activity, to Chapter 53, a vacant chapter. The adopted rules effectuate these changes.

Changes Concerning Consumer Complaints (Subchapter A)

The preexisting rules in Chapter 51, Subchapter A, Complaints, govern SML's administration of Finance Code §13.011, requiring SML to maintain a system to act on consumer complaints, and establish processes and procedures used by SML to process those complaints. The adopted rules: in §51.1, Purpose, clarify the purpose of the rules in Subchapter A; in §51.2, Definitions, adopt new definitions for "Consumer Responsiveness Unit," "respondent," and "SML," and eliminate the definition for "Department"; in §51.3, Computation of Time, clarify how time periods measured in calendar days are computed; in §51.4, Processing Inquiries and Complaints, clarify SML's processes and procedures for processing inquiries and complaints, reduce the time period during which a complainant is allowed to request reconsideration of the disposition of their complaint from 90 days to 60 days, establish a four-year limitations period to file a complaint, and clarify that SML will make reasonable efforts to resolve a complaint within 120 days after the date the complaint is received instead of within 90 days after the date the complaint investigation is complete.

Changes Concerning Hearings and Appeals (Subchapter B)

The preexisting rules in Chapter 51, Subchapter B, Hearings and Appeals, establish procedural requirements for contested cases and augment the commission's rules in 7 TAC Chapter 9, Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings. The adopted rules: in §51.100, Appeals, Hearings, and Informal Settlement Conferences, clarify that the rules of the State Office of Administrative Hearings (SOAH) apply to contested cases referred to SOAH, and clarify that an appeal for judicial review must be brought in a district court in Travis County, Texas.

Changes Concerning Advisory Committees (Subchapter C)

The preexisting rules in Chapter 51, Subchapter C, Advisory Committees, govern advisory committees created by SML under Finance Code §13.018, allowing SML to appoint advisory committees to assist in discharging its duties. SML has one advisory committee created under Finance Code §13.018 - the Mortgage Grant Advisory Committee (MGAC) - to assist in administering the mortgage grant fund grant program under Finance Code Chapter 156, Subchapter G. The adopted rules: in §51.200, Advisory Committees, change the date on which advisory committees created under Finance Code §13.018 are abolished from September 1, 2031 to September 1, 2030, to align more closely with SML's schedule for rule review, list the MGAC as an advisory committee subject to the rule, and remove references to the mortgage industry advisory committee created under Finance Code §156.104 which is not subject to the rule since it is not created under Finance Code §13.018.

Other Modernization and Update Changes

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

SUBCHAPTER A. COMPLAINTS

7 TAC §§51.1 - 51.4

Statutory Authority

The rules are adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice

stating the nature and requirements of all available formal and informal procedures; Finance Code §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks; Finance Code §156.102(a), authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act; Finance Code §157.0023(a), authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; Finance Code §158.003(b), authorizing the commission to adopt and enforce rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act; Finance Code §159.108, authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 159, Subchapter C; Finance Code §180.004(b), authorizing the commission to implement rules necessary to comply with Finance Code Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act); and Finance Code §180.061(5), authorizing the commission to adopt rules establishing requirements for investigation and examination authority for purposes of investigating a violation or complaint arising under the Texas SAFE Act. The rules are also adopted under the authority of, and to implement, Finance Code §§11.307, 13.011, 156.301, 157.0022, 157.009, 157.021, 157.026, 158.059, and 158.102.

The adopted rules affect the statutes in Finance Code: Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

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 June 20, 2025.

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

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7 TAC §§51.1 - 51.5

Statutory Authority

The rules are adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks; Finance Code §156.102(a), authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act; Finance Code §157.0023(a), authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; Finance Code §158.003(b), authorizing the commission to adopt and enforce rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act; Finance Code §159.108, authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 159, Subchapter C; Finance Code §180.004(b), authorizing the commission to implement rules necessary to comply with Finance Code Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act); and Finance Code §180.061(5), authorizing the commission to adopt rules establishing requirements for investigation and examination authority for purposes of investigating a violation or complaint arising under the Texas SAFE Act. The rules are also adopted under the authority of, and to implement, Finance Code §§11.307, 13.011, 156.301, 157.0022, 157.009, 157.021, 157.026, 158.059, and 158.102.

The adopted rules affect the statutes in Finance Code: Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

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

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SUBCHAPTER B. HEARINGS AND APPEALS

7 TAC §51.100

Statutory Authority

The rule is adopted under the authority of Government Code: §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and §2009.051(c), authorizing a state agency to adopt alternative dispute resolution procedures by rule. The rule is also adopted under the authority of, and to implement, Finance Code §§13.017, 66.107, 96.107, 156.209, 156.302, 156.303, 156.401, 156.406, 156.504, 157.009, 157.010, 157.017, 157.023, 157.024, 157.026, 157.031, 158.059, 158.105, 158.059, 159.301, and 180.202.

The adopted rule affects the statutes in Finance Code Title 3, Subtitles B and C; and Chapters 13, 156, 157, 158, 159, and 180.

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

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SUBCHAPTER C. ADVISORY COMMITTEES

7 TAC §51.200

Statutory Authority

The rule is adopted under the authority of Government Code §2110.008, authorizing a state agency that has established an advisory committee to designate, by rule, the date on which the committee will be automatically abolished. The rule is also adopted under the authority of, and to implement, Finance Code §13.018.

The adopted rule affects Finance Code §13.018.

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

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SUBCHAPTER D. RECOVERY FUND

7 TAC §§51.300 - 51.304

Statutory Authority

The rules are adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.102(b-1), authorizing the commission to adopt rules to promote the fair and orderly administration of the recovery fund under Finance Code Chapter 156, Subchapter F, Recovery Fund. The rules are also adopted under the authority of, and to implement, Finance Code: §§13.016, 156.504, 157.023, and 157.024.

The adopted rules affect the statutes in Finance Code Chapter 156, Subchapter F.

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

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SUBCHAPTER E. MORTGAGE GRANT FUND

7 TAC §§51.400 - 51.405

Statutory Authority

The rules are adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund, including rules to: (i) ensure that a grant awarded from the mortgage grant fund, administered by the department's commissioner under Finance Code Chapter G, is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

The adopted rules affect the statutes in Finance Code Chapter 156, Subchapter G.

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

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SUBCHAPTER F. MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED ACTIVITY

7 TAC §§51.500 - 51.506

Statutory Authority

The rules are adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchap-

ter G, Mortgage Grant Fund. The rules are also adopted under the authority of, and to implement, Finance Code: §§156.555, 157.023, 157.031.

The adopted rules affect the statutes in Finance Code Chapter 156, Subchapter G.

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 52. MORTGAGE GRANT FUND

7 TAC §§52.1 - 52.6

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts new rules in Chapter 52: §§52.1 - 52.6. The commission's proposal was published in the May 9, 2025, issue of the *Texas Register* (50 TexReg 2741). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The adopted rules are the product of SML's rule review of 7 TAC Chapter 51, Department Administration, conducted in accordance with Government Code §2001.039. The preexisting rules in Chapter 51 establish various requirements concerning SML's administrative processes and procedures.

Changes Concerning the Reorganization of Chapter 51

SML has determined it should reorganize its rules in 7 TAC Chapter 51 by relocating the preexisting rules in Subchapter E, Mortgage Grant Fund, to Chapter 52, a vacant chapter. The adopted rules effectuate this change.

Changes Concerning the Mortgage Grant Fund

The preexisting rules in Chapter 51, Subchapter E, Mortgage Grant Fund, govern SML's administration of the mortgage grant fund under Finance Code Chapter 156, Subchapter G, which provides grants for financial education relating to mortgage loans. The adopted rules: in §52.2, Definitions, adopt a new definition for "SML" and eliminate the definition for "Department"; in §52.4, Grant Coordinator, clarify that the SML commissioner may designate one or more SML employees to act on behalf of the grant coordinator when the grant coordinator is not available, and clarify that the grant coordinator may appear at hearings and judicial proceedings related to the mortgage grant fund; in §52.6, Grant Program, remove provisions related to disbursements from the mortgage grant fund made for the purpose of Finance Code §156.554(b)(3) as being unrelated to the grant program that is the subject of the rule, clarify that a political subdivision of this state is eligible to receive a grant, and clarify that a residential mortgage loan servicer registered with SML that is a nonprofit organization is eligible to receive a grant, and eliminate the requirement for grantees to make a longitudinal report after the grant cycle is completed.

Other Modernization and Update Changes

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

Statutory Authority

The rules are adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund, including rules to: (i) ensure that a grant awarded from the mortgage grant fund under Finance Code Chapter G, is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

The adopted rules affect the statutes in Finance Code Chapter 156, Subchapter G.

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

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CHAPTER 53. RECOVERY CLAIMS

7 TAC §§53.1 - 53.12

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts new rules in Chapter 53: §§53.1 - 53.12. The commission's proposal was published in the May 9, 2025, issue of the *Texas Register* (50 TexReg 2743). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The adopted rules are the product of SML's rule review of 7 TAC Chapter 51, Department Administration, conducted in accordance with Government Code §2001.039. The preexisting rules in Chapter 51 establish various requirements concerning SML's administrative processes and procedures.

Changes Concerning the Reorganization of Chapter 51

SML has determined it should reorganize its rules in 7 TAC Chapter 51 by relocating the preexisting rules in Subchapter D, Recovery Fund, and Subchapter F, Mortgage Grant Fund: Recovery Claims for Unlicensed Activity, to Chapter 53, a vacant chapter. The adopted rules effectuate this change.

Changes Concerning Recovery Claims

The preexisting rules in Chapter 51, Subchapter D, Recovery Fund, govern SML's administration of Finance Code §13.016 and Chapter 156, Subchapter F, Recovery Fund, which creates a recovery fund that allows for claims to compensate persons for actual, out-of-pocket damages incurred because of violations committed by an individual licensed by SML as a residential mortgage loan originator under Finance Code Chapter 157. The preexisting rules in Chapter 51, Subchapter F, Mortgage Grant Fund: Recovery Claims for Unlicensed Activity, govern SML's administration of Finance Code §156.555, allowing for claims to be made against the Mortgage Grant Fund created under Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund, to compensate persons for actual, out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but did not hold a residential mortgage loan originator license under Finance Code Chapter 157. The adopted rules: in §53.2, Definitions, adopt new definitions for "Consumer Responsiveness Unit," "recovery claim," and "SML," and eliminate the definition for "Department"; in §53.3, Submitting a Claim, clarify where a claim application should be sent, clarify that, if a claimant submits a scanned copy of the claim application, the claimant must maintain the original application and send it by mail to SML on request, and clarify that a claim application that is incomplete may be deemed withdrawn after notice is sent to the claimant and the claimant fails to provide the additional information within 30 days; in §53.4, Investigating the Claim, clarify that claims are generally investigated in the same manner as a complaint, and that, if the claim relates a pending complaint, the investigator may investigate the claim and the complaint simultaneously, and, if the claim relates to a closed complaint, the investigator may adopt the findings of that complaint investigation; in §53.5, Resolution by Agreement, clarify where notice to SML of a claim being resolved by the parties should be sent, and that, upon resolution of a claim by the parties, SML may consider the claim withdrawn or hold the claim in abatement pending satisfaction of the agreement; in §53.6, Preliminary Determination; Requests for Appeal, clarify where an appeal of SML's preliminary determination of the claim should be sent; in §53.7, Administrative Hearings, clarify that, at an administrative hearing on a recovery claim, SML will present its preliminary determination and then allow the claimant to present their claim and the respondent to contest or defend against the claim, and clarify that the claimant has the burden of proving they are entitled to recovery; in §53.12, Recoverable Damages, clarify the types of damages that a claimant may recover.

Other Modernization and Update Changes

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

Statutory Authority

The rules are adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §156.102(a), authorizing the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing Act; Finance Code §156.102(b-1), authorizing the commission to adopt rules to promote the fair and orderly administration of the recovery fund under Finance Code Chapter 156, Subchapter F, Recovery Fund; and Finance Code §156.556, authorizing the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G, Mortgage Grant Fund. The rules are also adopted under the authority of, and to implement, Finance Code: §§13.016, 156.504, 156.555, 157.023, 157.024, and 157.031.

The adopted rules affect the statutes in Finance Code Chapter 156, Subchapters F and G.

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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Iain A. Berry
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

16 TAC §22.251

The Public Utility Commission of Texas (commission) amends 16 Texas Administrative Code (TAC) §22.251, relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct. The commission adopts this rule with changes to the proposed text as published in the January 3, 2025 issue of the *Texas Register* (50 TexReg 10). The rule will be republished. The amended rule modifies the process for contesting ERCOT decisions on exemptions at the commission and makes other minor and conforming changes. This amendment is adopted under Project Number 57374. In the same project, the commission adopts new 16 TAC §25.517, relating to Exemption Process for ERCOT Reliability Requirements. That rule allows ERCOT to promulgate reliability-related technical standards and lists general criteria by which ERCOT must decide whether to grant an exemption from those standards.

The commission received comments on proposed §22.251 from AEP Texas Inc. and Electric Transmission Texas, LLC

(AEP Companies); Avangrid Renewables, LLC, Avangrid Texas Renewables, LLC, Karankawa Wind, LLC, Patriot Wind Farm, LLC, and True North Solar, LLC (collectively, Avangrid); Texas Public Power Association (TPPA); the Electric Reliability Council of Texas, Inc. (ERCOT); the Lower Colorado River Authority (LCRA); NextEra Energy Resources, LLC (NextEra); Oncor Electric Delivery Company LLC (Oncor); Texas Electric Cooperatives, Inc. (TEC); and Vistra Corporation (Vistra).

Representatives of the following entities testified at a public hearing on the proposed rule on February 20, 2025: Advanced Power Alliance and American Clean Power Association (APA and ACP); Avangrid; Invenergy Renewables, LLC; LCRA; NextEra; Southern Power Company; Texas Solar and Storage Association and Solar Energy Industries Association; and Vistra.

General Comments

NextEra recommended that the proposed changes other than inclusion and reference to the new exemption process may not be problematic, but does not rise to the level of urgency to support a rule change at this time.

Commission Response

The commission declines to adopt NextEra's recommendation not to adopt a rule change based on a lack of urgency. Clarity and transparency around commission processes and procedures are appropriate bases for a rule change, and the minor and conforming changes proposed in this project were adequately noticed for comment.

Precise language

ERCOT recommended replacing references to "entity" and "affected entity" throughout the proposed rule with "person" and "a person with legal standing" respectively. ERCOT noted that unlike the term "entity," the term "person" is defined in §22.2 (relating to Definitions). Because the term "entity" is not defined, use of the term creates ambiguity as to whether an individual person is included by the term. Importantly, use of the broader term "person" would give full effect to the commission's exclusive jurisdiction over ERCOT's conduct as the independent organization certified under PURA §39.151. Additionally, ERCOT recommended against replacing "entity" with "person" in instances where "affected" is directly before the word "entity" because "affected person" is defined in PURA to have a limited meaning not applicable to its use in the proposed rule. Use of "a person with legal standing" will ensure there is no confusion or ambiguity while giving effect to the intended meaning of "affected entity" as that term is used in the proposed rule.

Commission Response

The commission declines to adopt ERCOT's recommendation because it is outside the scope of this rulemaking, which is to align with new §25.517 and make other noticed minor and conforming changes. Potentially modifying the applicability of the rule - to the extent that the recommended edit might do so - is beyond the possible revisions contemplated in this proceeding.

Procedural timelines

ERCOT recommended modifying proposed §22.251(g), proposed §22.251(h)(1)-(2), and proposed §22.251(i) to extend the deadlines for ERCOT's response, commission staff's comments, motions to intervene, and replies by seven days, all of which are based on the date a complaint is filed. ERCOT's response to a complaint must be as comprehensive as the complaint itself, and the complaint and response must be detailed enough that the presiding officer has the option of entering a proposed order disposing of the case based solely on the pleadings and the record documents filed by the parties. Extending the response deadline in §22.251(g) from 28 days to 35 days after receipt of the complaint allows ERCOT the same amount of time as the complainant to prepare the required pleadings and record. Adding an additional seven days to the other deadlines would maintain the procedural timeline between each of the filings.

Commission Response

The commission declines to adopt ERCOT's recommendation because further consideration and comment are merited on this issue before changes are made. For example, in Project No. 25959, in which the commission initially adopted this rule, ERCOT argued for all of the timelines to be shortened because most complaints would have already been subject to some process and that prompt resolution of the issues is desirable. Balancing party preparation time and the prompt resolution of complaints against ERCOT is a substantive issue that is beyond the scope of this rulemaking proceeding.

Proposed §22.251(a) - Purpose

Proposed §22.251(a) provides that the purpose of the rule is to establish the procedure to appeal a decision made by ERCOT.

ERCOT recommended inserting "exclusive" in front of "procedure" to clarify that the procedure set forth in the rule is subject to the commission's exclusive jurisdiction.

Commission Response

The commission disagrees with ERCOT's recommendation and declines to modify the rule. This rule defines "conduct" extremely broadly, and other commission rules address or may address other methods of contesting aspects of ERCOT's conduct.

Proposed §22.251(b) - Definitions

Proposed §22.251(b) sets forth definitions for (1) conduct and (2) applicable ERCOT procedures.

Conduct

ERCOT and Vistra observed that the rule uses the terms "a decision made by ERCOT," "ERCOT decisions," and "conduct or decisions" to refer to "conduct" as defined in §22.251(b)(1). ERCOT and Vistra recommended clarifying changes to the definition of "conduct" in proposed §22.251(b)(1) to capture all actions or inaction that the rule references. For additional clarity, ERCOT and Vistra also recommended using only the defined term "conduct" in the proposed rule and eliminating synonymous terms.

Commission Response

The commission agrees with ERCOT's and Vistra's recommendation and modifies the rule to define "conduct" to capture all actions or inaction that the rule references and to only use the term "conduct" to describe these actions or inaction, except as required for consistency with §25.517. In these limited instances, the adopted rule refers to "decisions by ERCOT."

Applicable ERCOT Procedures

ERCOT noted that the proposed definition of "Applicable ERCOT Procedures" in proposed §22.251(b)(2) implies applicability only to the protocol revision process. Therefore, ERCOT recommended modifying the definition of "Applicable ERCOT Procedures" in §22.251(b)(2) to clarify that the definition applies to the revision process for all ERCOT procedures or rules.

TPPA noted that the term "resource" is an undefined term used in the rule and recommended defining the term in §22.251(b) using the same definition in proposed §25.517, relating to Exemption Process for ERCOT Reliability Requirements.

Commission Response

The commission agrees with ERCOT's recommendation to clarify §22.251(b)(2) and modifies the paragraph accordingly. The commission also agrees that "resource" should be defined in this rule and modifies the rule to refer to the definition in §25.517.

Proposed §22.251(c) - Scope of complaints

Proposed §22.251(c) identifies the scope of a complaint filed with the commission and who may file a complaint.

Non-exhaustive list

To remove ambiguity in proposed §22.251(c)(1), relating to ERCOT responsibilities that are within the scope of a permitted complaint, ERCOT recommended reinserting "but not limited to" before the listed responsibilities. ERCOT asserted that deletion of the phrase "but not limited to" may be misconstrued as restricting the scope of the rule when the listed responsibilities are intended to serve as a non-exhaustive list of examples.

Commission Response

The commission declines to adopt ERCOT's recommendation because it is unnecessary. "Including" is a term of enlargement, not a term of limitation or exclusive enumeration. Therefore, the phrase "but not limited to" is surplusage. The commission acknowledges the risk that removal of "but not limited to" could wrongly imply that the list is intended to be exclusive. However, there are several instances in this rule where "including" serves an inclusive function, and uniform usage of the term throughout the rule supports the correct interpretation across these instances.

Who may file a complaint appealing an ERCOT decision under proposed new §25.517

Avangrid recommended deletion of §22.251(c)(3), relating to who may file a complaint appealing an ERCOT decision under §25.517 of this title. Avangrid reasoned that the procedural rule should not account for an exemption process that could violate state and federal law as well as PURA.

Commission Response

The commission disagrees that this amended procedural rule should not account for proposed new §25.517. Amended §22.251 provides a process for an affected entity to appeal ERCOT conduct, and a decision to grant or deny an exemption under proposed new §25.517 is ERCOT conduct. Therefore, any ERCOT conduct under proposed new §25.517 is already appealable under §22.251 without the reference to proposed new §25.517 in amended §22.251. Subsections (c)(3) and (r) of amended §22.251 only slightly modify the general procedure outlined in the rule for all ERCOT conduct. An appeal of ERCOT conduct under proposed new §25.517 could proceed without these modifications.

Proposed §22.251(d) - ERCOT Protocols compliance prerequisite

Proposed §22.251(d) sets forth procedural requirements to which a complainant must adhere before initiating a complaint with the commission.

TPPA recommended modifying §22.251(d) to specify that dismissal of a complaint for failure to use the applicable procedure should be made without prejudice and that a dismissal should not impact ERCOT's or the commission's decisions in future actions.

Commission Response

The commission disagrees with TPPA's recommendation because it outside the scope of this rulemaking--the recommendation is not specific to ERCOT decisions related to an exemption and is neither a minor nor conforming change. Dismissal of a complaint with or without prejudice is a decision that currently resides with the presiding officer based on the facts of the case. TPPA's recommendation would be a substantive change applicable to all complaints under this rule and removes the presiding officer's discretion to dismiss a complaint with or without prejudice.

Informal dispute resolution

ERCOT recommended modifying §22.251(d)(3) to limit informal dispute resolution ordered by the presiding officer to those that are non-binding because a binding form of dispute resolution would infringe on the commission's exclusive jurisdiction over ERCOT's conduct.

Commission Response

The commission disagrees with ERCOT's recommendation because it is unnecessary. The commission's jurisdiction is set forth in statute, and proposed §22.251(d)(3) has been encapsulated in existing §22.251(c)(3) of the rule since 2003. Additionally, the recommendation is outside the noticed scope of this rulemaking.

Proposed §22.251(e) - Formal complaint

Proposed §22.251(e) sets forth procedural deadlines and substantive requirements for formal complaints.

Facsimile transmission numbers

ERCOT and Vistra recommended striking the requirement in proposed §22.251(e)(2)(A) for a formal complaint to include facsimile transmission numbers because facsimile is an obsolete method of professional communication.

Commission Response

The commission agrees with ERCOT and Vistra's recommendation because it is a minor change that conforms with existing practices. The commission modifies subparagraph (e)(2)(A) accordingly.

Page limit for procedural and historical statement

TPPA and Vistra recommended modifying proposed §22.251(e)(2)(B), relating to page limits for a procedural and historical statement. TPPA recommended increasing the page limit from two to five. Vistra recommended adding "as reasonably practicable" after the two-page limit so that important facts that cannot reasonably be summarized in two pages are not omitted.

Commission Response

To conform with existing §22.251(d)(1)(B), which provided a degree of flexibility by stating that the statement of the case should not ordinarily exceed two pages, the commission adopts Vistra's recommendation and modifies the rule accordingly.

Entities directly affected

Vistra recommended modifying proposed §22.251(e)(2)(B)(ii) by replacing the requirement that a complainant identify all entities that would be directly affected by the commission's decision in the complaint proceeding with a requirement that the complainant identify who the complainant seeks relief from. Identifying all entities that would be directly affected by the commission's decision is a difficult task without knowing what the commission's decision will be.

Commission Response

The commission disagrees with Vistra's recommendation because it is outside the scope of this rulemaking--the recommendation is not specific to ERCOT decisions related to an exemption and is neither a minor nor conforming change--and declines to modify the rule. Additionally, the recommended change is unnecessary because the end of §22.251(e)(2)(B)(ii) states "as reasonably practical."

Reference to another subsection

ERCOT recommended correcting a typographical error in proposed §22.251(e)(3)(B) by replacing the reference to §22.251(i) with §22.251(j) to maintain consistency with the proposed redesignation of §22.251(i) as §22.251(j).

Commission Response

The commission agrees with ERCOT's recommendation and modifies §22.251(e)(3)(B) accordingly.

Service of complaint

TEC recommended reinstating existing §22.251(d)(4), which requires a complainant to serve copies of the complaint on ERCOT's General Counsel, every other entity from whom relief is sought, the Office of Public Utility Counsel, and any other party. TEC noted that it is unclear why this notice requirement was deleted in the proposed rule and voiced concerns that the deletion reduces transparency for market participants and the public.

Commission Response

This provision was removed from the proposed amended rule to align with current procedural rules in Chapter 22. However, the commission agrees that it improves clarity and reinstates the provision as subsection (e)(5) with minor changes to reflect practices and section titles as proposed in ongoing rulemaking projects. These edits will also ensure that this language remains up to date as the commission completes its review of its Chapter 22 rules.

Proposed §22.251(g) - Response to complaint

Proposed §22.251(g) sets forth procedural deadlines and substantive requirements for a response to a complaint.

TPPA noted that proposed §22.251(g) implies but does not state that the response to a complaint is ERCOT's. To avoid confusion, TPPA recommended modifying §22.251(g) to explicitly state such.

Commission Response

The commission agrees with TPPA's recommendation and modifies §22.251(g) to clarify that the deadline in §22.251(g) applies to ERCOT. However, the substance of what is included in a response to a complaint is applicable to all responses, including ERCOT and intervenors. The commission modifies the rule to state this explicitly.

Proposed §22.251(h) - Comments by commission staff and motions to intervene

Proposed §22.251(h) sets forth deadlines for commission staff comments, motions to intervene, and responses to a complaint.

ERCOT recommended modifying proposed §22.251(h)(2) to more clearly indicate that the deadline to file a response to the complaint is the same as the deadline to file a motion to intervene.

Commission Response

The commission agrees with ERCOT's recommendation and modifies §22.251(g) and (h)(2) accordingly. This change aligns with the existing rule.

Proposed §22.251(l) - Extension or shortening of time limits

Proposed §22.251(l) sets forth the circumstances and requirements for modifying the procedural deadlines set forth in the rule.

ERCOT recommended adding a paragraph that would prohibit discovery requests, unless agreed to by all the parties or ordered by the presiding officer, before the date that commission staff must file its comments under proposed §22.251(h). This prohibition would allow commission staff and ERCOT adequate time to prepare their respective comments and response to a complaint without the additional burden of responding to discovery requests during that time.

Commission Response

The commission declines to adopt ERCOT's recommendation because it is outside the scope of this rulemaking--the recommendation is not specific to ERCOT decisions related to an exemption and is neither a minor nor conforming change. ERCOT's recommended change is a substantive change to the existing procedure set forth in the rule.

Proposed §22.251(m) - Standard for review

Proposed §22.251(m) requires facts be determined by an impartial third party under circumstances that are consistent with due process. Further, the commission will only reverse a factual determination that is not supported by substantial evidence or is arbitrary or capricious. Under the proposed rule, the commission will resolve any factual issues that are not determined on a de novo basis.

Vistra recommended clarifying that facts may also be determined by unanimous stipulation of the parties, which can serve as a means to narrow issues without spending significant time proving and determining uncontested facts.

Commission Response

The commission agrees with Vistra that stipulated facts can greatly increase the efficiency of a proceeding. Stipulated facts may be considered as part of the commission's de novo review, but the commission retains the discretion to determine the appropriate weight to assign to stipulated facts. Accordingly, the commission does not modify the rule to add stipulated facts in the procedural standards specified in the rule, as recommended by Vistra.

Proposed §22.251(p) - Granting of relief

Proposed §22.251(p) sets forth examples of the type of relief that the commission may grant in a complaint proceeding.

ERCOT, TPPA, and Vistra recommended deleting proposed §22.251(p)(4), which relates to ordering ERCOT to promptly

develop protocol revisions for commission approval because the paragraph is duplicative of proposed §22.251(p)(2), which relates to ordering that appropriate protocol revisions be developed. ERCOT and Vistra recommended modifying proposed §22.251(p)(2) to more clearly capture development and implementation.

Commission Response

The commission agrees with the recommendation to clarify §22.251(p)(2) and delete duplicative §22.251(p)(4). The commission modifies §22.251(p) accordingly.

Proposed §22.251(r) - Complaint regarding exemptions to ERCOT reliability requirements

Proposed §22.251(r) sets forth procedural and substantive requirements specific to complaints related to an exemption to ERCOT reliability requirements.

Avangrid recommended striking §22.251(r), reasoning that the commission's procedural rules should not account for an exemption process that could violate state and federal law as well as PURA.

Commission Response

The commission disagrees that this amended procedural rule should not account for proposed new §25.517. Amended §22.251 provides a process for an affected entity to appeal ERCOT conduct, and a decision to grant or deny an exemption under proposed new §25.517 is ERCOT conduct. Therefore, any ERCOT conduct under proposed new §25.517 is already appealable under §22.251 without the reference to proposed new §25.517 in amended §22.251. Subsections (c)(3) and (r) of amended §22.251 only slightly modify the general procedure outlined in the rule for all ERCOT conduct. An appeal of ERCOT conduct under proposed new §25.517 could proceed without these modifications.

However, the commission does modify the rule to reflect that the commission's decision to grant or deny an exemption or extension request under subsection (r) is not limited to whether there exists a threshold reliability risk, as that term is defined in §25.517. Under §25.517, ERCOT's decision to grant or deny such a request focuses on the reliability consequences of granting the request, because ERCOT is charged with maintaining the reliability of the grid. By contrast, it is appropriate for the commission to take broader, public interest concerns into account as it evaluates the request. Accordingly, adopted subsection (r)(5) clarifies that the commission may grant or deny an exemption or extension if doing so is in the public interest. Additionally, the adopted rule clarifies that the commission may impose conditions on an exemption or extension to protect the public interest.

Parties to a complaint

Proposed §22.251(r)(2) states that the parties to a §22.251(r) complaint proceeding are the complainant, the complainant's transmission service provider, ERCOT, OPUC, and commission staff.

ERCOT recommended modifying proposed §22.251(r)(2) to include a distribution service provider in the list of parties to a subsection (r) complaint proceeding.

LCRA and Oncor recommended that a complainant's TSP should have the option of intervening in a §22.251(r) complaint proceeding but should not automatically be made a party to every complaint proceeding under §22.251(r). Oncor recommended adding a new paragraph that: (1) requires the complainant provide notice of the §22.251(r) complaint to its TSP; (2) recognizes the complainant's TSP has a standing right to intervene; and (3) states the complainant's TSP should be granted party status if it chooses to intervene.

LCRA, TEC, TPPA, and Vistra recommended not limiting the parties to a §22.251(r) complaint proceeding, asserting that any affected entity with a justiciable interest should be granted intervention in the proceeding. TPPA noted it is unclear what, if any, authority exists to limit the type of parties to an appeal in this manner and the commission should seek information from all relevant entities. TEC and TPPA recommended deleting proposed §22.251(r)(2) in its entirety. LCRA and Vistra recommended modifying proposed §22.251(r)(2) to read that OPUC, the TSP, ERCOT, and Commission Staff are not required parties in every complaint proceeding that relates to an exemption to ERCOT reliability requirements and that any party with a justiciable interest in the proceeding should be granted intervention status. Vistra noted that allowing parties with a justiciable interest to intervene better ensures that the Commission has all the relevant facts when making a determination. Moreover, Vistra contended that an added benefit of interventions in §22.251(r) complaints is the opportunity for negotiated settlements and innovative solutions, especially when only a subset of requestors can be granted an exemption due to limitations (e.g., there are 500 MW of exemptions "available" but 750 MW of requests).

AEP noted that §22.251(r)(2) appears to contemplate that the complainant is necessarily the resource that is denied an exemption request. AEP recommended that any affected market participant should be able to appeal a decision by ERCOT regarding exemptions and §22.251(r)(2) should be modified to reflect this.

Commission Response

Who has a justiciable interest is a determination that should be made by the presiding officer based on the facts of the case. Similarly, whether a person that has not intervened is a necessary party to a proceeding is a determination that should be made by the presiding officer based on the facts of the case. Therefore, the commission agrees with TEC and TPPA's recommendation to delete §22.251(r)(2) and modifies the rule accordingly, which also addresses the concerns raised by ERCOT, LCRA, Oncor, and Vistra.

Notice requirements

Proposed §22.251(r)(3) states that ERCOT is exempt from the notice requirements of §22.251(f).

TPPA and Vistra recommended deleting §22.251(r)(3). Vistra asserted that market participants should be made aware of §22.251(r) complaints and have an opportunity to intervene because they may be affected by the reliability risk associated with the complaint.

Commission Response

The commission agrees with TPPA and Vistra's recommendation and modifies the rule accordingly.

ADR exemption

Section 22.251(r)(4) states that a §22.251(r) complaint proceeding is exempt from ADR or other informal dispute resolution procedures. ERCOT recommended deleting §22.251(r)(4) because it is duplicative of §22.251(r)(1), which states that the complainant is not required to comply with the Applicable

ERCOT Procedures prior to submitting a complaint to the commission.

Commission Response

The commission disagrees that the paragraphs are duplicative and declines to modify the rule. Proposed §22.251(r)(1) states that a complainant is not required to follow the Applicable ERCOT Procedures, which would otherwise be required before a complainant files its complaint at the commission. Proposed §22.251(r)(4) states that the complaint proceeding itself is exempt from ADR or other informal dispute resolution procedures, which could otherwise be ordered by the ALJ once a complaint has been filed.

History of violations

Section 22.251(r)(5) requires a complaint to include the resource's history of violations of ERCOT protocols, operating guides, or other binding documents related to the reliability requirement that is the subject of the complaint. TPPA recommended deleting §22.251(r)(5), reasoning that the inclusion of publicly available documents is unnecessary.

Commission Response

The commission declines to adopt TPPA's recommendation. The resource entity is familiar with its history of violations of ERCOT protocols, operating guides, or other binding documents related to the reliability requirement that is the subject of the complaint. It is reasonable and administratively efficient for the resource entity to provide this information. However, the commission modifies the provision to require information on the resource's history of violations of reliability-related ERCOT protocols and remove "related to the reliability requirement that is the subject of the complaint." Because a complaint related to §25.517 will involve a reliability requirement that has recently been approved, and the resource entity is seeking an exemption from that requirement, it is improbable that a resource will have a history of violations related to that requirement. However, there may be related compliance issues that are pertinent to the evaluation of the complaint.

Information Commission Staff may address

Proposed §22.251(r)(6) identifies a non-exhaustive list of information that commission staff may address in its comments under §22.251(h).

Vistra recommended deleting proposed §22.251(r)(6) because it risks confusing or limiting commission staff's ability to introduce information in all proceedings. The instruction that commission staff "may" include certain information in their comments could lead to the conclusion that there is also information that commission staff may not include in their comments unless specifically authorized by rule or statute. Additionally, the information in proposed §22.251(r)(6) is unnecessary for commission staff to address. The list includes information that the resource will provide in its exemption request or complaint (i.e., the history of violations and information on cost to comply), and information outside of commission staff's purview that is more appropriately presented by ERCOT, if ERCOT deems it relevant (i.e., resource adequacy outlooks and the potential of new resources to affect system reliability).

Commission Response

The commission disagrees with Vistra's recommendation and declines to modify the rule. The rule specifies that the listed considerations that commission staff may address in comments are in addition to the specific claims by the complainant. Without this clarification, the rule could be interpreted to limit commission staff's comments to the same criteria for responses to the complaint. Therefore, removal of this provision would create ambiguity instead of clarification. Additionally, commission staff represents the public interest; therefore, it is common for commission staff to address matters and make recommendations related to information that is also presented by ERCOT and stakeholders.

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; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also adopted under PURA §14.052, which authorizes the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings; §39.151(d), which allows the commission to delegate to an independent organization the responsibilities to adopt and enforce rules relating to the reliability of the regional electric network; and §39.151(d-4)(6), which allows the commission to resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.052, 39.151(d), and 39.151(d-4)(6).

§22.251. Review of Electric Reliability Council of Texas (ERCOT) Conduct.

(a) Purpose. This section establishes the procedure by which an entity, including commission staff and the Office of Public Utility Counsel (OPUC), may file a complaint regarding ERCOT's conduct as the independent organization certified under PURA §39.151 or any successor in interest to ERCOT.

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

(1) Applicable ERCOT Procedures--the applicable sections of the ERCOT protocols that are available to challenge or modify ERCOT conduct, including Section 20 (Alternative Dispute Resolution Procedures, or ADR) and Section 21 (Process for Protocol Revision), and other participation in an applicable revision process.

(2) Conduct--a decision, act, or omission.

(3) Resource--refers to a generation resource, load resource, or an energy storage resource, as defined and used in the ERCOT protocols.

(4) Resource entity--an entity that owns or controls a resource.

(c) Scope of complaints.

(1) The scope of permitted complaints includes ERCOT's performance as the independent organization certified under PURA §39.151, including ERCOT's promulgation and enforcement of standards and procedures relating to reliability, transmission access, customer registration, and the accounting of electricity production and delivery among generators and other market participants.

(2) An affected entity may file a complaint with the commission, setting forth any ERCOT conduct that is alleged to be in viola-

tion of any law that the commission has jurisdiction to administer, any order or rule of the commission, or any protocol, procedure, or binding document adopted by ERCOT in accordance with any law that the commission has jurisdiction to administer.

(3) A resource entity may file a complaint with the commission regarding a decision by ERCOT on the resource entity's exemption or extension request under §25.517 of this title (relating to Exemption Process for ERCOT Reliability Requirements) in accordance with this section, including the provisions in subsection (r) of this section. Any other affected entity may file a complaint with the commission regarding a decision by ERCOT on an exemption or extension request under §25.517 of this title as ERCOT conduct under the general provisions of this section.

(d) ERCOT Protocols compliance prerequisite. An affected entity must attempt to challenge or modify ERCOT conduct using the Applicable ERCOT Procedures before filing a complaint with the commission under this section. If a complainant fails to use the Applicable ERCOT Procedures, the presiding officer may dismiss or abate the complaint to afford the complainant an opportunity to use the Applicable ERCOT Procedures.

(1) A complainant may file a complaint with the commission directly, without first using the Applicable ERCOT Procedures, if:

(A) the complainant is commission staff or OPUC;

(B) the complainant is not required to comply with the Applicable ERCOT Procedures;

(C) the complainant seeks emergency relief necessary to resolve health or safety issues;

(D) compliance with the Applicable ERCOT Procedures would inhibit the ability of the affected entity to provide continuous and adequate service; or

(E) the commission has granted a waiver of the requirement to use the Applicable ERCOT procedures in accordance with paragraph (2) of this subsection.

(2) An affected entity may file with the commission a request for waiver of the Applicable ERCOT Procedures. The waiver request must be in writing and clearly state the reasons why the Applicable ERCOT Procedures are not appropriate. The commission may grant the waiver for good cause shown.

(3) For complaints for which ADR proceedings have not been conducted at ERCOT, the presiding officer may require informal dispute resolution.

(e) Formal complaint.

(1) A formal complaint must be filed within 35 days of the ERCOT conduct that is the subject of the complaint, except as otherwise provided in this subsection. When an ERCOT ADR procedure has been timely commenced, a complaint concerning the ERCOT conduct or decision that is the subject of the ADR procedure must be filed no later than 35 days after the completion of the ERCOT ADR procedure. The presiding officer may extend the deadline, upon a showing of good cause, including the parties' agreement to extend the deadline to accommodate ongoing efforts to resolve the matter informally, and the complainant's failure to timely discover through reasonable efforts the injury giving rise to the complaint.

(2) A formal complaint must include the following information:

(A) a complete list of all complainants and the entities against whom the complainant seeks relief and the addresses and e-mail addresses of the parties or their counsel or other representatives;

(B) a procedural and historical statement of the case that does not exceed two pages, as reasonably practicable, and does not discuss the facts. The statement must contain the following:

(i) a concise description of any underlying proceeding or any prior or pending related proceedings;

(ii) the identity of all entities or classes of entities that would be directly affected by the commission's decision, to the extent such entities or classes of entities can reasonably be identified;

(iii) a concise description of the ERCOT conduct from which the complainant seeks relief;

(iv) a statement of the ERCOT procedures, protocols, binding documents, by-laws, articles of incorporation, or law applicable to resolution of the dispute;

(v) whether the complainant has used the Applicable ERCOT Procedures for challenging or modifying the complained-of ERCOT conduct or decision as described in subsection (d) of this section and, if not, the provision of subsection (d) of this section upon which the complainant relies to excuse its failure to use the Applicable ERCOT Procedures;

(vi) a statement of whether the complainant seeks a suspension of the ERCOT conduct complained of while the complaint is pending; and

(vii) a statement of the basis of the commission's jurisdiction, presented without argument.

(C) a detailed and specific statement of all issues or points presented for commission review;

(D) a concise statement of the relevant facts, presented without argument. Each fact must be supported by references to the record, if any;

(E) a clear and concise argument for the contentions made, with appropriate citation to authorities and to the record, if any;

(F) a statement of all questions of fact, if any, that the complainant contends require an evidentiary hearing;

(G) a short conclusion that states the nature of the relief sought; and

(H) a record consisting of a certified or sworn copy of any document constituting or evidencing the matter complained of. The record may also contain any other item relevant to the issues or points presented for review, including affidavits or other evidence on which the complainant relies.

(3) If the complainant seeks to suspend the ERCOT conduct complained of while the complaint is pending, and all entities against whom the complainant seeks relief do not agree to the suspension, the complaint must include a statement of the harm that is likely to result to the complainant if the ERCOT conduct is not suspended.

(A) Harm may include deprivation of an entity's ability to obtain meaningful or timely relief if a suspension is not entered.

(B) A request for suspension of the ERCOT conduct must be reviewed in accordance with subsection (j) of this section.

(4) All factual statements in the complaint must be verified by affidavit made on personal knowledge by an affiant who is competent to testify to the matters stated.

(5) A complainant must file the formal complaint with the commission and serve a copy of the complaint and any other documents in accordance with §22.74 of this title (relating to Service of Pleadings and Documents) on:

(A) ERCOT's general counsel;

(B) each entity from whom relief is sought;

(C) OPUC; and

(D) any other party.

(f) Notice. Within 14 days of receipt of the complaint, ERCOT must provide notice of the complaint by email to all qualified scheduling entities and, at ERCOT's discretion, all relevant ERCOT committees and subcommittees. Notice must consist of an attached electronic copy of the complaint, including the docket number, but may exclude the record required by subsection (e)(2)(H) of this section.

(g) Response to complaint. ERCOT's response to a complaint is due within 28 days after receipt of the complaint by ERCOT. The deadline for other responses is 45 days after the date the complaint is filed. All responses must comply with the provisions of this subsection.

(1) A response to a complaint must be confined to the issues or points raised in the complaint and must otherwise conform to the requirements for the complaint established under subsection (e) of this section except for the following items:

(A) the list of parties and counsel unless necessary to supplement or correct the list contained in the complaint;

(B) a procedural and historical statement of the case, a statement of the issues or points presented for commission review, or a statement of the facts, unless the responding party contests that portion of the complaint;

(C) a statement of jurisdiction, unless the complaint fails to assert valid grounds for jurisdiction, in which case the reasons why the commission lacks jurisdiction must be concisely stated; and

(D) any item already contained in a record filed by another party.

(2) If the complainant seeks a suspension of the ERCOT conduct that is the subject of the complaint, the response to the complaint must state whether the responding party opposes the suspension and, if so, the basis for the opposition, specifically stating the harm likely to result if a suspension is ordered.

(h) Comments by commission staff and motions to intervene.

(1) Commission staff representing the public interest must file comments within 45 days after the date on which the complaint was filed.

(2) Any party desiring to intervene in accordance with §22.103 of this title (relating to Standing to Intervene) must file a motion to intervene accompanied by a response to the complaint within 45 days after the date on which the complaint was filed.

(i) Reply. The complainant may file a reply addressing any matter in a party's response or commission staff's comments. A reply, if any, must be filed within 55 days after the date on which the complaint was filed. The commission may consider and decide the complaint before a reply is filed.

(j) Suspension of conduct. The ERCOT conduct that is the subject of the complaint remains in effect until the presiding officer issues an order suspending the conduct.

(1) If the complainant seeks to suspend the ERCOT conduct that is the subject of the complaint while the complaint is pending and all entities against whom the complainant seeks relief do not agree to the suspension, the complainant must demonstrate that there is good cause for suspension. A good cause determination under this subsection will be based on the presiding officer's assessment of:

(A) the harm that is likely to result to the complainant if a suspension is not ordered;

(B) the harm that is likely to result to others if a suspension is ordered;

(C) the likelihood of the complainant's success on the merits of the complaint; and

(D) any other relevant factors as determined by the commission or the presiding officer.

(2) The presiding officer may issue an order, for good cause, on such terms as may be reasonable to preserve the rights and protect the interests of the parties during the processing of the complaint, including requiring the complainant to provide reasonable security, assurances, or to take certain actions, as a condition for granting the requested suspension.

(3) A party may appeal a decision of a presiding officer granting or denying a request for a suspension, in accordance with §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Orders Issued by the Commission).

(k) Oral argument. If the facts are such that the commission may decide the matter without an evidentiary hearing on the merits, a party desiring oral argument must comply with the procedures set forth in §22.262(d) of this title (relating to Commission Action After a Proposal for Decision). In its discretion, the commission may decide a case without oral argument if the argument would not significantly aid the commission in determining the legal and factual issues presented in the complaint.

(l) Extension or shortening of time limits.

(1) The presiding officer may grant a request to extend or shorten the time periods established by this rule for good cause shown.

(A) Any request or motion to extend or shorten the schedule must be filed prior to the date on which any affected filing would otherwise be due.

(B) A request to modify the schedule must include a representation of whether all other parties agree with the request and a proposed schedule.

(2) For cases to be determined after the making of factual determinations or through commission ADR as provided for in subsection (o) of this section, the presiding officer will issue a procedural schedule.

(m) Standard for review.

(1) If the factual determinations related to the ERCOT conduct complained of have not been provided or established in a manner that meets the procedural standards under paragraph (3) of this subsection, or if factual determinations necessary to the resolution of the matter have not been provided or established, the commission will resolve any factual issues on a de novo basis.

(2) If the factual determinations supporting the ERCOT conduct complained of have been made in a manner that meets the procedural standards specified under paragraph (3) of this subsection, the commission will reverse a factual finding only if it is not supported by substantial evidence or is arbitrary and capricious.

(3) Facts must be determined:

(A) in a proceeding to which the parties have voluntarily agreed to participate; and

(B) by an impartial third party under circumstances that are consistent with the guarantees of due process inherent in the procedures established by the Texas Government Code Chapter 2001 (Administrative Procedure Act).

(n) Referral to the State Office of Administrative Hearings (SOAH).

(1) If resolution of a complaint does not require determination of any factual issues, the commission may decide the issues raised by the complaint on the basis of the complaint, including any comments and responses.

(2) If factual determinations must be made to resolve a complaint brought under this section, disposition by summary decision under §22.182 of this title (relating to Summary Decision) is not appropriate, and the parties do not agree to the making of all factual determinations in accordance with a procedure described in subsection (o) of this section, the matter may be referred to SOAH.

(o) Availability of alternative dispute resolution. In accordance with Texas Government Code Chapter 2009 (Governmental Dispute Resolution Act), the commission will make available to the parties alternative dispute resolution procedures described by Civil Practices and Remedies Code Chapter 154, as well as combinations of those procedures. The use of these procedures before the commission for complaints brought under this section must be by agreement of the parties only.

(p) Granting of relief. Where the commission finds merit in a complaint and that corrective action is required by ERCOT, the commission will issue an order granting the relief the commission deems appropriate. The commission order granting relief may include:

(1) entering an order suspending the ERCOT conduct complained of;

(2) ordering that appropriate protocol revisions be developed and implemented; or

(3) providing guidance to ERCOT for further action, including guidance on the development and implementation of protocol revisions.

(q) Notice of proceedings affecting ERCOT.

(1) Within seven days of ERCOT receiving a pleading instituting a lawsuit against it concerning ERCOT's conduct as described in subsection (b) of this section, ERCOT must notify the commission of the lawsuit by filing with the commission, in the commission project number designated by the commission for such filings, a copy of the pleading instituting the lawsuit.

(2) Within seven days of receiving notice of a proceeding at the Federal Energy Regulatory Commission in which relief is sought against ERCOT, ERCOT must notify the commission by filing with the commission, in the commission project number designated by the commission for such filings, a copy of the notice received by ERCOT.

(r) Complaint related to a request for exemption from or extension for an ERCOT reliability requirement. In a complaint by a resource entity involving a decision by ERCOT on the resource entity's exemption or extension request under §25.517 of this title, the following additional provisions apply:

(1) the complainant is not required to comply with the Applicable ERCOT Procedures prior to submitting a complaint to the commission;

(2) a proceeding under this subsection is exempt from ADR or other informal dispute resolution procedures otherwise available in this section;

(3) the complaint must include the resource's history of violations of reliability-related ERCOT protocols, operating guides, or other binding documents;

(4) commission staff's comments under subsection (h) of this section may include consideration of the following, in addition to the specific claims by the complainant:

(A) ERCOT's most relevant outlook for resource adequacy;

(B) date of interconnection of the resource in question;

(C) the potential impact to system reliability of new resources that have been approved for energization by ERCOT;

(D) the resource's history of violations described in paragraph (3) of this subsection;

(E) the complainant's cost to comply with the reliability requirement, or the cost to other affected entities as a result of a resource entity's being granted or denied an exemption; and

(F) any condition related to the exemption.

(5) Notwithstanding any other provision in this section or §25.517 of this title, the commission may grant or deny an extension or exemption, with or without conditions, if doing so is in the public interest. In making its determination, the commission may consider any relevant information, including evidence of reliability risks to the grid and operational or economic impacts to the resource entity. The commission may impose conditions on an extension or exemption as appropriate to protect the public interest.

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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Public Utility Commission of Texas
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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.517

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.517, relating to Exemption Process for ERCOT Reliability Requirements. The commission adopts the rule with changes to the proposed text as published in the January 3, 2025 issue of the *Texas Register*

(50 TexReg 14). The rule will be republished. The rule establishes requirements for ERCOT's evaluation of exemption or extension requests to certain ERCOT reliability requirements. This new rule is adopted under Project Number 57374. In the same project, the commission adopts amended 16 TAC §22.251, relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct. That amended rule modifies the process for contesting ERCOT decisions on exemption and extension requests at the commission and makes other minor and conforming changes.

The commission received comments on the proposed rule from Advanced Power Alliance and American Clean Power Association (APA and ACP); AEP Texas Inc. and Electric Transmission Texas, LLC (AEP Companies); Avangrid Renewables LLC, Avangrid Texas Renewables, LLC, Karankawa Wind, LLC, Patriot Wind Farm, LLC, and True North Solar, LLC (collectively, Avangrid); Electric Reliability Council of Texas, Inc. (ERCOT); Elevate Energy Consulting (Elevate); Engie North America, Inc. (Engie); Intersect Power, LLC (IP); Invenergy Renewables LLC (Invenergy); Invenergy Renewables LLC, NextEra Energy Resources LLC, Southern Power Company, Avangrid Renewables LLC, and Clearway Renew, LLC (collectively, Joint Commenters); Jupiter Power LLC (Jupiter); the Lower Colorado River Authority (LCRA); NextEra Energy Resources, LLC (NextEra); the Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company, LLC (Oncor); Southern Power Company (Southern Power); Texas Competitive Power Advocates (TCPA); Texas Electric Cooperatives, Inc. (TEC); Texas Industrial Energy Consumers (TIEC); Texas Public Power Association (TPPA); Texas Solar + Storage Association and the Solar Energy Industries Association (Association Joint Commenters); and Vistra Corporation (Vistra).

The following entities testified at a public hearing on the proposed rulemaking held on February 20, 2025: APA and ACP; Avangrid; Invenergy; LCRA; NextEra; Southern Power; Association Joint Commenters; and Vistra.

General Comments

Many commenters indicated that the proposed rule seemed unclear in purpose and application. For example, several commented that the proposed rule could be interpreted to apply to any ERCOT requirement, existing and future, which would promote regulatory uncertainty and a chaotic application process. Others were concerned about who determines what a reliability requirement is and the process by which a reliability requirement will be created.

Commission Response

The commission adds several purpose-related provisions to proposed subsection (a) to clarify the issues raised by commenters. A reliability requirement is defined in the adopted rule as a mandatory technical standard adopted by ERCOT to support the reliability of electric service that is included in the ERCOT protocols. Accordingly, a reliability requirement is any ERCOT protocol related to reliability. The new purpose-related provisions clarify that this rule does not affect existing exemptions, prohibit ERCOT from adopting exemption processes unrelated to this rule, or create a presumption that any individual reliability requirement applies to an existing resource. In addition, the new provisions clarify that ERCOT staff must designate during the development of a reliability requirement whether the requirement will be subject to the new rule and allow for an exemption, and the proposed requirement will go to the ERCOT Board and then the commission for approval. The ERCOT Board can modify the requirement before adopting it, and the commission can approve, reject, or remand the requirement with suggested modifications at an open meeting. These procedural steps provide ample opportunity for stakeholder input and feedback.

Other provisions contained in modified (a) of the adopted rule include requirements that a reliability requirement that has been designated as allowing exemptions must include a deadline by which a resource entity must submit its exemption request to ERCOT, and that only existing resources are eligible for an exemption under this rule, and "existing" is described for a generation resource and a load resource.

Finally, the commission modifies the rule to apply to a reliability requirement that is already in effect for which ERCOT has accepted notices of intent to request an exemption, but for which ERCOT has not yet defined the standards by which those exemption requests will be evaluated. This modification will allow ERCOT to use this rule to evaluate exemption requests from the requirements of paragraphs (1) through (5) of Nodal Operating Guide §2.6.2.1, paragraphs (1) through (7) of §2.9.1.2, paragraphs (5) through (7) of §2.9.1, and paragraph (9) or §2.9.1.1, all of which were effective upon the commission's approval of Nodal Operating Guide Revision Request (NOGRR) 245 at its September 26, 2024 open meeting. NOGRR 245 also revised Nodal Operating Guide §2.12.1(2) to state that an exemption process will be established through an additional NOGRR. This rule takes the place of the additional NOGRR that had been planned, and this modification maintains the prospective orientation of the rule by not altering the substantive provisions of the requirements that have already been settled.

Public Comments

The commission invited interested persons to address four questions related to various parts of the proposed rule.

1. Should the concept of feasibility include a cost component?

Association Joint Commenters, TPPA, OPUC, and LCRA answered yes. Association Joint Commenters, TPPA, and LCRA noted that resource owners whose costs to comply with a reliability requirement that would be economically infeasible may choose to retire the resource prematurely. OPUC explained that the consumer does not benefit if a resource owner incurs excessive additional costs to achieve what could be minimal improvements to grid reliability and recommended that a cost-benefit analysis be included in the rule. TIEC and NextEra agreed in principle that consideration of cost is critical but proposed that cost be considered alongside technical feasibility.

Joint Commenters, Southern Power, Avangrid, and ERCOT answered no. Generally, these commenters stated that it is within the commission's purview to consider costs, rather than ERCOT's, and that it would be improper to introduce cost as a component of technical feasibility.

Other commenters responded indirectly. APA and ACP suggested that cost be considered in the context of a potential taking, rather than as part of considering technical feasibility. AEP Companies stated that whether to consider cost in the exemption evaluation process is highly fact dependent on the individual reliability issue and how cost is factored in, such as an absolute dollar threshold, a percentage of cost, or some other kind of cost-benefit analysis. TCPA responded that if the definition of "unacceptable reliability risk" is appropriately narrowed, then time-limited exemptions should be available, during which time the re-

source owner can evaluate whether it can spend the money required to come into compliance.

Commission Response

The commission agrees with commenters who responded that cost should not be considered as part of feasibility. As the entity responsible for reviewing exemption requests, ERCOT is charged with the reliability of the grid. Requiring ERCOT to evaluate the cost to an individual resource entity would dilute ERCOT's responsibility to maintain grid reliability and instead make a public interest decision. The commission agrees that it is the commission that is charged with making public interest decisions that weigh cost to an individual resource entity against the reliability benefit of compliance with a new requirement. The deliberation should occur at the commission during an appeal of an exemption decision under 16 TAC §22.251. Such deliberation is also expected during development of a reliability requirement, and the ERCOT Board and the commission will consider the impacts of a new reliability requirement on new and existing resources, whether the requirement needs to apply to existing resources, and whether this exemption process should be used for that requirement.

For these reasons, the commission modifies the rule to remove the requirement that a resource entity submit cost information and the discretion for ERCOT to consider costs as part of its system evaluation. However, the commission also modifies subsection (d) of the proposed rule to indicate that, if a threshold reliability risk exists related to a potential exemption, ERCOT will work with the resource entity to determine whether mitigation options exist that are mutually agreeable to ERCOT and the resource entity, and both parties may consider the cost impacts of these mitigation options.

2. How should the rule distinguish between ERCOT reliability requirements that should and should not allow for an exemption?

Commenters generally agreed that the rule should not distinguish between ERCOT reliability requirements that should and should not allow for an exemption. Rather, most commenters agreed that market participants should be allowed to seek an exemption from any new reliability requirement with which compliance is technically infeasible.

OPUC, TIEC, and ERCOT did not agree with other commenters in their responses. OPUC stated that there should be two tiers of reliability requirement: first, requirements that address critical risk, to which no exemptions should be available, and second, non-critical requirements from which exemptions should be available. TIEC stated that ERCOT should only impose new performance requirements on existing resources based on a statutory mandate or to mitigate a demonstrated reliability risk, and that if a reliability requirement is imposed to mitigate a demonstrated reliability risk, then specifics of the new requirement would still be vetted through the stakeholder process. Similarly, ERCOT stated that the rule should apply only to reliability requirements explicitly allowing ERCOT to grant an exemption, and that new reliability requirements and associated allowances for exemptions should be developed through the stakeholder process. ERCOT argued that applying proposed §25.517 to a broader set of ERCOT reliability requirements could weaken ERCOT system reliability.

Commission Response

The commission agrees with TIEC and ERCOT that new reliability requirements will be developed through the stakeholder process, but does not modify the rule to reflect this, because the process for developing new reliability requirements is beyond the scope of this rulemaking proceeding. However, as previously described, the commission does modify the rule to include additional language to clarify that whether the exemption process contained in this rule is available for a particular reliability requirement will be determined when that requirement is initially developed and adopted.

3. How should ERCOT evaluate cost in comparison to the reliability risk that an unmodified resource may pose to the grid?

Several commenters stated that ERCOT should not evaluate cost in comparison to reliability risk. ERCOT, Southern Power, and Avangrid wrote that cost considerations are irrelevant to reliability risk and are within the commission's purview rather than ERCOT's, so cost should be considered only on appeal. ERCOT further opined that this rule should function similarly to 16 TAC §25.101(b)(3)(A)(i), under which ERCOT performs economic cost-benefit studies to inform a commission decision whether to grant a certificate of convenience and necessity for an economically driven transmission line project.

TCPA stated that if granting an exemption would truly endanger the grid or substantially damage another resource owner's equipment, and it is not possible technically or cost-effectively to eliminate the unacceptable risk through mitigation, curtailment, or remedial action scheme, then the exemption should not be available. AEP Companies similarly stated that a cost threshold alone should not exempt a resource from a reliability requirement or shift costs from the resource to loads that pay for transmission within the region.

Among commenters who suggested that cost be compared to risk, explanations varied. NextEra, APA and ACP, TIEC, and Joint Commenters all had similar recommendations to compare the aggregate cost of implementation of a new reliability requirement to the measured increased reliability risk before adopting the new requirement. NextEra and TIEC further suggested that ERCOT compare the cost of compliance to other available technologies to achieve the same reduction in reliability risk. TIEC also suggested that ERCOT and the commission consider the number of resources affected and the incremental reliability benefit of any new reliability requirement. TIEC noted that typically, this consideration happens during the stakeholder process.

TPPA stated that cost to an individual resource should be a paramount consideration, suggesting that ERCOT consider the likelihood of lost capacity during critical hours if a resource owner chooses to retire or seasonally mothball a resource rather than incur the cost of complying with a new reliability requirement. TIEC and LCRA similarly suggested that during individual evaluation of exemption requests, ERCOT consider the reliability impact of resource retirement, with LCRA focusing specifically on dispatchable generation resources. On the other hand, AEP Companies suggested that ERCOT consider the value of lost reliability if an exemption is granted.

OPUC and LCRA had specific suggestions for how to compare cost. OPUC suggested that the rule require ERCOT to compare the cost of compliance with the change in Loss of Load Probability as valued by the Value of Lost Load (VOLL). If the cost of compliance is less than savings in expected VOLL, ERCOT should not consider costs further; however, if the cost of compliance exceeds expected VOLL, then ERCOT should consider granting an exemption or implementing phased compliance. LCRA suggested that the rule require ERCOT to compare the costs

incurred by a resource owner to the implicit costs incurred by the market for every granted exemption, including the potential costs of unserved load in the case of severe reliability impacts (cascading outages, uncontrolled separation, etc.).

AEP Companies commented that if the commission chooses to include a cost component, the commission should err on the side of reliability and recognize that any such exemption for the generator may require mitigation that includes additional transmission facilities.

Finally, Association Joint Commenters commented that ERCOT should weigh individual exemption requests based on the facts and circumstances of each case and the specific impact, if any, of the individual request on the ERCOT system and the resource owner.

Commission Response

The commission agrees with commenters that stated that ERCOT should not evaluate the cost to an individual resource entity in comparison to reliability risk. As stated in the commission's response to Question 1, ERCOT's role is to maintain grid reliability, not to weigh the cost to an individual resource entity against the impact to grid reliability. It is the commission's role to make such public interest decisions. Therefore, ERCOT's role under this rule is limited to evaluating an exemption request in terms of whether granting an exemption would cause a threshold reliability risk and to working with resource entities to identify mutually acceptable options to mitigate those risks. The commission also agrees with TCPA that if an exemption would lead to catastrophic consequences, it should not be granted, and with AEP Companies, that a cost threshold alone should not justify granting an exemption or shift costs from a resource to loads that pay for transmission. The commission also agrees with TIEC's and LCRA's suggestion that ERCOT consider the impact of resource retirement on resource adequacy, but this is already covered under the proposed rule and maintained in the adopted rule.

4. Under subsection (g)(1), an exemption is no longer valid if the market participant makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations. Is this a reasonable threshold for considering a resource modified to the extent that it is no longer the same resource that was granted an exemption? If not, what is a reasonable threshold?

Most commenters disagreed with proposed (g)(1)'s threshold because, under this threshold, a modification to a resource that is small or unrelated to the specific cause for the exemption could trigger loss of an exemption, and this outcome would be unreasonable. Of those who disagreed, most pointed to ERCOT's Planning Guide §5.2.1(1)(c) as the suggested threshold, with a subset of those commenters specifically suggesting §5.2.1(1)(c)(ii). Commenters argued that this planning guide section covers resource modifications that are so significant in changing a resource's performance characteristics that they require ERCOT to perform new studies and require a resource to make modifications to improve grid reliability.

Association Joint Commenters recommended ERCOT Planning Guide §5.2 with additional clarifying language, and TPPA recommended using Planning Guide §5.5(6), which specifically relates to continuing operations, rather than initial commissioning. NextEra and TCPA recommended adding language such as "significant modification" or "materially modified" to narrow the types of modifications that would trigger revocation of an exemption, and TIEC stated that exemptions should instead be reviewed and revoked on a case-by-case basis.

Oncor and OPUC agreed with proposed (g)(1).

Commission Response

The commission agrees with commenters who suggested that the proposed provision be modified. The commission modifies the rule to mirror the language in ERCOT Planning Guide §5.2.1(1)(c)(ii) because this language accounts for modifications significant enough that they require ERCOT to perform new studies to ensure grid reliability.

Overall suggestion to withdraw or delay rulemaking

Most commenters opined specifically on the need for this rulemaking. These commenters recommended that the proposed rule be withdrawn or delayed, with various justifications. Some commenters argued that the rule's action is an unconstitutional exercise of eminent domain or that the rule will apply retroactively, rather than prospectively. Avangrid argued that the rulemaking is arbitrary, with no reasoned justification for the rule. Several commenters argued that ERCOT or the commission should pause the rulemaking and have a third party conduct a reliability study showing a need for the rule. Other commenters argued that a rulemaking covering commission directives to ERCOT or commission oversight of ERCOT should be completed first. Several commenters also argued that the ERCOT protocol concerning exemptions for inverter-based resources (IBRs) should follow the process laid out by the North American Electric Reliability Corporation (NERC), that the rulemaking will discourage investment in the ERCOT market, or that ERCOT already has the tools it needs to ensure grid reliability without this rulemaking.

Commission Response

The commission disagrees that this rulemaking is unnecessary, arbitrary, or premature. These arguments reflect a mischaracterization of the rule as it relates to eminent domain law and retroactive application. The proposed rule outlines a process that must be followed by ERCOT, a resource entity, and the commission. The proposed rule itself does not prescribe a taking of private property without compensation or apply to a resource entity's action that occurred in the past. The rule refers only to a provision in an ERCOT protocol, guide, or other binding document and allows a resource entity to apply for an exemption from that provision. It does not regulate private property or authorize any taking of real property. In addition, the rule is fundamentally prospective: reliability requirements that are adopted in the future will allow for resources existing at the time the requirement is adopted to apply for an exemption, with the limited exception of applicability to a reliability requirement that is already in effect for which ERCOT has accepted notices of intent to request an exemption, but has not yet developed criteria for evaluating those exemptions. Thus, even in the case of this limited exception, this rule only applies in contexts where resource entities were already expecting further regulatory action regarding the exemption process.

In addition, comments discussing specific IBR-related issues are beyond the scope of this rulemaking.

Proposed §25.517(b), (c), (c)(3), (c)(4), and (c)(6)--Commercial availability and economic viability as part of technical feasibility

Proposed §25.517(b)(4) defines "technically feasible" as "[describing] a modification or upgrade that, based on physics and

engineering, can be made to a resource." Proposed subsection (c) allows a market participant to submit an exemption request if a technical limitation prevents a resource from complying with a requirement that ERCOT has determined is critical for reliability. Proposed subsection (c)(3) requires the market participant to submit documentation describing all technically feasible modifications, replacements, or upgrades that the market participant could implement, but has not yet implemented, to improve the resource's performance toward meeting the applicable reliability requirement. Proposed subsection (c)(4) requires the market participant to submit the estimated total cost of all modifications identified in subsection (c)(3). Proposed subsection (c)(6) requires the market participant to submit a plan to comply with each specific element of the applicable reliability requirement to the maximum extent possible and gives additional requirements for this plan in subparagraphs.

Many commenters had suggestions to modify several provisions of the rule to consider commercial availability, feasibility, or reasonableness and economic cost associated with equipment modifications or replacements. Commenters argued that considering only technical feasibility, without a cost component, would require the market participant to consider theoretical solutions to comply with a reliability requirement that may be either commercially unavailable or excessively expensive. Other comments focused on the difference between hardware and software modifications to existing, as-built equipment and suggested that the rule be modified to only require software modifications to as-built equipment, rather than requiring a replacement or upgrade, which could entail purchasing new equipment. For example, Joint Commenters wrote that subsection (c)(3) of the proposed rule requires an applicant to submit costs for theoretical solutions or replacement of an entire facility, which would be unreasonable.

Association Joint Commenters argued that because the rule does not specifically allow a market participant to request an exemption based on cost or commercial availability considerations, it would be unclear if that market participant could appeal to the commission because there would be no denial based on cost or commercial availability.

Finally, Joint Commenters argued that if ERCOT must evaluate costs (under subsection (d)), then an applicant should be required to submit costs (under subsection (c)); however, if ERCOT has discretion whether to evaluate costs, then an applicant should not be required to submit costs.

Commission Response

The commission disagrees that commercial reasonableness, economic feasibility, or another phrase signifying economic cost to the resource entity should be included in the concept of feasibility, as suggested by several commenters.

As described above in the commission's responses to Questions 1 and 3, ERCOT is responsible for maintaining grid reliability. Requirements related to grid reliability may involve additional investment by a resource entity. However, even if a requirement does involve additional investment, ERCOT is not statutorily tasked with measuring the economic impact of such additional investments to an individual resource entity. If there is a significant cost impact to an individual resource entity, and the entity is unsatisfied with the outcome of its exemption request, the adopted rule provides for an appeal process at the commission under 16 TAC §22.251, whereby the entity can argue its case related to the cost impact. The commission can then weigh the public interest served by ERCOT's decision against the cost impact to the individual resource entity.

For purposes of this rule, ERCOT is concerned only with whether a resource entity can identify, procure, and install a modification to its resource that would allow the resource to comply with the reliability requirement. Whether a modification can be procured is relevant to ERCOT's evaluation, but how much it costs is not. Additionally, whether a modification can be procured commercially, or "off the shelf," is not relevant to ERCOT because electricity production can involve highly customized equipment. Therefore, the commission replaces the defined term "technically feasible" ((b)(3) of the proposed rule) with "feasible" and modifies the definition to add the term "available," modifies (c)(3) of the proposed rule to remove the requirement to submit costs, and modifies (d) of the proposed rule to remove ERCOT's discretion to evaluate the individual cost to the resource entity.

However, the commission also modifies (d) of the proposed rule to require ERCOT to work with an individual resource entity to determine whether the resource in question could operate with conditions mutually acceptable to ERCOT and the resource entity to mitigate any threshold reliability risks caused by the resource's continued operation. This modification to the proposed rule allows ERCOT to request and consider additional information from the resource entity during this process, including costs of an individual condition. Modified §25.517(d) states, however, that failure to identify a mutually acceptable option does not prevent ERCOT from making a decision on the exemption request based on its assessment. This addition ensures that this requirement is not interpreted to limit ERCOT's discretion in making its final decision on the exemption request to options the resource entity is willing to agree to. This also allows ERCOT to make a final determination if a mutually acceptable option cannot be identified in a timely fashion.

Also, the primary role of the defined term "technically feasible" is to describe the potential modifications a resource entity could implement, but has not yet implemented, to comply with the reliability requirement. It is essential not to limit the types of modifications that a resource entity could implement based on a notion of financial cost or off-the-shelf availability. The commission modifies (d) of the proposed rule as described above for this reason.

In addition, the commission will not prescribe the types of reliability requirements and compliance solutions that may arise through the ERCOT stakeholder process by limiting the possibilities only to non-hardware modifications. ERCOT must have the flexibility to determine how best to maintain grid reliability through reliability requirements, including potential hardware modifications to existing equipment.

The commission disagrees with Association Joint Commenters that an appeal based on cost would not be available. In an appeal to the commission under 16 TAC §22.251, the appellant is given the opportunity to allege the harm to it of ERCOT's conduct, which could include the cost of compliance with the reliability requirement.

Proposed §25.517(a)--Application

Proposed §25.517(a) states that the section applies to a resource that existed before the date a reliability requirement takes effect and that satisfies the criteria for an exemption. Proposed subsection (a) does not refer to any other commission rules or to the Public Utilities Regulatory Act (PURA).

Joint Commenters, Avangrid, TPPA, Invenergy, and APA and ACP recommended that the rule be modified to exempt a resource from a reliability requirement that would damage the equipment of the resource, as provided for in 16 TAC §25.503(f)(2)(C) and (f)(3). These commenters argued that, for an existing resource, if a new standard is adopted that cannot work with existing equipment, or that could damage existing equipment or void original equipment manufacturer warranty, then these current rules exempt the resource from the standard. Joint Commenters and Invenergy also stated that the proposed rule conflicts with PURA §39.151(l), which states that no operational criteria, protocols, or other requirements established by ERCOT may adversely affect or impede any manufacturing or other internal process operation associated with an industrial generation facility, except to the minimum extent necessary to assure reliability of the transmission network. Furthermore, Joint Commenters argue that Sec. 5.2 of the commission-approved standard generation interconnection agreement (SGIA) "specifies…that generator's interconnection facilities must meet ERCOT requirements in effect at the time of construction."

Commission Response

The commission disagrees that the proposed rule conflicts with other statutes or commission rules and documents, including PURA §39.151(l), 16 TAC §25.503(f), and the SGIA, which many commenters mischaracterize as providing automatic exemptions to ERCOT reliability requirements.

The details of any particular reliability requirement will be decided through the ERCOT stakeholder process, not through this rule, and must comply with applicable statutes and commission rules. The proposed rule does not prescribe any operational criterion, protocol, or other reliability requirement, nor does it authorize the development of any of the above. Furthermore, as it relates to PURA §39.151(l), under the adopted rule, ERCOT will only deny an exemption request if it would lead to a threshold reliability risk. This aligns with the statutory standard that allows interference with the manufacturing or other internal process operation of a generation facility if necessary to assure the reliability of the transmission network. In fact, such a process is one way of ensuring that a reliability requirement that applies to existing resources is implemented in compliance with that statutory provision.

The commission strongly disagrees with commenter arguments concerning §25.503(f). Under §25.503(f)(2)(B), a market participant may be excused from compliance with ERCOT instructions or Protocol requirements only if such non-compliance is due to a number of enumerated reasons, such as creating a risk of harm to equipment, or for other good cause. By the plain language of subsection (f)(2)(B), this is a permissive provision (may be excused) that sets the outer bounds (only if) of when a participant can be excused from compliance with a requirement. In other words, it provides ERCOT with discretion to temporarily excuse compliance with a requirement if one of the listed conditions exists. It does not, as commenters argue, require ERCOT to do so or automatically exempt a market participant from an ERCOT requirement if one of the listed conditions exists. Moreover, to the extent that a market participant interprets this as an automatic exemption, this would leave it up to the judgment of the market participant when such an exemption applies, which is an especially problematic interpretation given that the listed conditions include "or for other good cause," which would provide the market participant with broad compliance discretion.

Similarly, §25.503(f)(3) describes what is expected of a market participant when ERCOT protocols require it to make its "best efforts." Essentially, this provision defines "best efforts" when used in this context. It does not extend those expectations universally to all reliability requirements promulgated by ERCOT, as suggested by some commenters. Commenters' arguments in favor of such an interpretation ignore the plain and unambiguous text of subsection (f)(3).

The commission also disagrees that this rule would conflict with Sec. 5.2 of the SGIA, as asserted by Joint Commenters. Joint Commenters' argument is supported by a partial citation of the relevant SGIA provision. Cited in full, the relevant provision reads: "Generator agrees to cause the GIF to be designed and constructed in accordance with Good Utility Practice, ERCOT Requirements and the National Electrical Safety Code in effect at the time of construction." Critically, this provision is specific to what standards are applicable during the design and construction of the resource, not - as suggested by Joint Commenters - what standards generally apply to that facility. In fact, the term "ERCOT Requirements" appears in the SGIA nearly 30 times, and the only two times it is joined with "at the time of construction" is when describing requirements related to facility construction and, therefore, apply at the time of construction. This addition is required in those two instances because the SGIA, which explicitly incorporates "ERCOT Requirements" by reference, includes in the definition of "ERCOT Requirements" the phrase "as amended from time to time." This indicates that signatories to the SGIA explicitly acknowledge that ERCOT requirements will change and that the SGIA incorporates, by reference, the version of ERCOT requirements that are in effect at any given time. Any other interpretation would make it impossible for ERCOT to maintain the reliability of the grid over time.

The interpretations forwarded by commenters described above are not only inconsistent with the plain language of the requirements being cited. When read together, these interpretations also represent a problematic compliance posture that suggests ERCOT and the commission are prohibited from updating requirements that apply to existing resources and, potentially, that market participants are free to disregard requirements when they believe there exists good cause to do so. If the commission, ERCOT, and market participants were to act in conformity with these interpretations, it would pose a material risk to ERCOT's ability to maintain the reliability of the grid.

Proposed §25.517(a), (b), and (c)--Market participant versus resource

Proposed §25.517(a) states that the section applies to "market participants," but that an exemption granted under this section applies only to a specific kind of "resource." Proposed subsection (b) defines "resource."

Several commenters noted the discrepancy throughout the rule between language directed at resources and the application of the rule to market participants. TPPA recommended that the rule language be modified to apply to all market participants, and Oncor requested clarification but noted that transmission and distribution utilities are also subject to reliability requirements. However, Association Joint Commenters and LCRA recommended the opposite--that the rule language be modified to apply only to resources and resource owners.

Oncor also requested clarification as to who can request an exemption: does the proposed rule only allow market participants that own or control a resource (i.e., resource entities) to request

exemptions, or can other market participants that are associated with a resource (e.g., qualified scheduling entities, load serving entities, etc.) request exemptions on a resource's behalf? Can a resource entity request an exemption for any resource that it owns, or must the request come from the designated decision-making entity that controls the resource? Avangrid suggested that the resource entity be the entity eligible to request an exemption.

Association Joint Commenters, Avangrid, and LCRA provided redlines consistent with their comments.

Commission Response

The commission agrees with Association Joint Commenters and LCRA that the intent is for the rule to apply to resources, not all market participants, and modifies the rule to apply only to generation resources, load resources, and energy storage resources.

The commission also agrees that a resource's resource entity is the appropriate applicant to request an exemption and modifies (c) of the proposed rule accordingly.

Proposed §25.517(a), (b)(2), and (c)--Definition of reliability requirement, and how and by whom a reliability requirement is established

Proposed §25.517(a) states the application of the rule to market participants in the ERCOT region that are required to comply with reliability requirements. Proposed subsection (b)(2) defines "reliability requirement" as "a technical standard adopted by ERCOT to support the reliability of electric service..." Proposed subsection (c) refers to a "requirement that ERCOT has determined is critical for reliability."

Many commenters expressed concerns that the proposed definition of "reliability requirement" is vague and that the proposed rule is silent on how a reliability requirement will be established in the future. Commenters offered varying suggestions for responding to their concerns.

Vistra suggested that subsection (b)(2) of the rule be modified to state that the commission will approve reliability requirements adopted by ERCOT and to define a process by which the commission would do this. Vistra argued that market participants should know before they request an exemption whether a new standard is a reliability requirement and that the commission's determination whether a standard is eligible for an exemption would result in an efficient use of commission time. Similarly, Southern Power questioned whether "reliability requirement" is easily identifiable by all parties and suggested that the commission direct ERCOT to identify all current reliability requirements and to document the process by which future reliability requirements are identified, developed, approved, modified, etc. Vistra provided redlines consistent with its suggestion.

ERCOT asserted that the rule should apply only to reliability requirements that explicitly allow ERCOT to grant an exemption based on its engineering judgment or discretion and cited to ERCOT Nodal Operating Guide §2.12 as an example. ERCOT recommended that a reliability requirement go through the ERCOT stakeholder process to become the type of requirement that the proposed rule requires, arguing that the stakeholder process encourages robust participation and is overseen by multiple bodies, including a committee or working group, the technical advisory committee, the ERCOT board of directors, and the commission. ERCOT provided redlines consistent with its comments.

Avangrid recommended that the commission use a definition like NERC's for "reliability requirement" because the proposed rule's definition is too broad and inappropriately expands ERCOT's authority. TCPA and Vistra suggested that exemptions that pose no reliability risk be excluded from the rule. TCPA also recommended modifying subsection (b)(2) of the proposed rule to exclude net metering arrangements because there are existing exemptions related to this topic that are routinely granted permanently. Avangrid, TCPA, and Vistra provided redlines consistent with these suggestions.

Avangrid, Association Joint Commenters, and TPPA recommended that the phrase "critical for reliability" in proposed subsection (c) be deleted because it is undefined, and the proposed rule contains no description of how ERCOT will arrive at the conclusion that a requirement is critical for reliability. TPPA also stated that the proposed rule seems to indicate that if ERCOT determines that a requirement is not critical for reliability, then a market participant would be disallowed from seeking an exemption. Avangrid and Association Joint Commenters provided redlines consistent with their comments.

Commission Response

In response to Vistra's comments on this topic, the commission agrees that market participants should know before they apply for an exemption whether a new standard is a reliability requirement and that the commission will approve new reliability requirements. In addition, the commission agrees with Southern Power's comments that ERCOT should identify all reliability requirements. The commission addresses these comments by modifying subsection (a) of the proposed rule to describe how a reliability requirement will be developed--that ERCOT will designate during its development whether a new reliability requirement will be subject to this rule and allow for exemptions--and makes the action associated with this rule prospective only. A reliability requirement is any provision in the ERCOT protocols, operating guide, or other binding documents related to reliability, so any new reliability requirement will be developed through the stakeholder process and approved by the commission, just as all protocol, operating guide, and planning guide revisions already are; therefore, all market participants will be aware which reliability requirements will be subject to the rule and allow for exemptions.

Similarly, in response to Southern Power, this rule is the documented process by which an exemption to a reliability requirement that is designated as allowing for exemptions can be requested and granted. To be subject to this new rule, a reliability requirement must be a mandatory, technical standard that applies to existing resources; therefore, a reliability requirement that is missing at least one of those elements (mandatory, technical, or applicable to existing resources) is not subject to this rule, and this would include protocols related to existing net metering arrangements. The commission also modifies the definition of "reliability requirement" to align with these concepts. The new provisions in subsection (a) of the adopted rule clarify that if a revision to an ERCOT protocol does not allow for an exemption, the exemption process outlined in this rule would not apply to that revision.

The commission agrees that "critical for reliability" in subsection (c) of the proposed rule is out of place and modifies the rule to replace it with "reliability requirement."

Proposed §25.517(a) and (c)--Exemption eligibility date

Proposed §25.517(a) states that "any exemption granted under this section applies only to a resource that existed before the date a reliability requirement takes effect." Subsection (c) uses the term "a resource" to describe an eligible resource, not limiting the types of resources that are eligible to apply for an exemption.

Several commenters suggested that, instead of describing an eligible resource as one that "existed" before the date a reliability requirement takes effect, the proposed rule use a more precise term or point in time, such as execution of the SGIA. However, some comments conflicted with submitted redlines. For example, NextEra's written comments suggested that a resource with an executed SGIA should be eligible for an exemption, but its redlines suggested that only a resource that had not executed an SGIA should be eligible for an exemption (i.e., a newly built resource, rather than any resource already operating). Similarly, Avangrid's comments and redlines suggested that it preferred that only new resources, or those that have not yet signed an SGIA, be eligible for an exemption. On the other hand, Association Joint Commenters commented that both new and existing resources should be eligible for an exemption and provided a redline strike of the sentence in subsection (a) of the proposed rule describing an eligible resource as one that is already existing.

Jupiter Power and Avangrid provided redlines to subsection (c) of the proposed rule.

Commission Response

The commission disagrees that a resource entity that has signed an SGIA should be eligible to apply for an exemption from a reliability requirement for a resource that is not yet interconnected in ERCOT. Instead, the commission modifies (a) of the proposed rule to clarify that only a resource whose Resource Commissioning Date is before the date a reliability requirement takes effect is eligible to apply for an exemption under this rule. In the case of a load resource, only one that had completed Ancillary Service Qualification Testing before the date a reliability requirement takes effect is eligible. The reason for this choice is that a load resource does not receive a Resource Commissioning Date, but the date that it completes Ancillary Service Qualification Testing is similar to a generation resource's Resource Commissioning Date in that after this date, the load resource can provide ancillary services to the ERCOT market.

Proposed §25.517(b) and (g)--Reference to ERCOT protocols

Proposed §25.517(b) refers to the ERCOT protocols in subsection (b)(1), the definition of "resource." Proposed §25.517(g)(1) refers to "the ERCOT planning guide section relating to Generator Commission and Continuing Operations."

AEP Companies discouraged the commission from referring to ERCOT protocols in a commission rule because the language or numbering in the protocols could change, thus potentially changing the rule's operation. In addition, AEP Companies noted that the reference in subsection (b)(1) refers to defined terms in the ERCOT protocols that only carry the weight of the defined term if they are capitalized.

Commission Response

The commission agrees that the rule should not directly name specific ERCOT protocols, but that it is appropriate to refer to the ERCOT protocols for terms that are defined in them, and modifies the rule accordingly.

Proposed §25.517(b)(1), (b)(2), and (b)(3)--Definitions

Proposed §25.517(b)(1) defines "resource" as "[including] a generation resource, load resource, and an energy storage resource, as defined in the ERCOT protocols." Proposed §25.517(b)(2) defines "reliability requirement" as "a technical standard...that is included in the ERCOT protocols, operating guides, or other binding documents." Proposed §25.517(b)(3) defines "technical limitation" as "a technical restriction...based on the resource's documented technical infeasibility to comply with the reliability requirement."

Oncor suggested that subsection (b)(1) of the proposed rule be modified to remove "load resource" from the definition of "resource," arguing that load resources are fundamentally different from generation resources and energy storage resources in the way they interact with the grid. Oncor argued further that they are not subject to the same performance requirements and are already exempt from many requirements applicable to generation and storage resources. As a result, Oncor stated that allowing load resources to obtain exemptions from ERCOT's reliability requirements would expose the grid to unnecessary risk.

Avangrid preferred that the commission use the definition of "resource" from existing 16 TAC §25.503 and provided a corresponding redline; alternatively, Avangrid recommended aligning the definition with the definition in the ERCOT protocols.

NextEra recommended that the commission strike "or other binding documents" from subsection (b)(2) of the proposed rule because ERCOT's other binding documents do not undergo the same rigorous processes that protocols and operating guides undergo to be modified; therefore, other binding documents should not have the same status as these other documents.

Avangrid recommended removing the concept of technical feasibility from subsection (b)(3) of the proposed rule because this concept is too broad and abstract.

Commission Response

The commission disagrees with Oncor that load resources should not be eligible for an exemption because a future reliability requirement that allows for exemptions could pertain to load resources. In addition, the commission believes that ERCOT's discretion whether to allow exemptions during development of a reliability requirement, subject to approval of the ERCOT Board and the commission, represents a strong check on the reliability impact of an exemption for a load resource.

The commission disagrees with Avangrid's suggestion to adopt the definition of "resource" from §25.503 because, for the purposes of this rule, the proposed definition with slight modifications suffices. The rule is applicable to generation resources, load resources, and energy storage resources, as defined in the ERCOT protocols; how the resource provides energy is not necessary to understand as part of this rule.

The commission does not share NextEra's concern related to the formality of the process in this rule relative to ERCOT's process for adopting other binding documents. The adopted rule provides ERCOT, subject to commission approval, with the discretion to determine which reliability requirements this rule will apply to. However, the commission modifies the rule to use only "ERCOT protocols" where, in the proposed rule, "ERCOT protocols, operating guides, and other binding documents" appears because §25.5 already defines ERCOT protocols to include the entire body of procedures developed by ERCOT to maintain the reliability of the regional electric network.

The commission agrees with Avangrid's suggestion to remove "technical infeasibility" from the definition of "technical limitation" and modifies the rule accordingly.

Suggested additional definitions

Several commenters had suggestions for additional definitions to include in subsection (b).

Association Joint Commenters provided suggested definitions for "economic limitation" and "commercially feasible" and explained that some costs may make it impracticable or impossible for market participants to comply with a reliability requirement.

NextEra provided suggested definitions for "commercial availability," "legacy resource," and "significant modification" with no additional comment. NextEra's definition of "legacy resource" denotes a resource that had a signed interconnection agreement prior to commission approval of the reliability requirement being applied to it.

LCRA provided a suggested definition for "affected entity" and explained that it would add clarification that an entity impacted by an exemption request is entitled to participate in the ERCOT process for exemption and the appeal process at the commission under 16 TAC §22.251. LCRA explained further that this addition would align terminology between 16 TAC §25.517 and §22.251.

Commission Response

For the reasons discussed under the commission's Questions 1 and 3 above, the commission declines to modify the rule to add the definitions suggested by Association Joint Commenters and NextEra. In addition, the commission disagrees with adding a definition for "legacy resource" because the rule already includes a delineation of existing resources.

The commission disagrees with LCRA and declines to modify the rule to include a definition of "affected entity" because it is unnecessary. The concept of an affected entity is not relevant to this rule, although it is relevant to amended §22.251, where an affected entity may intervene in an appeal of ERCOT conduct. The commission has chosen to limit participants in an exemption request to ERCOT, the resource entity, and the resource entity's interconnecting transmission service provider (TSP).

Proposed §25.517(b)(4)--Definition of "technically feasible"

Proposed §25.517(b)(4) defines "technically feasible" as "[describing] a modification or upgrade that, based on physics and engineering, can be made to a resource."

Several commenters had concerns that the definition is too broad. For example, NextEra stated that any modification based on physics and engineering possibilities alone could encompass an infinite universe of possibilities, and Joint Commenters stated that anything is technically feasible if one spends unlimited time and resources to replace all existing equipment. These and other commenters who agreed with this position recommended adding language to narrow the definition to those modifications or upgrades that can be made with known, commercially available, economically viable solutions, to the as-built resource, that do not require new hardware.

On the other hand, Vistra argued that "physics and engineering" do not cover the range of options that would make a modification technically infeasible; for example, impractical waitlist times or space constraints may preclude application of a potential compliance solution. OPUC's opinion differed: it stated that the definition lacked consideration of whether the modification or upgrade required to achieve compliance provides any material benefit to the resource or the grid accepting its output. Also, OPUC had concerns that the cost of compliance would be passed on to consumers via the Transmission Cost of Service (TCOS).

Avangrid, Joint Commenters, Jupiter Power, NextEra, TCPA, OPUC, and Vistra provided redlines consistent with their comments.

Commission Response

The commission declines to modify the definition of "technically feasible" to limit it as suggested by commenters for the reasons described in the commission's response to comments on Question 2. However, the commission modifies the provision to remove the term "technically" because it unnecessarily limits the term "feasible" and modifies the definition to add the concept of availability.

The commission disagrees with Vistra that other reasons why a modification may be infeasible need to be enumerated in the definition. A resource entity should include the reasons why its resource cannot comply with a reliability requirement in its application, as required by proposed subsection (c)(2). The commission also modifies subsection (d) of the proposed rule to allow ERCOT and the resource entity to work together to find mutually acceptable solutions to avoid both threshold reliability risks and a denial, although ERCOT retains discretion to deny an exemption if there is a failure to identify mutually acceptable solutions. In addition, the adopted rule allows for an extension. Therefore, if there is an issue with availability of a modification, an extension could be appropriate, and if there is a space issue, the resource entity can work with ERCOT according to the new process in subsection (d) of the adopted rule.

The commission disagrees with OPUC that the definition needs consideration of material benefit because material benefit to the grid will be determined to exist through the stakeholder process that produces the reliability requirement. In addition, comments related to TCOS are beyond the scope of this rule, which applies only to resources.

Proposed §25.517(b)(5)--Definition of "unacceptable reliability risk"

Proposed §25.517(b)(5) defines "unacceptable reliability risk" as "a risk posed to the ERCOT system, including: (A) instability, cascading outages, or uncontrolled separation; (B) loss of generation capacity equal to or greater than 500 MW in aggregate from one or more resources; (C) loss of load equal to or greater than 300 MW; (D) equipment damage; or (E) an unknown or unverified limitation."

Several commenters believed that this definition is too broad or lenient and requested that the commission narrow the definition to what is, according to the commenters, truly an unacceptable reliability risk. For example, Oncor and Association Joint Commenters both noted that using the term "including" in (b)(5) of the proposed rule enlarges the universe of possible risks beyond the list in (A) through (E). Association Joint Commenters and TPPA commented that "instability" and "equipment damage" are undefined and ambiguous, with Association Joint Commenters adding that "an unknown or unverified limitation" is also ambiguous. Association Joint Commenters stated that under the proposed definition, even a squirrel or snake could be an unacceptable reliability risk.

Other commenters had concerns about the thresholds of 300 MW of load loss and 500 MW of generation capacity: NextEra,

TCPA, Vistra, and Association Joint Commenters commented that these thresholds seem arbitrary and low, given that the ERCOT market operates regularly with outages up to 820 MW (Association Joint Commenters referred to the ERCOT Unplanned Resources Outages Report from January 18, 2025 for this figure). NextEra, TCPA, and Vistra argued that ERCOT can manage losses of generation capacity and load in a controlled manner, and that these losses do not necessarily threaten the reliability or stability of the grid. Southern Power requested the justification for choosing the thresholds, suggesting that they are arbitrary, especially in light of Planning Guide Revision Request 122, which would establish that no more than 1,000 MW of load may be lost for any single contingency. Oncor recommended removing (C), loss of load greater than or equal to 300 MW, because the rule relates to resources, not loads. Oncor additionally argued that one resource's exemption from a reliability requirement may contribute to a loss of load event, but that contribution is more attenuated than subsection (b)(5) seems to suggest and is highly dependent on other system conditions at the time of the event. TCPA and Vistra supported (A) and (D) as appropriate to include in the definition (along with their suggested redlines) because they are the types of reliability risk that cannot be mitigated and thus warrant a denial of an exemption.

As to (b)(5)(B) specifically, if this criterion is retained, NextEra and Joint Commenters recommended that the value be tied to ERCOT's most severe single contingency (MSSC) value of 1,430 MW, not 500 MW. Joint Commenters noted that ERCOT proposed 500 MW as the threshold during the NOGRR 245 development process because it is tied to ERCOT's NERC-reportable event threshold and argued that it is unreasonable to use ae NERC reporting threshold as grounds for rejecting reliability standard exemptions for existing resources. Southern Power agreed with using MSSC or ERCOT's interconnection frequency response obligation.

Avangrid, NextEra, and Joint Commenters included "material" in their redlines of this paragraph ("a material risk posed to the ERCOT system..."). Association Joint Commenters, Avangrid, TCPA, and Vistra included additional redline suggestions to clarify the definition: "a risk posed to the ERCOT system that, if realized (or materialized), would result in..."

Oncor, Association Joint Commenters, Joint Commenters, Avangrid, NextEra, TCPA, and Vistra provided redlines consistent with their comments.

Commission Response

The commission modifies the proposed rule by replacing the defined term "unacceptable reliability risk" with "threshold reliability risk," and makes conforming edits throughout the section. Whether a risk is "unacceptable" reflects a policy decision by the commission, rather than an operational decision. Further, ERCOT should not be required to say that there is an unacceptable reliability risk definitionally, even if there are mitigating measures from a policy perspective that should be considered by the commission. This modification also clarifies the line between ERCOT's reliability determinations and the commission policy decisions.

The commission disagrees with commenters who recommended modifying the amount of capacity loss in (b)(5)(B) and the amount of load loss in (C) of the proposed rule. 500 MW of capacity loss and 300 MW of load loss are NERC thresholds for reportable events, and the values reflect a supportable and conservative operating mindset. Loss of generation capacity equal to 500 MW or more in aggregate is related to a NERC Category 1 reportable event ("an outage, contrary to design, of three or more Bulk Electric System Facilities caused by...the outage of an entire generation station of three or more generators (aggregate generation of 500 MW to 1,999 MW)"). See NERC, Electric Reliability Organization Event Analysis Process Version 5.0 at 2, effective January 1, 2024, https://www.nerc.com/pa/rrm/ea/ERO_EAP_Documents%20DL/ERO_EAP_v5.0.pdf. Loss of load equal to or greater than 300 MW is related to a NERC Category 2 reportable event ("simultaneous loss of 300 MW or more of firm load due to a Bulk Electric System event, contrary to design, for more than 15 minutes"). In addition, 500 MW of generation capacity loss is enough to cause a frequency disturbance, which could lead to a more serious outage and should be avoided. However, the commission modifies the rule to reflect that the 500 MW of capacity loss must come from resources other than the resource requesting the exemption. The commission also notes that the NERC thresholds are established for reporting actual events where complete fact patterns are known, whereas the requirements of this section are tailored to the forward-looking orientation of ERCOT's analysis.

MSSC is an inappropriate measure because a reliability requirement is intended to prevent failures that could lead to the MSSC, and using the MSSC as the threshold reliability risk is overly risky.

The commission disagrees with Oncor that load loss is potentially so attenuated from a resource operating with an exemption that the loss cannot be fairly attributed to that resource. In the case of an assessment using models submitted by resource entities, potential load loss could be attributed to those resources; in the case of a real-time system event, an after-event analysis could determine the cause of experienced load loss. Additionally, the commission disagrees with removing (b)(5)(C) of the proposed rule, relating to loss of load, because load loss is an unacceptable scenario that could result from a resource's noncompliance with a reliability requirement and should be avoided or mitigated.

The adopted rule retains "equipment damage" because this is an industry-standard term that represents an important system risk; however, the commission modifies the provision to remove "unknown or unverified limitation" because it is too broad and open to interpretation for a commission rule definition. The commission also agrees with redlines modifying (b)(5) to avoid the term "including," because the list of risks is exclusive, and modifies the rule accordingly to begin with "one or more of the following."

The commission disagrees with modifications suggested by Association Joint Commenters, Avangrid, NextEra, TCPA, and Vistra and declines to modify the rule.

The commission also notes that the definition of threshold reliability risk sets the standard of reliability that ERCOT will use to evaluate exemption requests and will serve as an avoidance target for resource entities and ERCOT to achieve when collaborating on potential mitigation measures. However, if a resource entity believes that the application of one of these standards in a particular instance would be too strict and would result in too high of a cost of compliance, that entity can appeal to the commission under 16 TAC §22.251.

Proposed §25.517(c)--Extensions

Proposed §25.517(c) allows a market participant to request an exemption from a reliability requirement. The proposed rule does not mention extensions.

Several commenters recommended in written and oral comments that the commission allow extension requests in this rule alongside exemption requests. For example, Jupiter Power argued that a resource may be able to comply with a reliability requirement if it is permitted reasonable time for compliance. In those situations, Jupiter Power argued, a resource may only need an extension of the applicable requirement and not a permanent exemption. For regulatory expediency, therefore, Jupiter Power recommended that resources should be granted a defined amount of additional time to comply with the reliability requirement without having to seek a formal exemption.

Jupiter Power, Association Joint Commenters, and NextEra provided redlines consistent with their comments.

Commission Response

The commission agrees with commenters that an extension is an acceptable potential outcome of an exemption request and modifies the rule throughout accordingly. However, the process laid out in this rule will remain the same. A resource entity will apply to ERCOT and be assessed in the same way, regardless of whether the application is for an exemption, an extension, or both.

Proposed §25.517(c)--Timing of rule implementation

Proposed §25.517(c) allows a market participant to request an exemption from a reliability requirement.

TPPA recommended that the rule be modified to require ERCOT to promulgate the application form within 30 days of the rule's adoption to ensure that this rule can take full effect upon commission approval.

LCRA recommended that the rule be modified to add a 90-day limit for resource owners to submit an application for an exemption from a new reliability requirement. LCRA argued that this would allow ERCOT to collect and assess holistically the aggregate impacts of granting an exemption to all resource owners seeking to avoid a new reliability requirement, and that having a well-defined, time-bound exemption framework will also give other affected entities clarity and predictability regarding when, how, and to whom new reliability requirements will be applied. LCRA provided redlines consistent with its comments.

Commission Response

The commission disagrees with TPPA's recommendation to require ERCOT to promulgate an application form within 30 days of the rule's adoption because each reliability requirement may require a different format for data submission by a resource entity. The commission also clarifies that the use of the term "form" in the proposed rule did not necessarily mean an application form. The commission modifies the rule to replace "form" with "manner" to clarify intent. ERCOT may elect not to use a traditional form in favor of a less structured approach. This edit should also alleviate TPPA's concerns regarding the quick promulgation of a submission method, as ERCOT can quickly provide direction on how to submit information consistent with this rule.

The commission agrees with LCRA's recommendation because, with a time limitation by which all applications must be received, ERCOT will then have a complete picture of all resource entities that are requesting an exemption. However, the commission disagrees with requiring a static number of days for each reliability requirement because each requirement may warrant its own applicable deadlines based on the complexity of a requirement's underlying technical aspects. Therefore, the commission modifies (a) and (c) of the proposed rule to require a deadline for applications in each reliability requirement.

Proposed §25.517(c)--Application requirements

Proposed §25.517(c)(1) through (9) describe the documentation that must be submitted to ERCOT as part of an exemption request.

Proposed §25.517(c)(3) and (4)--Modifications and costs

Proposed §25.517(c)(3) requires the requester to submit documentation describing all technically feasible modifications, replacements, or upgrades the requester could implement, but has not yet implemented, to improve the resource's performance toward meeting the reliability requirement. Proposed §25.517(c)(4) requires the requester to submit costs for each of the items in paragraph (3) of subsection (c).

Vistra commented overall on subsection (c) of the proposed rule that the documentation should focus more on verifying the infeasibility of a required modification or upgrade and determining what mitigation options are available. Instead, Vistra asserted, the documentation required in proposed subsection (c) appears to assume that there is a technically feasible modification available, but the market participant is choosing not to implement it.

Several commenters focused on the breadth of the required documentation, stating their opinion that the proposed required documentation is overly burdensome. These commenters argued that the technically feasible modifications should be limited to known, available, non-hardware, commercially reasonable modifications. Southern Power explained that original equipment manufacturers (OEMs) and generation owners shouldn't have to study all possible solutions, only known, commercially available, and cost-effective solutions. Association Joint Commenters asserted not only that proposed requirements are too onerous, but also that they track NOGRR 245 too closely and do not apply to potential future reliability-related standards.

Vistra, Joint Commenters, Southern Power, Avangrid, and Association Joint Commenters provided redlines consistent with their comments.

Commission Response

The commission disagrees that the application requirements are burdensome and declines to modify the rule on this basis. An exemption from a reliability requirement is not something that should be evaluated or granted lightly, and ERCOT should have all the information available to make an informed decision whether to grant an exemption. In addition, for reasons stated above, the commission modifies the rule to add "available" to the definition of "technically feasible" but declines to modify the rule further to limit potential modifications, as suggested by Southern Power.

The commission agrees with Vistra that ERCOT should verify the inability of a resource to comply with a reliability requirement and work with the resource entity to determine mitigation options. The rule already allows for this, but the commission modifies subsection (d) of the proposed rule to explicitly require a process to determine mutually acceptable mitigation solutions.

The commission agrees that this rule is not specific to NOGRR 245 and modifies the rule throughout to broaden its scope to potential future reliability requirements, although the rule is ap-

plicable to approved NOGRR 245 as described under "General Comments" above.

Suggested additional application requirements

OPUC recommended that the commission modify the rule to require applicants to submit a detailed description of the anticipated benefits and savings to the market derived from the exemption, arguing that this may help ERCOT in its review.

Commission Response

The commission disagrees with requiring a resource entity to submit anticipated benefits and savings and declines to modify the rule. Benefits and savings of an exemption cannot be developed by the entity seeking the exemption because those must be determined through ERCOT's assessment of the system as a whole. A uniform process must be applied to all resources requesting an exemption, especially in measuring the benefit of compliance with a reliability requirement. Further, the commission intends ERCOT's evaluation to focus on whether an exemption would result in threshold reliability risks.

Other suggested edits

Proposed §25.517(c)(1) requires a description of the applicable reliability requirement that the market participant's resource cannot meet. Proposed §25.517(c)(2) requires a succinct description, with supporting technical documentation, of the market participant's efforts to comply with the applicable reliability requirement.

Avangrid recommended modifying the proposed rule to remove the term "technical" to describe "documentation," asking how technical documentation is different from any other type of documentation. Avangrid also provided the following redline without commentary to subsection (c)(1) of the proposed rule: "a description of the applicable reliability requirement from which the resource entity seeks an exemption."

Commission Response

The commission agrees with the suggested edits and modifies the rule accordingly.

Proposed §25.517(c)(5) and (9)--Required submissions

Proposed §25.517(c)(5) requires an applicant to submit models of its resource to ERCOT, and proposed §25.517(c)(9) requires an applicant to submit the resource's interconnection date, including a copy of the resource's interconnection agreement and any amendments.

Southern Power commented that these requirements should already be on file with ERCOT or the commission and that an applicant should not be required to submit such information again. Southern Power specifically suggested that (c)(5) of the proposed rule either be deleted or modified to specify that models may be provided to ERCOT via the relevant model rules and submission processes and explained that this modification would avoid ambiguity if a market participant must submit a model package to ERCOT multiple times. Avangrid and NextEra provided redlines without commentary on these two paragraphs.

Commission Response

The commission agrees with Southern Power that if models and a signed interconnection agreement are already on file with ERCOT, the resource entity should not be required to submit the same information again. The commission modifies the provisions to require submission of models and the interconnection agreement only if not already provided to ERCOT.

Proposed §25.517(c)(7) and (c)(8)--Submission of other exemption requests and enforcement actions

Proposed §25.517(c)(7) requires an applicant to submit information on whether any other exemption request has been submitted for the same resources, including the outcome of each request. Proposed §25.517(c)(8) requires an applicant to submit a list of the resource's history of violations of ERCOT protocols, operating guides, or other binding documents related to the reliability requirement for which an exemption is being requested.

Several commenters recommended that these two paragraphs be deleted. Specifically, TPPA stated that the commission's enforcement actions are public, ERCOT already has information about the exemption requests it has received, and it is unclear what these proposed requirements contribute to the process. For (c)(8) of the proposed rule, commenters suggested either that the commission delete it or modify it to only include violations that have been adjudicated through ERCOT or the commission. For example, ERCOT explained that it does not anticipate relying on a resource's violation history when evaluating the reliability impact of an exemption request, and that the commission could request this information as part of an appeal process under 16 TAC §22.251.

Joint Commenters, TPPA, Avangrid, NextEra, Southern Power, Vistra, and ERCOT provided redlines consistent with their comments.

Commission Response

The commission disagrees with deleting (c)(7) of the proposed rule. Because the proposed rule creates a new process, there may not be a centralized history of existing exemptions for each resource, and submission of this information would be helpful to ERCOT in determining whether a resource should be granted an exemption.

However, the commission agrees with deleting (c)(8) of the proposed rule. A resource's violation history would be relevant to the commission in a proceeding under §22.251, but not to ERCOT in an evaluation of an exemption request for threshold reliability risks.

Proposed §25.517(c), (d)(1), and (d)(2)--Transparency and confidentiality

See above for the rule summary of proposed §25.517(c). Proposed §25.517(d)(1) describes the assessment process ERCOT will use to evaluate exemption requests, and proposed §25.517(d)(2) describes the potential outcomes of ERCOT's assessment.

There were several comments related to the transparency of these provisions of the proposed rule. First, TPPA recommended that ERCOT be required to issue a market notice describing all exemption applications and which requirement the requests are for, with confidential information remaining protected. TPPA similarly recommended that ERCOT's determination on an exemption request (related to subsection (d) of the proposed rule) be filed publicly, with redactions for confidential information, including a full set of findings of fact and conclusions of law. TPPA's recommendation would also include a market notice for this provision. TPPA explained that, for subsection (c) of the proposed rule, the market notice would provide critical information to the commission and the

public as to which reliability requirements may be onerous and provide an opportunity for similarly situated market participants to coordinate exemption requests. For subsection (d) of the proposed rule, TPPA explained that its recommendations would assist in developing the record for a potential appeal to the commission and inform the public, given that ERCOT is an arm of the state that makes decisions as to the rights and obligations of the entities that must comply with its reliability requirements.

Other comments, specifically related to (d)(1) of the proposed rule, focused on the transparency from ERCOT's perspective as the assessor of an exemption request. Southern Power stated that, for (A) through (H) of subsection (d)(1), there needs to be a transparency and information sharing requirement for all assumptions, data, and models used for each step of the assessment process. Vistra stated in oral comments that there seems to be a lot of concern about the rule not containing any meaningful guidance on when ERCOT will grant an exemption. Similarly, NextEra stated that resource owners should know in advance what standards ERCOT will rely on to assess system reliability risk. NextEra suggested that the ERCOT Regional Transmission Plan is a good example because the assumptions and models used for that plan are known and would provide a level of regulatory certainty to the process. NextEra provided redlines consistent with its comments.

On the other hand, some commenters focused specifically on protection of confidential information. Vistra stated that information submitted as part of an exemption application should be treated as confidential by ERCOT because commercially sensitive information, as critical grid reliability information, should be protected. TCPA recommended adding language directing ERCOT to update its protocols to provide a process for determining what information should be protected, confidential information, and what information should be made available to all stakeholders. Vistra provided redlines consistent with its comments.

Commission Response

The commission disagrees with TPPA's suggested modifications to the proposed rule. ERCOT's primary function as the grid operator is not adjudicatory, and the commission declines to assign that function to ERCOT in this rule. The commission also declines to modify the rule to require a market notice of exemption requests and a market notice of outcomes because ERCOT and stakeholders can determine the appropriate level of transparency and how to best achieve that transparency during development and execution of a reliability requirement. Additionally, in terms of developing the record for potential appeals, the provisions of §22.251 already require the commission to be provided with an adequate record.

The commission agrees that a resource entity should understand the inputs into ERCOT's evaluation and modifies subsection (d) of the proposed rule to require ERCOT to provide a written explanation of its decision to a resource entity that includes details of the assessment, with appropriate confidentiality for protected information. However, the commission declines to specify exact standards, as recommended by NextEra, because ERCOT should have the flexibility to assess system reliability in a way that is appropriate to each reliability requirement, which is best defined during that requirement's development.

The commission agrees with Vistra that information submitted as part of an exemption request should be treated as protected information by ERCOT and modifies the rule accordingly.

Proposed §25.517(d) and (d)(1)--Authority to grant an exemption

Proposed §25.517(d)(1) states that ERCOT must assess the ERCOT system to determine whether an exemption would adversely affect ERCOT system reliability. Subsection (d) of the proposed rule in its entirety describes the assessment process and possible outcomes of the process.

TCPA suggested that ERCOT's decision on an exemption should be advisory only and that the commission should make the final decision on whether to grant an exemption. TCPA offered this suggestion as an alternative to having the commission consider implementation costs on appeal. TCPA explained that ERCOT may not be in a position to evaluate costs itself or may not feel that evaluating costs is the appropriate role for ERCOT, so it could make sense for the rule to provide for the commission making the final decision on all exemption requests.

TPPA requested clarification on who, precisely, at ERCOT will be conducting the risk assessment and who will make the final decision--is it the ERCOT Board of Directors, or only ERCOT staff?

Commission Response

The commission disagrees with TCPA's suggestion for ERCOT's decision on an exemption request to be advisory only because this would unnecessarily delay implementation of reliability requirements. The commission clarifies for TPPA that ERCOT staff will evaluate exemption requests and make a final decision, just as ERCOT staff implements all other nodal protocols.

Proposed §25.517(d)(2), (d)(2)(A), and (d)(2)(C)--ERCOT's discretion to grant an exemption

Proposed §25.517(d)(2) allows ERCOT to grant an exemption, grant an exemption with conditions, or deny an exemption. Proposed §25.517(d)(2)(A) states that ERCOT may grant an exemption if its assessment identifies no unacceptable reliability risks. Proposed §25.517(d)(2)(C) states that ERCOT must deny the exemption request if its assessment identifies an unacceptable reliability risk that cannot be eliminated by imposing conditions.

Several commenters stated that (d)(2)(A) of the proposed rule inappropriately gives ERCOT too much authority. These commenters stated that ERCOT should be required to grant an exemption if certain conditions are met; however, the stated conditions varied among commenters. For example, Vistra argued that subsection (d)(2) should require ERCOT to grant an exemption if its assessment identifies no unacceptable reliability risk. Association Joint Commenters argued that ERCOT should be required to grant an exemption if a market participant can establish that granting the exemption would result in no unacceptable reliability risk. NextEra commented that ERCOT should be required to grant an exemption to market participants that meet the reliability requirements in place on the date that resource signed its interconnection agreement and that show no degradation in performance for the applicable reliability requirement. NextEra argued that ERCOT should not be in the position of adopting standards that effectively order an existing resource that may have been serving the grid for decades to deenergize. NextEra argued further that ERCOT should continue with its current authority to establish operational restrictions as conditions warrant for existing resources that have demonstrated performance issues that pose operational stability risk to the grid. APA and ACP stated in oral comments that the exemption process should include a presumption in favor of an exemption for IBR owners rather than placing the burden on generators to prove infeasibility because this aligns with NERC's approach.

NextEra also commented that ERCOT should be required to deny an exemption request only if the resource fails to provide the information required to support the exemption and fails to make technically feasible and commercially available modifications to improve performance under the new reliability standard.

Vistra, NextEra, TCPA, Association Joint Commenters, and Joint Commenters provided redlines consistent with their comments.

Commission Response

The commission modifies (d)(2)(A) of the proposed rule to require ERCOT to grant an exemption if an assessment shows that the exemption would pose no threshold reliability risks. The commission agrees that because one purpose of the rule is to avoid threshold reliability risks, if an exemption would not pose any such risk, there is no other consideration remaining as to whether an exemption should be granted in that case. However, the commission disagrees with Association Joint Commenters that an exemption should be granted if the resource entity can demonstrate that granting an exemption will not cause a threshold reliability risk; it is ERCOT, not individual resource entities, that is capable of evaluating system reliability and determining if threshold reliability risks exist. In addition, the commission disagrees with NextEra's suggested language because some future reliability requirements will apply to existing resources, and the criterion chosen by the commission to determine whether a resource will receive an exemption is whether that resource creates a threshold reliability risk, not how the resource has performed in the past. The comments by APA and ACP are beyond the scope of this rulemaking because they refer to IBRs, and this rule is technology agnostic.

The commission agrees with NextEra that ERCOT should deny an exemption request if a resource entity fails to make required modifications and to supply the information required but disagrees that these are the only conditions under which ERCOT should be able to deny an exemption request. Therefore, the commission declines to modify the rule.

Proposed §25.517(d), (d)(1), (d)(2), (f), and (g)--Participation of other interested parties

Proposed §25.517(d), (f), and (g) identify communication that will occur between the requester and ERCOT and does not include communication with any other party related to a particular exemption request. Proposed subsection (f) states that if a market participant is not satisfied with ERCOT's determination of that market participant's request under subsection (d), the market participant may file a complaint to the commission. Proposed subsection (g) describes how ERCOT may revoke an exemption.

AEP Companies and LCRA suggested redlines to the rule to require communication between ERCOT and other market participants that could be affected by an exemption request and specifically identified the requesting resource entity's TSP as an affected entity. AEP Companies specifically recommended that ERCOT's assessment (all of subsection (d) of the proposed rule) consider input from the resource's interconnecting TSP and that any affected entity may file a complaint with the commission under subsection (f) of the proposed rule. AEP Companies explained that allowing input from other affected market participants would allow ERCOT to assess a fuller picture of the impact of a potential exemption.

LCRA suggested redlines to (d)(1), (d)(2), (g)(1), and (g)(2) requiring ERCOT to include the resource's interconnecting TSP and all affected entities in any communications related to an exemption request by a resource. LCRA explained that an exemption request granted to one market participant will pass on some level of risk to another market participant, so any entities affected by an exemption request should have standing and means to weigh in to the decision-making process.

Commission Response

The commission agrees with LCRA and AEP Companies that a TSP should be aware of an exemption request by a resource that interconnects with its transmission facilities and modifies the rule accordingly. The commission also modifies the rule to allow ERCOT to consider input from the resource's interconnecting TSP, as appropriate. However, the commission declines to modify the rule to allow an affected entity to file a complaint with the commission under subsection (f) of the adopted rule because §22.251 already allows an affected entity to file a complaint with the commission regarding any ERCOT conduct.

Proposed §25.517(d), (d)(1)(H), (d)(2), and (g)(1)--Time limitation on exemptions

Proposed §25.517(d) describes the process and criteria by which ERCOT will evaluate and decide on an exemption request. Proposed §25.517(d)(1)(H) states that ERCOT will consider any other information it deems necessary to assess the reliability impact of an exemption. Proposed §25.517(g)(1) states that any exemption is limited to the period identified by ERCOT in granting the exemption or the period in the commission's order ruling on an exemption under §22.251. Proposed subsection (g)(1) also states that an exemption is no longer valid if the resource owner or operator makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations.

Several commenters opined on whether a time limit should be included with the grant of an exemption. OPUC and TCPA recommended modifying the proposed rule to impose a specific time limit. OPUC specifically suggested a two-to-five-year exemption period, with the option for a renewal application to be filed at least six months before expiration. OPUC explained that as technology evolves, a technical limitation that was once not commercially viable or cost effective might become viable and thus render the exemption unnecessary. TCPA explained that a not-to-exceed timeframe for an exemption would provide clarity and transparency, and two years would be a reasonable timeframe to allow for supply chain or labor delays related to the required modification. TCPA also included a good cause exception in its redlines to provide flexibility for the commission to evaluate any additional issues that occur on a case-by-case basis. TCPA stated that its suggested modifications would strike a balance between requiring all resources to meet the same requirements with the very real cost considerations of required modifications.

OPUC provided redlines to (d)(1)(H) of the proposed rule, and TCPA provided redlines to (g)(1) of the proposed rule, consistent with their comments.

On the other hand, TPPA, Vistra, and Association Joint Commenters recommended modifying the rule to emphasize that ERCOT should identify the date at which an exemption will automatically expire. TPPA also recommended allowing ERCOT to grant an exemption that does not expire. TPPA explained that there may be circumstances where there is an exemption that is only needed for a limited period, such as to allow installation of new equipment or upgrades, and in this kind of circumstance, ERCOT should be empowered to grant an exemption for the specific duration requested. Vistra explained that an exemption should

expire at the end of the defined term, but that a market participant should be allowed to request an additional exemption for the resource if needed. Vistra provided redlines consistent with its comments. Association Joint Commenters provided redlines with no explanation to subsection (g)(1) showing its opinion that an exemption should be valid for the time specified in the granting of the exemption.

Commission Response

The proposed rule already states in subsection (g)(1) that ERCOT has discretion to grant an exemption for the time that it deems appropriate, so there is no need to modify the rule per TPPA, Vistra, and Association Joint Commenters' suggestions. However, for clarity, the commission modifies the rule to add this concept to subsection (d) of the proposed rule. In addition, the commission disagrees with OPUC and TCPA that each reliability requirement that allows an exemption should limit those exemptions to a certain duration by default. Longer exemption periods provide more regulatory certainty for resource entities. The adopted rule provides ERCOT with the flexibility to determine an appropriate duration for each requirement and each exemption based on the reliability risks an exemption poses.

Proposed §25.517(d)(1)--Elements of ERCOT's evaluation of an exemption request

Proposed §25.517(d)(1) describes the process and criteria by which ERCOT will assess an exemption request. Specifically, proposed §25.517(d)(1) requires ERCOT to assess the ERCOT system to determine whether an exemption granted to one resource or several resources would adversely affect ERCOT system reliability.

Association Joint Commenters insisted that ERCOT should be required to demonstrate a particular reliability concern arising from a specific exemption request. A particularized assessment would include an assessment of the ERCOT system considering the size, location, and availability of the resources, the cost of compliance, the commercial availability of any technical solutions, and other alternatives that could mitigate or eliminate any potential reliability risk, such as the use of grid forming inverters, synchronous condensers, or transmission solutions.

Association Joint Commenters also stated that ERCOT should not base its decision on the potential impact of dozens or hundreds of exemptions to other potential applicants that may never seek an exemption. TPPA similarly recommended that the rule provision be modified so that ERCOT will not be basing its decision to grant or deny an exemption on theoretical, unfiled exemption requests. TPPA explained that this flexibility could allow ERCOT to deny actual requests based on the idea that numerous additional requests could theoretically be filed. TPPA further stated that the rule should require ERCOT to evaluate reliability risks based solely on real requests that have actually been filed and that ERCOT evaluations should be conducted on a first come, first served basis.

TCPA commented that resources that are considered together in an assessment by ERCOT should be similarly situated. TCPA stated that its recommended changes would provide clarity to policymakers, regulators, and market participants and provide an apples-to-apples comparison during the assessment process. TCPA stated further that, by considering similarly situated resources when determining impacts to reliability, ERCOT would ensure that all such resources would either receive or not receive the exemption based on the aggregate impact of their requests. In other words, TCPA commented, if the aggregate impact of the exemption requests would present an unacceptable reliability risk, and that risk cannot be managed satisfactorily through curtailment or other mitigation schemes, then none of the similarly situated resources requesting that exemption should get the exemption. If, on the other hand, the risk would not be unacceptable, then, TCPA stated, the resources should all receive the exemption. Vistra supported TCPA's comments on this issue.

Association Joint Commenters, TCPA, and Vistra provided redlines consistent with their comments.

Commission Response

The commission agrees with Association Joint Commenters that each resource should be evaluated separately based on the information in its individual application. However, ERCOT must also evaluate resources in the aggregate to determine system risk. Both of these evaluations are necessary for ERCOT to determine whether an exemption will result in a threshold reliability risk. Therefore, the commission declines to modify the rule per Association Joint Commenter's suggestions.

The commission also agrees that ERCOT's analysis should be based on resources whose owners have requested an exemption from a particular reliability requirement. To achieve this result, the commission modifies (c) of the proposed rule, so that each reliability requirement will include a time by which requests for exemptions from that requirement must be submitted. The commission disagrees with TCPA's comment that the resources to be considered together by ERCOT should be similarly situated. ERCOT's analysis will be based on the resources that will have filed an exemption request, not on the similarities among resources. ERCOT must perform an individual and aggregate assessment of the resources whose resource entities have requested an exemption and determine if there is a threshold reliability risk, which is an objective standard, regardless of the "similarity" of resources requesting an exemption. Moreover, subsection (d) of the adopted rule also requires ERCOT to make a reasonable effort to work with each resource entity that requested an exemption to identify mitigation options that are mutually acceptable to ERCOT and the resource entity. Accordingly, the outcome for each resource will depend upon its ability to identify, with ERCOT, a mitigation option that avoids threshold reliability risks.

Resource adequacy

Association Joint Commenters, TPPA, and NextEra recommended modifying the proposed rule to require ERCOT to assess the system if a resource would choose to retire due to not receiving an exemption. Association Joint Commenters and NextEra provided redlines consistent with their comments.

Commission Response

The commission agrees that if denial of an exemption request would result in a measurable and significant impact to resource adequacy, ERCOT should consider that impact to the system when determining mitigation options for the resource in question. However, the commission declines to make the changes suggested because proposed §25.517(d)(1)(F) already includes ERCOT consideration of the most relevant outlook for resource adequacy, which could include the monthly outlook for resource adequacy, the capacity, demand, and reserves report, or another resource adequacy assessment. In addition, proposed §22.251(r)(6) requires commission staff to consider the most relevant outlook for resource adequacy in a proceeding to appeal

ERCOT conduct under proposed new §25.517. This language provides ERCOT and the commission discretion to evaluate as a data point the short-term and long-term impacts of the units exiting the market as a result of not being able to comply.

Proposed §25.517(d)(1)--ERCOT's cost evaluation

TPPA stated that ERCOT should be required to consider costs, not that ERCOT "may" consider costs as part of its assessment. LCRA stated in oral comments that a cost component makes sense to include and that the methodology should be transparent to all parties that are affected by the exemption request. Vistra stated in oral comments that "it's a bit odd that ERCOT is not empowered to grant a cost-based exemption, but the requester still has to apply to ERCOT and then complain about the conduct of ERCOT when the request is not granted."

Southern Power, on the other hand, commented the opposite: that ERCOT should not have the authority to consider costs. Southern Power explained that financial analysis of potential capital investments for generation and load resources is outside of ERCOT's purview and expertise and squarely within the commission's, on appeal from a denied exemption request.

Commission Response

As discussed above, the commission modifies the rule to remove consideration of cost from the exemption request process at ERCOT. For the same reasons, the commission modifies this provision to remove consideration of cost.

System assessment responsibility

Avangrid provided redlines stating its opinion that the rule should require a third party to conduct the system assessment, and that the assessment should be conducted before any evaluation of individual requests. Avangrid explained that a prior system assessment is crucial for identifying critical grid vulnerabilities, determining acceptable risk thresholds, and understanding how a resource's technical limitations may impact overall system reliability. Avangrid also argued that a system-level analysis would help prioritize mitigation efforts based on a resource's contributions to the system, redundancy within the system, and the potential for cascading effects. Avangrid emphasized its preference that any such study be conducted by a third party to assure that it is evidence based, objective, and non-discriminatory.

Commission Response

The commission disagrees that the proposed rule should be modified to require a system-level analysis before ERCOT accepts exemption requests from a particular reliability requirement. The need for an individual reliability requirement will be established before and during its development, and the development process should include any necessary system-level analyses. The adopted rule neither requires ERCOT to conduct, nor prohibits ERCOT from conducting, additional assessments or considering assessments conducted by third parties when appropriate.

"Adversely affect ERCOT system reliability"

Proposed §25.517(d)(1) states that ERCOT must assess the ERCOT system to determine whether an exemption granted to one resource or several resources would adversely affect ERCOT system reliability, including whether an unacceptable reliability risk is present in ERCOT's assessment.

Several commenters argued that the phrase "adversely affect ERCOT system reliability" is vague and undefined. For example, Association Joint Commenters noted that it appears that there are two standards present in the first sentence of subsection (d)(1) of the proposed rule: first, whether an exemption would adversely affect ERCOT system reliability, and second, whether an exemption would create an unacceptable reliability risk. Association Joint Commenters recommended choosing one defined standard to eliminate ambiguity and avoid confusion and specifically recommended using "unacceptable reliability risk." NextEra argued that the layering of subjective determinations results in a rule that would, by nature, be arbitrary and capricious, and commission (or judicial) review of the assessment of these exemptions would be rendered meaningless.

Association Joint Commenters, Avangrid, NextEra, TCPA, and Vistra provided redlines consistent with their comments.

Commission Response

The commission agrees with commenters and modifies the rule to remove "adversely affect ERCOT system reliability" and replace it with a phrase using the defined term "threshold reliability risk."

Proposed §25.517(d)(1)(D) and (E)--Engineering judgment

Proposed §25.517(d)(1)(D) and (E) rely on "[ERCOT's] engineering judgment" to determine contingencies and expected impact of technical limitations that are missing from models submitted by a requester.

Avangrid and NextEra provided redlines to replace "[ERCOT's] engineering judgment" with "good utility practice," and NextEra went further to suggest "good utility practice consistent with 16 TAC §25.5(57)." NextEra explained that the proposed rule language gives ERCOT too much subjective discretion and could lead to opaque outcomes.

Commission Response

The commission disagrees with comments that would replace "ERCOT's engineering judgment" with "good utility practice consistent with 16 TAC §25.5(57)." Subsection (d) of the proposed rule outlines the process that ERCOT will use to assess an exemption request, including the types of assumptions that will go into the assessment. In (d)(1)(D) of the proposed rule, "ERCOT's engineering judgment" describes contingencies ERCOT may choose to evaluate, and in (d)(1)(E) of the proposed rule, "ERCOT's engineering judgment" describes how ERCOT will analyze the expected impact of any technical limitations described in the request that are not included in the models provided by the resource entity. Because ERCOT's role is to evaluate the system impact of one or more exemptions, ERCOT's focus must remain on the system despite reviewing individual requests. For this reason, ERCOT must use its engineering judgment to choose contingencies and expected impacts of certain aspects of models provided by a resource entity, not evaluate an exemption request based on how the resource entity would choose to operate its own resource.

However, the commission also agrees that the assumptions used in an assessment of an exemption request should be clear to a resource entity requesting an exemption. For this reason, the commission modifies subsection (d) of the proposed rule to require ERCOT to provide each resource entity requesting an exemption with a written explanation of the outcome of its assessment, including which models ERCOT used in the assessment, a list of assumptions that were used in the assessment, and which factors were varied to run any sensitivities.

Proposed §25.517(d)(1)(G)--Impact of new resources

Proposed §25.517(d)(1)(G) requires ERCOT to evaluate the potential impact of new resources in the interconnection queue on system reliability.

Joint Commenters and Avangrid recommended that the resources that are evaluated under this subparagraph should be ones that have been approved for energization by ERCOT. Joint Commenters argued that no speculative generation should be considered as part of the reliability assessment, and Avangrid argued that ERCOT's assessment should be evidence based, not based on speculative generation or load.

Commission Response

The commission agrees that ERCOT should evaluate new resources that are reasonably certain to come online. For this reason, the commission modifies this provision to state "the potential impact on system reliability of new resources that have been approved for energization by ERCOT." The commission also notes, however, that limiting the number of potential future resources that are considered as part of ERCOT's analysis supports the inclusion of exemption expiration and revocation provisions elsewhere in the rule. If speculative interconnections do materialize, ERCOT must be permitted to take the reliability impacts of these resources into account when they do.

Proposed §25.517(d)(1)(H)--Catchall subparagraph

Proposed §25.517(d)(1)(H) allows ERCOT to use any other information it deems necessary to assess the reliability impact of an exemption based on ERCOT's engineering judgment.

Southern Power, Avangrid, and NextEra provided redlines striking this provision from the proposed rule. Southern Power argued that "any other information" is very vague and open ended, and it had concerns that this clause could be misinterpreted or misused.

Commission Response

The commission disagrees that the provision should be struck because it gives ERCOT the flexibility to customize its evaluation criteria based on the needs of each individual reliability requirement. It is unclear what incentive ERCOT would have to use this discretion for any purpose other than enhancing the accuracy of its reliability analysis, but the risk of this scenario is outweighed by the potential benefits of more fine-tuned analysis. If a resource entity is dissatisfied with ERCOT's conduct in this - or any - aspect of the exemption process, it may file a complaint with the commission about ERCOT conduct under amended §22.251. Therefore, the commission declines to modify the rule.

Proposed §25.517(d)(1) and (d)(2)(C)--Other solutions to mitigate risk

Proposed §25.517(d)(1) describes the process and criteria by which ERCOT will assess an exemption request by an individual market participant. Proposed §25.517(d)(2)(C) states that ERCOT must deny an exemption request if ERCOT's assessment identifies an unacceptable reliability risk that cannot be eliminated by imposing conditions on the resource that is the subject of the request.

Several commenters recommended modifying the rule to consider solutions to mitigate a resource's inability to comply with a reliability requirement that are outside the control of the requester. Specifically, Joint Commenters, Avangrid, and OPUC suggested that the assessment process in (d)(1) of the proposed rule should consider and review the costs and benefits of these potential alternative solutions. Joint Commenters suggested static var compensators (SVCs) and transmission solutions. OPUC argued that it could be appropriate to consider alternative solutions if they achieve compliance across multiple generation resource sites, especially if such solutions prove to be more cost effective than a by-resource-site approach. Avangrid provided redlines consistent with its comments.

Association Joint Commenters offered redlines to (d)(2)(C) of the proposed rule that would allow the use of alternative solutions (such as the use of grid forming inverters, synchronous condensers, or transmission solutions) to mitigate an unacceptable reliability risk, which would in turn mean that ERCOT would not deny an exemption request.

Commission Response

The commission disagrees that this rule should explicitly address alternative solutions to mitigate a threshold reliability risk that involve entities other than the requesting resource entity, such as regional solutions or requiring action by the TSP. The appropriate context for determining which entity should be responsible for addressing a reliability issue is the development of new reliability requirements. The commission disagrees with OPUC that ERCOT should be required to evaluate regional solutions in the context of an exemption request. The process established in this rule relates to the compliance obligations of individual entities with respect to reliability requirements, and it would be inappropriate to require consideration of solutions that would shift costs from competitive entities to ratepayers in such a process. Moreover, this is consistent with the division of responsibilities that resource entities agree to when interconnecting (see Sec. 1.6 of the SGIA, which states that with regards to ERCOT requirements, any "requirement…imposed upon generation entities or generation facilities becomes the responsibility of the Generator, and any requirements imposed on transmission providers or transmission facilities become the responsibility of the TSP"). While not every interconnecting resource is subject to the SGIA, it reflects the appropriate regulatory principle in this case. If a reliability requirement imposes an obligation on a resource entity, the obligation to comply with that requirement or mitigate the reliability risks associated with noncompliance rests with the resource entity.

Proposed §25.517(d)(2)--Assessment outcomes

Proposed §25.517(d)(2) describes the potential outcomes of an assessment by ERCOT: ERCOT may grant an exemption, grant an exemption with conditions, or deny an exemption.

TPPA and Vistra commented that the rule does not address how a market participant will be treated while ERCOT is reviewing that market participant's exemption request: is it required to comply with the reliability requirement from which it is requesting an exemption, or not? TPPA recommended that the rule explicitly provide that, while the exemption request is being processed, no enforcement actions will be taken against that market participant for failure to comply with the reliability requirement in question. TPPA also recommended that the rule allow for a cure period for the complainant to become compliant if its exemption request is denied. Vistra recommended that the rule be modified to provide a specific temporary exemption for a resource with a pending request. Vistra provided redlines consistent with its comments.

TPPA also recommended that the rule be modified to include a date certain by which ERCOT will complete its exemption re-

quest assessments to ensure that exemption requests are processed timely.

Commission Response

The commission declines to modify the rule to address whether a resource entity is required to comply with a reliability requirement while ERCOT is processing an exemption request because it is unnecessary. All market participants are required to comply with all applicable requirements that are in effect unless otherwise stated. In this instance, codifying a universal exemption in this rule may interfere with ERCOT's ability to ensure the reliability of the grid and create an incentive for market entities to request exemptions merely to delay compliance obligations. The commission is not in a position to judge the consequences of delayed compliance with future reliability requirements or whether other interim measures may be appropriate. These details can, when appropriate, be addressed in the provisions of individual reliability requirements. Additionally, ERCOT already has tools to grant temporary exemptions, as appropriate, during the pendency of an exemption request. For example, ERCOT may consider a pending exemption request good cause for excusing compliance with a requirement under §25.503(f)(2).

For the same reasons, the commission declines to explicitly provide that a resource entity will not be the subject of enforcement actions during the pendency of an exemption request. In some scenarios, for example, the resource entity may be subject to temporary mitigation measures during the pendency of an exemption request, and enforcement actions may be appropriate if the entity does not abide by the restrictions. However, the commission agrees that, in most instances, enforcement actions during the pendency of an exemption request are inappropriate and, accordingly, will use its enforcement discretion accordingly. Additionally, the commission may consider an exemption request under the penalty factors under PURA §15.023, which include "efforts to correct the violation" and "any other matter that justice may require."

The commission also adds (d)(5) to the proposed rule to allow ERCOT to give a resource that is denied an exemption a reasonable amount of time to come into compliance with the reliability requirement in question.

The commission disagrees with TPPA that the rule should require a date certain by which ERCOT will complete its assessments of exemption requests and declines to modify the rule. ERCOT must have flexibility to thoroughly evaluate exemptions to individual reliability requirements.

Detailed written explanation

TCPA and Vistra recommended that (d)(2) of the proposed rule be modified to require ERCOT to provide a detailed written explanation for the denial of an exemption request. TCPA argued that this change would provide transparency and important information for the market participant and the commission, especially if the market participant chooses to appeal to the commission.

Vistra's explanation centered on ERCOT's ability to deny an exemption based solely on economic considerations. Vistra argued that if no economic viability consideration is included in the rule, then even when no unacceptable reliability risk is identified, every exemption request to ERCOT based on economic viability would be rejected and then appealed to the commission. If, however, the rule provides for a mandatory grant of an exemption when ERCOT is able to verify the factual bases for the request and confirm that there is no unacceptable reliability risk, the commission's review of economically based requests would be appropriately limited to requests where there are costs and risks that need to be balanced. Vistra argued that if the rule is not modified to require ERCOT to grant an exemption if there are no unacceptable reliability risks, an alternative process should be included in the rule for an exemption request based on economic viability, so that the initial review of the request will include meaningful consideration of the cost component.

TCPA and Vistra provided redlines consistent with their comments.

Commission Response

The commission agrees that ERCOT should provide a written explanation of its decision to a resource entity--because a resource entity should understand how its request is evaluated--and modifies the rule accordingly.

The commission modifies the rule to require ERCOT to work with each resource entity to identify mitigation options in a case where an assessment shows a threshold reliability risk, and ERCOT may request and consider costs of such mitigation options. Finally, the commission modifies the rule to require ERCOT to grant an exemption if its assessment identifies no threshold reliability risks.

Proposed §25.517(d)(2)(B) and (C)--Exemption with conditions and denial of an exemption

Proposed §25.517(d)(2)(B) allows ERCOT to grant an exemption with conditions, one of which is curtailment of the resource's output under certain circumstances, if implementation of those conditions would eliminate all unacceptable reliability risks. Proposed §25.517(d)(2)(C) requires ERCOT to deny an exemption if its assessment identifies an unacceptable reliability risk that cannot be eliminated by imposing conditions, such as those listed in (d)(2)(B).

Association Joint Commenters commented that (d)(2)(B) of the proposed rule, especially related to curtailment, is too vague, in that the circumstances under which ERCOT will impose conditions are not identified in the rule. Association Joint Commenters argued that curtailment should not be viewed as a "condition" that ERCOT can impose any time it wishes, but more as an extreme action of a regulatory authority that should be very limited and under the most serious circumstances. Association Joint Commenters also argued that this provision violates PURA §39.001, which prevents the open-ended use of curtailment on competitive generation, and that PURA requires regulatory authorities to use competitive rather than regulatory methods to the greatest extent possible to cause the least impact to competition. Association Joint Commenters provided redlines consistent with its comments.

NextEra and TCPA had minor recommendations for wording in these two subparagraphs. NextEra provided a redline to proposed (d)(2)(B) showing the following change: "...if implementation of those conditions ~~would eliminate all~~ is necessary to avoid unacceptable reliability risks." TCPA suggested a redline to proposed (d)(2)(C) adding the following: "...an unacceptable reliability risk that cannot be eliminated or satisfactorily managed by imposing conditions..." TCPA explained its redline by stating that if a risk can be managed, e.g., through curtailment, then it should not be deemed unacceptable and should not require denial of the exemption request.

LCRA provided a redline to proposed (d)(2)(C) that would remove the reference to subparagraph (B) because subparagraph

(B) includes a very few examples of conditions that should not be considered a list.

Commission Response

The commission disagrees with Association Joint Commenters regarding curtailment and declines to modify the rule. The conditions listed as examples in (d)(2)(B) of the proposed rule are only examples of the types of mitigation options that ERCOT and a resource entity may discuss and agree to as part of an exemption request evaluation. The circumstances under which ERCOT may curtail a resource's output would be specific to both the individual reliability requirement from which a resource entity seeks an exemption and the resource's characteristics and capabilities. These circumstances cannot be listed in a commission rule of general applicability and will be detailed during the evaluation process or during development of an individual reliability requirement.

The commission disagrees with the language "is necessary to avoid" a threshold reliability risk but modifies the provision for clarity to use the phrase "would no longer result in" a threshold reliability risk. However, the commission disagrees that TCPA's suggested modification to (d)(2)(C) of the proposed rule is necessary because if a threshold reliability risk is eliminated or avoided, then it is no longer unacceptable. That is the purpose of allowing an exemption with conditions.

The commission agrees with LCRA's suggestion and modifies the rule accordingly.

Proposed §25.517(e)--ERCOT inspections

Proposed §25.517(e) allows ERCOT to inspect resources to verify the need for an exemption or perform field verification of modeling parameters with 48 hours' prior notice.

Several commenters recommended modifying this provision to allow for three business days instead of 48 hours because 48 hours is not enough time to prepare for a site visit. TPPA specifically suggested using the provisions from 16 TAC §25.55(d), the commission's weather preparedness rule, which requires inspectors to give a market participant 72 hours' notice and names of inspectors; comply with safety and security regulations; and treat all documents, photographs, and video recordings collected or generated by inspectors as confidential. Avangrid suggested modifying the rule to provide for additional time if requested by the resource owner and agreed to by ERCOT, with the explanation that security concerns may require additional time to prepare for. Avangrid provided redlines consistent with its comments.

NextEra provided the following redline: "ERCOT may inspect resources owned and operated by a market participant to verify the need for an exemption…". NextEra argued that the proposed rule applies to load resources, which could comprise aggregated distributed energy resources (ADER) that are not owned or operated by a market participant. For this reason, NextEra stated, the proposed rule should clarify that ERCOT is not authorized to enter the premises of private end-use customers who may have an ADER on their property. NextEra argued that requiring inspection access in contracts with end users could compromise the viability of the ADER initiative.

Commission Response

The commission agrees with commenters that suggested 72 hours' notice as the appropriate amount of time and modifies the rule accordingly. In addition, the commission agrees with TPPA that the inspection components in 16 TAC §25.55(d) are a good model for this rule's inspection requirements and modifies the rule accordingly.

The commission agrees with NextEra that a resource should be owned and operated by a resource entity to be open to an ERCOT inspection and modifies the rule accordingly. However, the commission notes that ERCOT is not required to conclude that an threshold reliability risk does not exist or that a mitigation measure is effective simply because it is not able to inspect for verification purposes.

Proposed §25.517(f)--Appeal to commission

Proposed §25.517(f) allows a market participant that is not satisfied with the outcome of its exemption request to file a complaint with the commission under 16 TAC §22.251.

TPPA and Avangrid stated that the proposed rule in its entirety is a form of enforcement that the commission is delegating to ERCOT but had separate recommendations for responding to this concern. TPPA argued that PURA §39.151(d) states that enforcement actions delegated to ERCOT may not take effect before receiving approval from the commission, so the commission may be required to review ERCOT's decision regardless of whether a market participant appeals. On the other hand, Avangrid recommended deletion of this provision and stated that ERCOT does not have legal or statutory authority to deny an exemption under the proposed rule. Avangrid argued that PURA provides the commission with remedies for a resource's significant violations of ERCOT's reliability standards (see PURA §39.356(b), §39.357, and §15.023) and does not allow the commission to delegate these remedies to ERCOT. In addition, Avangrid argued, only the commission has the authority to determine whether non-compliance with a reliability requirement rises to the required level of materiality for exercising the commission's statutorily prescribed remedies (see Project 44650, Rulemaking Proceeding to Amend P.U.C. Subst. R. §25.503, relating to Oversight of Wholesale Market Participants, Order Adopting Amendment of 25.503 as Adopted at the August 14, 2015 Open Meeting, Aug. 21, 2015).

AEP Companies commented that this subsection appears to limit the ability to file a complaint with the commission to the market participant that made the exemption request. AEP Companies argued that other affected market participants should have the ability to contest ERCOT's determination as well and would bring this subsection of the rule into better alignment with proposed 16 TAC §22.251(c)(3). AEP provided redlines consistent with its comments.

Commission Response

The commission disagrees with TPPA and Avangrid that the rule delegates enforcement authority to ERCOT. This rule lays out a process for a resource entity to request an exemption from a reliability requirement and for that resource entity or an affected entity to use the existing appeal process in §22.251 if it is unsatisfied with the outcome of an exemption request. As several commenters, including TPPA and Avangrid, note, there are already many different forms of exemptions that ERCOT evaluates unilaterally, and this rule is no different.

The commission declines to modify the rule to state that an affected entity has the right to appeal the outcome of another entity's exemption request as recommended by AEP Companies because it is unnecessary. Any affected entity can already appeal any ERCOT conduct under §22.251, and this rule does not change that.

Proposed §25.517(g)(1)--Modification resulting in invalidation

Proposed §25.517(g)(1) states that an exemption is no longer valid if the resource owner or operator makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations; after such a modification, the resource must meet the latest reliability requirements in the ERCOT protocols, operating guides, and other binding documents.

In addition to comments responding to this section as part of commission question 4, several commenters submitted redlines that would modify this provision. Most commenters specified that the provision is too broad or would result in loss of an exemption after a modification that may be small or unrelated to the equipment that is the subject of the exemption. For example, Joint Commenters recommended that an exemption should remain valid unless a modification results in the replacement of the specific equipment with the underlying limitation that prevented the resource from meeting the applicable reliability requirement, unless the replacement is in kind. Joint Commenters argued that this proposal is consistent with the proposed federal standards for ride-through requirements for IBRs. NextEra argued that the modification that would cause loss of an exemption should be significant enough to necessitate the submission of a modified interconnection agreement at ERCOT, and even then, a resource owners should be allowed to request a modified or new exemption.

Avangrid and Vistra argued that the provision would discourage investment, improvement, and modernization of resources due to concerns that any modifications may lead to loss of the exemption, and that resource owners might choose to delay modifications until the resource can come into compliance with the exempted standard. Vistra additionally argued that the fundamental purpose of the proposed rule is to limit unacceptable degradation to reliability and achieve resource adequacy, and that this purpose would be best served by granting exemptions for specific terms. Alternatively, Vistra suggested implementing language that would allow a resource to retain an exemption if it makes an uprate or modification unrelated to the exemption.

ERCOT commented that it preferred to refer to the planning guide section related to generation interconnection or modification, not commissioning and continuing operations.

Joint Commenters, NextEra, Vistra, and Avangrid provided redlines consistent with their comments.

Commission Response

As stated above in the commission's response to comments on Question 4, the commission modifies this provision to align with the language in ERCOT Planning Guide §5.2.1(1)(c)(ii). That is, an exemption is no longer valid if a modification is made to the resource that involves changing the inverter, turbine, generator, battery modules, or power converter associated with a facility with an aggregate real power rating of ten MW or greater, unless the replacement is in kind. However, the commission agrees with Joint Commenters that replacement of the specific equipment with the technical limitation that prevented the resource from complying with the applicable reliability requirement should also invalidate an exemption, unless the replacement is in kind, and modifies the provision accordingly.

Proposed §25.517(g)(1) and (2)--Revocation authority

See above for the description of proposed §25.517(g)(1). Proposed §25.517(g)(2) allows ERCOT to revoke an exemption it granted, or suspend an exemption granted by the commission, if a reliability study by ERCOT demonstrates that system conditions have materially changed since the exemption was granted; if ERCOT suspends an exemption granted by the commission, the commission will either ratify or set aside ERCOT's action as soon as practicable.

Several commenters expressed concerns with (g)(1) and (g)(2) of the proposed rule. For example, Avangrid argued that (g)(2) impermissibly grants ERCOT the unilateral authority to revoke or suspend an exemption based on a reliability study and should be deleted. NextEra and Joint Commenters also suggested that subsection (g)(2) be deleted. NextEra and Association Joint Commenters commented that the terms "reliability study" and "material change" are undefined, leaving market participants without guidance as to when exemptions might be revoked, leading to a negative impact on investment decisions. Joint Commenters also argued that this paragraph poses an unreasonable level of regulatory uncertainty on existing assets, which would lead to investors becoming unlikely to invest in such assets. Southern Power also commented that "materially changed" is very open ended when associated with "system conditions" and that specific parameters should be added to the proposed rule so that material changes are directly associated with and impactful to the resource in question. Joint Commenters also argued that ERCOT already has authority to temporarily curtail resources in an emergency, rendering this paragraph unnecessary. On the other hand, Oncor commented that ERCOT's authority to revoke or suspend an exemption should be mandatory, not permissive, if the change in system conditions is truly material.

ERCOT suggested some modifications to subsection (g)(2) of the proposed rule: first, allowing ERCOT to modify an exemption, rather than revoking one, in response to a system change. Second, ERCOT recommended removing the term "material" because it is undefined; ERCOT's proposed modification would give ERCOT the engineering discretion to determine whether system condition changes would warrant revoking or modifying a previously granted exemption. ERCOT's third proposed modification was to add a reference to an actual system disturbance, so that ERCOT could revoke or modify an exemption based on actual conditions, rather than only a study based on modeling. This final recommendation was also suggested by Oncor. Oncor explained that a real-time system event makes revocation or suspension of an exemption even more urgent than under circumstances of a reliability study, and the proposed rule should reflect this urgency to avoid exposing the grid to unnecessary reliability risks.

Association Joint Commenters commented that the commission is the only body capable of revoking or suspending an exemption, and only after notice and an opportunity for a hearing and with a compelling state interest. If ERCOT seeks to revoke an exemption, Association Joint Commenters wrote, there should also be transparency to the affected entity as to why ERCOT is requesting to revoke the exemption, including a reasoned justification for ERCOT's action, and a reasonable period should be granted for the entity to implement necessary modifications.

TPPA recommended that additional requirements be added to (g)(2) of the proposed rule: ERCOT should be required to (1) provide notice to any resources with exemptions affected by ERCOT's new determination, (2) make a public filing of its determinations, and (3) establish a cure period in conjunction with the

entity, for the entity to become compliant with the rule for which the exemption was revoked.

Avangrid, NextEra, Joint Commenters, ERCOT, Oncor, and Association Joint Commenters provided redlines consistent with their comments.

Commission Response

The commission agrees with ERCOT's suggested changes to the proposed rule and modifies the rule to allow ERCOT to modify an exemption, remove the term "material," and revoke an exemption based on an anticipated or actual system disturbance.

However, in response to concerns about due process and transparency related to revocations, the commission makes several modifications to proposed subsection (g). First, the commission modifies (g)(1) of the proposed rule to allow for an extension request of an expiring exemption, which ERCOT may grant, provided that it does not result in a threshold reliability risk.

Second, the commission adds subparagraphs to (g)(2) of the proposed rule to lay out the process that must occur after ERCOT decides to revoke or modify an ERCOT=granted exemption. ERCOT must first inform the resource entity, the resource entity's interconnecting TSP, and the commission, in writing, and this notice must include a justification for the action. Then, ERCOT must make reasonable efforts to work with the resource entity to identify mutually acceptable mitigation solutions. After these reasonable efforts, ERCOT must issue a final decision whether to revoke, modify, or continue the exemption. If ERCOT revokes or modifies the exemption, it must inform the resource entity, the resource entity's interconnecting TSP, and the commission, in writing, and give the resource entity a reasonable period in which to come into compliance with the reliability requirement or implement necessary mitigatory actions. The resource entity may then file a complaint with the commission under §22.251 if it is unsatisfied with the outcome of this process.

Third, the commission modifies the rule to require ERCOT to petition the commission if it wishes to revoke or modify an exemption or extension that was granted by the commission. However, the commission further modifies the rule to allow ERCOT to suspend an exemption or extension or impose mitigation requirements on a temporary basis. These revisions strike a proper balance by providing ERCOT with authority to take immediate action in the short term to protect reliability, while respecting the commission's proper role of determining whether the exemptions or extensions it previously granted remain in the public interest.

Proposed §25.517(g)(2) and (g)(3)--Review or revocation of an exemption

Proposed §25.517(g)(2) allows ERCOT to revoke an exemption it granted or suspend an exemption the commission granted. If ERCOT suspends an exemption the commission granted, the commission will either ratify or set aside ERCOT's actions as soon as practicable. Proposed §25.517(g)(3) states that the commission may initiate a review of an exemption on its own motion or in response to a filing by ERCOT.

Association Joint Commenters and NextEra provided redlines without commentary to modify these two paragraphs. Association Joint Commenters provided a redline replacing (g)(2) of the proposed rule in its entirety with the following: Any affected entity, ERCOT, or commission staff may request that the commission revoke or suspend a previously granted exemption. This redline shows that Association Joint Commenters prefers that the commission have sole authority to revoke or suspend an exemption and prefers that other affected entities also have the right to request that the commission revoke or suspend an exemption. Association Joint Commenters' redline to (g)(3) of the proposed rule would allow only the commission, on its own motion, to initiate a review of any previously granted exemption.

NextEra provided a redline modifying (g)(3) of the proposed rule so that the resource owner may file a request for the commission to review its exemption.

Commission Response

The commission disagrees with deleting proposed (g)(2) or (g)(3) and declines to modify the rule. The commission also declines to modify the rule according to Association Joint Commenters' redline to proposed (g)(2). ERCOT should be able to revoke or modify an exemption it granted because it is the entity most informed and capable of making such a decision. Also, an affected entity should not be able to request a revocation of an exemption because an affected entity is not directly involved with the grant of an exemption.

Proposed §25.517(g)(3)--Reservation of ERCOT's right to prudently operate the grid

Proposed §25.517(g)(3) states that nothing in this section reduces or otherwise adversely affects ERCOT's authority to prudently operate the grid, regardless of whether a resource has been granted an exemption.

Avangrid recommended deleting this sentence because, it argued, ERCOT already has authority to manage reliability risks through established mechanisms. Avangrid stated that this provision is unnecessary and could destabilize the market by undermining investor confidence in the long-term viability of existing resources.

Commission Response

The commission disagrees with Avangrid that the provision is unnecessary and declines to modify the rule. ERCOT has statutory authority to manage the stability of the grid in several ways, and this provision clarifies that ERCOT's responsibility to reliably operate the grid is not abrogated by the rule.

Proposed §25.517(h)--Limit on number of exemptions

Proposed §25.517(h) limits the number of exemptions for each resource to two exemptions from the same reliability requirement.

Several commenters recommended deleting this provision. For example, Avangrid stated that the limit in (h) is arbitrary, capricious, potentially illegal, and without any reasoned justification. Other commenters stated similar beliefs. Vistra commented that the focus of the exemption process should be on striving to keep generation operating in ERCOT while maintaining reliability, which would not be achieved by setting an arbitrary number of exemptions.

On the other hand, AEP Companies supported retaining a limit on the number of exemptions and in fact reducing the limit to a single exemption. AEP Companies suggested that more than one exemption from the same reliability requirement should not be available because the need for more than one exemption would arise only in the case that an exemption was revoked under proposed (g)(2) due to a reliability study completed by ERCOT showing material changes in conditions since the exemption was granted. Further, AEP Companies supported limiting the overall number of exemptions that any one resource can

have, to limit reliability risk to the system. AEP Companies also suggested that the rule could be helped by defining the allowable duration of an exemption.

Commission Response

The commission agrees that the process in the proposed rule does not benefit by imposing a limit on the number of exemptions that a resource may be granted and modifies the rule to remove this provision.

Proposed §25.517--"Technical"

Vistra commented that the proposed rule should be modified throughout to remove the term "technical" because it unnecessarily limits what ERCOT could consider and might limit the information to be provided during the process. Additionally, "technical" is a vague term that could lead to confusion and misunderstanding between ERCOT and market participants.

Commission Response

The commission disagrees with removing "technical" throughout the entire rule because it sometimes refers to equipment or operations associated with a resource, as opposed to a resource entity's commercial market behavior, and so, as it is used, is not a vague term. However, the commission agrees that some instances of "technical" in the proposed rule are unnecessary and modifies the rule to remove these instances accordingly.

The new rule is adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §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; and §39.151, which grants the commission authority to establish the terms and conditions for the exercise of ERCOT's authority, grants the commission authority to adopt and enforce rules concerning reliability of the regional electrical network, and allows the commission to delegate to an independent organization responsibilities for establishing or enforcing such rules, which are subject to commission oversight and review.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002 and 39.151.

§25.517. Exemption Process for ERCOT Reliability Requirements.

(a) Purpose and applicability. This section outlines a process at the Electric Reliability Council of Texas (ERCOT) for a resource entity to request an exemption from an ERCOT reliability requirement that applies to existing resources. This section does not modify or otherwise preempt existing exemptions or exemption processes contained in commission rules or ERCOT protocols, as that term is defined in §25.5 of this title (relating to Definitions). This section also does not prohibit ERCOT from adopting specific exemption processes for an individual reliability requirement that is not designated as a requirement for which an exemption under this section is available or create a presumption that any individual reliability requirement applies to an existing resource.

(1) ERCOT must designate during the development of a reliability requirement whether the exemption process outlined in this section is available for that reliability requirement. This designation must appear in the text of the approved reliability requirement.

(A) A reliability requirement designated under this paragraph must include a reasonable deadline by which a resource entity must submit its exemption request to ERCOT. ERCOT may extend this deadline.

(B) An exemption to a reliability requirement designated under this paragraph is available only for a resource that had a resource commissioning date, as defined in the ERCOT protocols, before the date a reliability requirement takes effect. An existing load resource is one that completed Ancillary Service Qualification Testing, as defined in the ERCOT protocols, before the date a reliability requirement takes effect.

(2) This section also applies to a reliability requirement that is already in effect on the effective date of this section and for which ERCOT has accepted notices of intent to request an exemption, but for which ERCOT has not yet defined the standards by which those exemption requests will be evaluated.

(3) A threshold reliability risk described in subsection (b) of this section applies only to the assessment of an exemption request under this section and does not apply to reliability criteria in other ERCOT protocols.

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

(1) Feasible--describes an available modification or upgrade that can be made to a resource.

(2) Reliability requirement--a mandatory technical standard adopted by ERCOT to support the reliability of electric service that is included in the ERCOT protocols.

(3) Resource--refers to a generation resource, load resource, or an energy storage resource, as defined and used in the ERCOT protocols.

(4) Resource entity--an entity that owns or controls a resource.

(5) Technical limitation--a technical restriction preventing a resource from complying with a reliability requirement, based on the resource's documented inability to comply with the reliability requirement.

(6) Threshold reliability risk--one or more of the following:

(A) instability, cascading outages, or uncontrolled separation;

(B) loss of generation capacity equal to or greater than 500 megawatts in aggregate from one or more resources other than the resource for which the exemption is requested;

(C) loss of load equal to or greater than 300 megawatts; or

(D) equipment damage.

(c) Exemption Request. If a technical limitation prevents a resource from complying with a reliability requirement, a resource entity may submit to ERCOT an exemption request in accordance with this section by the deadline established by ERCOT under subsection (a) of this section. ERCOT must treat information submitted as part of an exemption request as protected information. The exemption request must be submitted in a manner prescribed by ERCOT that, at a minimum, requires the following:

(1) a description of the applicable reliability requirement from which the resource entity seeks an exemption, including cross-references to ERCOT protocols where the applicable reliability requirement is contained;

(2) a succinct description, with supporting documentation, of the resource entity's efforts to comply with the applicable reliability requirement, and an explanation of the resource entity's inability to comply;

(3) documentation describing all feasible modifications, replacements, or upgrades the resource entity could implement, but has not yet implemented, to improve the performance of the resource toward meeting the applicable reliability requirement;

(4) models that accurately represent expected resource performance and reflect the actual, as-built resource equipment and settings, with all technical limitations, before and after maximizing the resource's operational capability, if applicable, and if not already submitted to ERCOT. Each model must include a description of any technical limitation the resource entity cannot accurately represent in that model;

(5) a plan to comply with each specific element of the applicable reliability requirement to the maximum extent possible. A plan under this paragraph must include:

(A) a proposed completion deadline for each proposed modification, replacement, or upgrade;

(B) proposed dates for the resource entity to provide updates to ERCOT on its progress;

(C) any supporting documentation relevant to plan implementation; and

(D) potential mitigation options, if applicable;

(6) whether any other exemption request has been submitted for the resource, in accordance with this section or otherwise, including the outcome of each request;

(8) the resource's interconnection date, including a copy of the resource's interconnection agreement and any amendments, if not already submitted to ERCOT; and

(9) whether the resource entity is seeking an exemption, an extension, or both.

(d) ERCOT assessment of exemption requests.

(1) Assessment process. ERCOT must assess the ERCOT system to determine whether an exemption granted to one resource or several resources would result in a threshold reliability risk to the ERCOT system . ERCOT must identify the resource's interconnecting TSP and send the TSP all studies and substantive communications related to the exemption request and ERCOT's assessment and may consider input from the interconnecting TSP, as appropriate. The assessment must consider at least the following:

(A) steady state and dynamic stability of the ERCOT system;

(B) resource and system performance under a reasonable set of operating conditions (e.g., peak summer, peak winter, high wind low load, and nighttime conditions);

(C) reasonable and expected topology, equipment status, and dispatch used in the assessment;

(D) any contingencies ERCOT deems critical based on engineering judgment, including contingencies from any applicable North American Electric Reliability Corporation reliability standard, such as any allowed steady state system adjustments for contingencies, or from the ERCOT planning guide;

(E) any technical limitations described in the request that are not included in the models provided by the resource entity under subsection (c)(4) of this section, the effect of which will be assessed by analyzing the expected impact based on ERCOT's engineering judgment;

(F) ERCOT's most relevant outlook for resource adequacy;

(G) the potential impact to system reliability of new resources that have been approved for energization by ERCOT;

(H) any mitigation options included in the exemption request under subsection (c)(5)(D) of this section; and

(I) any other information ERCOT deems necessary to assess the reliability impact of an exemption based on ERCOT's engineering judgment.

(2) Process to determine mitigation options. Before making a final decision to grant an exemption or extension with conditions or deny an exemption or extension, ERCOT must make a reasonable effort to work with the resource entity that made the request to identify any technical or operational options that are mutually acceptable to ERCOT and the resource entity to mitigate any threshold reliability risk caused by the resource's continued operation. ERCOT may request and consider additional information from the resource entity during this process, including costs of an individual option. Failure to identify a mutually acceptable option does not prevent ERCOT from making a final decision on the requested exemption or extension based on its assessment.

(3) Assessment outcomes. ERCOT may grant an exemption, grant an exemption with conditions, grant an extension, or deny an exemption. ERCOT must provide the resource entity with a written explanation for its decision that includes information on its assessment, including which models ERCOT used in the assessment, a list of assumptions that were used in the assessment, and which factors were varied to run any sensitivities.

(A) ERCOT must grant an exemption if its assessment identifies that no threshold reliability risks would result from granting the exemption or, if applicable, granting several exemptions requested by multiple resource entities.

(B) ERCOT may grant an exemption with conditions (e.g., curtailment of the resource's output under certain circumstances, a congestion management plan, or other remedial action) if doing so would no longer result in a threshold reliability risk.

(C) ERCOT may grant an extension or an extension with conditions if it determines that a feasible solution acceptable to both it and the resource entity will become available within a reasonable time.

(D) ERCOT must deny the exemption request if its assessment identifies that a threshold reliability risk would result from granting the exemption or, if applicable, granting several exemptions requested by multiple resources entities, that cannot be eliminated by imposing conditions.

(4) An exemption under this section may be limited to a period identified by ERCOT in granting the exemption.

(5) If ERCOT denies an exemption request, ERCOT may specify in its written explanation a reasonable amount of time for the resource to come into compliance with the reliability requirement from which the resource entity was seeking an exemption.

(e) ERCOT inspections. ERCOT may inspect a resource owned and operated by a resource entity to verify the need for an exemption or perform field verification of modeling parameters, using employees or ERCOT-designated contractors.

(1) ERCOT must provide the resource entity at least 72 hours' written notice of a field visit unless otherwise agreed by that resource entity and ERCOT. The written notice must identify each ERCOT employee, commission staff member, or designated contractor participating in the inspection. Within 24 hours of receiving notice of inspection, a resource entity must provide ERCOT, commission staff, and designated contractors all resource entity requirements for facility access. Upon provision of the required written notice, a resource entity must grant access to its facility to ERCOT and to commission staff, including an employee of a contractor designated by ERCOT to conduct, oversee, or observe the inspection.

(2) During the inspection, a resource entity must provide ERCOT, commission staff, or designated contractors access to any part of the facility upon request. ERCOT, commission staff, and designated contractors must comply with all applicable safety and security regulations, including those maintained by the resource entity, during the inspection. A resource entity must provide access to inspection, maintenance, and other records associated with the applicable reliability requirement and must make the resource entity's staff available to answer questions. A resource entity may escort ERCOT, commission staff, and designated contractors at all times during an inspection. During the inspection, ERCOT, commission staff, or designated contractors may take photographs or video recordings of any part of the facility, except control rooms, and may conduct interviews of facility personnel designated by the resource entity. Documents, photographs, and video recordings collected or generated by ERCOT, commission staff, or designated contractors during or related to the inspection will be treated as confidential information under applicable state or federal laws and regulations. ERCOT may require additional documentation from the resource or conduct its own verifications, as ERCOT deems necessary.

(f) Complaint to commission. If a resource entity is not satisfied with ERCOT's determination of that resource entity's request under subsection (d) of this section, the resource entity may file a complaint under §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).

(g) Validity and revocation. An exemption may become invalid, or ERCOT may revoke or modify an exemption, under the circumstances listed in this subsection. ERCOT must notify the resource entity's interconnecting TSP of any changes to the status of an exemption.

(1) Expiration. An exemption is valid for the period identified by ERCOT in granting the exemption or the period in the commission's order ruling on an exemption under §22.251 of this title. If an exemption expires, the resource entity may request an extension of the exemption, and ERCOT may grant an extension, provided that granting the extension does not result in a threshold reliability risk. ERCOT may develop procedures to implement this provision, including establishing extension request deadlines for a group of exemptions to a reliability requirement that will expire at the same time. ERCOT may request any information reasonable and necessary to evaluate a request under this paragraph.

(2) Resource modification. An exemption is no longer valid if a modification described in this paragraph is made to the resource. After such a modification, the resource must meet the latest reliability requirements in the ERCOT protocols.

(A) A modification that involves changing the inverter, turbine, generator, battery modules, or power converter associated with a facility with an aggregate real power rating of ten MW or greater, unless the replacement is in kind.

(B) A modification that involves changing the specific equipment with the technical limitation, unless the replacement is in kind.

(3) Revocation. An exemption or extension may be revoked or modified if an anticipated or actual system disturbance or a reliability study indicates that the resource's continued operation with the exemption or extension results in a threshold reliability risk.

(A) If the exemption or extension was granted by ERCOT under this section, then the following provisions apply:

(i) If ERCOT determines that it is necessary to revoke or modify an exemption or extension, it must inform the resource entity, the resource entity's interconnecting TSP, and the commission of its determination, in writing, and this notice must include a justification for the action.

(ii) Before revoking or modifying an exemption or extension, ERCOT must make reasonable efforts as described under subsection (d)(2) of this section to find mutually acceptable mitigation solutions to avoid a threshold reliability risk. However, if necessary to ensure the reliability of the grid, ERCOT may temporarily suspend an exemption or extension, or impose temporary mitigation measures, pending its final decision under this subparagraph.

(iii) After making reasonable efforts as described under subsection (d)(2) of this section, ERCOT must issue a final decision whether to revoke, modify, or continue the exemption or extension. If ERCOT revokes or modifies the exemption or extension, ERCOT must share the information required under subsection (d)(3) of this section with the resource entity, the resource entity's interconnecting TSP, and the commission, in writing, and give the resource entity a reasonable period in which to come into compliance with the reliability requirement or implement necessary mitigatory actions.

(iv) If a resource entity is unsatisfied with ERCOT's final decision under this subparagraph, it may contest the decision by filing a complaint with the commission consistent with the procedure in subsection (f) of this section. For purposes of this clause, the resource entity's complaint will be treated like a complaint relating to a decision made by ERCOT under subsection (d) of this section.

(B) If the exemption or extension was granted by the commission in response to a complaint filed under §22.251 of this title, the following provisions apply:

(i) If an anticipated or actual system disturbance or a reliability study indicates that continued operation of a resource with an exemption or extension results in a threshold reliability risk, ERCOT may file a petition with the commission to revoke or modify the extension or exemption. ERCOT must provide notice of this petition to all of the parties in the proceeding in which the exemption or extension was granted by the commission.

(ii) ERCOT may request interim relief during the pendency of the petition for good cause to ensure the reliability of the grid. ERCOT may temporarily suspend an exemption or extension, or impose temporary mitigation measures, for fifteen days or until the presiding officer rules on its request for interim relief, whichever is shorter.

(iii) The commission may grant ERCOT's petition if doing so is in the public interest. In making its determination, the commission may consider any relevant information, including evidence of reliability risks or operational or economic impacts to the resource entity.

(4) The commission may initiate a review of an exemption or extension on its own motion or in response to a filing by ERCOT.

(h) Nothing in this section reduces or otherwise adversely affects ERCOT's authority to prudently operate the grid, regardless of whether a resource has been granted an exemption.

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 June 20, 2025.

TRD-202502082
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 10, 2025
Proposal publication date: January 3, 2025
For further information, please call: (512) 936-7322

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

The Texas Education Agency (TEA) adopts the repeal of §§61.1026, 61.1071, and 61.1073, concerning school district reporting requirements and counseling public school students. The repeal is adopted without changes to the proposed text as published in the March 14, 2025 issue of the *Texas Register* (50 TexReg 1889) and will not be republished. The adopted repeal relocates the existing requirements to new 19 TAC Chapter 78.

REASONED JUSTIFICATION: Section 61.1026 requires school districts and open-enrollment charter schools to report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the number of full-time equivalent school counselors at each campus and the availability of expanded learning opportunities. The adopted repeal of §61.1026 moves the existing language to adopted new §78.1001 with no changes to the content of the rule.

Section 61.1071 requires school counselors to provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during the student's senior year. The adopted repeal of §61.1071 moves the language to new §78.2001.

Section 61.1073 implements the statutory requirement for school districts to annually assess compliance with the district policy requiring a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program. The adopted repeal of §61.1073 moves the existing language to adopted new §78.1003 with no changes to the content of the rule.

The relocations are necessary due to a comprehensive reorganization of 19 TAC Chapter 61.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 14, 2025, and ended April 14, 2025. No public comments were received.

SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1026

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §33.252, which outlines the types of expanded learning opportunities that may be provided by school districts and open-enrollment charter schools and the manner in which expanded learning opportunities may be offered; and TEC, §48.009, which requires the commissioner of education to by rule require each school district and open-enrollment charter school to report through the Public Education Information Management System information regarding the availability of school counselors at each campus and the availability of expanded learning opportunities as described by TEC, §33.252

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §33.252 and §48.009.

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 June 17, 2025.

TRD-202502049
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 7, 2025
Proposal publication date: March 14, 2025
For further information, please call: (512) 463-9526

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SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COUNSELING PUBLIC SCHOOL STUDENTS

19 TAC §61.1071, §61.1073

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §33.252, which outlines the types of expanded learning opportunities that may be provided by school districts and open-enrollment charter schools and the manner in which expanded learning opportunities may be offered; and TEC, §48.009, which requires the commissioner to by rule require each school district and open-enrollment charter school to report through PEIMS information regarding the availability of school counselors at each campus and the availability of expanded learning opportunities as described by TEC, §33.252

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §33.252 and §48.009.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 463-9526

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CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.3

The State Board of Education (SBOE) adopts an amendment to §74.3, concerning the required secondary curriculum. The amendment is adopted with changes to the proposed text as published in the December 20, 2024 issue of the *Texas Register* (49 TexReg 10181) and will be republished. The amendment updates the list of high school courses for science that are required to be offered to students.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. In late 2019, the SBOE began the process to review and revise the Texas Essential Knowledge and Skills (TEKS) for Kindergarten-Grade 12 science. In November 2020, the SBOE approved for second reading and final adoption revised TEKS for four high school science courses: Biology, Chemistry, Physics, and Integrated Physics and Chemistry (IPC). At the June 2021 SBOE meeting, the board approved for second reading and final adoption new TEKS for Specialized Topics in Science and revised standards for Aquatic Science, Astronomy, Earth Science Systems (formerly titled Earth and Space Science), and Environmental Systems. The updated TEKS for high school science were implemented beginning with the 2024-2025 school year.

Career and technical education (CTE) TEKS review work groups were convened from March-July 2021 to develop recommendations for certain CTE courses that satisfy a science graduation requirement. Proposed new TEKS for certain CTE courses that may satisfy science graduation requirements were approved for second reading and final adoption by the SBOE at the April 2024 SBOE meeting.

Additional CTE TEKS review work groups were convened from May-December 2024 to develop recommendations for a set of CTE courses in engineering. At the January 2025 SBOE meeting, the SBOE approved two CTE engineering courses to satisfy a high school science graduation requirement for first reading and filing authorization: Fluid Mechanics and Mechanics of Materials. At the January 2025 meeting, the SBOE postponed action on this item for second reading to provide an opportunity to consider adding Fluid Mechanics and Mechanics of Materials to the updated list of high school courses for science that are required to be offered to students.

The adopted amendment aligns the required secondary curriculum in §74.3(b)(2)(C) with updates to the secondary science course offerings made during recent TEKS revisions and adds advanced level biology, chemistry, physics, and environmental science courses offered as dual credit and courses selected from 19 TAC §74.12(b)(3)(A) or (B) to the list of options from which districts must select two courses to offer in addition to Biology, Chemistry, Physics, and IPC. The adopted amendment also replaces the secondary curriculum requirement in computer science to offer a specific course, Advanced Placement Computer Science Principles, with a general option to offer an advanced computer science course to meet the requirement.

The following changes were made to the rule since published as proposed.

Section 74.3(b)(2) was amended by replacing "The" with "A," striking "the" after "offer," adding the phrase "subparagraphs (A)-(J) of" before "this paragraph," and inserting the phrase "unless selection from a list of courses is specified" after "paragraph."

Section 74.3(b)(2)(C) was amended by reorganizing required science courses into clauses (i) and (ii) with science courses required for a school district to offer appearing in clause (i) and science course options from which a school district must select at least two additional courses to offer appearing in clause (ii).

Section 74.3(b)(2)(C)(ii) was further amended by adding the following course options: Fluid Mechanics, Mechanics of Materials, and advanced level biology, chemistry, physics, and environmental science courses offered as dual credit as referenced in §74.11(i) of this title (relating to High School Graduation Requirements) or a course selected from §74.12(b)(3)(A) or (B) of this title (relating to Foundation High School Program). The course options included at proposal, including Advanced Placement (AP) Biology; AP Chemistry; AP Physics 1: Algebra Based; AP Physics 2: Algebra Based; AP Environmental Science; AP Physics C: Electricity and Magnetism; and AP Physics C: Mechanics, were removed, as well as language stating that science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry. Language stating that the requirement to offer two additional courses may be reduced to one by the commissioner of education upon application of a school district with a total high school enrollment of less than 500 students was moved to new subsection (b)(3).

Section 74.3(b)(2)(D) was amended by striking the last sentence of the paragraph, which read, "The requirement to offer both Economics with Emphasis on the Free Enterprise System and Its Benefits and Personal Financial Literacy and Economics may be reduced to one by the commissioner of education upon application of a school district with a total high school enrollment of less than 500 students."

Section 74.3(b)(2)(I) was amended by adding the phrase "another advanced computer science course" and striking "AP Computer Science Principles."

New §74.3(b)(3) was added and contains language struck due to reorganizing curriculum requirements in §74.3(b)(2)(C) and (D).

Section 74.3(b)(5) was amended by replacing the word "The" with the word "A" and replacing the phrase "all courses listed" with the phrase "each course the district is required to offer or selects to offer as specified." Additionally, the following sentence was deleted: For students entering Grade 9 beginning with the 2007-2008 school year, districts must ensure that one or more courses offered in the required curriculum for the recommended and advanced high school programs include a research writing component.

The SBOE approved the amendment for first reading and filing authorization at its November 22, 2024 meeting and for second reading and final adoption at its April 11, 2025 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will enable districts to begin preparing for implementation of the revised curriculum requirements. The effective date is August 1, 2025.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 20, 2024, and ended at 5:00 p.m. on January 21, 2025. The SBOE also provided opportunities for registered oral and written comments at its January and April 2025 meetings in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and the corresponding responses.

Comment. Two teachers expressed concern that the proposal to require districts to offer a specified number of Advanced Placement (AP) courses would put an undue burden on smaller districts.

Response. The SBOE agrees that smaller school districts may experience more challenges than larger districts in the number of advanced science courses, including AP courses, they can offer; however, the SBOE also provides the following clarification. School districts are not required to offer all courses listed in the required secondary curriculum for science in 19 TAC §74.3(b)(2)(C). In response to this and other comments, the SBOE took action to replace AP courses in the list of options for course offerings with a reference to advanced level biology, chemistry, physics, and environmental science courses in order to provide greater flexibility to districts.

Comment. One teacher stated that many districts offer a dual credit option that has a higher success rate than AP courses and is more cost effective for the district and students.

Response. The SBOE agrees that dual credit courses are good options for districts and students. In response to this and other comments, the SBOE took action to replace AP courses in the list of options for course offerings with a reference to advanced level biology, chemistry, physics, and environmental science courses in order to provide greater flexibility to districts.

Comment. One teacher questioned the addition of AP courses to the required curriculum in science without increasing the rigor of core classes.

Response. The SBOE disagrees that adding AP courses to the list of courses in the description of a required secondary curriculum should be connected to a change in rigor for other courses. However, in response to other comments, the SBOE took action to replace specific references to AP courses in the list of options for courses offerings with a reference to advanced level biology, chemistry, physics, and environmental science courses to provide greater flexibility for districts.

Comment. One teacher asked whether AP courses in math, English, and history would be added to the rules for the required curriculum in the future.

Response. The SBOE offers the following clarification. At this time, there are no plans to make additional amendments to 19 TAC §74.3(b).

Comment. One counselor expressed support for the proposal to include AP courses in the required secondary curriculum and stated that it should be implemented to increase advanced coursework opportunities in urban districts with marginalized student populations.

Response. The SBOE agrees that the required secondary curriculum should provide advanced coursework opportunities for students. In response to other comments, the SBOE took action to replace specific references to AP courses in the list of options for courses offerings with a reference to advanced level biology, chemistry, physics, and environmental science courses to provide greater flexibility for districts.

Comment. One counselor stated that the proposed amendment should not require school districts to offer AP courses without a specified plan for how to fund them.

Response. The SBOE agrees that school districts should not be required to offer AP courses and provides the following clarification. School districts are not required to offer all science courses listed in the required secondary curriculum in §74.3(b)(2)(C). In response to other comments, the SBOE took action to replace specific references to AP courses in the list of options for courses offerings with a reference to advanced level biology, chemistry, physics, and environmental science courses to provide greater flexibility for districts.

Comment. One teacher asked whether the SBOE would be requiring students to take AP tests and if student performance would be a way to grade schools.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that colleges do not grant credit for AP exams on a consistent basis or scale and some schools may not offer credit at all for courses in a student's major.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher stated that all students should have equal curriculum and opportunity to be taught by trained dyslexia specialists and dyslexia trained teachers should receive stipends.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that the proposed requirement is vague; therefore, it is difficult to determine whether to support the amendment.

Response. The SBOE agrees that rules for the required secondary curriculum could be clarified. The SBOE took action to amend §74.3(b)(2)(C) by creating one clause, new §74.3(b)(2)(C)(i), with the science courses all districts must offer listed and a separate clause, §74.3(b)(2)(C)(i)(ii), that provides the list of science courses from which districts must select two to offer. The SBOE also approved additional technical edits to further clarify the rule.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.025(b-1), which requires the SBOE to determine by rule specific courses for graduation under the foundation high school program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.102(c)(4), 28.002(a), and 28.025(b-1).

§74.3. Description of a Required Secondary Curriculum.

(a) Middle Grades 6-8.

(1) A school district that offers Grades 6-8 must provide instruction in the required curriculum as specified in §74.1 of this title (relating to Essential Knowledge and Skills). The district must ensure that sufficient time is provided for teachers to teach and for students

to learn English language arts, mathematics, science, social studies, at least one of the four disciplines in fine arts (art, dance, music, theatre), health, physical education, technology applications, and to the extent possible, languages other than English. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must ensure that, beginning with students who enter Grade 6 in the 2010-2011 school year, each student completes one Texas essential knowledge and skills-based fine arts course in Grade 6, Grade 7, or Grade 8.

(3) A district shall offer and maintain evidence that students have the opportunity to take courses in at least three of the four disciplines in fine arts. The requirement to offer three of the four disciplines in fine arts may be reduced to two by the commissioner of education upon application of a school district with a total middle school enrollment of less than 250 students.

(b) Secondary Grades 9-12.

(1) A school district that offers Grades 9-12 must provide instruction in the required curriculum as specified in §74.1 of this title. The district must ensure that sufficient time is provided for teachers to teach and for students to learn the subjects in the required curriculum. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) A school district must offer courses listed in subparagraphs (A)-(J) of this paragraph, unless selection from a list of courses is specified, and maintain evidence that students have the opportunity to take these courses:

(A) English language arts--English I, II, III, and IV and at least one additional advanced English course;

(B) mathematics--Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications;

(C) science--

(i) Integrated Physics and Chemistry, Biology, Chemistry, Physics; and

(ii) at least two additional science courses selected from Aquatic Science, Astronomy, Earth Systems Science, Environmental Systems, Advanced Animal Science, Advanced Plant and Soil Science, Anatomy and Physiology, Physics for Engineering, Biotechnology I, Biotechnology II, Engineering Design and Problem Solving, Food Science, Forensic Science, Medical Microbiology, Pathophysiology, Scientific Research and Design, Engineering Science, Fluid Mechanics, Mechanics of Materials, and advanced level biology, chemistry, physics, and environmental science courses offered as dual credit as referenced in §74.11(i) of this title (relating to High School Graduation Requirements) or a course selected from §74.12(b)(3)(A) or (B) of this title (relating to Foundation High School Program);

(D) social studies--United States History Studies Since 1877, World History Studies, United States Government, World Geography Studies, Personal Financial Literacy, Economics with Emphasis on the Free Enterprise System and Its Benefits, and Personal Financial Literacy and Economics;

(E) physical education--at least two courses selected from Lifetime Fitness and Wellness Pursuits, Lifetime Recreation and Outdoor Pursuits, or Skill-Based Lifetime Activities;

(F) fine arts--courses selected from at least two of the four fine arts areas (art, music, theatre, and dance)--Art I, II, III, IV; Music I, II, III, IV; Theatre I, II, III, IV; or Dance I, II, III, IV;

(G) career and technical education-- three or more career and technical education courses for four or more credits with at least one advanced course aligned with a specified number of Texas Education Agency-designated programs of study determined by enrollment as follows:

(i) one program of study for a district with fewer than 500 students enrolled in high school;

(ii) two programs of study for a district with 501-1,000 students enrolled in high school;

(iii) three programs of study for a district with 1,001-2,000 students enrolled in high school;

(iv) four programs of study for a district with 1,001-5,000 students enrolled in high school;

(v) five programs of study for a district with 5,001-10,000 students enrolled in high school; and

(vi) six programs of study for a district with more than 10,000 students enrolled in high school.

(H) languages other than English--Levels I, II, and III or higher of the same language;

(I) computer science--one course selected from Fundamentals of Computer Science, Computer Science I, or another advanced computer science course; and

(J) speech--Communication Applications.

(3) The following requirements may be reduced to one by the commissioner of education upon application of a school district with a total high school enrollment of less than 500 students:

(A) the requirement to offer two additional science courses; and

(B) the requirement to offer both Economics with Emphasis on the Free Enterprise System and Its Benefits and Personal Financial Literacy and Economics.

(4) Districts may offer additional courses from the complete list of courses approved by the State Board of Education to satisfy graduation requirements as referenced in this chapter.

(5) A school district must provide each student the opportunity to participate in each course the district is required to offer or selects to offer as specified in subsection (b)(2) of this section. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses required to be offered in subsection (b)(2) of this section. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact. A school district must teach a course that is specifically required for high school graduation at least once in any two consecutive school years. For a subject that has an end-of-course assessment, the district must either teach the course every year or employ options described in Subchapter C of this chapter (relating to Other Provisions) to enable students to earn credit for the course and must maintain evidence that it is employing those options.

(c) Courses in the foundation and enrichment curriculum in Grades 6-12 must be provided in a manner that allows all grade promotion and high school graduation requirements to be met in a timely manner. Nothing in this chapter shall be construed to require a district to offer a specific course in the foundation and enrichment curriculum except as required by this subsection.

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

Filed with the Office of the Secretary of State on June 20, 2025.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 463-9526

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CHAPTER 78. COUNSELING, ADVISING, AND STUDENT SUPPORT

The Texas Education Agency (TEA) adopts new §§78.1001, 78.1003, and 78.2001, concerning counseling services and student advising. New §78.1001 and §78.1003 are adopted without changes to the proposed text as published in the March 14, 2025 issue of the *Texas Register* (50 TexReg 1889) and will not be republished. New §78.2001 is adopted with changes to the proposed text as published in the March 14, 2025 issue of the *Texas Register* (50 TexReg 1889) and will be republished. The adopted new sections relocate existing requirements from 19 TAC Chapter 61.

REASONED JUSTIFICATION: Adopted new §78.1001 moves existing language from 19 TAC §61.1026, which requires school districts and open-enrollment charter schools to report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the number of full-time equivalent school counselors at each campus and the availability of expanded learning opportunities. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule were proposed.

Adopted new §78.1003 moves existing language from 19 TAC §61.1073, which implements the statutory requirement for school districts to annually assess compliance with the district policy requiring a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule were proposed.

Adopted new §78.2001 moves existing language from 19 TAC §61.1071, which requires school counselors to provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during the student's senior year. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule were proposed; however, changes have been made at adoption.

In response to public comment, §78.2001(a) was amended at adoption to require that students be provided with information during each year of a student's enrollment in high school in addition to during the first year the student is enrolled in a high school or at the high school level.

Additionally, §78.2001(b)(2) was amended at adoption to update the language to align with current graduation requirements as defined in statute.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 14, 2025, and ended April 14, 2025. Following is a summary of the public comment received and agency response.

Comment: A commenter stated that students should be provided information regarding postsecondary education in their junior and senior years.

Response: The agency agrees that students should be provided with information regarding postsecondary education more frequently than their senior year of high school. Section 78.2001(a) was amended at adoption to require that students be provided with information during each year of a student's enrollment in high school in addition to during the first year the student is enrolled in a high school or at the high school level. This adjusted language also aligns with the current statutory requirement in TEC, §33.007.

SUBCHAPTER AA. COMMISSIONER'S RULES ON COUNSELING SERVICES

19 TAC §78.1001, §78.1003

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §33.252, which outlines the types of expanded learning opportunities that may be provided by school districts and open-enrollment charter schools and the manner in which expanded learning opportunities may be offered; TEC, §48.009, which requires the commissioner of education to by rule require each school district and open-enrollment charter school to report through PEIMS information regarding the availability of school counselors at each campus and the availability of expanded learning opportunities as described by TEC, §33.252; TEC, §33.005, which provides that a school counselor shall plan, implement, and evaluate a comprehensive school counseling program that meets the requirements of the section; TEC, §33.006(d), which requires, except as provided by subsection (e) of the section, school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005; TEC, §33.006(e), which requires school district boards of trustees that determine that staffing needs require school counselors to spend less than 80% of their work time on duties that are components of counseling programs developed under TEC, §33.005, to change the policy adopted under subsection (d) of the section to reflect the reasons why counselors need to spend less than 80% of their work time on components of the counseling program, list those non-component duties, and set the required percentage of work time to be spent on components of the counseling program; and TEC, §33.006(h), which requires each school district to annually assess the district's compliance with the policy adopted under TEC, §33.006(d), and, on request by the commissioner, provide a written copy of the assessment to Texas Education Agency on or before a date specified by the commissioner. This section

requires the commissioner to adopt rules to implement these requirements.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §33.252 and §48.009, for §78.1001; and TEC, §33.005 and §33.006, for §78.1003.

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
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For further information, please call: (512) 463-9526

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SUBCHAPTER BB. COMMISSIONER'S RULES ON STUDENT ADVISING

19 TAC §78.2001

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §33.252, which outlines the types of expanded learning opportunities that may be provided by school districts and open-enrollment charter schools and the manner in which expanded learning opportunities may be offered; TEC, §48.009, which requires the commissioner to by rule require each school district and open-enrollment charter school to report through PEIMS information regarding the availability of school counselors at each campus and the availability of expanded learning opportunities as described by TEC, §33.252; TEC, §33.005, which provides that a school counselor shall plan, implement, and evaluate a comprehensive school counseling program that meets the requirements of the section; TEC, §33.006(d), which requires, except as provided by subsection (e) of the section, school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005; TEC, §33.006(e), which requires school district boards of trustees that determine that staffing needs require school counselors to spend less than 80% of their work time on duties that are components of counseling programs developed under TEC, §33.005, to change the policy adopted under subsection (d) of the section to reflect the reasons why counselors need to spend less than 80% of their work time on components of the counseling program, list those non-component duties, and set the required percentage of work time to be spent on components of the counseling program; and TEC, §33.006(h), which requires each school district to annually assess the district's compliance with the policy adopted under TEC, §33.006(d), and, on request by the commissioner, provide a written copy of the assessment to Texas Education Agency on or before a date specified by the commissioner. This section requires the commissioner to adopt rules to implement these requirements.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §33.252 and §48.009, for §78.1001; and TEC, §33.005 and §33.006, for §78.1003.

§78.2001. Counseling Public School Students Regarding Higher Education.

(a) In accordance with Texas Education Code (TEC), §33.007, a counselor shall provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during each year of a student's enrollment in high school.

(b) The information that counselors provide in accordance with subsection (a) of this section must include information regarding all of the following:

(1) the importance of higher education, which:

(A) includes workforce education, liberal arts studies, science education, graduate education, and professional education to provide broad educational opportunities for all students;

(B) furthers students' intellectual and academic development; and

(C) offers students more career choices and a greater potential earning power;

(2) the advantages of earning an endorsement and a performance acknowledgment and completing the distinguished level of achievement under the foundation high school program, including, at a minimum, curriculum programs which:

(A) provide students with opportunities to complete higher-level course work, particularly in mathematics, science, social studies, and languages other than English, thereby:

(i) increasing students' readiness for higher education and reducing the need for additional preparation for college-level work;

(ii) preparing students for additional advanced work and research in both career and educational settings;

(iii) allowing students, in certain instances, to receive college credit for their high school course work; and

(iv) enabling students to be eligible for certain financial aid programs for which they would otherwise be ineligible (e.g., the TEXAS grant program);

(B) enable students to receive an academic achievement record noting the completion of either the recommended program or higher; and

(C) provide students who elect to complete the distinguished achievement program with an opportunity to demonstrate student performance at the college or career level by demonstrating certain advanced measures of achievement;

(3) the advantages of taking courses leading to a high school diploma relative to the disadvantages of preparing for a high school equivalency examination, including:

(A) the progressive relationship between education and income; and

(B) the greater possibility for post-secondary opportunities (including higher education and military service) that are available to students with a high school diploma;

(4) financial aid eligibility, including;

(A) the types of available aid, not limited to need-based aid, and including grants, scholarships, loans, tuition and/or fee exemptions, and work-study;

(B) the types of organizations that offer financial aid, such as federal and state government, civic or church groups, foundations, nonprofit organizations, parents' employers, and institutions of higher education; and

(C) the importance of meeting financial aid deadlines;

(5) instruction on how to apply for financial aid, including guidance and assistance in:

(A) determining when is the most appropriate time to complete financial aid forms; and

(B) completing and submitting the Free Application for Federal Student Aid (FAFSA) or any new version of this form as adopted by the U.S. Department of Education;

(6) the Texas Higher Education Coordinating Board's Center for Financial Aid Information, including its toll-free telephone line, its Internet website address, and the various publications available to students and their parents;

(7) the Automatic Admissions policy, which provides certain students who graduate in the top 10% of their high school class with automatic admission into Texas public universities; and

(8) the general eligibility and academic performance requirements for the TEXAS grant program, which allows students meeting the academic standards set by their college or university to receive awards for up to 150 credit hours or for six years or until they receive their bachelor's degree, whichever occurs first. The specific eligibility and academic performance requirements, along with certain exemptions to these requirements, are specified in Chapter 22, Subchapter L, of this title (relating to Toward Excellence, Access and Success (TEXAS) Grant Program). The general requirements include:

(A) Texas residency;

(B) financial need;

(C) registration for the Selective Service or exemption from this requirement;

(D) completion of the recommended high school program or higher or, in the case of a public high school that did not offer all of the courses necessary to complete the recommended or higher curriculum, a certification from the district that certifies that the student completed all courses toward such a curriculum that the high school had to offer;

(E) enrollment of at least three-quarters time in an undergraduate degree or certificate program within 16 months of high school graduation, unless an allowable exemption is satisfied; and

(F) no conviction of a felony or crime involving a controlled substance, unless certain conditions are met.

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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Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 463-9526

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CHAPTER 101. ASSESSMENT
SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING SUBSTITUTE ASSESSMENTS FOR GRADUATION

19 TAC §101.4002

The Texas Education Agency adopts an amendment to §101.4002, concerning State of Texas Assessments of Academic Readiness (STAAR®) end-of-course (EOC) assessments. The amendment is adopted with changes to the proposed text as published in the April 18, 2025 issue of the *Texas Register* (50 TexReg 2476) and will be republished. The adopted amendment updates the list of approved substitute assessments to include the addition of the PreACT 8/9 and the PreACT assessments.

REASONED JUSTIFICATION: Section 101.4002 specifies the assessments the commissioner of education recommends as substitute assessments that a student may use to meet EOC assessment graduation requirements and establishes the satisfactory scores needed for graduation purposes. The amendment updates the rule text in subsection (f) to include the PreACT assessments in place of the PLAN and Aspire assessments, which are no longer administered.

In addition, the updated figure in subsection (b) includes the PreACT 8/9 and the PreACT assessments with associated substitute assessment scores. The order of assessments listed in the figure has been adjusted to display the current assessments first followed by the previous assessments. Finally, the order of the footnotes has been adjusted to align with the new order of the assessments, and the text of the footnotes has been amended for consistency where appropriate.

This amendment provides students, parents, and school district staff with the most up-to-date information regarding substitute assessments that may be used to satisfy graduation assessment requirements.

Based on public comment, the first page of Figure: 19 TAC §101.4002(b) was amended at adoption to remove PreACT assessments as substitute assessments for the STAAR English II assessment. The amendment to Figure: 19 TAC §101.4002(b) was made to address a discrepancy in the proposal that erroneously listed PreACT assessments as approved substitute assessments for the STAAR English II assessment. Pre-assessments are used as substitute assessments only for freshman level courses. As a result of this change, conforming amendments were also made to the footnotes and to the date in the header for Figure: 19 TAC §101.4002(b).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 18, 2025, and ended May 19, 2025. Following is a summary of public comments received and agency responses.

Comment: ACT expressed support for the proposed changes to replace ACT Plan and Aspire with PreACT. ACT also recommended changes to some of the passing scores for PreACT and ACT in Figure: 19 TAC §101.4002(b) to align with other uses of these assessments.

Response: The agency disagrees with the recommended changes to the passing scores for PreACT and ACT in Figure: 19 TAC §101.4002(b). The passing scores for substitute assessments listed in Figure: 19 TAC §101.4002(b) are based on

the college readiness performance standards determined by each of the assessment vendors.

Comment: College Board recommended revisions to Figure: 19 TAC §101.4002(b) to approve the use of PSAT assessments as substitute assessments for the STAAR English II assessment to ensure consistency with PreACT assessments listed in the figure.

Response: The agency acknowledges the discrepancy and provides the following clarification. Figure: 19 TAC §101.4002(b) has been amended at adoption to remove the PreACT assessments as substitute assessments for the STAAR English II assessment. Pre-assessments are used as substitute assessments only for freshman level courses.

Comment: College Board recommended revisions to Figure: 19 TAC §101.4002(b) to include SAT as a substitute assessment for the STAAR Biology assessment.

Response: The agency disagrees with the recommend change. The SAT does not assess science knowledge or skills. The SAT only provides a science score based on questions that assess reading language arts and mathematics. Therefore, the SAT may not be used as a substitute assessment for the STAAR Biology assessment.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.023(c), which requires the agency to adopt end-of-course (EOC) assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; and TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma. TEC, §39.025(a), requires the commissioner of education to adopt rules requiring students to achieve satisfactory performance on each EOC assessment listed under TEC, §39.023(c), to receive a Texas high school diploma. TEC, §39.025(a-1), (a-2), and (a-3), allow for the use of specific substitute assessments to satisfy the EOC assessment graduation requirements under certain conditions.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.023 and §39.025.

§101.4002. State of Texas Assessments of Academic Readiness End-of-Course Substitute Assessments.

(a) For purposes of this subchapter, "equivalent course" is defined as a course having sufficient content overlap with the essential knowledge and skills of a similar course in the same content area listed under §74.1(b)(1)-(4) of this title (relating to Essential Knowledge and Skills).

(b) Effective beginning with the 2011-2012 school year, in accordance with Texas Education Code (TEC), §39.025(a-1), (a-2), and (a-3), the commissioner of education adopts certain assessments as provided in the chart in this subsection as substitute assessments that a student may use in place of a corresponding end-of-course (EOC) assessment under TEC, §39.023(c), to meet the student's assessment graduation requirements. A satisfactory score on an approved substitute assessment may be used in place of only one specific EOC assessment, except in those cases described by subsection (d)(1) of this section.
Figure: 19 TAC §101.4002(b)

(c) A student at any grade level is eligible to use a substitute assessment as provided in the chart in subsection (b) of this section if:

(1) a student was administered an approved substitute assessment for an equivalent course in which the student was enrolled;

(2) a student received a satisfactory score on the substitute assessment as determined by the commissioner and provided in the chart in subsection (b) of this section; and

(3) a student using a Texas Success Initiative Assessment (TSIA) or a Texas Success Initiative Assessment, Version 2.0 (TSIA2) also meets the requirements of subsection (d) of this section.

(d) Effective beginning with the 2014-2015 school year, a student must meet criteria established in paragraph (1) or (2) of this subsection in order to qualify to use TSIA or TSIA2 as a substitute assessment.

(1) A student must have been enrolled in a college preparatory course for English language arts (PEIMS code CP110100) or mathematics (PEIMS code CP111200) and, in accordance with TEC, §39.025(a-1), have been administered an appropriate TSIA or TSIA2 at the end of that course.

(A) A student under this paragraph who meets all three TSIA or both TSIA2 English language arts score requirements provided in the figure in subsection (b) of this section satisfies both the English I and English II EOC assessment graduation requirements.

(B) A student under this paragraph may satisfy an assessment graduation requirement in such a manner regardless of previous performance on an Algebra I, English I, or English II EOC assessment.

(2) In accordance with TEC, §39.025(a-3), a student who has not been successful on the Algebra I or English II EOC assessment after taking the assessment at least two times may use the corresponding TSIA or TSIA2 in place of that EOC assessment. For a student under this paragraph who took separate reading and writing assessments for the English II EOC assessment and who did not meet the English II assessment graduation requirement using those tests as specified in §101.3022(b) of this title (relating to Assessment Requirements for Graduation), the separate reading or writing TSIA may not be used to substitute for the corresponding English II reading or writing EOC assessment.

(e) A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under TEC, §39.023(c), at least once for federal accountability purposes. If a student sits for an EOC assessment, a school district may not void or invalidate the test in lieu of a substitute assessment.

(f) A student who fails to perform satisfactorily on a PSAT or PreACT test (or any versions of these tests) as indicated in the chart in subsection (b) of this section must take the appropriate EOC assessment required under TEC, §39.023(c). However, a student who does not receive a passing score on the EOC assessment and retakes a PSAT or PreACT test (or any versions of these tests) is eligible to meet the requirements specified in subsection (c) of this section.

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

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 353. LEAKING WATER WELLS GRANT PROGRAM

30 TAC §§353.1 - 353.8

The Texas Commission on Environmental Quality (TCEQ, or commission) adopts new 30 Texas Administrative Code (TAC) §§353.1-353.8.

New §§353.2, 353.5 and 353.8 are adopted *with changes* to the proposed text as published in the January 3, 2025 issue of the *Texas Register* (50 TexReg 23) and, therefore, will be republished. New §§353.1, 353.3, 353.4, 353.6, and 353.7 are adopted without changes to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 4256, 88th Texas Legislature, Regular Session, 2023, amended the Texas Water Code (TWC), Chapter 28, Subchapter E to require TCEQ to establish and administer a Leaking Water Wells Grant Program (LWWGP). This rulemaking adoption establishes the LWWGP and its associated requirements and criteria by creating new 30 TAC Chapter 353. The adopted rules implement requirements in HB 4256 (88R) by establishing criteria for prioritizing projects and establishing criteria for ensuring that wells are permanently plugged.

TWC, §28.106(c) requires that TCEQ establish, by rule, criteria for prioritizing projects eligible to receive grant funding. The criteria adopted include well characteristics, including completion and wellbore conditions; well location relative to sensitive areas; environmental considerations; wellsite safety and access considerations; economic considerations; and other priorities determined by the commission.

TWC, §28.107(b) requires TCEQ to establish criteria for ensuring a well is permanently plugged. The adopted rule requires that the grant recipient use Railroad Commission of Texas (RRC) information, data, and regulations to plan, plug, and document that a well has been permanently plugged.

The Leaking Water Wells Fund (LWWF) created by HB 4256 is a separate fund within the state treasury outside of the general revenue fund and may only be used to implement the LWWGP, including the costs of TCEQ program administration and operation. The fund can be financed by various sources, including money appropriated, credited, or transferred by the legislature, gifts or grants contributed to the fund, and interest earned from deposits and investments of the fund. To date, $10,000,000 has been deposited to the LWWF. None of these funds were appropriated by the 88th Texas Legislature for grant awards during the current biennium.

During the comment period, the commission received comments from several individuals and from Middle Pecos Groundwater Conservation District (MPGCD), which is a district that meets the eligibility requirements to apply for LWWGP funding. The individuals and MPGCD expressed support for the rule. MPGCD requested the rule include a definition for "leaking water well," asked for a description of an administrative expense, and asked whether the commission could award grant funds to a district for an eligible project before the project begins, rather than providing reimbursement only.

In response, the commission notes that while the term "leaking water well" was not specifically defined in the statute, it is effectively described by the eligibility criteria and a change is not needed to the adopted rule. In addition, grant documents will clarify how the LWWGP will determine administrative costs and how it will award grant funds. The commission did not change the rule language for these comments but provided general guidelines that expenses incurred before an application is submitted would not be reimbursable.

The commission noted that grant documents are being developed separately from the rule adoption. Recognizing that many of the questions asked during the rulemaking will be addressed by the grant documents as opposed to the rule itself, a LWWGP Workshop was held on May 20, 2025. All Groundwater Conservation Districts (GCDs) in Texas were invited to attend this workshop. At the workshop, the TCEQ presented information about the program and provided an opportunity for GCDs to ask questions and provide feedback. The workshop addressed eligibility, prioritization criteria, eligible and non-eligible expenses, and disbursement of funds (including reimbursement, advance of funds, and working capital advance).

Section by Section Discussion

§353.1 Purpose

TWC, Chapter 28, Subchapter E, charges the commission to establish a grant program to offset the cost of plugging leaking water wells for eligible districts for eligible projects. The commission adopts new 30 TAC §353.1 to describe the purpose of the rules and specify that these grants will be administered by the commission staff in accordance with the most recent Uniform Grant and Contract Management Act (Texas Government Code, Chapter 783) and any specific requirements of the applicable State General Appropriations Act.

§353.2 Definitions

The commission adopts new 30 TAC §353.2 to include definitions for "District," "Leaking Water Wells Fund," and "Leaking Water Wells Grant Program." TWC §28.101 defines these three terms as "District," "Fund" and "Program." The variation in the terms defined and slight variations in the language defining these three terms is for clarity. For the purposes of this chapter, "District" means a GCD or authority established under Section 52, Article III, or Section 59, Article XVI of the Texas Constitution and endowed with the power to regulate the spacing and production of water wells. The "Leaking Water Wells Fund" and "Leaking Water Wells Grant Program," respectively, refer to the fund created, and the program established under TWC, §§28.103 and 28.104.

The commission's rulemaking adoption defines "approved well plugger" by referencing RRC rules, 16 TAC §3.14. The definition establishes that the term "approved well plugger" in the statute is equivalent to the RRC's term "approved cementer."

Minor changes to the definitions were made to conform to the style of definitions in other TCEQ rules. Specifically, the definition for "approved well plugger" removes the word "is" as the first word of the definition; and the definitions for "district," leaking water wells fund," and "leaking water wells program" removes the word "means" as the first word of the definition.

§353.3 Grant Eligibility

The commission adopts new 30 TAC §353.3 which incorporates requirements from TWC, §28.102 and specifies that this chapter only applies to GCDs within counties that have a population of 16,000 or less and that are adjacent to at least seven counties with populations less than 15,000.

To determine grant eligibility, the commission will utilize county population data from the most recent decennial Census conducted by the U.S. Census Bureau.

§353.4 Application for Grant

The commission adopts new 30 TAC §353.4 to incorporate requirements from TWC, §28.105(b), which specifies that districts seeking grants for eligible projects under the LWWGP must apply using a specific form provided by the commission and include the information requested on that form by the commission.

§353.5 Restriction on Use of the Grant

The commission adopts new 30 TAC §353.5 to identify restrictions on the use of the grant funds. In accordance with TWC, §28.107, the rulemaking adoption specifies that districts may only use the funds for the cost of the project, excluding administrative expenses. The grant documents will specify what constitutes an administrative expense.

Per TWC, §28.106(b)(1-2), the rulemaking adoption will require that a district select a contractor from a list of RRC approved well pluggers after a bid process, and that the district may select a contractor based on whose bid the district determines provides the best value.

Lastly, per TWC, §28.107(c), unspent grant money must be returned to the commission to be re-allocated to the fund.

In order to ensure the rule language follows the statute, new §353.5(d) is adopted with changes to the proposed text to remove the last sentence: "TCEQ may choose to credit the funding to other projects under the grant."

§353.6 Project Eligibility

The commission adopts new 30 TAC §353.6 to identify projects eligible for the grant funds, consistent with TWC, §28.106. A District must demonstrate that the project includes a leaking water well, and then must demonstrate either: that the leaking water well is located within 2,000 feet of a drinking water well, a water well for livestock or irrigation, or a sensitive wildlife area; or that the leaking water well has seasonal or annual flow to the surface, or a hydrological connection to surface water, including a waterway, intermittent stream, or springs system. In addition, a District must demonstrate either: that the leaking water well is known by a District to have a deficiency in the plug, casing, completion interval, or general integrity; or that the leaking water well's completion interval is sufficiently proximate to other known intervals or pressurized zones with high concentrations of salinity, chlorides, sulfides, or other hazardous or toxic components.

A District must obtain any necessary property access from the surface owner where the leaking water well is located.

§353.7 Prioritization Criteria

The commission adopts new 30 TAC §353.7 to provide the criteria that will be used to prioritize projects, consistent with TWC, §28.106(c). In addition to the requirements adopted in the "Project Eligibility" section, the commission adopts additional criteria for the purpose of prioritizing projects. These criteria include the following: well characteristics, such as completion information and wellbore conditions; well location relative to sensitive areas; environmental considerations; wellsite safety and access considerations; economic considerations, and other priorities determined by the commission. The grant documents will include detail on prioritization criteria.

§353.8 Plugging Criteria

The commission adopts new 30 TAC §353.8 which directs a district to utilize appropriate information, data, and regulations available from the RRC and to adhere to certain RRC rules as applicable to ensure wells are properly and permanently plugged. Per TWC, §28.106(b)(1), the contract to permanently plug a leaking water well must be awarded to a contractor selected from a list of RRC-approved well pluggers. The approved well plugger must ensure that the wells are plugged in compliance with the standards and criteria in applicable RRC rules for plugging wells under RRC jurisdiction (16 TAC §3.14). The adopted rule does not require the district or their contractor to directly coordinate with RRC. The district must ensure a leaking water well is permanently plugged. The grant will set forth the criteria for ensuring that a well is permanently plugged, and the documentation that will be required.

Section 353.8(b)(3) is adopted with changes to the proposed text to more clearly describe how an approved well plugger will need to comply with RRC rules and standards related to plugging a leaking water well.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking adoption is to implement legislative changes enacted by HB 4256, which establishes and funds a grant program to plug leaking water wells in certain Texas counties.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the adopted rule is not expected to be significant with respect to the economy.

Furthermore, the rulemaking adoption is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing grant programs for plugging leaking water wells. Second, the rulemaking adoption does not exceed an express requirement of state law. Third, the rulemaking adoption does not exceed a requirement of a delegation agreement or contract between the

state and an agency or representative of the federal government to implement a state and federal program. Finally, the rulemaking adoption is not an adoption of a rule solely under the general powers of the commission as the adopted rules are required by HB 4256.

The commission invited public comment regarding the draft regulatory impact analysis determination. During the public comment period, no comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an assessment of whether the rulemaking adoption constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the rulemaking adoption is to implement legislative changes enacted by HB 4256, which establishes and funds a grant program to plug leaking water wells in certain Texas counties. The rulemaking adoption will substantially advance this purpose by incorporating the new statutory requirements.

Promulgation and enforcement of this rulemaking adoption will be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. The rulemaking adoption will primarily affect districts planning to utilize the grant program to plug leaking water wells; this will not be an effect on real property. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the rulemaking adoption is not subject to the Texas Coastal Management Program.

The commission invited public comments regarding the consistency with the coastal management program (CMP) during the public comment period. No comments were received on the Consistency with the CMP.

Public Comment

The commission held a public hearing on January 29, 2025, and the comment period closed on February 4, 2025. The commission received comments from MPGCD, who supported the rulemaking and recommended changes to the rule language; and from six individuals who supported the rulemaking.

Response to Comments

Comment 1:

MPGCD and six individuals expressed their support for the rulemaking.

Response 1:

The commission acknowledges these comments.

Comment 2: Two individuals stated that the LWWGP needs to plug the leaking wells to protect water supply and water systems for humans, food, and livestock; three individuals stated that more money would be needed to plug all of the wells; and four individuals commented that the rules need to be adopted quickly in order to plug the wells as soon as practicable.

Response 2:

The commission acknowledges these comments.

Comment 3:

MPGCD requested that the commission clarify the prioritization criteria described in §353.7-Prioritization Criteria.

Response 3:

30 TAC §353.7 of the adopted rule provides the criteria that will be used for project prioritization. On May 20, 2025, TCEQ hosted a LWWGP workshop. The workshop provided additional detail regarding the potential metrics associated with the prioritization criteria in 30 TAC §353.7. The final metrics will be included in the grant documents. No changes were made in response to this comment.

Comment 4:

MPGCD recommended that the rule include a definition of "leaking water well" to ensure that wells originally drilled for oil and gas purposes are eligible for the LWWGP if water is present in the wellbore or at the well head, such that one can reasonably conclude that water is leaking from or into the wellbore. The commentor stated that adding this definition would ensure that wells colloquially known as "P-13" wells or wells for which no known records are available-but which meet the definition-are eligible for LWWGP grant funding. MPGCD requested the commission add the following definition as a new §353.2(3):

"Leaking water well-means a well leaking water, or a mix of water and other substances such as oil, gas, or minerals and/or substances, either at the surface or subsurface portions of the wellbore, irrespective of the purpose for which the well was originally drilled."

Response 4:

The commission notes that the statute does not provide a definition for leaking water well; however, the eligibility criteria in §28.106(a) of the statute effectively define the wells that can receive the funding. These eligibility criteria are included in 30 TAC §353.6, "Project Eligibility." Establishing a definition could create a conflict between the definition and the eligibility criteria. This could result in projects that meet the eligibility criteria being disqualified because of the definition. As written, wells originally drilled for oil and gas will be eligible if they meet the criteria in the rule. No changes were made in response to this comment.

Comment 5:

MPGCD requested the rule include clarification on what qualifies as an administrative expense. MPGCD commented that they expect to have expenses related to identification of projects, site evaluation and preparation, downhole investigation to determine project eligibility and plugging cost estimates, preliminary engineering, hydrogeological assessments, and other related expenses. MPGCD requested the commission add the following language to the end of paragraph §353.5(a):

"Administrative costs include costs associated with preparing a grant application, but specifically do not include those costs associated with preliminary fieldwork required to develop overall project cost estimates. All costs associated with necessary preliminary fieldwork, which are first approved by the Commission, shall be recoverable costs under the Program."

Response 5:

The commission acknowledges the benefit of addressing what may be considered an administrative expense and notes that Texas Comptroller of Public Accounts offers general guidance on reimbursable and non-reimbursable costs under the Texas Grant Management Standards.

A recipient of a grant provided under the LWWGP may use the grant only to pay the cost of a project for which the grant is awarded. The grant documents, which the executive director is developing separately from the rule adoption, will contain specific information about both reimbursable and non-reimbursable expenses, including administrative costs. On May 20, 2025, TCEQ hosted a LWWGP workshop. The workshop provided additional detail regarding eligible and non-eligible expenses. No changes were made in response to this comment.

Comment 6:

MPGCD requested clarification as to whether grant funds can be issued prior to the commencement of an eligible project or if they are issued for reimbursement only. MPGCD states that they support a grant distribution process that does not burden the district with incurring considerable costs related to eligible projects for a prolonged period.

Response 6:

The LWWGP will award grants and distribute funds based on the Texas Grant Management Standards. The state's standard distribution method for grants is reimbursement of money actually spent on allowable expenses. An advance of funds may also be available at a grantee's request where the LWWGP determines the advance is necessary for the purposes of the grant. On May 20, 2025, TCEQ hosted a LWWGP workshop. The workshop provided additional detail regarding disbursement of funds, including the information needed for the grantee to demonstrate the need for advance of funds. No changes were made in response to this comment.

Comment 7:

MPGCD commented that they would like to develop a sequence or well plugging plan to ensure that when a well is plugged, it does not create additional problems, such as blow out wells or sinkholes.

Response 7:

The commission acknowledges this comment. During the application process, it would be acceptable for an eligible GCD in its application to request grant funds to plug a sequence of wells based on studies conducted by the eligible GCD or their consultants. The prioritization criteria as included in §353.7(f) of the adopted rule includes "other priorities determined by the commission." Considering a proposed well sequence is in line with the adopted rules' prioritization criteria, although the study itself would not be reimbursable under the grant fund. No changes were made in response to this comment.

Statutory Authority

These new rules are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §28.106 establishes the commission's authority to make rules for establishing criteria for prioritizing projects eligible to receive a grant under the Leaking Water Wells Program set out in this chapter; and TWC, §28.030 requires the commission to adopt rules reasonably required for the performance of the powers, duties, and functions of the commission under this chapter. Lastly, TWC, §5.124 establishes the executive director's authority to award grants for any purpose regarding resource conservation or environmental protection in accordance with this section, with the consent of the commission, and it establishes the commission's authority to adopt rules for establishing procedures for awarding a grant, for making any determination related to awarding a grant, and for making grant payments.

The rulemaking adoption implements the language set forth in House Bill 4256, 88th Texas Legislature, Regular Session, 2023.

§353.2 Definitions.

When used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Approved well plugger--a Railroad Commission of Texas approved cementer as defined in 16 TAC §3.14.

(2) District--a groundwater conservation district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, which has the authority to regulate the spacing of water wells, the production of water wells, or both.

(3) Leaking Water Wells Fund (Fund)--the leaking water wells fund created under TWC, §28.103 that provides funds to certain Districts to plug leaking water wells.

(4) Leaking Water Wells Grant Program (Program)--the Texas Commission on Environmental Quality (commission or TCEQ) program established under TWC, §28.104 that provides funds to certain Districts to plug leaking water wells.

§353.5. Restriction on Use of the Grant.

(a) A District receiving a grant provided under the Program may use the grant only to pay the cost of eligible projects. A District may not use the grant to pay administrative costs associated with a project.

(b) When contracting or subcontracting for work on a project for which a grant is provided under the Program, a District shall engage in a bid process to select and hire a contractor or subcontractor.

(c) A contract for work on a project for which a grant is provided under the Program:

(1) must be awarded to a contractor or subcontractor selected from a list of approved well pluggers maintained by the Railroad Commission of Texas; and

(2) may be awarded to the contractor or subcontractor whose bid or proposal provides the best value for a District, as determined by the District based on the selection criteria published by the District in the bid solicitation documents.

(d) The amount of a grant provided under the Program that is not spent for the completion of a project must be returned to the commission for deposit to the credit of the Fund.

§353.8. Plugging Criteria.

(a) A District must utilize available Railroad Commission of Texas (RRC) information, data, and regulations to plan, plug, and document that a well has been permanently plugged.

(b) A District must:

(1) Ensure that the leaking water well is permanently plugged. The criteria for ensuring that a well is permanently plugged will be set forth in the grant terms and conditions.

(2) Award the plugging contract to an RRC approved plugger, and

(3) Ensure any well plugged under this chapter is plugged in compliance with the standards and criteria in 16 TAC §3.14 and RRC guidance.

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 June 19, 2025.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: January 3, 2025
For further information, please call: (512) 239-2678

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

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

31 TAC §53.13

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 22, 2025, adopted an amendment to 31 TAC §53.13, concerning Business Licenses and Permits (Fishing), with changes to the proposed text as published in the April 18, 2025, issue of the *Texas Register* (50 TexReg 2477) and will be republished. The amendment reduces the annual fees for both types of Cultivated Oyster Mariculture (COM) permits issued by the department. The amendment is intended to encourage the development and maturation of a commercially viable oyster mariculture industry that could provide relief to native natural oyster reefs and associated ecosystems.

The change inserts a colon in subsection (d)(3) to create grammatical sense. The change is nonsubstantive.

The 86th Texas Legislature in 2019 enacted House Bill 1300, which added new Chapter 75 to the Texas Parks and Wildlife Code and delegated to the Parks and Wildlife Commission the authority to regulate the process of growing oysters in captivity. In turn, the commission in 2020 adopted regulations governing oyster mariculture (45 TexReg 5916), which included various fees.

At the direction of the commission, the department reviewed all department data relative to the costs of implementation and operation of the COM program and comparable fees for oyster mariculture in other Gulf states, interacted extensively with the regulated community, and determined that a reduction in fees could result in more rapid maturation of the industry in Texas and the realization of attendant resource and ecosystem benefits. The department notes that the Texas General Land Office (GLO) recently reduced surface lease fees for COM operations. In 2024, the GLO lease fee was reduced to $500 per acre per year from $1,500 per acre per year.

In Fiscal Year (FY) 2024, the average fee for a COM Grow-Out permit was $3,495.46 (range $900 - $13,500 per year) and for a Nursery-Hatchery it was $1,805.55 (range $79.05 - $3,943.69 per year; fees are dependent on the acreage of the operation and thus vary from permit to permit).

With respect to an analysis of similar fees in other states, the department concludes that while fee structures vary from state to state, among the Gulf states Texas appears to have the highest fees for oyster mariculture operations. Mississippi and Florida charge an annual flat fee of $50 and $100, respectively. Louisiana requires cultivated oyster operators to have a commercial fishing license ($100) and harvester license ($96), in addition to which a fee of $2 per-acre-per-year is imposed. Alabama charges a $300 per-acre easement fee. The current rate for a Grow-Out facility in Texas is $450 per acre. Staff has determined that a rate reduction of approximately two-thirds will make Texas rates more consistent and competitive with other states. The amendment therefore alters subsection (d) to implement a fee reduction and to update permit types to accurately reflect the terminology employed in the regulations contained in Chapter 58, Subchapter D, that regulate COM operations.

With respect to the COM Grow-Out Permit, the fee for any portion of a site located in public water is reduced to $150 per-acre-per-year from $450 per-acre-per-year and the fee for any portion of a site on private property is reduced to $57 per-acre-per-year from $170 per-acre-per-year.

With respect to fees for the COM Nursery-Hatchery Permit, the current fee is $170 per-acre-per-year, with a $0.010 per-square-foot-per-year surcharge for the portion of a site in public water, and $170 per-acre-per-year for the portion of a site located on private land. The amendment reduces the public water fee to $150 per-acre-per-year and the private land fee to $57 per-acre-per-year, or a minimum fee of $150 per year, whichever is greater. The minimum fee is necessary to recoup costs incurred by the department to conduct required annual inspections, as some Nursery-Hatchery operations occupy much less than an acre but still require a site inspection.

The department received four comments opposing adoption of the rule as proposed.

One commenter opposed adoption and stated that fees for facilities in public water should be increased because the public is deprived of the use of public water. The department disagrees with the comment and responds that the total area encompassed by oyster mariculture operations is quite small and impacts public use of public water to a very small degree and notes that only the gear is private, not the water of a site. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a fee reduction will result in proliferation of undesirable applicants. The commenter stated that fees should be tied to performance if the agency is interested in the enhancement of the industry. The department disagrees with the comment and responds that the current oyster mariculture rules already impose an "active-use"

requirement, the industry is efficiently and effectively regulated in Texas at the current time, and the department is confident that oversight can be scaled to meet increased demand if necessary in the future. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should stop overreach on private property and that property owners pay property taxes and "should have the liberty to use it as they wish without other citizens forced to pay for the regulatory bureaucracy oversight." The department is unsure what the commenter intends to communicate, but in any case disagrees that the rule as adopted infringes upon or even affects the private property rights of any person. The fee is not for the property itself, the fee is for a permit to conduct mariculture activity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that fees are still too high and referenced certificate of location fees. The department disagrees with the comment and responds that fees imposed by the rule do not apply to or affect certificates of location for oyster restoration or harvest. No changes were made as a result of the comment.

The department received 14 comments supporting adoption of the amendment as proposed.

Texas Conservation Alliance and Palacios Marine Agricultural Research commented in support of adoption.

The amendment is adopted under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75.

§53.13. Business License and Permits (Fishing).

(a) Licenses. The fee amounts prescribed in paragraphs (1) - (4) of this subsection reflect the total fee paid by the purchaser and include the surcharges established in subsection (b) of this section.

(1) retail fish dealer's--$92.40;

(2) retail fish dealer's truck--$171.60;

(3) wholesale fish dealer's--$825;

(4) wholesale fish dealer's truck--$590;

(5) bait dealer's--individual--$38;

(6) bait dealer-place of business/building--$38;

(7) bait dealer-place of business/motor vehicle--$38;

(8) bait shrimp dealer's--$215;

(9) finfish import--$95;

(10) freshwater fishing guide (required for residents or nonresidents who operate a boat for anything of value in transporting or accompanying anyone who is fishing in freshwater of this state)--$132;

(11) resident all-water fishing guide--$210;

(12) resident paddle craft all-water fishing guide--$210;

(13) non-resident all-water fishing guide--$1,050; and

(14) non-resident paddle craft all-water fishing guide--$1,050.

(b) Business license surcharge for shrimp marketing assistance account.

(1) retail fish dealer's--$8.40;

(2) retail fish dealer's truck--$15.60;

(3) wholesale fish dealer's--$75; and

(4) wholesale fish dealer's truck--$51.

(c) License transfers.

(1) retail fish dealer's license transfer--$25;

(2) retail fish dealer's truck license transfer--$25;

(3) wholesale fish dealer's license transfer--$25;

(4) wholesale fish dealer's truck license transfer--$25;

(5) bait dealer's license transfer--$25;

(6) bait dealer's-place of business/building license transfer--$25;

(7) bait dealer's-place of business/motor vehicle license transfer--$25;

(8) bait shrimp dealer's license transfer--$25;

(9) finfish import license transfer--$25.

(d) Cultivated Oyster Mariculture Fees.

(1) Application fee--$200.

(2) Cultivated Oyster Mariculture Grow-Out Permit.

(A) Portion of site located in public water-- $150 per acre per year.

(B) Portion of site located on private property--$57 per acre per year.

(3) Cultivated Oyster Mariculture Nursery-Hatchery Permit: the greater of:

(A) $150 per year; or

(B) the total of $150 per acre per year for portion of site in public water and $57 per acre per year for portion of site on private property.

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 June 18, 2025.

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General Counsel
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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER E. CULTIVATED OYSTER MARICULTURE

31 TAC §58.353

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 22, 2025, adopted an amendment to 31 TAC §58.353, concerning Cultivated Oyster Mariculture (COM), with changes to the proposed text as published in the April 18, 2025, issue of the *Texas Register* (50 TexReg 2479) and will be republished. The amendment expands triploid seed sourcing opportunities for oyster mariculture permittees.

The change to §58.353, concerning General Provision, removes an extra space in subsection (n), and is nonsubstantive.

The 86th Texas Legislature in 2019 enacted House Bill 1300, which added new Chapter 75 to the Texas Parks and Wildlife Code and delegated to the Parks and Wildlife Commission the authority to regulate the process of growing oysters in captivity. In turn, the commission in 2020 adopted regulations to implement an oyster mariculture program (45 TexReg 5916).

At the direction of the commission, the department reviewed regulations regarding permissible genetic origins of triploid oyster seed for use in mariculture. The department considered current scientific information, the current biosecurity and genetic integrity protocols used in the program, and feedback from the regulated community regarding seed supply. Given that the genetic population structure of the northern Gulf stock of the Eastern oyster (*Crassostrea virginica*) is shared with oysters from the northern portion of the Texas coast, the department has determined that regulations regarding broodstock origin for triploid oysters can be altered to include the entire northern Gulf stock without significant risk to wild Texas oyster populations. The northern Gulf stock ranges from Alabama waters west to the San Antonio Bay system in Texas. There is a mixing zone, comprised of the Aransas and Corpus Christi Bay systems, between the northern stock and the south Texas stock of the Laguna Madre.

Hatcheries and nurseries currently supplying seed to Texas mariculture operations produce more frequent and larger batches of triploid oyster seed with northern Gulf origins than those specific to Texas; thus, availability of Texas-specific triploid seed is limited. Allowing permittees to utilize this more plentiful seed supply will provide access to a more consistent, stable supply of triploid oyster seed, which in turn is expected to result in COM industry stability and growth.

The amendment alters §58.353(h) to require that broodstock must originate from the waters of Texas, Louisiana, Mississippi, or Alabama. Additionally, the phrase "originating from the Gulf" is also added to subparagraph (A) to create structural agreement with subparagraph (B), which is intended to eliminate potential confusion or misunderstanding.

The department received one comment opposing adoption of the rule as proposed. The commenter did not provide a reason or rationale for opposing adoption. No changes were made as a result of the comment.

The department received 14 comments supporting adoption of the amendment as proposed.

Palacios Marine Agricultural Research and Texas Conservation Alliance commented in support of adoption.

The amendment is adopted under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75.

§58.353. General Provisions.

(a) No person may engage in cultivated oyster mariculture (COM) in this state unless they have on their person a valid permit issued by the department authorizing the activity. A valid permit may be possessed in physical or electronic format.

(b) A Cultivated Oyster Mariculture (COM) Grow-out Permit authorizes the permittee to purchase, receive, grow, and sell cultivated oysters.

(c) A Cultivated Oyster Mariculture (COM) Nursery-Hatchery Permit authorizes a permittee to:

(1) hold oyster broodstock and germplasm;

(2) spawn oyster broodstock;

(3) purchase, receive, and grow oyster seed and larvae; and

(4) sell oyster broodstock, germplasm, seed, and larvae; but

(5) does not authorize the sale of oysters in any form for human consumption.

(d) No person may conduct an activity authorized by a permit issued under this subchapter at any location other than the location specified by the permit.

(e) It is unlawful for a permittee or subpermittee to possess an oyster dredge or oyster tongs within a permitted area or aboard a vessel transporting oysters under the provisions of this subchapter.

(f) The period of validity for a permit issued under this subchapter is 10 years, subject to the limitations of this subchapter.

(g) Unless otherwise specifically authorized in writing by the department, one year from the date of issuance of a COM Grow-Out Permit and by the anniversary of the date of issuance for each year thereafter, the permittee must provide evidence to the department's satisfaction that at least 100,000 oyster seed per acre of permitted area has been planted.

(h) Unless otherwise specifically authorized by the department in writing, cultivated oyster mariculture is restricted to seed and larvae from native Eastern oyster (*Crassostrea virginica*) broodstock collected or originating from Texas waters and propagated in a permitted Nursery-Hatchery located in Texas.

(1) The department may authorize a person permitted under this subchapter to, on or before December 31, 2033, import:

(A) tetraploid seed, larvae, and/or semen/eggs (germplasm) originating from the Gulf and produced in department-approved out-of-state hatcheries located along the Gulf for use in cultivated oyster mariculture in this state; and/or

(B) triploid seed, larvae, and/or semen/eggs (germplasm) from a tetraploid line of oysters originating from the Gulf and crossed with broodstock originating from Texas, Louisiana, Mississippi, or Alabama waters produced in department-approved out-of-state hatcheries located along the Gulf for use in cultivated oyster mariculture in this state; and/or

(C) diploid seed, larvae, and/or semen/eggs (germplasm) produced from Texas broodstock at department-approved out-of-state hatcheries located along the Gulf for use in cultivated oyster mariculture in this state.

(2) A department authorization made under the provisions of this subsection must be in writing and provide for any permit conditions the department deems necessary.

(3) The department will not authorize the possession of any oyster, larvae, or oyster seed that the department has determined, in the context of the prospective activity, represents a threat to any native oyster population, including to genetic identity.

(i) It is unlawful to possess wild caught oysters:

(1) within a COM Grow-Out permitted area;

(2) within a COM Nursery-Hatchery permitted area unless:

(A) they are legally obtained;

(B) labeled as to their identity and use for broodstock; and

(C) held separately from cultivated oysters; or

(3) on a vessel operating under a permit issued under this subchapter.

(j) The department may:

(1) inspect any permitted area, facility, infrastructure, container, vessel, or vehicle used to engage in cultivated oyster mariculture;

(2) sample any oyster in a permitted area, facility, container, vessel, or vehicle used to engage in cultivated oyster mariculture in order to determine genetic lineage; and

(3) specify any permit provisions deemed necessary.

(k) The holder of a COM Permit (Grow-out or Nursery-Hatchery) must notify the department within 24 hours of the:

(1) discovery of any disease condition within a permitted area; and

(2) discovery of any condition, manmade or natural, that creates a threat of the unintentional release of stock or larvae.

(3) The requirements of this subsection do not apply to the discovery of dermo (Perkinosis, Perkinsus marinus).

(l) The department may take any action it considers appropriate, including ordering the removal of all stock and larvae from a permitted area or facility and the cessation of permitted activities, upon:

(1) a determination that a disease condition other than dermo (Perkinsosis, Perkinsus marinus) exists; or

(2) the suspension or revocation by a federal or state entity of a permit or authorization required under §58.355 of this title (relating to Permit Application).

(m) The department may order the suspension of any or all permitted activities, including the removal of all stock and larvae from a permitted area or facility, upon determining that a permittee is not compliant with any provision of this subchapter, which suspension shall remain in effect until the deficiency is remedied and the department authorizes resumption of permitted activities in writing.

(n) Harvest Requirements.

(1) No person may harvest for the purpose of delivery and/or sale for human consumption any oyster less than 2.0 inches in length (measured along the greatest length of the shell) from a COM Grow-Out permitted area; however, a cargo of oysters may contain oysters between 1.5 inches and 2 inches (measured along the greatest length of the shell); provided such oysters constitute five percent or less of the cargo in question.

(2) Oysters produced under a Nursery-Hatchery permit in waters or using waters from an area classified as Prohibited or Unclassified must be transferred to a COM permitted Grow-Out location in waters classified as Approved or Conditionally Approved before they reach one inch in length (as measured along the greatest length of the shell) and held in that area for a minimum of 120 days before harvest.

(3) Oysters produced under a Nursery-Hatchery permit in waters or using waters from an area classified as Restricted must be transferred to a COM permitted Grow-Out location in waters classified as Approved or Conditionally Approved before they reach one inch in length (as measured along the greatest length of the shell) and held in that area for a minimum of 60 days before harvest. Oysters greater than one inch may be transferred from these facilities but are subject to relay regulation requirements under the NSSP.

(4) Oysters that are out of the water for a time period exceeding the parameters specified by the Time-to-Temperature controls established by DSHS in 25 TAC §241.68, relating to Vibrio vulnificus Management Plan for Oysters, must be re-submerged for a minimum of 14 days prior to harvest for market for raw consumption. Records regarding re-submergence must be maintained in accordance with permit provisions.

(5) It is unlawful for a permittee to harvest oysters under this subchapter unless they have a Grow-Out permit and a Cultivated Oyster Mariculture Harvest Authorization.

(o) Harvest of oysters under this subchapter is unlawful between sunset and sunrise.

(p) Except as may be specifically provided otherwise in this section, activities authorized by a permit issued under this subchapter shall be conducted only by the permittee or subpermittees named on the permit.

(1) A permittee may designate subpermittees to perform permitted activities in the absence of the permittee.

(A) The permittee shall submit a subpermittee request on a form provided by the department that is signed and dated by both the permittee and subpermittee.

(B) The department will review the request and issue a list of individuals authorized as subpermittees.

(C) The department may refuse to approve a subpermittee if that person would not be eligible to be a permittee under this subchapter.

(2) At all times that a subpermittee is conducting permitted activities, the subpermittee shall have on their person a valid permit and subpermittee list in physical or electronic format

(3) It is an offense for a permittee to allow any permitted activity to be performed by a person not listed with the department as a subpermittee as required under this subsection.

(4) A permittee and subpermittee are jointly liable for violations of this subchapter or the provisions of a permit issued under this subchapter.

(q) A permittee shall, prior to the placement of any infrastructure within a permitted area located in or on public water:

(1) mark the boundaries of the permitted area with buoys or other permanent markers and continuously maintain the markers until the termination of the permit. All marker, buoys, or other permanent markers must:

(A) be at least six inches in diameter;

(B) extend at least three feet above the water at mean high tide;

(C) be of a shape and color that is visible for at least one half-mile under conditions that do not constitute restricted visibility; and

(D) be marked with the permit identifier assigned by the department to the permitted area, in characters at least two inches high, in a location where it will not be obscured by water or marine growth; and

(2) install safety lights and signals required by applicable federal regulations, including regulations of the United States Coast Guard (U.S.C.G.) and must be functional. A permittee shall repair or otherwise restore to functionality any light or signal within 24 hours of notification by the U.S.C.G or the department.

(r) Transfer of Permit. The department may approve the transfer of a permit.

(1) A transfer request must be submitted to the department for approval on a form provided by the department, accompanied by the application fee specified in §53.13 of this title (relating to Business License and Permits (Fishing)).

(2) The department may refuse to approve a transfer if that person would not be eligible to be a permittee under this subchapter.

(3) A transfer does not change the terms, conditions, or provisions of a permit.

(s) Permittees must remove, at the expense of the permittee, all containers, enclosures and associated infrastructure from public waters within 60 calendar days of permit expiration or revocation.

(t) A valid gear tag must be attached to each piece of component infrastructure (e.g., containers, cages, bags, sacks, totes, trays, nursery structures) within a permitted area. The gear tag must bear the name and either address or phone number of the permittee and the permit identifier of the permitted area. The information on a gear tag must be legible.

(u) It is unlawful for any person to harvest oysters from a COM Grow-Out area for purposes of delivery and/or sale for human consumption unless the oysters are in a container that has been tagged in accordance with the applicable provisions of the NSSP concerning shellstock identification, and this subchapter. Tagging must occur prior to leaving the permitted area.

(v) Except as provided by subsection (u) of this section for harvested oysters transported for delivery and/or sale for human consumption, it is unlawful for any person to possess oysters, oyster seed, or oyster larvae outside of a permitted area unless the person also possesses a department-issued Oyster Transport Authorization or the department has authorized in a permit provision the transport of oysters for tumbling and sorting:

(1) Oyster Transport Authorization

(A) An Oyster Transport Request must be submitted to the department prior to the transport date and:

(i) be on a form provided or approved by the department;

(ii) contain the name, address, and, if applicable, permit identifier from whom the oysters, oyster seed, or oyster larvae were obtained;

(iii) contain the name, address, and permit identifier to whom the oyster, oyster seed, or oyster larvae are to be delivered; and

(iv) precisely account for and describe all containers in possession.

(B) The department will review the request and, if approved, will issue an Oyster Transport Authorization specific to the oysters, oyster seed, or oyster larvae being transported.

(2) Permit Provision Authorization for Tumbling and Sorting outside of permitted area

(A) The department may authorize, within a permit's provisions, a permittee to transport oysters to a specified location outside of their permitted area for tumbling and sorting oysters.

(B) Oysters must be returned to the permitted area after tumbling and sorting before harvest.

(C) It is unlawful to transport oysters for tumbling and sorting while in possession of oysters tagged for harvest.

(w) A vessel used to engage in activities regulated under this subchapter shall prominently display an identification plate supplied by the department at all times the vessel is being used in such activities.

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 June 18, 2025.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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Proposal publication date: April 18, 2025
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 344. EMPLOYMENT, CERTIFICATION, AND TRAINING
SUBCHAPTER G. CERTIFICATION

37 TAC §344.804

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §344.804, Dual Certification, without changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2954). The rule will not be republished.

JUSTIFICATION

The amended §344.804 provides that: (1) an individual with an active certification as a juvenile supervision officer or juvenile probation officer who is seeking a dual certification is not required to retake previously completed mandatory training topics before taking the exam for the newly sought certification; and (2) the individual may not get credit for the hours of the previously taken topics toward the requirements for the additional certification unless they were taken within the prior 18 months.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

The amended section is adopted under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

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

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Texas Juvenile Justice Department
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