ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.3, §351.6

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §351.3, concerning Recognition of Out-of-State License of a Military Service Member or Military Spouse; and §351.6, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

Amended §351.3 and §351.6 are adopted without changes to the proposed text as published in the September 19, 2025, issue of the *Texas Register* (50 TexReg 6083). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with House Bill (HB) 5629, 89th Regular Session, 2025 and Senate Bill (SB) 1818, 89th Regular Session, 2025.

SB 1818 amends Texas Occupation Code (TOC) §55.004 and §55.0041 to allow a military service member, a military veteran, or a military spouse to receive a provisional license upon receipt of a complete application, if they meet the existing criteria outlined in TOC §55.004 or §55.004. To qualify, the applicant must hold a current license in good standing from another state that is similar in scope of practice to a license issued in Texas.

HB 5629 amends TOC §55.004 and §55.0041 to require state agencies to recognize out-of-state licenses that are in good standing and similar in scope of practice to a Texas license, and to issue a corresponding Texas license. The bill also changes the documentation required in an application, shortens the time by which the agency must process an application, and defines "good standing".

COMMENTS

The 31-day comment period ended October 20, 2025.

During this period, HHSC received comments regarding the proposed rules from one commenter, Endeavors. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Endeavors expressed support for the amendments and noted that it strongly supports the amendments for their potential to enhance workforce retention, minimize professional disruption, and promote regulatory consistency for military-connected individuals across Texas.

Response: HHSC acknowledges this comment.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Occupations Code §55.004, which requires a state agency that issues a license to adopt rules for the issuance of the license to an applicant who is a military service member, military veteran, or military spouse; and Texas Occupations Code §55.0041, which requires a state agency that issues a license to adopt rules for recognition of out-of-state licenses of military service members and military spouses.

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 November 10, 2025.

TRD-202504101
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 1, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 221-9021

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATION DEPARTMENT

SUBCHAPTER C. AFFILIATED NONPROFIT ORGANIZATIONS; FRIENDS OF THE TEXAS HISTORICAL COMMISSION

13 TAC §§11.61 - 11.67

The Texas Historical Commission (THC) adopts new Subchapter C of Chapter 11, including §§11.61 - 11.67, related to Affiliated Nonprofit Organizations and the Friends of the THC, as autho-

rized in Texas Government Code §§ 442.005(q), and 442.043, as enacted in H.B. 4187, 89th Legislature, Regular Session. Sections 11.61, 11.62 and 11.64 - 11.67 are adopted without changes to the text as published in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6394) and will not be republished. Section 11.63 is adopted with changes and will be republished.

THC received no public comments on the rules as published.

These rules are adopted under in Texas Government Code §§ 442.005(q), which authorizes the Commission to adopt rules for the effective administration of Chapter 442, Texas Government Code, and 442.043, as enacted in H.B. 4187, 89th Legislature, Regular Session, which requires the Commission to adopt rules and guidelines for affiliated nonprofit organizations, including the Friends of the Texas Historical Commission.

No other statutes, articles, or codes are affected by these rules.

§11.63. Criteria and General Requirements.

ANOs must comply with the general best practices prescribed in this subsection.

(1) ANOs shall not hold or obligate commission funds unless the ANO has entered into written agreement with the commission regarding the use of such funds.

(2) ANOs shall comply with all applicable rules, regulations, and laws, including all applicable laws regarding discrimination based on race, color, national origin, sex, age, and disability.

(3) ANOs shall not use or authorize the use of commission intellectual property, including trademarks, logos, name, or seal, without the express written agreement of the commission.

(4) ANOs may use equipment, facilities, or services of employees of the commission only in accordance with a written agreement that provides for the payment of adequate compensation and/or identifies the benefit to the commission for such use. Notwithstanding this subsection, an ANO may use commission facilities to the same extent and for the same fee as members of the public.

(5) ANOs shall conduct business in a way that will ensure public access and transparency. As used in this subsection, "transparency" shall mean that an ANO's business practices and internal processes are conducted in a way that is open, clear, measurable, and verifiable.

(6) ANOs shall file with the commission and make available to the public an annual report that includes a list of the primary activities undertaken during the previous year, a summary of significant achievements and challenges over the previous year, and other information requested by the commission.

(7) Regardless of whether an ANO is required to file an IRS 990 with the Internal Revenue Service, each ANO must complete and file an IRS 990 with the commission each year, regardless of income.

(8) ANOs shall file with the commission their articles of incorporation, by-laws, most recent financial statements, and any updates to these documents upon request of the commission.

(9) An ANO shall not engage in activities that would require it or a person acting on its behalf to register as a lobbyist under Chapter 305, Texas Government Code, or other Texas law. However, this subsection is not intended to restrict an ANO from providing information to the legislature or to other elected or appointed officials.

(10) ANOs shall not donate funds to a political campaign or endorse a political candidate.

(11) ANOs shall notify the commission of all meetings and allow a commission representative to attend all meetings, including, but not limited to, meetings of the ANO's general membership, managing board, and committees. Meeting notices must be provided to the commission sufficiently in advance of the meeting so that the commission representative has ample opportunity to attend. Such notice may be provided by letter, email, or telephone.

(12) ANOs must have an annual audit by an independent accounting firm and shall make the results of that audit available to the commission.

(13) ANOs must maintain an adequate directors and officers liability insurance policy.

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 November 14, 2025.

TRD-202504157
Joseph Bell
Executive Director
Texas Historical Commission
Effective date: December 4, 2025
Proposal publication date: October 3, 2025
For further information, please call: (512) 463-6100

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.60, relating to Transmission and Distribution Wildfire Mitigation Plans, with changes to the proposed text as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5853) and amendments to 16 TAC §25.231, relating to Cost of Service, with no changes to the proposed text as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5853). 16 TAC §25.60 will be republished. 16 TAC §25.231 will not be republished.

New §25.60 and the amendments to §25.231 implement Public Utility Regulatory Act (PURA) §§38.080 and 36.064 as enacted and revised, respectively, by House Bill (HB) 145 during the 89th Regular Texas Legislative Session. New §25.60 requires electric utilities, municipally owned utilities, and electric cooperatives that own transmission or distribution facilities in a wildfire risk area of this state to seek commission approval of, and subsequently implement, a wildfire mitigation plan. The amendments to §25.231 add additional criteria for the commission to consider when approving electric utility self-insurance plans and specific conditions for electric utilities' use of self-insurance reserve funds for damages from a wildfire event.

New §25.60 and the amendments to §25.231 are adopted under Project Number 56789.

The commission received written comments on the proposed new §25.60 and amended §25.231 from American Electric Power Companies (AEP Companies), CenterPoint Energy Houston Electric, LLC (CenterPoint), Cross Texas Transmission, LLC (Cross Texas), Entergy Texas, Inc (Entergy), Golden Spread Electric Cooperative, Inc. (Golden Spread), LCRA Transmission Services Corporation (LCRA), Office of Public Utility Counsel (OPUC), Oncor Electric Delivery Company, LLC (Oncor), Pedernales Electric Cooperative, Inc (PEC), Southwestern Public Service Company (SPS), Technosylva, Texas Electric Cooperatives, Inc (TEC), Texas-New Mexico Power Company (TNMP), and Texas Public Power Association (TPPA).

Comments on proposed new §25.60 and amendments to §25.231

General comments

Cost allocation to residential and small commercial customers

OPUC recommended that the commission ensure that residential and small commercial customers do not bear a disproportionate share of the costs of wildfire mitigation plans and electric utility self-insurance plans.

Commission Response

The commission will review costs related to the implementation of an electric utility's wildfire mitigation plan during a rate proceeding and will apply the appropriate standards to the utility's requested rate changes. The commission does not retain original jurisdiction to review the retail rates of electric cooperatives or municipally owned utilities and, therefore, the commission would review the appropriateness of cost allocation only on a perfected appeal of those retail rates.

Cost allocation to generators

OPUC recommended that the commission "closely evaluate whether generators should share in wildfire mitigation and insurance costs for transmission infrastructure protection." OPUC asserted that, in the same way that "consumers are assigned these costs because TDU use their transmission and distribution infrastructure to deliver electricity service to them," "generators should be assigned some costs because they use the same transmission infrastructure to deliver power to and through the grid."

Commission Response

The commission declines to assess as part of this rulemaking project whether electric utilities' wildfire mitigation plan and self-insurance plan costs should be allocated to generators as recommended by OPUC. The purpose of this rulemaking project is to implement PURA §§ 36.064 and 38.080, as required by HB 145, §3, and conducting a cost sharing evaluation as proposed by OPUC is beyond that scope.

Comments on proposed §25.60

General comments

Duplicative cost recovery

OPUC noted that transmission and distribution utilities can seek to recover the costs of implementing wildfire-related measures through multiple avenues, including through distribution cost recovery factor and comprehensive base rate proceedings. Accordingly, OPUC recommended that the cost components of wildfire mitigation plans be reviewed comprehensively to ensure that there is no duplicate cost recovery.

Commission Response

The commission declines to address the review of cost components of wildfire mitigation plans as it is beyond the scope of this rulemaking project.

Cost burden of independent expert analysis

OPUC recommended that the commission "determine if an analysis of the plan by an independent expert in wildfire risk mitigation is needed, especially if such analysis is already included in a utility's SRP or filed as part of a utility's comprehensive rate review to curtail costs for residential and small commercial consumers." OPUC additionally recommended that, because hiring an independent expert or other entity with relevant wildfire risk mitigation expertise may pose an unnecessary cost burden on smaller, individual entities, "utilities should partner with adjacent utilities to reduce costs" whenever possible.

Commission Response

PURA §38.080(b)(7) requires an entity to include in its wildfire mitigation plan "an analysis of the wildfire mitigation plan prepared by an independent expert in fire risk mitigation." Accordingly, adopted §25.60(f)(2)(C) requires that an entity must include in its application for approval of a wildfire mitigation plan an analysis of its plan prepared by an independent expert, or a team of independent experts. Entities may consider filing a joint application with one or more other entities in accordance with adopted §25.60(d)(2) or utilizing local or non-traditional expert resources such as volunteer fire departments, provided that those resources meet the qualifications established by adopted §25.60(f)(2)(C).

TDEM wildfire risk area determinations

TNMP asserted that the references to TDEM wildfire risk area determinations in proposed §25.60(b)(3), (c)(3)(C), (d)(2), (e)(A)(iv), (e)(B)(v), and (f)(4)(A)(v) are unclear because "TDEM itself does not determine wildfire risk areas" and instead defers to the Texas A&M Forest Service and its publicly-available Texas Wildfire Risk Explorer map. Further, TNMP asserted that "TDEM does not provide specific determinations based on the TAMFS Risk Explorer, or provide guidance on which layers or considerations are most applicable for entity evaluations under this Section" and questioned "whether the Commission intends for a utility to comply with suggested 'determinations' made as of the date of a wildfire mitigation plan filing, or if consistent updates to plans are required when the TAMFS Risk Explorer…changes or updates with new data." Accordingly, TNMP recommended that the commission revise the proposed rule to "clarify the involvement of…TDEM…in making determinations of elevated risk areas for wildfire" and "address whether or how often utilities must update plans in response to ongoing changes in wildfire risk assessments."

Commission Response

The commission declines to modify proposed §25.60 to specify how TDEM will make wildfire risk area determinations or specify how entities should respond to ongoing changes in wildfire risk area determinations as recommended by TNMP because it would be inappropriate for the commission to do so. PURA §38.080 does not provide the commission with the authority to dictate how wildfire risk area determinations will be made or how often those determinations will be updated. However, the

commission specifies, in adopted §25.60(f)(1), the filing requirements for an entity's application for approval of a wildfire mitigation plan.

Independent ownership of wildfire risk maps and models

Technosylva recommended that the commission enable entities to "designate additional areas of wildfire risk above what TDEM determines" and, where there is discrepancy between entities' and TDEM's determinations, allow for the "more sophisticated and granular model to take precedence over TDEM's determinations." Additionally, Technosylva recommended that the commission consider implementing a "regulatory pathway" for utilities to own their wildfire risk maps and make "Petition for Modification" filings to "formally adjust their elevated wildfire risk areas based on new findings from dynamic risk assessments based on current conditions."

Commission Response

The commission declines to modify proposed §25.60 to enable entities to make additional wildfire risk area determinations above TDEM's determinations, allow entities' determinations to take precedence over TDEM's determinations, or implement a regulatory pathway for entities to own their own wildfire risk maps as recommended by Technosylva because it is unnecessary. PURA §38.080(a)(4) explicitly allows an entity to designate an area to be at an elevated risk for wildfire. Additionally, the commission specifies, in adopted §25.60(f)(1), the process for an entity to file an update to its wildfire mitigation plan.

Filing requirements for facilities outside of an entity's service territory

TPPA requested clarification from the commission on the requirements for entities to file wildfire mitigation plans in wildfire risk areas where the entity owns and operates facilities outside of the entity's service territory.

Commission Response

The commission clarifies that an entity must file an application for approval of a wildfire mitigation plan if it owns a transmission or distribution facility in a wildfire risk area of this state, as determined by TDEM or the entity itself. This requirement applies to facilities located both inside and outside of entities' service territory.

Inapplicability of plan requirements

TPPA commented that some smaller entities may be unable to provide all of the information required for a wildfire mitigation plan because the information is maintained by a larger entity, like a transmission service provider, rather than the filing entity. Accordingly, TPPA recommended that the commission allow entities to indicate in their applications that a requirement is 'not applicable' to their plan or request good cause exceptions to plan requirements.

Commission Response

The commission agrees with TPPA and adopts §25.60(f)(4) to provide that, for any inapplicable application requirements, an entity must clearly identify in its application the requirement that is inapplicable and include a description of why the entity believes the requirement is inapplicable to its application.

Future-focused planning

TPPA noted that "some utilities may include in their plan actions they intend to take in the future to help mitigate against wildfire going forward" and recommended that the commission encourage entities to report both the wildfire mitigation measures they have already implemented and those that will be undertaken in the near future.

Commission Response

Entities may include in their wildfire mitigation plans measures that they determine are suited to their individual system characteristics and present wildfire risks.

Consideration of transmission-only entities

Cross Texas asserted that, because "the operations of a transmission-only utility differ significantly from other electric service providers," applying the requirements of proposed §25.60 in its entirety to transmission-only utilities "simply is not feasible or practicable." Accordingly, Cross Texas urged the commission to "take into account the substantial differences between transmission-only utilities and those utilities that provide distribution service" and "consider the specific challenges and operational realities that transmission-only utilities face."

Commission Response

The commission recognizes that not all requirements in §25.60 will apply to all different types of entities impacted by §25.60 and adopts §25.60(f)(4) to provide that, for any inapplicable application requirements, an entity must clearly identify in its application the requirement that is inapplicable and include a description of why the entity believes the requirement is inapplicable to its application.

Proposed §25.60(a)

Proposed §25.60(a) establishes that the section applies to electric utilities, municipally owned utilities, and electric cooperatives operating in this state.

TPPA recommended that the commission add the following language to proposed §25.60(a) for consistency with 16 TAC §25.62, relating to Transmission and Distribution System Resiliency Plans: "Each transmission and distribution system has different system characteristics and faces different wildfire risks. The ability to precisely define, measure, and address these risks varies. Wildfire mitigation plans will be construed pragmatically to provide each utility with the flexibility to affordably develop a well-tailored and systematic approach to improving the resiliency of its system."

Commission Response

The commission declines to add the 'purpose and applicability' language in §25.62(a)(1), relating to Transmission and Distribution System Resiliency Plans, to adopted §25.60(a) as recommended by TPPA because §25.62(a)(1) and §25.60(a) serve functionally different purposes. The 'purpose and applicability' language in §25.62(a)(1) is employed to frame the pragmatic construal of the rule's requirements, as the concept of resiliency may apply to a variety of situations and may not be subject to a standardized method of measurement. Differently, the 'applicability' language in adopted §25.60(a) is employed to indicate the entities to which the rule applies.

Proposed §25.60(b)

Proposed §25.60(b) establishes the section's definitions of 'Entity,' 'Wildfire,' and 'Wildfire risk area.'

LCRA recommended that the commission add a new 'material change' definition to proposed §25.60(b) to specify that material

changes are only those that will impact how an entity will respond to wildfires.

Commission Response

The commission declines to add a 'material change' definition to proposed §25.60(b) or limit the scope of material changes to only those changes that impact how an entity will respond to wildfires as recommended by LCRA because the information included in an entity's wildfire mitigation plan is not limited to wildfire response. Instead, the commission retains the proposed definition of 'material change' in adopted §25.60(f)(1)(B)(ii).in adopted §25.60(f)(1)(B)(ii).

AEP Companies recommended that the commission add a new 'wildland' definition to proposed §25.60(b), as follows, to mirror that of the Texas A&M Forest Service's enabling statute: "An area in which there is virtually no development except for: (A) roads, railroads, transmission lines. and similar transportation facilities; or (B) development related to use of the land for park purposes or for timberland or other agricultural purposes."

Commission Response

The commission agrees with AEP Companies and adopts the following 'wildland' definition as §25.60(b)(4): "an area in which development is limited to roads, railroads, power lines, and similar transportation or utility structures."

Proposed §25.60(b)(2)

Proposed §25.60(b)(2) establishes the following definition of 'Wildfire': "any fire occurring on wildland or in a place where urban areas and rural areas meet. The term does not include a fire that constitutes controlled burning within the meaning of Section 28.01, Penal Code.

TPPA asserted that the phrase 'any fire occurring on wildland or in a place where urban areas and rural areas meet,' as used in the proposed §25.60(b)(2), does not provide meaningful clarity. Accordingly, TPPA recommended that the commission revise proposed §25.60(b)(2) as follows to mirror the Texas A&M Forest Service's definition of 'wildfire': "an unplanned, uncontrolled fire in an area of combustible vegetation, starting in rural or urban areas."

Cross Texas asserted that the 'wildfire' definition in proposed §25.60(b)(2) is "overly broad" and "will create uncertainty about when a utility becomes subject to the regulatory framework contemplated under the PFP." Further, Cross Texas asserted that the term 'wildland' and the phrase 'where urban areas and rural areas meet' are "vague and lack precision and, as a result, could cause the definition of 'wildfire' to encompass situations that ordinarily would not be considered wildfire events." Accordingly, Cross Texas recommended that the commission revise proposed §25.60(b)(2) as follows: "an uncontrolled fire spreading through vegetative fuels, requiring suppression action by fire departments or emergency services, occurring primarily on wildland or in wildland-urban interface areas." Cross Texas included redlines consistent with its recommendation.

PEC asserted that the 'wildfire' definition in proposed §25.60(b)(2) is "too broad" and should be revised to "avoid categorizing all fires as wildfires, as this may lead to overreporting and misinterpretation," and to mirror the 'large wildfire' acreage threshold employed by Texas A&M's Texas Wildfire Risk Explorer map. Accordingly, PEC recommended that the commission revise proposed §25.60(b)(2) to specify that a 'wildfire' is "any unplanned, uncontrolled fire that poses a significant threat to public safety, property, or utility infrastructure, occurring on wildland or in a place where urban areas and rural areas meet" and does not include fires less than 500 acres.

Entergy recommended that the commission consider the following National Weather Service definition of 'wildfire' in revising proposed §25.60(b)(2): "Any significant forest fire, grassland fire, rangeland fire, or wildland-urban interface fire that consumes the natural fuels and spreads in response to its environment ... In general, forest fires smaller than 100 acres, grassland or rangeland fires smaller than 300 acres, and wildland use fires not actively managed as wildfires should not be included."

Oncor asserted that the definition of 'wildfire' in proposed §25.60(b)(2) could be "problematic" when applied in context to wildfire mitigation plans because it would designate all fires, including structure fires, that occur on wildland or in a place where urban areas and rural areas meet as 'wildfires.' Further, Oncor argued that this "much broader definition" of 'wildfire' could "cause utilities to be assigned responsibility for mitigation actions relating to structure fires not within the realm of the type of utility wildfire mitigation that the Legislature contemplated in passing HB 145." Accordingly, Oncor recommended that the commission delete the phrase 'or in a place where urban areas and rural areas meet' from proposed §25.60(b)(2).

Commission Response

The commission agrees with commenters that clarifying revisions to the 'wildfire' definition under proposed §25.60(b)(2) are warranted. Accordingly, the commission specifies in adopted §25.60(b)(2) that a wildfire is "an unplanned fire spreading through vegetative fuels, occurring primarily on wildland or in wildland-urban interface areas. The term does not include a fire that constitutes controlled burning within the meaning of Section 28.01, Penal Code."

The commission declines to modify the 'wildfire' definition under proposed §25.60(b)(2) to include a minimum acreage threshold as recommended by PEC and Entergy for two reasons. First, the size of the wildfire is not a controlling factor on whether an entity must submit a wildfire mitigation plan. Second, the commission recognizes that small wildfires can quickly become large wildfires and an entity's wildfire mitigation plan must address the risk of such an event.

Proposed §25.60(b)(3)

Proposed §25.60(b)(3) establishes the following definition of 'Wildfire risk area determination': "an area determined to be at an elevated risk for wildfire by the Texas Division of Emergency Management (TDEM) or an entity that owns transmission or distribution facilities within that area. An area that is determined to be a wildfire risk area by an entity that owns transmission or distribution facilities within that area is only considered to be a wildfire risk area under this section with respect to the entity that made the designation."

OPUC recommended that the commission revise proposed §25.60(b)(3) to specify that entities that determine their own wildfire risk areas should properly support this determination with "evidence and justification based on historical wildfire data, fuel sources, periodic physical inspections, climate and weather condition standards, wildland-urban interfaces, and vulnerability of the systems to wildfires."

TEC expressed concern that the 'wildfire risk area' definition in proposed §25.60(b)(3) lacks clear criteria or explanation for how

TDEM will determine wildfire risk areas. Accordingly, TEC recommended that the commission revise proposed §25.60(b)(3) to clarify TDEM's methodology for determining a wildfire risk area and provide that "the determination of a wildfire risk area will not be applied retroactively if an event were to occur in an area that was not previously designated as a wildfire risk area."

Cross Texas recommended that the commission revise the definition of 'wildfire risk area' in proposed §25.60(b)(3) to retain entities' abilities to self-determine wildfire risk areas but "establish a preference for wildfire risk areas being established by TDEM." Cross Texas argued that this approach would improve consistency in wildfire risk determinations while maintaining entities' flexibility to self-determine .

Commission Response

The commission declines to modify the 'wildfire risk area' definition under proposed §25.60(b)(3) to require entities to provide evidence and justifications of their wildfire risk area determinations as recommended by OPUC. PURA §38.080 does not provide the commission with authority over wildfire risk area determinations, nor does it require entities to justify their wildfire risk area determinations to the commission. Accordingly, it would be inappropriate for the commission to impose such a requirement in §25.60.

The commission declines to modify the 'wildfire risk area' definition under proposed §25.60(b)(3) to specify how TDEM will make wildfire risk area determinations as recommended by TEC because PURA §38.080 does not provide the commission with the authority to dictate how wildfire risk area determinations are made. Accordingly, it would be inappropriate for the commission to indicate otherwise in §25.60.

The commission declines to specify in the 'wildfire risk area' definition that TDEM wildfire risk area determinations will not be applied retroactively as recommended by TEC because it is unnecessary. The commission clarifies that an entity only becomes subject to the requirements of §25.60 once an area in which it owns a transmission or distribution facility is determined to be a wildfire risk area.

The commission declines to modify the 'wildfire risk area' definition under proposed §25.60(b)(3) to prioritize TDEM's wildfire risk area determinations over entities' determinations as recommended by Cross Texas because PURA §38.080(a)(4) sets equal the wildfire risk area determinations made by TDEM and those made by entities. Accordingly, it would be inappropriate for the commission to indicate in adopted §25.60(b)(3) that any one party's wildfire risk area determinations precede another's.

In order to limit adopted §25.60(b) to only definitional language, the commission moves the language related to determination of a wildfire risk area to adopted §25.60(c) and specifies in adopted §25.60(b)(3) that a wildfire risk area is "an area determined, under subsection (c)(1) of this section, to be at an elevated risk for wildfire."

Proposed §25.60(c)

Proposed §25.60(c) provides guidance on filing responsibilities and requirements, as well as application filing schedules.

TPPA asserted that clear communication between TDEM, the commission, and facility owners is essential to ensure all parties understand which areas of the state are considered wildfire risk areas. Accordingly, TPPA recommended that the commission revise proposed §25.60(c) to include "guidance on how an entity can determine whether TDEM has classified areas where it owns transmission or distribution facilities as being at elevated risk for wildfire, ensuring that the entire state isn't designated as being at an elevated risk, which would seem to contravene the statute." Further, TPPA recommended the commission and TDEM coordinate publicly.

Commission Response

The commission declines to modify proposed §25.60(c) to specify how TDEM will present its wildfire risk area determinations as recommended by TPPA. PURA §38.080 does not specify how TDEM will present its wildfire risk area determinations, and it does not require TDEM to coordinate its presentational method with either the commission or the entities subject to its wildfire risk area determinations. Accordingly, it would be inappropriate for the commission to indicate otherwise in §25.60.

Proposed §25.60(c)(1)(A)

Proposed §25.60(c)(1)(A) establishes that, if the owner and operator of a transmission or distribution facility are different entities, the owner may authorize the operator of the facility to file an application for approval of a wildfire mitigation plan or other filings required under this section on behalf of the owner.

LCRA recommended that the commission revise proposed §25.60(c)(1)(A) to provide that, if a facility's owner and operator are different entities, both entities may mutually agree to authorize the facility operator to file an application for approval of a wildfire mitigation plan on the facility owner's behalf. LCRA asserted that, while there may be scenarios in which a facility operator is the appropriate entity to submit a wildfire mitigation plan over a facility owner, the facility operator should, in no circumstance, be required to file a plan in place of the facility owner without mutual agreement by both entities. LCRA provided redlines according to its recommendation.

Commission Response

The commission declines to specify in proposed §25.60(c)(1)(A) that the authorization of an alternative filing entity is contingent on mutual agreement as recommended by LCRA because it is unnecessary. The commission clarifies that, while an entity that operates a transmission or distribution facility in a wildfire risk area of this state may agree to make filings on behalf of the entity that owns the facility, it is not required to do so. Under PURA §38.080(b) and adopted §25.60(d), only those entities that own a transmission or distribution facility in a wildfire risk area of this state are required to comply with the requirements of §25.60.

Proposed §25.60(c)(1)(B)

Proposed §25.60(c)(1)(B) establishes that one or more entities may file a joint application for approval of a wildfire mitigation plan.

TEC recommended that the commission revise proposed §25.60(c)(1)(B) to clarify that "an approval of a joint application…constitutes an approval of a wildfire mitigation plan for all parties to the joint application."

Commission Response

The commission agrees with TEC and adopts §25.60(j)(2)(C) to provide that commission approval of a joint application constitutes an approval for all entities party to the joint application. Further, for consistency, the commission adopts §25.60(j)(1)(B) to provide that commission denial of a joint application constitutes a denial for all entities party to the joint application.

Proposed §25.60(c)(2)(A), (B), and (C)

Proposed §25.60(c)(2)(A) requires entities to file an application for approval of an initial wildfire mitigation plan after an area in which the entity owns transmission or distribution facilities is determined to be a wildfire risk area. Proposed §25.60(c)(2)(B) requires entities with approved wildfire mitigation plans to continuously maintain and improve their plans in between required filings, provides that entities may make immaterial changes to approved plans without voiding their approval, and requires entities that make material changes to an approved plan to reobtain approval. Proposed §25.60(c)(2)(C) requires entities with approved wildfire mitigation plans to reobtain approval of those plans every three years.

TPPA asserted that, due to changing weather, long term climate patterns, and topography from year to year, an area that qualifies as 'at risk' one year may not present the same risk in subsequent years. Accordingly, TPPA recommended that the commission revise proposed §25.60(c)(2)(A), (B), and (C) to "clarify the process for an entity to communicate that its wildfire mitigation plan is no longer necessary, as the entity no longer operates in a wildfire risk area."

Commission Response

The commission declines to modify proposed §25.60(c)(2)(A) to clarify the process for an entity to communicate that it is no longer subject to the requirements of §25.60 as recommended by TPPA because it is unnecessary. Under adopted §25.60(d), an entity that owns a transmission or distribution facility in a wildfire risk area of this state is required to comply with the filing requirements of §25.60. Accordingly, if an entity previously subject to the requirements of §25.60 no longer owns a transmission or distribution facility in a wildfire risk area of this state, either because the entity no longer owns that facility or the wildfire risk area determination is rescinded, the entity is no longer required to comply with the filing requirements of §25.60.

Proposed §25.60(c)(2)(B)(i)

Proposed §25.60(c)(2)(B)(i) requires entities with approved wildfire mitigation plans to continuously maintain and improve their plans in between required filings

TEC commented that the term 'improve,' as used in proposed §25.60(c)(2)(B)(i), indicates that "there will always be a superior approach to mitigation developed between every required filing, which may simply not be the case." TEC asserted that, if an entity has an approved wildfire mitigation plan that is continuously followed and maintained, that entity has satisfied their statutory obligation and should not be required to "continuously improve or reach a higher standard with every required filing." Accordingly, TEC recommended that the commission revise proposed §25.60(c)(2)(B)(i) to provide that an entity with a plan approved by the commission must "continuously maintain and amend, if necessary, its plan in between required filings."

TNMP asserted that the requirement for entities to 'continuously maintain and improve' their approved wildfire mitigation plans in proposed §25.60(c)(2)(B)(i) is "vague and imposes unclear and unrealistic expectations for changing mitigation plans, which is not always possible or feasible." Further, TNMP asserted that this obligation is "difficult to qualify or demonstrate," and does not "meaningfully add benefits" when taken alongside the other reporting and reapproval requirements in the proposed rule. Accordingly, TNMP recommended that the commission revise proposed §25.60(c)(2)(B)(i) to require entities to maintain and improve their wildfire mitigation plans "as reasonably practicable," rather than continuously.

AEP Companies recommended that the commission revise proposed §25.60(c)(2)(B)(i) to remove the term 'continuously' and the phrase 'and improve.' AEP Companies argued that these elements of proposed §25.60(c)(2)(B)(i) are "unnecessary," create "an expectation of continuous enhancement that is not conducive to effective regulatory compliance," exceed statutory direction, and introduce regulatory uncertainty by implying a standard that is "subjective and unmeasurable."

Oncor asserted that the requirement for entities to 'continuously…improve' their plans between required filings in proposed §25.60(c)(2)(B)(i) is unclear. Accordingly, Oncor recommended that the commission delete the phrase 'and improve' from proposed §25.60(c)(2)(B)(i).

Commission Response

The commission agrees with commenters that the phrase 'continuously…improve,' as used in proposed §25.60(c)(2)(B)(i), is unclear and excludes it from the adopted rule accordingly.

Proposed §25.60(c)(2)(B)(ii)

Proposed §25.60(c)(2)(B)(ii) provides that entities with approved wildfire mitigation plans may make immaterial changes to those plans without voiding their approval.

OPUC recommended that the commission revise proposed §25.60(c)(2)(B)(ii) to provide the following: "An immaterial change is a change that will not increase the cost of the plan, or negatively impact how an entity will monitor, respond to, or mitigate the risk of wildfires. An entity that has a commission-approved wildfire mitigation plan must make an informational filing with the commission under this clause that describes the immaterial change made to the plan." OPUC explained that, because the phrase 'immaterial change' is not used anywhere else in Chapter 25 of the commission's rules, both the entities and ratepayers would benefit from a clear differentiation between what constitutes a material versus immaterial change to a wildfire mitigation plan.

TNMP recommended that the commission revise proposed §25.60(c)(2)(B)(ii) to include guidelines or examples of 'immaterial' changes to a wildfire mitigation plan, such as "changes in contact information, personnel or organizational changes, changes in vendors, or community outreach efforts." TNMP asserted that offering these guidelines or examples will provide entities with additional certainty regarding which kinds of changes warrant plan reapproval.

Commission Response

In order to minimize confusion for entities, the commission removes from adopted §25.60 all references to 'immaterial' changes and instead provides in adopted §25.60(f)(1)(B)(ii) a definition for, and practical examples of, a 'material change' to an approved wildfire mitigation plan, including the elimination of an approved plan measure, reduction of approved frequencies of infrastructure inspections or vegetation management practices, introduction of a new plan measure, or a significant update to risk modeling methodologies.

Proposed §25.60(c)(2)(B)(iii)

Proposed §25.60(c)(2)(B)(iii) requires entities that make material changes to approved wildfire mitigation plans to reobtain approval of those plans, provides that a material change is one that

will impact how an entity will monitor, respond to, or mitigate the risk of wildfires, and requires applications filed under this clause to describe the material changes made to the plan.

LCRA asserted that proposed §25.60(c)(2)(B)(iii) contains a regulatory framework that, if adopted, would prove "onerous" for both the commission and entities by requiring reapproval of wildfire mitigation plans over changes to details like wildfire monitoring practices. Accordingly, LCRA recommended that the commission add a definition for the term 'material change' to proposed §25.60(b) to specify that material changes are only those that will impact how an entity will respond to wildfires and delete the following sentence from proposed §25.60(c)(2)(B)(iii): "A material change is one that will impact how an entity will monitor, respond to, or mitigate the risk of wildfires." LCRA provided redlines according to its recommendations. LCRA claimed that, if implemented, its recommendations would make the adopted rule "more transparent" and align the adopted rule with the "reasonable and appropriate" materiality standard in §25.53, relating to Electric Service Emergency Operations Plans.

CenterPoint recommended that the commission revise proposed §25.60(c)(2)(B)(iii) to clarify that a material change to a wildfire mitigation plan is one that will "materially" impact wildfire monitoring, response, or risk mitigation. CenterPoint noted that proposed §25.60(c)(2)(B)(iii) would deem any change to wildfire monitoring, response, or risk capabilities, no matter how slight, a material change. CenterPoint further asserted that, under proposed §25.60(c)(2)(B)(iii), even the action of switching from one wildfire monitoring camera manufacturer to another could be deemed a material change to an approved wildfire mitigation plan. CenterPoint provided redlines in accordance with its recommendation.

OPUC asserted that proposed §25.60(c)(2)(B)(iii) is unclear as to whether an entity's desire or need to increase costs would meet the threshold of a material change if the entity was not making any changes to how it monitors, responds to, or mitigates the risk of wildfires. Accordingly, OPUC recommended that the commission revise proposed §25.60(c)(2)(B)(iii) to specify that a material change to a wildfire mitigation plan is one that will "increase the cost of the plan" or impact how an entity will monitor, respond to, or mitigate the risk of wildfires.

TPPA requested that the commission include in the proposal for adoption examples of what common actions would be considered material changes and noted a conflict between the requirements in proposed §25.60(c)(2)(B)(i) and (iii) in that entities are charged with both continuously improving their plans in between required filings and seeking commission reapproval upon material changes to their plans.

PEC asserted that the "broad definition" of 'material change' in proposed §25.60(c)(2)(B)(iii) "may cause utilities to delay potential updates to their plan because…incremental enhancements to a utility's plan could be considered a material change and require a filing of an entirely new contested case." Accordingly, PEC recommended that the commission revise proposed §25.60(c)(2)(B)(iii) to provide that only the elimination or discontinuation of a measure in an entity's approved wildfire mitigation plan would require an application for commission reapproval. PEC included redlines according to its recommendation.

Commission Response

The commission agrees with TPPA and provides in adopted §25.60(f)(1)(B)(ii) practical examples of a material change to an approved wildfire mitigation plan, including the elimination of an approved plan measure, reduction of approved frequencies of infrastructure inspections or vegetation management practices, introduction of a new plan measure, or a significant update to risk modeling methodologies.

The commission declines to modify proposed §25.60(c)(2)(B)(iii) to limit the scope of material changes to only those changes that impact entities' ability to respond to wildfires as recommended by LCRA. While adopted §25.60(f)(2)(B)(iii) requires entities to include in their wildfire mitigation plans a detailed operations plan for wildfire response, the information included in entities' wildfire mitigation plans will not be exclusive to wildfire response. Accordingly, it would be inappropriate for the scope of material changes under adopted §25.60(d)(1)(B)(ii) to be limited to only those changes that impact entities' ability to respond to wildfires.

The commission declines to modify proposed §25.60(c)(2)(B)(iii) to limit the scope of material changes to only those changes that 'materially' impact entities' ability to monitor, respond to, or mitigate for the risk of wildfires as recommended by CenterPoint because such a modification would not meaningfully impact the practical clarity of the provision. Instead, the commission provides in adopted §25.60(f)(1)(B)(ii) practical examples of a material change to an approved wildfire mitigation plan, including the elimination of an approved plan measure, reduction of approved frequencies of infrastructure inspections or vegetation management practices, introduction of a new plan measure, or a significant update to risk modeling methodologies.

The commission declines to modify proposed §25.60(c)(2)(B)(iii) to limit the scope of material changes to only the elimination or discontinuation of measures included in entities' approved plans as recommended by PEC because this modification would inaccurately imply that only the removal of a measure from an approved plan would modify the plan's impact. However, the commission specifies in adopted §25.60(f)(1)(B)(ii) that one practical example of a material change to an approved plan is the elimination of an approved plan measure.

The commission declines to modify proposed §25.60(c)(2)(B)(iii) to expand the scope of material changes to those changes that would increase the costs of entities' plans as recommended by OPUC because entities are not required to include cost information in their wildfire mitigation plans. Accordingly, it would be inappropriate for the commission to indicate otherwise in adopted §25.60(f)(1)(B)(ii).

TPPA commented that, in its understanding, proposed §25.60(c)(2)(B)(iii) provides that, "if an entity determines a need for a material change to its plan, … the Commission must first approve that material modification before it can be implemented." Accordingly, TPPA asserted that "entities may forgo making adjustments to their plan to resolve immediate problems due to the risk of voiding the plan entirely" and recommended that the commission revise proposed §25.60(c)(2)(B)(iii) to allow entities to make material changes to their plans, so long as they seek Commission approval no later than 30 days after making the material change.

Commission Response

The commission agrees with TPPA that it is appropriate to include a filing timeline for applications based on material changes. However, the commission declines to modify proposed §25.60(c)(2)(B)(iii) to provide that an entity can file an application for reapproval within 30 days of making a material change to its approved plan and instead specifies in adopted

§25.60(f)(1)(B)(ii) that an entity must file an application for reapproval upon making a material change to its approved plan. The commission clarifies that an entity that determines a material change to its approved plan is needed must file an application for reapproval upon making the change. The commission further clarifies that, if an entity identifies a deficiency in its approved plan that creates an imminent wildfire risk, the entity should take the operational steps necessary to rectify the deficiency while simultaneously seeking approval of the modification to its plan.

Oncor recommended that the commission revise proposed §25.60(c)(2)(B)(iii) to provide that commission review of an entity's application for plan reapproval will be limited to the specific, material changes sought and the specific portions of the entity's plan that are impacted by the material changes. Oncor provided redlines consistent with its recommendation.

Commission Response

The commission declines to modify proposed §25.60(c)(2)(B)(iii) to limit commission review of an entity's application for reapproval of a wildfire mitigation plan to only the material changes made to, or impacted portions of, a previously approved plan as recommended by Oncor. Wildfire mitigation plans consist of various, interrelated components that--when considered together--depict the strengths and weaknesses of an entity's overall wildfire mitigation strategy, relative to the entity's present risks and considerations. Therefore, the commission must consider all elements of a plan together when deliberating on the public interest of a change to that plan.

Proposed §25.60(c)(2)(C)

Proposed §25.60(c)(2)(C) requires entities with approved wildfire mitigation plans to reobtain approval of those plans every three years.

LCRA recommended that the commission revise proposed §25.60(c)(2)(C) to provide that entities must file an application for wildfire mitigation plan reapproval every five years, rather than every three years. LCRA asserted that there is a "disjunction" between proposed §25.60(c)(2)(C) and proposed §25.60(f)(5)(B)(i), with §25.60(c)(2)(C) providing that plans must be reapproved every three years and §25.60(f)(5)(B)(i) providing that commission approval of a plan is effective for five years. LCRA further asserted that, taken with the proposed rule's other reporting and reapproval requirements, a five-year reapproval cycle is appropriate. LCRA provided redlines according to its recommendation.

OPUC asserted that entities' wildfire mitigation plans should be on a three-year reapproval cycle. Additionally, OPUC asserted that entities' wildfire mitigation plans should contain a "three-year short-term evaluation and a ten-year long-term goal" that are updated and resubmitted for review and approval by the commission at the end of the three-year period. OPUC reasoned that long-term goals will allow entities to develop a long-term strategy while also allowing for flexibility to adapt to evolving risks, new information, and lessons learned.

TEC asserted that, because HB 145 does not contain an expiration period or a requirement for entities to periodically re-file their wildfire mitigation plans, the requirement in proposed §25.60(c)(2)(C) is "beyond the scope of the legislation" and is "not necessary to implement the overt requirements of HB 145." TEC recommended that, if the commission retains the requirement in proposed §25.60(c)(2)(C), the adopted rule should provide for a simplified process that would allow entities to file a "simple notation" that their plan either is the same as was last approved by the commission or has only minor or non-substantive changes, with the minor changes noted by the entity. TEC reasoned that this simplified process would ease the burden on both the entities and commission staff.

TPPA asserted that a three-year reapproval cycle, as provided by proposed §25.60(c)(2)(C), is too frequent, "administratively punitive," and unlikely to yield meaningful changes to plans. TPPA suggested that the requirement for entities to gain reapproval of their plans upon material changes "should provide the Commission with suitable assurance that these plans are being continuously reviewed for necessary changes, without overburdening the Commission with dozens of new contested cases every year." Accordingly, TPPA recommended that the commission revise proposed §25.60(c)(2)(C) to extend the reapproval cycle to at least five, but preferably six, years from the last approval date.

PEC recommended that the commission revise proposed §25.60(c)(2)(C) to extend the reapproval cycle from three years to five years. PEC asserted that, because electric cooperatives pass regulatory costs onto their members, a three-year reapproval cycle for wildfire mitigation plans, as provided by proposed §25.60(c)(2)(C), will "impose material cost burdens" on electric cooperative members. Further, PEC asserted that, because HB 145 "does not prescribe reapproval," the commission should "avoid imposing unnecessary and potentially costly administrative filings."

Commission Response

The commission declines to delete proposed §25.60(c)(2)(C) as recommended by TEC. PURA §38.080(c) provides that the commission will approve, order the modification of, or reject an entity's wildfire mitigation plan as necessary to be consistent with the public interest. Therefore, by approving an entity's wildfire mitigation plan, the commission affirms that the plan is consistent with the public interest. However, given the dynamic nature of wildfire risks, the commission cannot, in good faith, affirm that an entity's wildfire mitigation plan will remain consistent with the public interest in perpetuity. Accordingly, the commission has determined that a three-year reapproval cadence is consistent with industry best practices for wildfire mitigation planning and provides for such in adopted §25.60(f)(1)(B)(i).

For the same reason, the commission declines to revise proposed §25.60(c)(2)(C) to provide a simplified administrative process as recommended by TEC. Though an entity with an approved plan may not have made material changes to the plan, wildfire risk circumstances may have changed, requiring the commission to comprehensively evaluate whether the plan remains in the public interest.

The commission also declines to modify the three-year reapproval cadence in proposed §25.60(c)(2)(C) as recommended by commenters because the commission has determined that it is consistent with industry best practices for wildfire mitigation planning.

Proposed §25.60(c)(2)(D)

Proposed §25.60(c)(2)(D) establishes application timing requirements for entities.

LCRA asserted that proposed §25.60(c)(2)(D) is "superfluous" and could easily be combined with proposed §25.60(c)(4) to "create a more congruous and straightforward requirement." Accordingly, LCRA recommended that the commission delete

proposed §25.60(c)(2)(D) and incorporate the content into proposed §25.60(c)(4).

Commission Response

The commission declines to delete proposed §25.60(c)(2)(D) and incorporate the content into proposed §25.60(c)(4) as recommended by LCRA because the two provisions serve separate functional purposes, with the former provision applying to entities and the latter provision applying to the commission. However, to further clarify the functional differences between the provisions, the commission redesignates proposed §25.60(c)(2)(D) as adopted §25.60(f)(1)(A), relating to initial application filing requirements, and proposed §25.60(c)(4) as adopted §25.60(h)(1), relating to application filing schedules.

Proposed §25.60(c)(3)

Proposed §25.60(c)(3) establishes filing requirements for entities' notices of intent to file an application for approval of wildfire mitigation plan.

LCRA recommended that the commission streamline the two provisions titled "Notice of intent"--proposed §25.60(c)(3) and (d)--to eliminate confusion. Specifically, LCRA recommended that the commission delete proposed §25.60(c)(3) and incorporate the content into proposed §25.60(d). LCRA provided redlines according to its recommendation.

Commission Response

The commission agrees with LCRA and consolidates the content of proposed §25.60(c)(3) and (d) into adopted §25.60(e).

Proposed §25.60(c)(4)

Proposed §25.60(c)(4) establishes that the commission will use notices of intent filed by entities under subsection (d) of this section to establish filing schedules for applications, as necessary.

LCRA recommended that the commission revise proposed §25.60(c)(4) by adding the following language: "Entities that are required to file an application under this section must file an application as soon as practicable. However, an entity must not file an application prior to May 1, 2026, unless scheduled by the commission."

Commission Response

The commission declines to revise proposed §25.60(c)(4) as recommended by LCRA because it is unnecessary when read in conjunction with proposed §25.60(c)(2)(D). However, to clarify the functional differences between the provisions, the commission redesignates proposed §25.60(c)(4) as adopted §25.60(h)(1), relating to application filing schedules, and proposed §25.60(c)(2)(D) as adopted §25.60(f)(1)(A), relating to initial application filing requirements.

Oncor recommended that the commission "set a prescribed filing schedule that would have the utilities with the largest service territories, like Oncor, file their applications for plan approval first." Oncor reasoned that its recommended approach would "allow the Commission to more effectively address the largest areas of the state sooner and provide smaller utilities the benefit of the Commission' s decisions on the larger utilities' plans."

SPS asserted that, if necessary, the commission should prioritize applications from entities that own transmission or distribution entities in TDEM-determined wildfire risk areas when establishing the initial filing schedule. Accordingly, SPS recommended that the commission add the following language to the adopted rule as new §25.60(c)(4)(C): "To the extent that the number of notices of intent received at a given time exceeds processing capacity, priority will be given in the initial filing schedule for applications to entities that own facilities in a wildfire risk area determined by TDEM."

Commission Response

The commission declines to set a prescribed filing schedule as recommended by Oncor or to establish priority status for certain applicants as recommended by SPS. Section 3(b) of HB 145 requires entities to file a wildfire mitigation plan as soon as practicable after the commission adopts a rule to implement PURA §38.080. Accordingly, it would be inconsistent with the intent of HB 145 for adopted §25.60 to establish an application filing schedule that does not account for the practicability of filing for entities. Hence, the commission specifies in adopted §25.60(h)(1)(A) that the commission will establish an initial application filing schedule based on notices of intent that are filed before March 1, 2026. Adopted §25.60(h)(1)(B) further provides that the commission may establish subsequent filing schedules at the recommendation of commission staff or the commission counsel. These provisions enable entities with an articulable estimated application filing date, as provided by the notice of intent, to move through the application process earlier and provide other entities for which readiness to file is not yet known or practicable with additional time to assemble their applications.

Proposed §25.60(c)(5)

Proposed §25.60(c)(5) requires entities with approved wildfire mitigation plans to file annual status updates by May 1 of each year and include in those reports information regarding plan implementation and approval status.

LCRA asserted that the annual reporting requirement in proposed §25.60(c)(5) is overly general and the requirements are not clearly defined. LCRA also noted that some entities, such as itself, will not have annual implementation information to provide because their wildfire mitigation plans are already implemented. Accordingly, LCRA recommended that the commission revise proposed §25.60(c)(5) by retitling the provision "Annual status update" and providing that an entity's annual status update must only contain information on the status of its wildfire mitigation plan approval.

TEC asserted both that the annual reporting requirement in proposed §25.60 is inconsistent with HB 145 and that entities may not have substantive implementation information to report annually. Accordingly, TEC recommended that the commission revise the annual reporting requirement in proposed §25.60 to provide that annual reporting is "only…required in the form of an after-action report if the wildfire mitigation plan is activated or if substantive changes are needed within the wildfire mitigation plan." Further, TEC suggested that the commission "could require the annual filing to include a statement from the entity that the report has not been materially modified." TEC asserted that, at a minimum, the commission should clarify what information must be included in entities' annual reports.

TPPA noted that annual reports are not part of the enabling statute. TPPA asserted that, taken together, the annual reports and the proposed wildfire mitigation plan reapproval requirements would impose a significant regulatory burden. Additionally, TPPA asserted that requiring annual reports on wildfire mitigation plan implementation is unlikely to yield meaningful updates because most wildfire mitigation measures require multiple years to fully implement.

AEP Companies asserted that the commission lacks clear statutory authority for the annual reporting requirement in proposed §25.60(c)(5) and that the requirement exceeds the scope of the statute. Accordingly, AEP Companies recommended that the commission remove proposed §25.60(c)(5) from the adopted rule.

Commission Response

For organizational purposes, the commission redesignates proposed §25.60(c)(5) as adopted §25.60(k)(1).

The commission disagrees with commenters that asserted the commission does not have authority to require annual reports. PURA §38.080(b)(10) requires an entity to include in its wildfire mitigation plan a description of how the entity intends to monitor compliance with the plan. Certainly, the Legislature intended for the commission to hold each entity with an approved wildfire plan accountable to that compliance plan. The commission determines, pursuant to its authority under PURA §14.001, that requiring an entity with an approved wildfire mitigation plan to file an annual report is necessary to accomplish the objectives of PURA §38.080 and safeguard the public interest by ensuring wildfire risks are more ably mitigated in the future.

Proposed §25.60(c)(2)

Proposed §25.60(c)(2) establishes that, in the event of a wildfire that impacts or is caused by an entity's transmission or distribution facilities or assets, the commission, the executive director of the commission, or a designee of the executive director may require that entity to provide an after-action or lessons-learned report and file it with the commission by a specified date.

LCRA expressed concern about the after-action reporting requirement in proposed §25.60(c)(2) and requested assurance that the commission is open to input from entities when setting due dates for after-action reports. LCRA explained that, while they have "a robust after-action procedure for all emergency operations" and "after-action reports are standard," each event is unique in its size, duration, and extent of damage and the preparation of after-action reports will not be prioritized if outstanding threats remain. Accordingly, LCRA recommended that the commission revise proposed §25.60(c)(2) to provide entities the ability to file their after-action reports as soon as practicable upon the de-escalation of emergency response levels, diminished threat conditions, or return to normal operations. LCRA provided redlines according to its recommendation.

OPUC recommended that the commission revise proposed §25.60(c)(2) to require entities to file an after-action report with the commission within 30 days of each wildfire event that impacts, or is caused by, an entity's transmission or distribution facilities or assets, rather than only in response to a request by the commission, executive director of the commission, or designee of the executive director. OPUC reasoned that this requirement would serve the public interest by assisting entities in mitigating for future wildfires and providing greater transparency and accountability to both the commission and ratepayers. Additionally, OPUC recommended that the commission revise proposed §25.60(c)(2) to specify that entities are required to include the following information in their after-action reports: a description of a wildfire event's origin; an estimate of the customers and load affected by the event; an estimate of the critical care customers, load, and other critical infrastructure facilities affected by the event; an estimate of the load affected by public safety power shut-off measures; a description of any actions taken in-line with the entity's wildfire mitigation plan before, during, and after the event; a list and brief description of any actions included in the entity's wildfire mitigation plan that were not taken before, during, and after the event; and an explanation of lessons learned from an event.

TNMP noted that proposed §25.60(c)(2) is "silent" on what would constitute an 'impact' to entities' facilities. TNMP asserted that "without further clarification, utilities cannot reasonably anticipate the scope of potential requested reporting." TNMP provided three recommendations. First, TNMP recommended that the commission revise proposed §25.60(c)(2) to clarify what qualifies as an 'impact,' either by referring to "outage specifications, dollar-value thresholds, or other measures to sufficiently inform entities when additional reporting may be required after an event." Second, TNMP recommended that the commission revise proposed §25.60(c)(2) to include a required reporting timeframe that is no earlier than 45 days after an event. Last, TNMP recommended that the commission replace the phrase 'caused by' in proposed §25.60(c)(2) with "otherwise involved" as to avoid "prematurely suggesting causation, which could implicate entity liability in a wildfire event without a full investigation and determination of legal liability."

AEP Companies asserted that there is a "lack of clear statutory authority" for the annual reporting requirement in proposed §25.60(c)(2) and that the "inclusion of additional requirements that are not necessary to implement the law exceeds the scope of the statute and deviates from the Legislature's intent." Accordingly, AEP Companies recommended that the commission remove proposed §25.60(c)(2) from the adopted rule. Alternatively, if proposed §25.60(c)(2) is retained in the adopted rule, AEP Companies recommended that the commission design the scope and content of after-action reports to "prevent unnecessary and burdensome reporting for the utility and Commission Staff."

SPS warned that, while entities will sometimes prepare after-action or lesson-learned reports for internal purposes or at the direction of counsel, after-action reports created under proposed §25.60(c)(2) could be used out of context in litigation and have "unintended consequences that could negatively impact customers." Accordingly, SPS recommended that the commission remove the after-action reporting requirement in proposed §25.60(c)(2) from the adopted rule.

Commission Response

The commission notes the inclusion of two (c)(2) provisions in proposed §25.60 and clarifies that this response is in regard to the (c)(2) provision titled 'After-action report.' Further, the commission redesignates proposed §25.60(c)(2) as adopted §25.60(k)(2) for organizational purposes.

The commission disagrees with commenters that asserted the commission does not have the authority to require after-action reports. PURA §14.001 provides the commission with the "general power to…do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction." Certainly, the Legislature intended for the commission to safeguard the public interest by ensuring wildfire risks are more ably mitigated in the future. After-action reporting allows for the analysis of the performance of an approved wildfire mitigation plan during an actual wildfire event. Accordingly, the commission determines that after-action reporting is a necessary tool for the commission to accomplish the objectives of PURA §38.080.

In order to maintain situational flexibility, the commission declines to further specify in proposed §25.60(c)(2) a filing timeline or informational requirements for after-action reporting as recommended by commenters.

The commission agrees with TNMP that the phrase 'or is caused by the entity's transmission or distribution facilities or assets' in proposed §25.60(c)(2) may prematurely imply causation of a wildfire event. Accordingly, the commission deletes that phrase and instead specifies in adopted §25.60(k)(2) that after-action reporting may be required in response to a wildfire event that impacts or involves an entity's transmission or distribution facilities.

Proposed §25.60(d)

Proposed §25.60(d) establishes the required contents of entities' notices of intent to file an application for approval of a wildfire mitigation plan.

LCRA recommended two revisions to proposed §25.60(d). First, LCRA asserted that the first two sentences of proposed §25.60(d) are "not essential" and recommended that the commission delete them from the adopted rule. LCRA explained that the first sentence, which provides that an entity's notice of intent to file an application must comply with proposed §25.60(d), is unnecessary because "regulations are drafted with the intention that they be followed and it is not requisite to remind the reader that the rule was drafted with the intention that an entity must comply." LCRA explained that the second sentence, which directs commission staff to open a 'designated project for the filing of notices,' is unnecessary because commission staff may open a project for this purpose without including direction to do so in the rule. Second, LCRA recommended that the commission replace the third sentence's reference to 'this project' with 'designated project.' LCRA explained that the second sentence's directive to commission staff to open a 'dedicated project' for notices of intent contradicts the third sentence's directive to entities to file all notices of intent under 'this project' because it implies that the 'dedicated project' and 'this project'--Project No. 56789--are the same.

Commission Response

The commission agrees with LCRA and modifies proposed §25.60(d) accordingly. The commission additionally redesignates proposed §25.60(d) as adopted §25.60(e) and (e)(1) for organizational purposes.

Proposed §25.60(d)(1)

Proposed §25.60(d)(1) requires entities to include in their notices of intent to file an application for approval of a wildfire mitigation plan an acknowledgement that they are required to file an application under this section.

TPPA recommended that the commission delete proposed §25.60(d)(1) from the adopted rule because the requirement for entities to include in their notice of intent an acknowledgment that the entity is required to file an application "creates perverse incentives for entities to avoid developing, maintaining, or implementing wildfire mitigation plans." TPPA explained that, because wildfire risk areas in the state can change year to year, entities may hesitate to establish a wildfire mitigation plan if doing so constitutes a binding acknowledgment that it operates in a wildfire risk area or would expose the entity to administrative penalties under proposed §25.60(h). TPPA further asserted that entities should have the ability to implement wildfire mitigation plans when needed and the flexibility to forgo them when they are no longer necessary.

Commission Response

The commission disagrees with TPPA that the filing obligation acknowledgement requirement under proposed §25.60(d)(1) functionally impacts or alters an entity's obligation to file an application for approval of a wildfire mitigation plan under §25.60. By filing an application for approval of wildfire mitigation plan with the commission, an entity affirms that it owns a transmission or distribution facility in a wildfire risk area and is required to file a wildfire mitigation plan under PURA §38.080.

However, to clarify the intent of proposed §25.60(d)(1), the commission deletes proposed §25.60(d)(1) and instead specifies the following in adopted §25.60(c)(3): "An entity that owns a transmission or distribution facility in an area that TDEM determines is a wildfire risk area must file with the commission an acknowledgement of that determination as soon as practicable after the determination is made, using the control number designated by commission staff under subsection (e)(1) of this section."

Proposed §25.60(d)(4)

Proposed §25.60(d)(1) requires entities to include in their notices of intent to file an application for approval of a wildfire mitigation plan the approximate number of customers served by the entity and the approximate number of transmission and distribution customers located in the entity's wildfire risk area(s).

AEP Companies asserted that entities that do not possess or maintain records of distribution customers should be exempt from the requirement in proposed §25.60(d)(4). Accordingly, AEP Companies recommended that the commission revise proposed §25.60(d)(4) to clarify that it "applies only to entities with access to the specified customer data." AEP Companies provided redlines consistent with its recommendation.

Commission Response

The commission agrees with AEP Companies and specifies in adopted §25.60(e)(2)(C) that entities must provide the specified customer data, if applicable.

Proposed §25.60(e)

Proposed §25.60(e) establishes the required contents of entities' applications for approval of a wildfire mitigation plan.

LCRA recommended that the commission delete the first sentence of proposed §25.60(e), which provides that an entity's application for approval of a wildfire mitigation plan must comply with proposed §25.60(e), because "it is not necessary to remind readers of the rule that compliance is required."

Commission Response

The commission agrees with LCRA and excludes this language from adopted §25.60(f).

Proposed §25.60(e)(1)(A)(iii)

Proposed §25.60(e)(1)(A)(iii) provides that entities must include in their applications' executive summary or comprehensive chart a description and map of each area of this state to which the entity provides transmission or distribution service that is in a wildfire risk area and a description of how the entity identified each wildfire risk area.

PEC recommended that the commission revise proposed §25.60(e)(1)(A)(iii) to specify that entities may use the Texas

A&M Texas Wildfire Risk Assessment Portal, or "other methods…if justified by the entity," to identify wildfire risk areas in their service territory. PEC provided redlines according to its recommendation.

Commission Response

The commission declines to modify proposed §25.60(e)(1)(A)(iii) to specify that an entity may only use the Texas A&M Texas Wildfire Risk Assessment Portal to make wildfire risk area determinations, unless it justifies other methods of determination, as recommended by PEC. PURA §38.080 does not provide the commission with authority over wildfire risk area determinations. Similarly, it does not require an entity to justify its wildfire risk area determinations to the commission. Accordingly, it would be inappropriate for the commission to impose such requirements in adopted §25.60.

Proposed §25.60(e)(1)(A)(iv)

Proposed §25.60(e)(1)(A)(iv) provides that entities must include in their applications' executive summary or comprehensive chart a description of the entity's history with wildfire in its service territory for the preceding 15 years, including the date, implicated TDEM disaster districts, and known impacts of each wildfire to life, property, and the entity's infrastructure.

LCRA expressed concern on the length and scope of reporting required under proposed §25.60(e)(1)(A)(iv). LCRA asserted that it would be "an extremely onerous undertaking" for entities to provide a description of their history with wildfire in their service territory for the preceding 15 years, as required by proposed §25.60(e)(1)(A)(iv). LCRA further asserted that, for entities, meeting this requirement is "made even more arduous by the vague language in the rule requesting a description of impacts of each fire on life and property." LCRA explained that "it is likely that utility records do not go back fifteen years, and even more likely that what records a utility does have will only relate to the utility's infrastructure and will not summarize the impacts to life and property damage at large." LCRA further explained that LCRA itself only records and retains data on outages and damages that were sustained by its assets dating four years back and "is not in a position to provide any information related to the impacts of a wildfire beyond the damage to its own facilities." Accordingly, LCRA recommended that the commission revise proposed §25.60(e)(1)(A)(iv) by scaling the 'preceding 15 years' requirement down to four years and removing 'known impacts of each wildfire to life, property' from the scope of reporting. LCRA provided redlines according to its recommendations. Additionally, LCRA recommended that, rather than requiring each entity to provide a "patchwork of information" through their wildfire mitigation plans, the commission engage TDEM to provide "its recorded history" to gain a comprehensive picture of wildfires in the state.

TEC expressed concern that the breadth of reporting required under proposed §25.60(e)(1)(A)(iv) would produce an impractical result, given the expansive definition of 'wildfire' under proposed §25.60(b)(2). TEC asserted that, because it is "outside the expertise and knowledge of the utility to track and monitor every occurrence of wildfire" and entities may not have information responsive to this requirement, entities should not be required to "create such records." Accordingly, TEC recommended that the commission revise proposed §25.60(e)(1)(A)(iv) to only require "a description of recorded wildfires that affected or were impacted by the entity's infrastructure within the entity's service territory, if applicable, for the preceding 10 years, including the date, impacted TDEM disaster districts, and known impacts of each wildfire to life, property, and the entity's infrastructure."

TPPA posed three recommendations on proposed §25.60(e)(1)(A)(iv). First, TPPA recommended that the commission clarify whether entities are required to report all wildfires that have occurred in their service territory in the preceding 15 years, or only those wildfires that impacted the entity's infrastructure. Second, TPPA recommended that the commission revise proposed §25.60(e)(1)(A)(iv) to clarify that entities operating facilities in a service territory for fewer than 15 years are only required to report wildfire history for the years in which it has operated those facilities in that territory. Last, TPPA recommended that the commission revise proposed §25.60(e)(1)(A)(iv) to limit the scope of reporting to only wildfires occurring in the area for which the utility seeks a mitigation plan, rather than the entire service territory.

TNMP asserted that it is "uncommon for a utility to maintain records of wildfire events for such a long period of time." Accordingly, TNMP recommended that the commission revise proposed §25.60(e)(1)(A)(iv) to establish a "more reasonable" five to eight years standard. TNMP further recommended that the commission revise proposed §25.60(e)(1)(A)(iv) to qualify that entities must only report information "to the extent known or available." TNMP asserted that this qualifier would make the requirement "more practicable and attainable" and alleviate concerns about retroactive rulemaking.

PEC noted that it does not currently maintain the information required by proposed §25.60(e)(1)(A)(iv) and asserted that "it will be difficult to ensure that all utilities are reporting historical information in the same way, as to date there has been no rule requiring electric cooperatives to maintain such data." Instead, PEC recommended that the commission revise proposed §25.60(e)(1)(A)(iv) to specify that entities should utilize historical wildfire information available from the Texas A&M Texas Wildfire Risk Assessment Portal for the past 10 years. PEC provided redlines according to its recommendations.

Entergy recommended that the commission delete the requirement in proposed §25.60(e)(1)(A)(iv) because "the executive summary or comprehensive chart should provide a high-level overview of the key components of the utility's wildfire mitigation plan." Alternatively, if the requirement is retained in the adopted rule, Entergy recommended that the commission move the requirement from proposed §25.60(e)(1)(A) to proposed §25.60(e)(1)(B) and reduce the scope of required information from 15 years to five years. Entergy asserted that because "environmental and physical conditions that create a greater risk for wildfires are constantly changing…the 15-year requirement could require utilities to provide dated information that is not helpful or relevant."

Oncor asserted that the information required by proposed §25.60(e)(1)(A)(iv) is "not readily available" and that, in order to comply with proposed §25.60(e)(1)(A)(iv), entities "would likely need to file public information requests with TDEM and other entities to obtain information relating to each of the…required datapoints." Accordingly, Oncor recommended the commission delete the references to specific datapoints in proposed §25.60(e)(1)(A)(iv) and instead provide for the inclusion of a "general, high-level summary of the utility's knowledge of the history of wildfires in its service territory." Additionally, Oncor recommended that the commission reduce the scope of information required under proposed §25.60(e)(1)(A)(iv) from 15

years to five years. Oncor provided redlines consistent with its recommendations.

SPS recommended that the commission remove the 15-year reporting standard from proposed §25.60(e)(1)(A)(iv) and instead specify that entities may provide the required information "to the extent available." SPS argued that PURA §38.080 is "silent on the length of historical wildfire descriptions for a service territory" and that, while data collection related to wildfire mitigation activities in Texas has improved over time, entities may possess only general, less detailed information for any fires going back further than several years. SPS also argued that, if the commission finds an entity's wildfire history to be insufficiently detailed, the commission has the statutory authority to reject their application.

Commission Response

The commission agrees with commenters that the wildfire history requirement in proposed §25.60(e)(1)(A)(iv) is overly burdensome and instead requires an entity to include the following in its executive summary under adopted §25.60(f)(2)(A)(iv): "A description of wildfires that impacted or were caused by the entity's infrastructure in its wildfire risk area(s) in the preceding 10 years, or to the extent known or available, including the date, implicated TDEM disaster districts, and known impacts of each wildfire to the entity's infrastructure."

Proposed §25.60(e)(1)(B)(i)-(vii)

Proposed §25.60(e)(1)(B)(i)-(vii) establish the required contents of entities' wildfire mitigation plans.

AEP Companies asserted that proposed §25.60(e)(1)(B)(i) through (vii) impose "non-statutory requirements that exceed the scope of PURA §38.080(b), such as prescriptive technology mandates, historical data beyond statutory intent, and mapping methodology requirements." Accordingly, AEP Companies recommended that the commission replace proposed §25.60(e)(1)(B)(i) through (vii) with the statutory language in PURA §38.080(b)(1) through (11).

Commission Response

The commission declines to replace proposed §25.60(e)(1)(B)(i) through (vii) with the language in PURA §39.080(b)(1) through (11) as recommended by AEP Companies. PURA §38.080(b)(11) provides that an entity must include in its wildfire mitigation plans "any other information the commission may require." The commission has determined that the requirements in adopted §25.60(f)(2)(B) are necessary for the commission to assess the public interest of an entity's wildfire mitigation plan.

Proposed §25.60(e)(1)(B)(ii)

Proposed §25.60(e)(1)(B)(ii) requires entities to include in their wildfire mitigation plans a detailed plan for vegetation management.

Entergy recommended that the commission revise proposed §25.60(e)(1)(B)(ii) to specify that the requirement may be satisfied by a cross-reference to an entity's annual vegetation management plan, as required by 16 TAC §25.96, relating to Vegetation Management.

Commission Response

The commission declines to modify proposed §25.60(e)(1)(B)(ii) to specify that the requirement may be satisfied by a cross-reference to an entity's annual vegetation management plan as recommended by Entergy because it is unnecessary. Adopted §25.60(f)(3) specifies how an entity may use other substantially similar information to meet the wildfire mitigation plan requirements under adopted §25.60(f)(2)(B).

Proposed §25.60(e)(1)(B)(iv)

Proposed §25.60(e)(1)(B)(iv) requires entities to include in their wildfire mitigation plans a detailed operations plan for responding to a wildfire in the entities' wildfire risk area(s).

TPPA recommended that the commission delete proposed §25.60(e)(1)(B)(iv) from the adopted rule because "the requirement improperly conflates mitigation with emergency operations." TPPA asserted that wildfire mitigation plans should be focused on preventative measures, not response measures.

Commission Response

The commission declines to delete proposed §25.60(e)(1)(B)(iv) as recommended by TPPA because PURA §38.080(b)(3) expressly requires an entity's wildfire mitigation plan to include "a detailed operations plan for reducing the likelihood of wildfire ignition from the utility's or cooperative's facilities and for responding to a wildfire" (emphasis added). However, to better reflect the language of PURA §38.080(b)(3), the commission combines the requirements of proposed (e)(1)(B)(iii) and (iv) into adopted §25.60(f)(2)(B)(iii).

Proposed §25.60(e)(1)(B)(iv) and (v)

Proposed §25.60(e)(1)(B)(iv) requires entities to include in their wildfire mitigation plans a detailed operations plan for responding to a wildfire in the entities' wildfire risk area(s). Proposed §25.60(e)(1)(B)(v) requires entities to include in their wildfire mitigation plans a description of the procedures the entity intends to use to restore its system during and after a wildfire, including contact information for the entity that may be used for coordination with TDEM and first responders

Entergy requested that the commission clarify the difference between 'a detailed operations plan for responding to a wildfire in the utility' s identified wildfire risk area(s),' as required by proposed §25.60(e)(1)(B)(iv), and 'a description of the procedures that the utility intends to use to restore its system during and after a wildfire,' as required by proposed §25.60(e)(1)(B)(v).

Commission Response

The commission combines the requirements of proposed (e)(1)(B)(iii) and (iv) into adopted §25.60(f)(2)(B)(iii) to better reflect the language of PURA §38.080(b)(3).

The commission clarifies that the difference between the requirements is a sequencing one. The mitigation and response procedures under adopted §25.60(f)(2)(B)(iii) correspond to before and during a wildfire event, while the system restoration procedures under adopted §25.60(f)(2)(B)(iv) correspond to during and following a wildfire event.

Proposed §25.60(e)(1)(B)(vi)

Proposed §25.60(e)(1)(B)(vi) requires entities to include in their wildfire mitigation plans a community outreach and public awareness plan regarding wildfire risks and actual wildfires affecting the entity's service territory or system, including a specific communications plan for responding to a wildfire.

PEC noted that the requirement under proposed §25.60(e)(1)(B)(vi) may duplicate existing requirements for emergency operations plan filings. PEC recommended that the commission revise proposed §25.60(e)(1)(B)(vi) to specify that entities with existing community outreach and public awareness

plans, as included in their emergency operations plans, should provide a copy of those existing plans.

Commission Response

The commission declines to modify proposed §25.60(e)(1)(B)(vi) to require an entity to submit any existing community outreach and public awareness plans from its emergency operations plan, as recommended by PEC, because it is unnecessary. Adopted §25.60(f)(3) specifies that an entity may use substantially similar information required under other law to fulfill the wildfire mitigation plan requirements under adopted §25.60(f)(2)(B).

Proposed §25.60(e)(1)(B)(vii)

Proposed §25.60(e)(1)(B)(vii) requires entities to include in their wildfire mitigation plans a description of the entity's procedures for de-energizing power lines and disabling reclosers or implementing a public safety power shut-off plan to mitigate for potential wildfires, including, if applicable, a description of the entity's procedures for coordinating with its regional transmission organization, independent system operator, or other reliability coordinator.

TEC expressed concern that proposed §25.60(e)(1)(B)(vii) would require entities to file "a set process" with the commission regarding how they will de-energize lines, disable reclosers, and implement a public safety power shut-off (PSPS) plan to mitigate for potential wildfires. TEC argued that having a set process on-file with the commission is problematic because, if approved, it would "bind" the way entities respond to actual wildfire events and discourage entities from utilizing processes that are more effective or applicable to the event at-hand for fear of losing their liability protection. TEC further argued that, as a general matter, the procedures under proposed §25.60(e)(1)(B)(vii) implicate a "drastic measure" and the adopted rule "should not imply any expectation that end users will be removed from service." TEC asserted that, if entities do activate the procedures under proposed §25.60(e)(1)(B)(vii), it "can only be made based on the unique circumstances present at the local level" and there must be coordination between all relevant entities, including between the filing entities, transmission operators, and local distribution service providers. Accordingly, TEC recommended that the commission revise proposed §25.60(e)(1)(B)(vii) to remove the requirement for entities to describe their procedures for de-energizing lines, disabling reclosers, and implementing a PSPS plan, and instead provide that entities should describe their procedures for "coordinating with its local distribution providers or transmission operator, as applicable, and its regional transmission organization, independent system operator, or other reliability coordinator."

TPPA noted that proposed §25.60(e)(1)(B)(vii) implicates two different planning processes--the Enhanced Powerline Safety Settings (EPSS) process and the PSPS planning process--both of which often require substantial capital investment and, if activated, can result in broader public impacts. TPPA further noted that, to its knowledge, neither EPSS nor PSPS processes are currently used within ERCOT. Accordingly, TPPA recommended that the commission clarify its expectations on the level of detail required for entities to comply with proposed §25.60(e)(1)(B)(vii) by adding the following sentence: "The entity's procedures for deenergizing power lines and disabling reclosers or implementing a public safety power shut-off plan will be sufficient if the entity provides a description of the utility' s plan for ensuring its facilities will not be re-energized inappropriately in the event that a wildfire disables power to those facilities."

Golden Spread expressed two concerns on proposed §25.60(e)(1)(B)(vii). First, Golden Spread expressed its concern that proposed §25.60(e)(1)(B)(vii) doesn't specify that transmission service providers should include "procedures for coordinating with distribution service providers, such as electric cooperatives, served by affected transmission lines before their de-energization occurs." Second, Golden Spread expressed its concern that proposed §25.60(e)(1)(B)(vii) could be interpreted to require entities to "de-energize or disable a facility" even when it would be "inappropriate for public safety or could exacerbate a wildfire situation." Accordingly, Golden Spread recommended that the commission revise proposed §25.60(e)(1)(B)(vii) to specify that entities should include a description of their procedures for de-energizing power lines and disabling reclosures or implementing a public safety power shut-off, a description of the "situations in which it may implement such procedures," and, if applicable, their procedures for coordinating with "a distribution service provider served by an affected transmission facility" and its regional transmission organization, independent system operator, or other reliability coordinator.

PEC recommended that the commission revise proposed §25.60(e)(1)(B)(vii) to clarify that "the required description of de-energization or recloser procedures may be more general rather than specific in nature, given that there may be security and other confidentiality concerns associated with publicly disclosing detailed descriptions of such matters." Further, PEC asserted that requiring all entities to implement a public safety power shut-off plan "may not be operationally feasible or prudent…in all cases" and recommended that the commission revise proposed §25.60(e)(1)(B)(vii) to clarify that "plans are not required to include a public safety power shut-off plan…to obtain approval, but may instead implement other types of de-energization and reclosure procedures as a reasonable wildfire mitigation measure."

Cross Texas recommended that the commission revise proposed §25.60(e)(1)(B)(vii) to clarify that, "to the extent an entity operates transmission facilities, then with respect to those transmission facilities, the entity shall satisfy this requirement by complying with the procedures of the relevant regional transmission organization, independent system operator, or other reliability coordinator."

Commission Response

The commission agrees with commenters that recommended that an entity should not be required to develop or implement a PSPS plan. A PSPS is a high-impact measure that is not suitable or practicable for all entities to implement. Accordingly, in developing a plan for approval, an entity should consider whether the development of a PSPS plan is appropriate relative to its individual system characteristics and wildfire risks. For organizational purposes, the commission redesignates proposed §25.60(e)(1)(B)(vii) as adopted §25.60(f)(2)(B)(vi) and revises the requirement to provide that an entity must provide a description of procedures to de-energize power lines and disable reclosers to either mitigate for potential wildfires or implement a PSPS.

Additionally, the commission agrees with commenters that an entity's procedures under proposed §25.60(e)(1)(B)(vii) should additionally address how it intends to coordinate with transmission operators and distribution service providers and revises adopted §25.60(f)(2)(B)(vi) accordingly.

The commission disagrees with TPPA's and PEC's recommendations to allow for more generalized statements rather than a complete description of the procedures to de-energize power lines or disable reclosers. An entity must consider its unique circumstances when developing a procedure to ensure it appropriately conforms with its system characteristics and addresses its unique wildfire risks. Accordingly, the commission declines to make the recommended changes to the proposed rule.

Similarly, the commission disagrees with Cross Texas' recommendation to allow an entity to simply conform its procedures under adopted §25.60(f)(2)(B)(vi) to follow the procedures of the applicable regional transmission operator, independent system operator, or reliability coordinator. These entities are responsible for the coordination of transmission facility operation across an entire power region and, as such, their procedures will not inherently address the local issues that any individual electric utility, municipally owned utility, or electric cooperative may face when confronting a wildfire. Accordingly, the commission declines to make the recommended changes to the proposed rule.

Proposed §25.60(e)(1)(C)

Proposed §25.60(e)(1)(C) requires entities to include in their applications for approval of a wildfire mitigation plan an analysis of their wildfire mitigation plans prepared by an independent expert in fire risk mitigation.

TNMP recommended that the commission revise proposed §25.60(e)(1)(C) to allow for the involvement of more than one independent expert's analysis "to the extent necessary to provide a sufficient detailed assessment of adequacy and appropriateness of the entity's plan." TNMP asserted that "more than one expert may be needed to address varying wildfire risks and best practices" in entities' wildfire mitigation plans and that, allowing entities to use multiple experts, as necessary, would "ensure plans are adequately tailored to each entity's specific conditions."

Commission Response

The commission agrees with TNMP and specifies the following in adopted §25.60(f)(2)(C)(i): "Qualifications may be met in aggregate by a team of multiple independent experts, each with different areas of expertise, provided that each independent expert has not less than five years of relevant professional experience and the team designates a lead independent expert to be responsible for preparing the analysis."

Golden Spread expressed concern that, due to a "limited pool of qualified experts, especially in rural Texas," compliance with proposed §25.60(e)(1)(C) may be "difficult" or result in "disproportionate costs" for entities that are smaller in size. Accordingly, Golden Spread recommended that the commission revise proposed §25.60(e)(1)(C) to specify that "an appropriately trained person associated with a volunteer fire department" may qualify as an independent expert in fire risk mitigation. Golden Spread argued that, because "in rural Texas, fire safety and response is often provided by volunteer fire departments" and "volunteers undergo fire training or have experience tailored to the fire risks in their region," its recommendation provides a "mutually beneficial solution" that would "improve the availability of independent experts and have the added benefit of supporting volunteer fire departments that frequently face funding challenges."

Commission Response

The commission declines to modify proposed §25.60(e)(1)(C) to specify that a volunteer fire department member may qualify as an independent expert as recommended by Golden Spread. Instead, the commission clarifies that a volunteer fire department member may serve as an independent expert if they meet the requirements of adopted §25.60(f)(2)(C) and are able to provide supporting documentation of that fact.

AEP Companies asserted that the requirements in proposed §25.60(e)(1)(C) exceed statutory authority. Accordingly, AEP Companies recommended that the commission delete proposed §25.60(e)(1)(C)(i) through (iii) from the adopted rule and revise the language in proposed §25.60(e)(1)(C) to specify that an independent expert's analysis of an entity's wildfire mitigation plan should evaluate the adequacy of the plan relative to identified wildfire risks. AEP Companies provided redlines consistent with its recommendation.

Commission Response

The commission declines to delete proposed §25.60(e)(1)(C)(i) through (iii) and revise proposed §25.60(e)(1)(C) to specify that an independent expert's analysis of an entity's wildfire mitigation plan should evaluate the adequacy of the plan relative to identified wildfire risks as recommended by AEP Companies. PURA §38.080(b)(11) provides that an entity must include in its wildfire mitigation plans "any other information the commission may require." The commission has determined that the information to be furnished by an independent expert under adopted §25.60(f)(2)(C)(ii) is necessary for the commission to assess the public interest of an entity's wildfire mitigation plan.

Proposed §25.60(e)(1)(C)(i)

Proposed §25.60(e)(1)(C)(i) requires the analyses of entities' wildfire mitigation plans prepared by independent experts to include a description of the independent experts' qualifications and expertise relative to fire risk mitigation.

CenterPoint recommended that the commission revise proposed §25.60(e)(1)(C)(i) to specify that independent experts must include in their analyses of entity wildfire mitigation plans a description of their qualifications and expertise relative to fire risk mitigation "in the electric utility industry." CenterPoint provided redlines in accordance with its recommendation.

Commission Response

The commission agrees with CenterPoint and specifies in adopted §25.60(f)(2)(C) that an independent expert must have not less than five years of professional experience in electric utility fire risk mitigation, including in wildfire operations, electric transmission and distribution operations, and risk analysis methods. Further, the commission specifies in adopted §25.60(f)(2)(C)(ii)(I) that an independent expert's analysis must include "supporting documentation that the independent expert meets the required qualifications and an attestation that the independent expert was not involved in designing the entity's wildfire mitigation plan or its component programs."

Entergy recommended that the commission to revise proposed §25.60(e)(1)(C)(i) to "provide clear criteria" for who qualifies as an independent expert in fire risk mitigation, such as required academic degrees or certifications, years of professional experience specifically related to wildfire risk analysis or mitigation, or demonstrated familiarity with current wildfire mitigation technologies and practices.

Commission Response

The commission agrees with Entergy and specifies in adopted §25.60(f)(2)(C) that an independent expert must have not less

than five years of professional experience in electric utility fire risk mitigation, including in wildfire operations, electric transmission and distribution operations, and risk analysis methods. Further, the commission specifies in adopted §25.60(f)(2)(C)(ii)(I) that an independent expert's analysis must include "supporting documentation that the independent expert meets the required qualifications and an attestation that the independent expert was not involved in designing the entity's wildfire mitigation plan or its component programs."

Proposed §25.60(e)(1)(C)(iii)

Proposed §25.60(e)(1)(C)(iii) requires the analyses of entities' wildfire mitigation plans prepared by independent experts to include a detailed assessment of adequacy and appropriateness of the contents of the plans, relative to the risks in entities' wildfire risk area(s), industry standards and best practices, and any available alternative wildfire mitigation measures.

SPS recommended that the commission remove the phrase 'adequacy and appropriateness' from proposed §25.60(e)(1)(C)(iii) and provided two supporting reasons. First, SPS asserted that, "in the litigious environment of wildfire mitigation, independent experts may be cautious about assuming any liability for future wildfire events, and therefore unwilling to attest that an entity' s proposed plan is 'adequate and appropriate' to mitigate the risk of catastrophic wildfire." Second, SPS asserted that PURA §38.080 requires only 'an analysis of the wildfire mitigation plan' and does not require an adequacy determination.

Commission Response

The commission disagrees with SPS' assertions that PURA §38.080 does not provide for an independent expert to assess the adequacy or appropriateness of an entity's wildfire mitigation plan or that an independent expert would be exposed to liability risk by doing so. Under PURA §38.080(b)(7), an entity's wildfire mitigation plan must include "an analysis of the…plan prepared by an independent expert in fire risk mitigation" (emphasis added). Certainly, the Legislature would not have included this requirement in PURA §38.080 if it did not intend for the independent expert to assess the adequacy and appropriateness of the entity's plan, relative to fire risk mitigation, or if doing so would expose the independent expert to liability risk.

PEC asserted that the commission's public interest determination under proposed §25.60(f)(4) "may turn in part on the cost of implementing wildfire mitigation measures relative to their benefit or relative to other, less costly mitigation measures." Accordingly, PEC recommended that the commission revise proposed §25.60(e)(1)(C)(iii) to specify that an independent expert's assessment of the adequacy and appropriateness of an entity's wildfire mitigation plan may include, as appropriate, a cost-benefit or cost comparison analysis.

Commission Response

The commission declines to modify proposed §25.60(e)(1)(C)(iii) to specify that an independent expert's assessment may include a cost-benefit or cost comparison analysis as recommended by PEC because it is unnecessary. Under adopted §25.60(f)(2)(C)(ii)(II), the independent expert's analysis must include "a description of the independent expert's methodology for analyzing the entity's wildfire mitigation plan." An independent expert is not restricted from including a cost-benefit or cost comparison analysis as part of this methodology.

Entergy asserted that the lack of established standards or benchmarks in proposed §25.60(e)(1)(C)(iii) poses questions and concerns around the uniformity and accountability of independent experts' assessments of the adequacy and appropriateness of entities' wildfire mitigation plans. Accordingly, Entergy recommended that the commission revise proposed §25.60(e)(1)(C)(iii) to "either reference specific standards or require that the expert explicitly identify the standards and best practices they are using in their review." Additionally, Entergy asserted that "the standards should adequately differ between different levels of wildfire risk and geographic regions."

Commission Response

The commission declines to modify proposed §25.60(e)(1)(C)(iii) to reference specific assessment standards as recommended by Entergy because it would inappropriately suggest an independent expert must rely on any one framework.

The commission also declines to modify proposed §25.60(e)(1)(C)(iii) to require an independent expert to specify the assessment standards or best practices they employed as recommended by Entergy because it is unnecessary. Adopted §25.60(f)(2)(C)(ii)(II) requires an independent expert's analysis to include a description of the independent expert's analysis methodology.

LCRA asserted that any alternative wildfire mitigation measures suggested by an entity's independent expert in fire risk mitigation under proposed §25.60(e)(1)(C)(iii) must be limited to those that are deemed 'reasonable.' Accordingly, LCRA recommended that the commission revise proposed §25.60(e)(1)(C)(iii) by replacing the reference to 'available' with 'reasonable.'

Commission Response

The commission agrees with LCRA and specifies in adopted §25.60(f)(2)(C)(ii)(III) that an independent expert must consider "any reasonable alternative wildfire mitigation measures" when assessing the adequacy and appropriateness of an entity's wildfire mitigation plan.

Oncor recommended that the commission delete the phrase 'and any available alternative wildfire mitigation measures' from proposed §25.60(e)(1)(C)(iii). Oncor argued that requiring independent experts to consider 'any available alternative…measures' could have a "limited usefulness in broad application to all utilities" because "the alternative measure identified by the independent expert, while useful for one utility and its unique service territory, may not be the best measure for a utility with a service area that covers a more varied geographic and climate region." Alternatively, if this consideration is retained in the adopted rule, Oncor recommended that the commission make it optional, rather than required, for independent experts.

Commission Response

The commission declines to modify proposed §25.60(e)(1)(C)(iii) to eliminate or make an independent expert's consideration of alternative wildfire mitigation measures optional as recommended by Oncor. However, to clarify the intent of the requirement, the commission replaces 'available' with 'reasonable' in adopted §25.60(f)(2)(C)(ii)(III).

New §25.60(e)(1)(C)(iv)

SPS asserted that, in order to comply with proposed §25.60(e)(1)(C), entities will incur costs that do not fall clearly under existing cost recovery mechanisms. Accordingly, SPS recommended that the commission add new §25.60(e)(1)(C)(iv) to establish how electric utilities should request recovery of costs that are associated with retaining an independent expert

or developing an approved wildfire mitigation plan. SPS posed a primary and alternative version of new §25.60(e)(1)(C)(iv) and requested that, at minimum, the commission adopt the alternative version. SPS' primary version of new §25.60(e)(1)(C)(iv) would provide that electric utilities may request recovery for costs associated with an approved plan that are not otherwise included in the utility's rates through a rider, interim rate proceeding, base-rate proceeding, or as a regulatory asset that includes associated depreciation expense and carrying costs at the utility' s weighted average cost of capital as established in the utility's most recent base-rate proceeding. SPS' alternative version of new §25.60(e)(1)(C)(iv) would provide that electric utilities may request recovery for costs associated with the independent expert or other costs associated with developing an approved plan through their next base-rate proceeding."

Commission Response

The commission declines to adopt SPS's recommended changes because cost recovery issues, beyond the limited issues related to self-insurance plans, are beyond the scope of this rulemaking project.

Proposed §25.60(e)(1)(E)

Proposed §25.60(e)(1)(E) requires entities to include in their applications for approval of a wildfire mitigation plan any reports, plans, or other information that they determine are relevant to their wildfire mitigation efforts and would assist the commission in making a public interest determination on their wildfire mitigation plans. Proposed §25.60(e)(1)(E) further requires entities to file those reports, plans, or other information in their entirety and include a summary of how the reports, plans, or other information relate to, or impact, their wildfire mitigation efforts.

Entergy recommended that the commission revise proposed §25.60(e)(1)(E) to specify that "a cross-reference to the filed reports" is sufficient.

AEP Companies recommended that the commission revise proposed §25.60(e)(1)(E) to provide that entities may include "a citation of these reports with a brief summary explaining their similarity and applicability with the full documents available upon request."

Commission Response

The commission has determined that it is appropriate for an entity to file all application materials in their entirety. Accordingly, the commission declines to remove the comprehensive filing requirement from proposed §25.60(e)(1)(E)--or adopted §25.60(f)(2)(D)(ii)--as recommended by Entergy and AEP Companies.

Proposed §25.60(e)(2)

Proposed §25.60(e)(2) provides that entities may submit any information required under other law that is substantially similar to the information that entities are required to include in their wildfire mitigation plans. Proposed §25.60(e)(2) further provides that entities must clearly identify in their wildfire mitigation plans the requirement the submitted information is intended to fulfill and include a description of why they believe the submitted information is substantially similar to that requirement.

LCRA recommended that the commission revise proposed §25.60(e)(2) to allow entities to provide cross-references to other existing reports--such as storm hardening plans and emergency operations plans--in their wildfire mitigation plans, rather than requiring entities to produce "a compilation of distinct plans for the singular purpose of meeting this rule."

Commission Response

The commission has determined that it is appropriate for an entity to file all application materials in their entirety. Accordingly, the commission declines to revise the comprehensive filing requirement in proposed §25.60(e)(2) as recommended by LCRA.

Proposed §25.60(e)(4)

Proposed §25.60(e)(4) provides that entities may designate portions of their applications for approval of a wildfire mitigation plan, including portions of its plan, as critical energy infrastructure information, as defined by applicable law, and file such portions confidentially.

TPPA recommended that the commission revise proposed §25.60(e)(4) to allow entities to file their entire applications--including any attachments--as confidential, with the exception of the executive summary. TPPA further recommended that, at a minimum, the commission revise proposed §25.60(e)(3) to extend confidential treatment to competitively sensitive information.

Entergy recommended that the commission revise proposed §25.60(e)(4) to allow information other than critical energy infrastructure information, such as 'contact information for the utility that may be used for coordination with TDEM and first responders' as implicated by proposed §25.60(e)(1)(B)(iv), to be filed confidentially.

Oncor recommended that the commission revise proposed §25.60(e)(4) to allow information other than critical energy infrastructure information, such as proprietary business and financial information, to be designated and filed confidentially. Oncor provided redlines consistent with its recommendation.

Commission Response

In order to minimize conflict between §25.60 and other existing rule language relating to the confidential treatment of information, the commission deletes this provision in its entirety.

Proposed §25.60(f)

Proposed §25.60(f) establishes how the commission will process entities' applications for approval of a wildfire mitigation plan.

TEC recommended that the commission revise proposed §25.60(f) to provide that wildfire mitigation plans will be processed on an "administrative basis," rather than as contested cases because there is no element of rate recovery or actions with significant rate impacts. TEC noted that smaller electric cooperatives would be burdened by the costs associated with contested case process.

TPPA expressed its concern that proposed §25.60(f) provides that wildfire mitigation plans will be processed as contested cases, given that "contested cases require significant time and expense, and litigating each plan could cost entities hundreds of thousands of dollars, resources that would otherwise be available for actual wildfire mitigation measures."

Golden Spread asserted its opposition to the commission processing electric cooperatives' wildfire mitigation plans as contested cases and provided three primary reasons. First, Golden Spread asserted that, while HB 145 directs the Commission to approve wildfire mitigation plans within 180 days if they are in the public interest, it "does not contemplate a con-

tested case process" and "the public interest finding does not require a contested case, at least not for electric cooperatives." Second, Golden Spread asserted that it is "not appropriate" for the commission to process electric cooperatives' wildfire mitigation plans as contested cases because there are "different statutory context and jurisdictional limitations that preclude a contested case process for electric cooperatives." Last, Golden Spread asserted that requiring electric cooperatives to engage in contested cases would impose "significant" financial burdens on small, rural electric cooperatives and their members, especially if required to obtain plan reapproval every three years as provided by §25.60(c)(2)(C). Accordingly, Golden Spread recommended that the commission "adopt a more efficient procedural mechanism to process wildfire mitigation plans for electric cooperatives, like that used for processing emergency operations plans."

Commission Response

The commission declines to modify proposed §25.60(f), as it relates to the contested case process, as recommended by several commenters. A contested case proceeding is one in which, according to 16 TAC §22.2(16), a state agency determines the legal rights, duties, or privileges of a party after an opportunity for adjudicative hearing. In this instance, the commission will determine an entity's rights and obligations by approving, modifying, or rejecting an application for approval of a wildfire mitigation plan. For example, under PURA §38.080(d), an entity must implement and adhere to its approved plan or be subject to administrative enforcement action. Therefore, a contested case proceeding is the appropriate procedural paradigm for the commission to follow.

Proposed §25.60(f)(1)

Proposed §25.60(f)(1) requires entities to provide, not later than the working day following their filing of an application for approval of a wildfire mitigation plan, notice of filing and 30-day intervention deadline to all municipalities in the entities' service areas that have retained original jurisdiction, all parties in the entities' most recent base-rate proceedings, the Office of Public Utility Counsel, and the entities' regional transmission operators, independent system operators, or other reliability coordinators.

LCRA commented that it "fails to see any need to open the door to intervenors for approval of the WMPs" and asserted that "there are no benefits to be gained in extending participation beyond the applicant and Commission Staff as there is no cost recovery associated with the WMP, and any costs incurred in implementing the plan would be reviewed during the entity's rate case." LCRA additionally asserted that the resources expended by entities and intervenors will be substantial, particularly because "independent experts are required and preparation is burdensome." Accordingly, LCRA recommended that the commission delete proposed §25.60(f)(1) from the adopted rule.

Golden Spread argued that the notice of filing and intervention requirements under proposed §25.60(f)(1) "cannot and should not apply to electric cooperatives" because the requirements "appear to be based on ratemaking requirements for entities other than electric cooperatives" and are "not appropriate or necessary to determine that an electric cooperative's plan meets the requirements of HB 145." Accordingly, Golden Spread recommended that the commission revise proposed §25.60(f)(1) to recuse electric cooperatives and municipally owned utilities from providing a notice of filing to any party and provide that intervention in electric cooperatives' wildfire mitigation plan cases is not permitted.

TPPA recommended that, if wildfire mitigation plans are to be processed as contested cases under the adopted rule, the commission revise proposed §25.60(f)(1) to limit participation in the contested cases to the commission, OPUC, TDEM, the filing entity's independent system operator, and the filing entity.

Commission Response

The commission declines to delete proposed §25.60(f)(1) as recommended by LCRA or limit participation in the proceedings as recommended by TPPA. Whether an entity recognizes the benefits of public participation in a proceeding to review a proposed wildfire mitigation plan, those with justiciable interests are largely afforded the opportunity to intervene in contested case proceedings. See 16 Tex. Admin. Code §22.103(b). The commission recognizes that parties beyond the filing entity and commission staff may have interests that are adversely affected by the commission's decision and, therefore, should have the opportunity to participate in the proceeding.

The commission disagrees with Golden Spread's assertions that the notice and intervention requirements do not apply to electric cooperatives because the requirements appear to be based on ratemaking requirements. First, whether the requirements in this rule bear similarities to other rules adopted by the commission has no bearing on the legality of adopting the requirements in this order. Second, the commission must determine whether a proposed wildfire mitigation plan is in the public interest. See PURA §38.080(c). This public interest test applies equally to applications filed by electric utilities, municipally owned utilities, and electric cooperatives. As a result, it stands to reason that those with a justiciable interest – irrespective of which type of entity provides them with electric service – should be entitled to participate in the commission's proceeding. Therefore, the commission finds it reasonable that notice of the filing of the application for approval and of the intervention deadline should be required. Thus, the commission declines to make a special exception exempting electric cooperatives from providing notice of filing and the intervention deadline.

OPUC noted that the 30-day intervention deadline established in proposed §25.60(f)(1) is inconsistent with the 45-day intervention deadline established in §22.104, relating to Motions to Intervene. OPUC asserted that, because no justification for deviating from this language has been presented, the 30-day intervention deadline would create confusion for the public if adopted. Accordingly, OPUC recommended that the commission extend the intervention deadline in proposed §25.60(f)(1) from 30 days to 45 days.

Commission Response

The commission declines to revise the intervention deadline in proposed §25.60(f)(1) as recommended by OPUC. Given that the commission must render a decision on an entity's application within 180 days from the date the application is filed, the commission finds it reasonable to adopt a different intervention time period for proceedings conducted under this adopted rule than what may exist for other types of proceedings that are not subject to the same rapid procedural deadline.

Proposed §25.60(f)(1)(A)

Proposed §25.60(f)(1)(A) requires entities to provide, not later than the working day following their filing of an application for approval of a wildfire mitigation plan, notice of filing and 30-day

intervention deadline to all municipalities in the entities' service areas that have retained original jurisdiction.

TEC recommended that, if plans are to be processed as contested cases under the adopted rule, the commission revise proposed §25.60(f)(1)(A) to exempt electric cooperatives from the required notice to municipalities.

Golden Spread asserted that the required notice in proposed §25.60(f)(1)(A) should not apply to electric cooperatives because Chapter 33 of PURA--which addresses original municipal jurisdiction and the surrender of original municipal jurisdiction over rates, operations, and services to the commission--applies only to 'electric utilities,' a designation from which electric cooperatives are explicitly excluded.

Cross Texas asserted that the required notice in proposed §25.60(f)(1)(A) would create "implementation challenges" and "uncertainty" for transmission-only utilities, because transmission-only utilities do not maintain retail service territories, in many cases do not traverse municipal boundaries, and are not subject to municipalities' original jurisdiction. Accordingly, Cross Texas recommended that the commission revise proposed §25.60(f)(1)(A) to require that entities are required to provide notice to all municipalities in the entity's service area that have retained original jurisdiction "to the extent the utility is subject to that municipality's original jurisdiction."

Commission Response

The commission declines to modify proposed §25.60(f)(1)(A) to exempt electric cooperatives or transmission-only utilities from providing notice to all municipalities in their service areas that have retained original jurisdiction as recommended by commenters because it is unnecessary. Proposed §25.60(f)(1)--or adopted §25.60(g)(1)--requires an entity to provide notice to certain parties as those parties apply to the entity. For example, a transmission-only utility will not have municipalities retaining original jurisdiction located in its service territory; therefore, that utility will not need to provide notice to municipalities under adopted §25.60(g)(1)(A). Thus, an entity will need to determine to which parties the notice provision applies in its specific case and serve notice in accordance with the rule.

Proposed §25.60(f)(1)(B)

Proposed §25.60(f)(1)(B) requires entities to provide, not later than the working day following their filing of an application for approval of a wildfire mitigation plan, notice of filing and 30-day intervention deadline to all parties in the entities' most recent base-rate proceedings.

TEC recommended that the commission either delete proposed §25.60(f)(1)(B) or exempt distribution-only electric cooperatives and municipally owned utilities from the requirement.

TPPA recommended the commission delete proposed §25.60(f)(1)(B) from the adopted rule. TPPA asserted that "it is not appropriate to use a rate proceeding to determine the service list for a non-rate proceeding" because "parties with an interest in a rate proceeding will not have the same interest in a wildfire mitigation plan proceeding."

Golden Spread asserted that the required notice in proposed §25.60(f)(1)(B) should not apply to electric cooperatives because "the Commission does not have jurisdiction over electric cooperative retail rates and, therefore, electric cooperatives do not file base-rate proceedings at the Commission." Golden Spread further asserted that, because electric cooperatives have not participated in base-rate proceedings since the deregulation of the Texas electric market, "identifying, locating, and providing notice to parties from such long-closed dockets would be exceedingly difficult, if not impossible, and would serve no practical purpose given the staleness of the information."

Commission Response

The commission declines to modify proposed §25.60(f)(1)(B) to exempt electric cooperatives or municipally owned utilities from providing notice to all parties in their most recent base-rate proceeding as recommended by commenters because it is unnecessary. Proposed §25.60(f)(1)--or adopted §25.60(g)(1)--requires an entity to provide notice to certain parties as those parties apply to the entity. For example, an electric cooperative may not have had a base rate proceeding before the commission; therefore, that cooperative will not need to provide notice to those parties under adopted §25.60(g)(1)(B). Thus, an entity will need to determine to which parties the notice provision applies in its specific case and serve notice in accordance with the rule.

Proposed §25.60(f)(1)(C)

Proposed §25.60(f)(1)(C) requires entities to provide, not later than the working day following their filing of an application for approval of a wildfire mitigation plan, notice of filing and 30-day intervention deadline to the Office of Public Utility Counsel.

Golden Spread asserted that the required notice to OPUC in proposed §25.60(f)(1)(C) should not apply to electric cooperatives because "OPUC does not represent the interests of electric cooperative member-consumers in retail rate matters at the Commission, because no such matters exist." Golden Spread further asserted that "any interest OPUC may have in evaluating the reasonableness of transmission-related costs, as opposed to distribution-related costs, should be dealt with in TCOS proceedings that are designed for such an evaluation, not in wildfire mitigation plan filings" because the wildfire mitigation plan proceeding "cannot involve electric cooperative rates or other consumer issues within the exclusive jurisdiction of the electric cooperative board."

Commission Response

The commission declines to modify proposed §25.60(f)(1)(C) to exempt electric cooperatives from providing notice to OPUC as recommended by Golden Spread because it is unnecessary. Proposed §25.60(f)(1)--or adopted §25.60(g)(1)--requires an entity to provide notice to certain parties as those parties apply to the entity. For example, OPUC represents the interests of residential and small commercial customers; therefore, an entity that does not serve residential or small commercial customers will not need to provide notice to OPUC under adopted §25.60(g)(1)(C). Thus, an entity will need to determine to which parties the notice provision applies in its specific case and serve notice in accordance with the rule.

Proposed §25.60(f)(1)(D)

Proposed §25.60(f)(1)(D) requires entities to provide, not later than the working day following their filing of an application for approval of a wildfire mitigation plan, notice of filing and 30-day intervention deadline to the entities' regional transmission operators, independent system operators, or other reliability coordinators.

TEC recommended that, if plans are to be processed as contested cases under the adopted rule, the commission revise pro-

posed §25.60(f)(1) to exempt distribution-only electric cooperatives from the required notice to regional transmission operators, independent system operators, or other reliability coordinators.

Golden Spread asserted that the required notice in proposed §25.60(f)(1)(D) should not apply to distribution-only electric cooperatives, at a minimum, because they don't own transmission facilities and, accordingly, don't interact with regional transmission operators, independent system operators, or reliability coordinators.

Commission Response

The commission declines to modify proposed §25.60(f)(1)(D) to exempt distribution-only electric cooperatives from providing notice to their regional transmission operator, independent system operator, or other reliability coordinator as recommended by commenters because it is unnecessary. Proposed §25.60(f)(1)--or adopted §25.60(g)(1)--requires an entity to provide notice to certain parties as those parties apply to the entity. For example, a distribution-only utility will not have interactions with a regional transmission operator; therefore, that utility will not need to provide notice to the regional transmission operator under adopted §25.60(g)(1)(D). Thus, an entity will need to determine to which parties the notice provision applies in its specific case and serve notice in accordance with the rule.

Proposed §25.60(f)(2)

Proposed §25.60(f)(2) provides that entities' applications are sufficient if the entities have filed a notice of intent as required by proposed §25.60(d), the entities' applications include the information required by proposed §25.60(e), and the entities have filed proof that their notices of filing have been provided in accordance with proposed §25.60(f)(1).

Consistent with its recommended revisions to proposed §25.60(f)(1), Golden Spread recommended that the commission revise proposed §25.60(f)(2) to provide that an entity's wildfire mitigation plan application will be deemed sufficient if the entity has filed a notice of intent as required by proposed §25.60(d), the entity's application includes the information required by proposed §25.60(e), and--if required--the entity has filed proof that it provided notice of filing to the required parties.

Commission Response

The commission declines to modify proposed §25.60(f)(2) to create a carve-out for entities not required to provide notice because it is unnecessary. Proposed §25.60(f)(2)--or adopted §25.60(h)(2)--provides that an entity's notice is sufficient if it has been provided in accordance with the requirements in adopted §25.60(g). As described above, adopted §25.60(g)(1) requires entities to provide notice, as applicable. Therefore, an entity that finds the notice requirements under adopted §25.60(g)(1) inapplicable may refrain from providing notice and still be found in compliance with adopted §25.60(g).

Proposed §25.60(f)(4)

Proposed §25.60(f)(4) provides that the commission will evaluate entities' wildfire mitigation plans for public interest and will not approve applications for approval of wildfire mitigation plans that are not in the public interest.

TPPA recommended that the commission revise proposed §25.60(f)(4) to "explicitly state that wildfire mitigation plans should not be rejected solely because certain measures require multi-year implementation."

Commission Response

The commission declines to specify in proposed §25.60(f)(4) that an entity's wildfire mitigation plan will not be rejected solely because of a multi-year measure implementation schedule as recommended by TPPA. PURA §38.080(c) requires the commission to approve, modify, or reject an entity's plan as necessary to be consistent with the public interest. Accordingly, the commission will consider each application in its entirety and render a decision based on the evidence presented.

Cross Texas recommended that the commission revise proposed §25.60(f)(4) to provide the following: "In evaluating an application for a plan, the Commission shall consider the specific type of entity and the specific type of service or services that the entity provides." Cross Texas asserted that its recommended language would "help ensure that the Commission considers differences between different types of entities--including, for example, the differences between transmission-only utilities such as Cross Texas and other types of electric service providers."

Commission Response

The commission declines to revise proposed §25.60(f)(4) as recommended by Cross Texas because it is unnecessary. The commission will consider each application in its entirety and render a decision based on the evidence presented.

Proposed §25.60(f)(4)(B)

Proposed §25.60(f)(4)(B) provides that, in determining whether entities' wildfire mitigation plans are in the public interest, the commission will consider whether there are more efficient or otherwise superior means of preventing, withstanding, mitigating for, or responding to wildfire risks addressed by the plans.

CenterPoint recommended that the commission revise proposed §25.60(f)(4)(B) to require entities to explain why they selected the measures contained in their wildfire mitigation plan over other "reasonable and readily-identifiable alternatives," rather than requiring entities to explain whether there are 'more efficient or otherwise superior means of preventing withstanding, mitigating for, or responding to wildfire risks addressed by the plan.' CenterPoint noted that, if implemented, this recommendation would ensure consistency between the commission's requirements for wildfire mitigation plans in §25.60 and the commission's requirements for transmission and distribution system resiliency plans under 16 TAC §25.62. CenterPoint further explained that consistency between the two rules would benefit entities that both are required to file a wildfire mitigation plan and have commission-approved system resiliency plans that contain wildfire mitigation measures. CenterPoint provided redlines in accordance with its recommendation.

TPPA expressed its opposition to proposed §25.60(f)(4)(B) in that "it appears the Commission may reject plans even if they are prudent and meet all necessary requirements, because in the Commission's judgement (over the evaluation of an independent expert in fire risk mitigation), it prefers a different approach." TPPA asserted that "deciding what is more efficient or otherwise superior is ultimately a value decision, and the Commission should not substitute its own judgment for that of a utility's or the utility's governing body and the independent third party expert." TPPA further asserted that entities consider a multitude of factors--including time, cost, overall effectiveness, technology requirements, security, the needs of the entire system, and the needs of individual customers--when designing their wildfire mitigation plans, and that the 'analysis of the adequacy and ap-

propriateness of the entity's plan relative the risks in the entity's wildfire risk areas, industry standards and best practices' will be thoroughly verified and be included with the entity's filing.

Golden Spread expressed its concern that the use of the term 'efficient' in proposed §25.60(f)(4)(B) "invites statutory overreach" because it could be "construed as implicating cost-related considerations, which falls outside the scope of wildfire mitigation planning and the Commission's jurisdiction over electric cooperatives." Accordingly, Golden Spread recommended that the commission replace the term 'efficient' with 'effective' in proposed §25.60(f)(4)(B).

SPS asserted that, because "utilities commissioners…are not necessarily experts in wildfire mitigation," the commission should "refrain from interjecting its judgment into operational questions regarding what mitigation practices are superior to others." Accordingly, SPS recommended that the commission delete proposed §25.60(f)(4)(B) from the adopted rule.

Commission Response

The commission agrees with commenters that the phrase 'more efficient or otherwise superior means,' as used in proposed §25.60(f)(4)(B), is overly expansive. Instead, the commission specifies in adopted §25.60(i)(2) that the commission may consider in evaluating an entity's wildfire mitigation plan whether there are 'more reasonable or effective means' of preventing, withstanding, mitigating for, or responding to the wildfire risks addressed by the plan.

New §25.60(f)(4)(C)

TEC recommended that the commission add a new §25.60(f)(4)(C) to establish that the commission will "also consider and weigh the approval of the local cooperative board" when analyzing a wildfire mitigation plan submitted by an electric cooperative. TEC provided redlines consistent with its recommendation.

PEC asserted that the commission should "recognize the unique governance and financial structure of cooperatives" when making its public interest determination on wildfire mitigation plans and recommended that the commission add a new §25.60(f)(4)(C) to specify that the commission's public interest determination may consider whether a wildfire mitigation plan has been approved by an electric cooperative's Board of Directors or municipal entity's city council and whether the measures included, or not included, in an entity's plan are appropriate "in light of their relative costs and benefits." PEC provided redlines consistent with its recommendation.

Commission Response

The commission declines to add new §25.60(f)(4)(C) to specify that the commission will consider whether a municipally owned utility's or electric cooperative's governing body has approved its wildfire mitigation plan as recommended by commenters because it is unnecessary. Adopted §25.60(i)(3) provides that the commission may consider in its evaluation of an entity's plan other factors deemed relevant. Accordingly, no new rule language is required to permit the commission to consider the approval of an entity's governing body.

Proposed §25.60(f)(5)

Proposed §25.60(f)(5) provides that commission denial of an application for approval of an entity's wildfire mitigation plan is not a finding on the prudence or imprudence of the contents of the entity's plan, that entities with a denied application may file a revised application for review and approval by the commission, and that commission approval of an entity's application is effective until the earlier of the fifth anniversary of the date the application was approved or the date the entity receives approval of a subsequent application.

Consistent with its comments on proposed §25.60(d)(1), TPPA asserted that proposed §25.60(f)(5) could create a perverse incentive for entities to avoid filing or maintaining wildfire mitigation plans and recommended that the commission revise proposed §25.60(f)(5) to clarify that "if a plan is not approved, this does not constitute a finding regarding whether the entity owns facilities in a wildfire risk area."

Commission Response

The commission declines to modify proposed §25.60(f)(5) to provide that commission denial of an entity's wildfire mitigation plan does not constitute a finding of the entity's ownership of transmission or distribution facilities in a wildfire risk area as recommended by TPPA.

By filing an application for approval of wildfire mitigation plan with the commission, an entity affirms that it owns a transmission or distribution facility in a wildfire risk area and is required to file a wildfire mitigation plan under PURA §38.080. This truth is not functionally altered or impacted by the commission's decision to approve, modify, or deny an entity's plan.

Proposed §25.60(f)(5)(B)(i)

Proposed §25.60(f)(5)(B)(i) provides that commission approval of an entity's application is effective until the fifth anniversary of the date the application was approved.

AEP Companies requested clarification from the commission on the timeline for approval of wildfire mitigation plans. Additionally, AEP Companies recommended that the commission delete proposed §25.60(f)(5)(B)(i) from the adopted rule to ensure consistency with proposed §25.60(c)(2)(C) and clarify that commission approval of a wildfire mitigation plan remains effective until a new application is approved.

Commission Response

The commission declines to delete proposed §25.60(f)(5)(B)(i) as recommended by AEP Companies and clarifies that proposed §25.60(f)(5)(B)(i)--or adopted §25.60(j)(2)(B)(i)--works in tandem with the reapproval requirement in adopted §25.60(f)(1)(B)(i).

New §25.60(f)(6)

LCRA recommended that, if proposed §25.60(f)(1) is retained in the adopted rule, the commission add a new §25.60(f)(6) to allow entities to request recovery for, or defer for recovery as a regulatory asset, costs associated with a wildfire mitigation plan that are not otherwise included in rates.

Commission Response

The commission declines to add new §25.60(f)(6) as recommended by LCRA because cost recovery issues, beyond the limited issues related to self-insurance plans, are beyond this scope of this rulemaking project.

Proposed §25.60(g)

Proposed §25.60(g) provides that the commission staff may initiate a proceeding to develop one or more pro forma wildfire mitigation plans and designate the size or characteristics of the entities or systems for which each pro forma plan is appropriate.

Proposed §25.60(g) also provides that entities using a pro forma plan must adapt the details of the plan to the characteristics of their systems and the wildfire risks to which their systems are exposed, include in the executive summary of their applications for approval a description of the modifications made to the pro forma plan to adapt it to their systems, and include in the independent expert analyses of their plans an assessment of whether the pro forma plan has been appropriately adapted to their systems.

TNMP recommended that the commission delete proposed §25.60(g) from the adopted rule and address the development of pro forma wildfire mitigation plans separately from this rulemaking. TNMP asserted that postponing pro forma plan development would allow "implementation of proposed rule requirements, with considerations set forth herein," "avoid imposing requirements that may not be appropriate or feasible for the entities to which they would apply," and "ensure…plans remain tailored to individual service territories, entity abilities and public interest needs."

TEC recommended that the commission revise proposed §25.60(g) to either require commission staff to create one or more pro forma plans or identify a date by which interested parties will be made aware of a forthcoming pro forma plan.

Oncor emphasized that "the development of a possible standardized template for the smaller utilities should not delay the ability of the larger utilities to file their WMPs as soon as practicable after adoption of § 25.60." Additionally, Oncor recommended that the commission clarify, either in the preamble of the proposal for adoption or in §25.60 itself, that the use of pro forma plans is optional, rather than mandatory.

Commission Response

The commission declines to delete proposed §25.60(g) as recommended by TNMP because it is unnecessary. Adopted §25.60(f)(1)--redesignated proposed §25.60(g)--allows commission staff to develop one or more pro forma plans but does not specify that the development will occur as part of this rulemaking project or prior to the adoption of §25.60. The commission clarifies that, if commission staff elects to develop one or more pro forma plans, those plans will be developed outside of this rulemaking project and in accordance with adopted §25.60.

The commission declines to modify proposed §25.60(g) to require commission staff to develop one or more pro forma wildfire mitigation plans, or to identify a specific publication date for these plans, as recommended by TEC. Adopted §25.60(l)(1) provides commission staff with the ability to assess, outside of this rulemaking project, the extent to which the development of one or more pro forma plans may reduce the complexities of complying with adopted §25.60. Commission staff may choose not to develop one or more pro forma plans if such work would not simplify compliance with adopted §25.60.

As requested by Oncor, the commission clarifies that, if commission staff chooses to develop one or more pro forma wildfire mitigation plans, an entity required to file an application for approval of a wildfire mitigation plan may, but is not required to, use a pro forma plan. The commission further clarifies that the potential of pro forma plan development should not delay an entity from filing an application that complies with the requirements of adopted §25.60 if it deems it practicable without making use of a pro forma plan.

Proposed §25.60(h)

Proposed §25.60(h) establishes that entities that fail to adequately implement wildfire mitigation plans approved by the commission under this section, including entities that fail to timely submit a plan or submits a plan that is not approved by the commission, are subject to administrative penalties.

TEC asserted that proposed §25.60(h) goes beyond the commission's statutory authority under PURA §38.080 by providing that the commission can assess administrative penalties against entities for "failing to timely file and plan rejection by the commission." Accordingly, TEC recommended that the commission revise proposed §25.60(h) to provide that administrative penalties may only be assessed if an entity fails to adequately implement a wildfire mitigation plan approved by the commission under §25.60, as provided for under PURA §38.080. TEC provided redlines according to its recommendations.

TPPA argued that the statute does not authorize the commission to assess penalties against an entity whose plan is rejected. TPPA recommended that the commission delete proposed §25.60(h) from the adopted rule and instead "evaluate each mitigation plan on its merits and approve plans that advance the public interest."

Commission Response

The commission declines to revise proposed § 25.60(h) as recommended by the commenters because it would be unnecessary. The commission's authority to enforce the mandatory provisions of any statute contained within PURA or rule adopted thereunder is clear. See PURA §§15.023(a) and 15.035. Rather than provide specific enforcement provisions within the adopted §25.60, the commission deletes the provision in its entirety to reduce potential confusion.

Proposed §25.60(i)

Proposed §25.60(i) requires that entities with approved wildfire mitigation plans maintain records associated with the information referred to in this section for five years, beginning the year after their plans are approved.

Oncor expressed concern that proposed §25.60(i) could be interpreted to require retention of all records that were merely 'associated with' an entity's wildfire mitigation plan. Accordingly, Oncor recommended that the commission narrow the scope of proposed §25.60(i) to only information included in entities' applications for wildfire mitigation plan approval in the preceding five years. Oncor provided redlines consistent with its recommendation.

TEC commented that the statute of limitations for claims involving property damage can range from two to four years, depending on the nature of an action. Accordingly, TEC recommended that the commission revise proposed §25.60(i) to limit the record retention requirement to four years, instead of five years.

TPPA recommended that the commission revise proposed §25.60(i) to limit the record retention requirement to four years, instead of five years, to align with the statute of limitations for filing a civil suit or claim arising from a wildfire.

Commission Response

In order to reduce regulatory burdens, the commission declines to modify proposed §25.60(i) as recommended by Oncor and, instead, deletes the provision entirely.

Comments on proposed amendments to §25.231

Proposed §25.231(b)(1)(G)

Proposed §25.231(b)(1)(G) provides that electric utilities may charge their self-insurance reserve accounts with property or liability losses that are not paid or reimbursed with commercial insurance or were not included in operating and maintenance expenses. Additionally, the reserve accounts can also be charged for liability losses resulting from personal injury or property damage caused by a wildfire unless the wildfire was caused intentionally, recklessly, or with gross negligence of the electric utility. Proposed §25.231(b)(1)(G) also outlines evaluation criteria that the commission will use to approve an electric utility's self-insurance plan.

AEP Companies recommended that the commission revise proposed §25.231(b)(1)(G) to specify that reserve accounts may be charged with liability losses resulting from personal injury or property damage caused by a public safety power shut-off or re-energization of systems subsequent to a public safety power shut-off because "Public Safety Power Shutoff and re-energization are treated the same as wildfire liabilities by utility industry insurers."

Commission Response

The commission declines to modify proposed §25.231(b)(1)(G) to specify that electric utilities may charge their self-insurance reserve accounts with liability losses resulting from personal injury or property damage caused by a public safety power shut-off or re-energization of systems subsequent to a public safety power shut-off as recommended by AEP Companies because PURA §36.064 does not explicitly contemplate this inclusion.

AEP Companies recommended that the commission revise proposed §25.231(b)(1)(G) to clarify that the exclusion for charging the reserve account for personal injury or property damage caused by a wildfire that the utility caused intentionally, recklessly, or with gross negligence applies only after a determination is made through a final adjudication. AEP Companies provided redlines consistent with its recommendations.

Commission Response

The commission declines to modify proposed §25.231(b)(1)(G) to specify that the exclusion for charging the reserve account for personal injury or property damage caused by a wildfire that the utility caused intentionally, recklessly, or with gross negligence applies only after a determination is made through a final adjudication because it is unnecessary to specify standard practices. The Texas courts retain jurisdiction over such matters.

Entergy requested that the commission revise proposed §25.231(b)(1)(G) to define the term 'savings' as used in the phrase 'that ratepayers will receive the benefits of any savings…'.

Commission Response

The commission declines to modify proposed §25.231(b)(1)(G) to define the term 'savings' as recommended by Entergy. The commission clarifies that, as used in this section, the term 'savings' refers to the cost differences for the coverage of losses, if any, between available commercial insurance and the electric utility's self-insurance.

SPS recommended that the commission replace the term 'insufficient,' as used to reference the ability of commercial insurance to cover potential liability losses, damages, or catastrophic property loss in proposed §25.231(b)(1)(G), with 'inappropriate.' SPS asserted that this replacement in terminology would grant "more latitude" to qualified independent insurance consultants to assess the range of potential losses in a utility's service area that may require coverage.

Commission Response

The commission declines to modify proposed §25.231(b)(1)(G) to replace the term 'insufficient' with 'inappropriate' as recommended by SPS because it is unnecessary. When reviewing a self-insurance plan, the commission evaluates the plan for reasonableness and prudency to assess whether the self-insurance plan costs and coverage that provided for liability losses resulting from personal injury and property damage caused by a wildfire are appropriate. Therefore, the commission finds that retaining the term "insufficient" provides greater clarity and consistency with the statutory intent and regulatory objectives.

New §25.231(b)(1)(I)

OPUC noted that many electric utilities are already recovering the costs of self-insurance, commercial liability insurance, vegetation management, and wildfire-related system resiliency measures through transmission cost of service. OPUC asserted that electric utilities' recovery of these costs, costs associated with excess liability and self-insurance, and their approved rate of return, should be "evaluated in light of the utility's ability to demonstrate that it is properly operating, maintaining, building and replacing its transmission and distribution facilities in a manner that promotes wildfire mitigation." Further, OPUC asserted that electric utilities should be "held to deliver what they promised" in their wildfire mitigation plans and should be "required to refund or credit ratepayers if they fail to achieve the wildfire mitigation measures promised in their plans." Accordingly, OPUC recommended that the commission add new §25.231(b)(1)(I) to provide that electric utilities may not recover costs for wildfire mitigation plans and measures that are already included in commission-approved plans or other orders of the commission and that the commission will review such cost components to ensure that there is no duplicate cost recovery.

Commission Response

The commission declines to add new §25.231(b)(1)(I) as recommended by OPUC because this recommendation is beyond the scope of the rulemaking project noticed by the proposal for publication approved on August 21, 2025.

In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.60

New 16 TAC §25.60 is adopted under the following provisions of Public Utility Regulatory Act (PURA): §§ 14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; 14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and 38.080, which authorizes the commission to evaluate and approve, modify, or reject wildfire mitigation plans filed by electric utilities, municipally owned utilities, or electric cooperatives that own transmission or distribution facilities in a wildfire risk area of this state.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001; 14.002; and 38.080.

§25.60. Transmission and Distribution Wildfire Mitigation Plans.

(a) Applicability. This section applies to each electric utility, municipally owned utility, and electric cooperative that owns a transmission or distribution facility in this state.

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

(1) Entity--an electric utility, a municipally owned utility, or an electric cooperative operating in this state.

(2) Wildfire--an unplanned fire spreading through vegetative fuels, occurring primarily on wildland or in a wildland-urban interface area. The term does not include a fire that constitutes controlled burning within the meaning of Section 28.01, Penal Code.

(3) Wildfire risk area--an area determined, under subsection (c)(1) of this section, to be at an elevated risk for wildfire.

(4) Wildland--an area in which development is limited to roads, railroads, power lines, and similar transportation or utility structures.

(c) Wildfire risk area determination.

(1) A determination of elevated risk of wildfire may be made by the Texas Division of Emergency Management (TDEM) or an entity that owns a transmission or distribution facility within that area.

(2) An area that is determined to be a wildfire risk area by an entity that owns a transmission or distribution facility within that area is only considered to be a wildfire risk area under this section with respect to the entity that made the determination.

(3) An entity that owns a transmission or distribution facility in an area that TDEM determines is a wildfire risk area must file with the commission an acknowledgement of that determination as soon as practicable after the determination is made, using the control number designated by commission staff under subsection (e)(1) of this section.

(d) Filing entity. An entity that owns a transmission or distribution facility in a wildfire risk area of this state must comply with the filing requirements of this section.

(1) Authorization of alternative filing entity. An entity that owns, but does not operate, a transmission or distribution facility in a wildfire risk area of this state may authorize the entity that operates the facility to make filings required under this section on its behalf. The entity that owns the transmission or distribution facility retains responsibility for compliance with the requirements of this section.

(2) Joint filing. Two or more entities subject to the filing requirements of this section may jointly submit filings required by this section, provided that the joint application or filing satisfies the requirements of this section for each entity as if each entity had filed separately. The executive summary required under subsection (f)(2)(A) of this section must identify which sections of the joint application apply to each entity. Each entity retains individual responsibility for compliance with the requirements of this section.

(e) Notice of intent. An entity required to file an application under this section must file a notice of intent not later than 60 calendar days prior to the entity's estimated application filing date.

(1) Filing requirements. The notice of intent must be filed in a control number designated for this purpose by commission staff.

(2) Content. The notice of intent must include:

(A) A description of the entity's wildfire risk area(s), and whether the area was determined to be a wildfire risk area by TDEM or the entity;

(B) A description of the transmission and distribution facilities the entity owns in the wildfire risk area(s);

(C) If applicable, the approximate number of transmission and distribution customers served by the entity, and the approximate number of transmission and distribution customers served by the entity that are located in the wildfire risk area(s);

(D) A statement that the entity is preparing to file an application under this section, including the entity's estimated application filing date;

(E) A statement of whether the entity intends to use a pro forma plan developed under subsection (l) of this section when assembling its application;

(F) A statement of whether the entity intends to file a joint application with one or more other entities and an explanation for the joint filing; and

(G) A statement of whether the entity is filing an application on its own behalf or if the entity is an authorized alternative filing entity under subsection (d)(1) of this section.

(f) Application for approval of a wildfire mitigation plan.

(1) Filing requirements.

(A) Initial application.

(i) Prior to May 1, 2026, an entity that has filed a notice of intent in accordance with subsection (e) of this section must file its application on the date scheduled by the commission under subsection (h)(1) of this section.

(ii) After May 1, 2026, an entity that has filed a notice of intent in accordance with subsection (e) of this section may file an application on its estimated application filing date, as provided by the entity's notice of intent, unless the commission schedules the filing for a different date under subsection (h)(1) of this section.

(B) Subsequent application. An entity with an approved wildfire mitigation plan under subsection (j) of this section must file an application for reapproval of its plan:

(i) not later than three years after the plan's approval date; and

(ii) upon making a material change to the approved plan. A material change is one that will impact how an entity will monitor, respond to, or mitigate for the risk of wildfire in its wildfire risk area(s), such as the elimination of an approved plan measure, the reduction of approved frequencies of infrastructure inspections or vegetation management practices, the introduction of a new plan measure, or a significant update to the entity's wildfire risk modeling methodologies. An application filed under this clause should describe in the executive summary under paragraph (2)(A) of this subsection the material change made to the approved plan.

(2) Contents.

(A) Executive summary. An entity's application must include the following in an executive summary or comprehensive chart:

(i) A description of the contents of the application;

(ii) A reference to specific sections and page numbers of the application that correspond with the requirements of this paragraph;

(iii) A description and map, in reference to the nearest county boundary, city, or town, of each area of this state to which the entity provides transmission or distribution service that is in the wildfire risk area at issue in the application and a description of how the entity identified each wildfire risk area. If practicable, the entity must also provide the map in GIS format, such as a geodatabase feature class or shapefile;

(iv) A description of wildfires that impacted or were caused by the entity's infrastructure in its wildfire risk area(s) in the preceding 10 years, or to the extent known or available, including the date, implicated TDEM disaster districts, and known impacts of each wildfire to the entity's infrastructure;

(v) A description of the environmental and operational risks that the entity's wildfire mitigation plan is designed to address (e.g., low-moisture, high-temperature, or high-wind conditions or events, the presence of salt moisture or other contaminants on transmission or distribution facilities or equipment, dry or high-volumes of vegetation, etc.); and

(vi) An explanation of how the entity's wildfire mitigation plan sufficiently mitigates for wildfire risk in the entity's wildfire risk area(s).

(B) Wildfire mitigation plan. An entity's application must include the following in a wildfire mitigation plan:

(i) A description of the entity's process for periodically inspecting its transmission and distribution facilities in its wildfire risk area(s), including, if applicable, a description of the entity's use of geospatial or remote sensing technologies (such as Light Detection and Ranging (LiDAR), satellite, etc.) or risk-modeling tools;

(ii) A detailed plan for vegetation management in the entity's wildfire risk area(s), including, if applicable, a description of the entity's use of geospatial or remote sensing technologies (such as LiDAR, satellite, etc.) or risk-modeling tools;

(iii) A detailed operations plan for reducing the likelihood of wildfire ignition from the entity's transmission and distribution facilities and responding to a wildfire in the entity's wildfire risk area(s), including, if applicable, a description of the entity's use of automated fault detection devices or programs (such as microprocessor-based relays, Supervisory Control and Data Acquisition (SCADA), etc.);

(iv) A description of the entity's procedures for restoring its transmission or distribution system during and after a wildfire, including contact information for the entity that may be used for coordination with TDEM and first responders;

(v) A community outreach and public awareness plan regarding wildfire risks, actual wildfire events, and service interruptions or outages caused by, or initiated to mitigate for, wildfire events, that affect the entity's service territory or transmission or distribution system. The entity must include in its community and public awareness plan a specific communications plan for responding to a wildfire event;

(vi) A description of the entity's procedures for de-energizing power lines and disabling reclosers to either mitigate for potential wildfires or implement a public safety power shut-off plan. The entity must include, as applicable, a description of its procedures for coordinating those measures with its regional transmission organization, independent system operator, or other reliability coordinator and other transmission operators and distribution service providers; and

(vii) A description of the procedures, measures, and standards that the entity will use to inspect and operate its transmission and distribution infrastructure to mitigate for wildfire risks in its wildfire risk area(s).

(C) Independent expert analysis. An application must include an analysis of the entity's wildfire mitigation plan prepared by an independent expert with not less than five years of professional experience in electric utility fire risk mitigation, including in wildfire operations, electric transmission and distribution operations, and risk analysis methods.

(i) Qualifications may be met in aggregate by a team of multiple independent experts, each with different areas of expertise, provided that each independent expert has not less than five years of relevant professional experience and the team designates a lead independent expert to be responsible for preparing the analysis.

(ii) The independent expert's analysis must include:

(I) supporting documentation that the independent expert meets the required qualifications and an attestation that the independent expert was not involved in designing the entity's wildfire mitigation plan or its component programs;

(II) a description of the independent expert's methodology for analyzing the entity's wildfire mitigation plan; and

(III) a technical assessment of the adequacy and appropriateness of the contents of the entity's wildfire mitigation plan, relative to the size and complexity of the entity's transmission and distribution system, wildfire risks in the entity's wildfire risk area(s), applicable industry standards and best practices, and any reasonable alternative wildfire mitigation measures.

(D) Additional application requirements.

(i) An application must include a description of how the entity will monitor implementation and compliance with the wildfire mitigation plan.

(ii) An application must include any other infrastructure report, maintenance report, transmission or distribution pole maintenance plan, or information that the entity is required to submit under PURA, other commission rules, North American Electric Reliability Corporation or other federal standards, or ERCOT protocols or operating guides that the entity determines is relevant to its wildfire mitigation efforts and would assist the commission in making a public interest determination on the entity's wildfire mitigation plan. An entity submitting a report, plan, or other information under this clause must submit the report, plan, or other information in its entirety and include a summary of how the report, plan, or other information relates to, or impacts, the entity's wildfire mitigation efforts.

(3) Substantially similar information. An entity may fulfill the requirements of paragraph (2)(B) of this subsection by submitting any information required under other law that is substantially similar to the information required by paragraph (2)(B) of this subsection. An entity must clearly identify in its application the requirement the submitted information is intended to fulfill and include a description of why the entity believes the submitted information is substantially similar to that requirement.

(4) Inapplicable requirements. For any requirement under paragraph (2)(B) of this subsection that an entity determines is inapplicable to its application, the entity must clearly identify in its application

the requirement that is inapplicable and include a description of why the entity believes the requirement is inapplicable to its application.

(g) Notice and intervention deadline.

(1) Not later than the working day following the filing of an application, an entity must use a reasonable method to provide notice of the filed application and intervention deadline to, as applicable:

(A) all municipalities in the entity's service area that have retained original jurisdiction;

(B) all parties in the entity's most recent base-rate proceeding;

(C) the Office of Public Utility Counsel; and

(D) the entity's regional transmission operator, independent system operator, or other reliability coordinator.

(2) The notice required by this subsection must include the docket number assigned to the application and a copy of the application and state the deadline for intervention. Notwithstanding the standard intervention deadline specified in §22.104(b), relating to Motions to Intervene, the intervention deadline is 30 calendar days from the date service of notice is complete.

(h) Commission processing of application.

(1) Application filing schedules.

(A) The commission will establish an initial filing schedule for applications, based on notices of intent that were filed by entities under subsection (e) of this section prior to March 1, 2026. However, the commission may schedule individual filings prior to this initial filing schedule on an as-needed basis.

(B) The commission may establish, at the recommendation of commission staff or commission counsel, subsequent filing schedules for individual or multiple applications.

(2) Sufficiency of application. An entity's application is sufficient if the entity has filed a notice of intent as required by subsection (e) of this section, the application includes the information required by subsection (f)(2) of this section, and the entity has filed proof that notice has been provided in accordance with subsection (g) of this section.

(A) Unless otherwise ordered by the presiding officer, commission staff must review each application for sufficiency and file a recommendation on sufficiency within 30 days after the application is filed. If commission staff recommends the application be found deficient, the deficiencies must be identified in the recommendation. The entity will have seven calendar days to file a response.

(B) If the presiding officer concludes the application is deficient, the presiding officer will file a notice of deficiency and cite the particular requirements with which the application does not comply. The presiding officer must provide the entity an opportunity to amend its application. Unless otherwise ordered by the presiding officer, commission staff must file a recommendation on sufficiency within 10 days after the filing of an amended application, when the amendment is filed in response to a notice of deficiency in the application.

(3) Procedural schedule. The commission will approve or deny an application or approve a modified wildfire mitigation plan not later than 180 days after a sufficient application is filed. The presiding officer must establish a procedural schedule that will enable the commission to approve or deny an application or approve a modified wildfire mitigation plan not later than 180 days after a sufficient application is filed. An application is not sufficient if it has been deemed insufficient by the presiding officer.

(i) Commission review of application. In determining whether to approve or deny an application, or approve a modified application, the commission will consider whether an entity's wildfire mitigation plan is in the public interest. The commission will not approve an application for a plan that is not in the public interest. In evaluating the public interest of a plan, the commission may consider:

(1) the extent to which the plan will:

(A) mitigate the wildfire risks present in an entity's wildfire risk area(s);

(B) reduce the potential frequency or duration of service interruptions or outages, or potential damages to utility infrastructure, that are attributable to wildfires in the entity's wildfire risk area(s); and

(C) improve the entity's communication and coordination before, during, and after a wildfire in the entity's wildfire risk area(s) with:

(i) the entity's customers;

(ii) the commission;

(iii) if applicable, the entity's regional transmission operator, independent system operator, or other reliability coordinator and other transmission operators or distribution service providers;

(iv) first responders; and

(v) TDEM.

(2) whether there are more reasonable or effective means of preventing, withstanding, mitigating for, or responding to wildfire risks addressed by the plan; or

(3) other factors deemed relevant by the commission.

(j) Commission decision on application.

(1) Denial.

(A) The commission's denial of an entity's application is not a finding on the prudence or imprudence of the contents of the entity's wildfire mitigation plan. Upon denial of an application, an entity may file a revised application for review and approval by the commission under this subsection.

(B) Commission denial of a joint application constitutes a denial for all entities that are applicants in the joint application.

(2) Approval.

(A) The Commission may approve an entity's application with or without modification.

(B) Commission approval of an entity's application is effective until the earlier of:

(i) the fifth anniversary of the date the application was approved; or

(ii) the date the entity receives commission approval of a subsequent application.

(C) Commission approval of a joint application constitutes an approval for all entities that are applicants in the joint application.

(k) Reports.

(1) Annual report. An entity with an approved wildfire mitigation plan must file an annual report on its plan by May 1 of each year, beginning the year after the plan is approved. An entity's annual report must include information on the entity's implementation of the plan.

(2) After-action report. In the event of a wildfire that impacts or involves an entity's transmission or distribution facilities or assets, the commission, the executive director of the commission, or a designee of the executive director may require the entity to file an after-action or lessons-learned report with the commission by a specified date.

(l) Pro forma plan.

(1) Development. Commission staff may develop one or more pro forma wildfire mitigation plans. Commission staff may designate the size or characteristics of the entities or systems for which each pro forma plan is appropriate.

(2) Use. An entity that uses a pro forma plan must adapt the details of the plan to the characteristics of its transmission or distribution system and the wildfire risks to which its system is exposed. Additionally, an entity that uses a pro forma plan must include in the executive summary under subsection (f)(2)(A) of this section a description of the entity's modifications to the pro forma plan to adapt the plan to its system and include in the independent expert analysis under subsection (f)(2)(C) of this section an assessment of whether the pro forma plan has been appropriately adapted to the entity's system and wildfire risks.

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 November 14, 2025.

TRD-202504167
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 4, 2025
Proposal publication date: September 5, 2025
For further information, please call: (512) 936-7244

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SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.231

Amended 16 TAC §25.231 is adopted under the following provisions of Public Utility Regulatory Act (PURA): §§ 14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; 14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and 36.064, which authorizes the commission to evaluate and approve electric utility self-insurance plans.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001; 14.002; and 36.064.

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 November 14, 2025.

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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 4, 2025
Proposal publication date: September 5, 2025
For further information, please call: (512) 936-7244

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS

SUBCHAPTER AA. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT

19 TAC §67.1001

The Texas Education Agency (TEA) adopts an amendment to §67.1001, concerning the instructional materials and technology allotment. The amendment is adopted without changes to the proposed text as published in the September 12, 2025 issue of the *Texas Register* (50 TexReg 6001) and will not be republished. The adopted amendment implements Senate Bill (SB) 13, 89th Texas Legislature, Regular Session, 2025, and codifies a tacit allowable expense by updating the allowable expenditures from a district's instructional materials and technology allotment.

REASONED JUSTIFICATION: SB 13, 89th Texas Legislature, Regular Session, 2025, added Texas Education Code (TEC), §33.023(d), which requires school districts to adopt procedures for parental access to a school district's library catalog and access by the parent's child to certain library materials. The statute allows a school district to use funds from its instructional materials and technology allotment to comply with the requirement.

To implement SB 13, new §67.1001(e)(6) specifies that allotment funds may be used to pay for costs connected to parents' ability to access the library or for access by their child to certain materials.

New §67.1001(e)(5) specifies that allotment funds may be used to pay for software relating to analyzing content for its appropriateness to Texas Essential Knowledge and Skills content under TEC, §28.002. This addition codifies into rule a tacit allowable expense already in practice.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 12, 2025, and ended October 13, 2025. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §31.003(b), which authorizes the commissioner of education to adopt rules consistent with TEC, Chapter 31, as necessary to implement a provision of the chapter that the commissioner or the agency is responsible for implementing; TEC, §31.0211, which permits the commissioner to adopt rules regarding the instructional materials and technology

allotment, including the amount of the per-student allotment, the authorization of juvenile justice alternative education program allotments, allowed expenditures, required priorities, and adjustments to the number of students for which a district's allotment is calculated; TEC, §31.0212, which addresses the documentation required for requisitions and disbursements to be approved, districts' online instructional materials ordering system accounts, and school district submissions to the commissioner of the title and publication information for any materials the districts purchase with their allotments; TEC, §31.0215, which addresses allotment purchases, including announcing to districts the amount of their allotments and delayed payment options; TEC, §31.029, which requires the commissioner to adopt rules regarding instructional materials for use in bilingual education classes; TEC, §31.031, which requires the commissioner to adopt rules regarding the purchase of college preparatory instructional materials with the allotment; TEC, §31.071, which addresses state-developed open-source instructional materials; TEC, §31.076, which permits the commissioner to adopt rules necessary to implement TEC, Chapter 31, Subchapter B-1, and states that a decision made by the commissioner under the subchapter is final and may not be appealed; TEC, §31.104, which requires the commissioner to adopt rules that include criteria for determining whether instructional materials and technological equipment are returned in an acceptable condition; TEC, §33.023(d), as added by Senate Bill 13, 89th Texas Legislature, Regular Session, 2025, which authorizes school districts and open-enrollment charter schools to use funds from the district's or school's instructional materials and technology allotment under TEC, §31.0211, for costs associated with complying with statutes relating to parental access to library catalog and access by the parent's child to certain library materials; TEC, §48.004, which requires the commissioner to adopt rules, act, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the Foundation School Program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§31.003(b); 31.0211; 31.0212; 31.0215; 31.029; 31.031; 31.071; 31.076; 31.104; 33.023(d), as added by Senate Bill 13, 89th Texas Legislature, Regular Session, 2025; and 48.004.

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 November 17, 2025.

TRD-202504172
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 7, 2025
Proposal publication date: September 12, 2025
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.63

The Texas State Board of Pharmacy adopts amendments to §281.63, concerning Considerations for Criminal Offenses. These amendments are adopted without changes to the proposed text as published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6283). The rule will not be republished.

The amendments update the board's disciplinary guidelines concerning the imprisonment of a licensee, a registrant, or an owner of a pharmacy following a felony conviction or deferred adjudication, in accordance with Senate Bill 1080 and clarify certain provisions to align more closely to existing statute.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 10, 2025.

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Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8084

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.12

The Texas State Board of Pharmacy adopts amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. These amendments are adopted with changes to the proposed text as published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6285). The rule will be republished.

The amendments update the alternative licensing procedures, expedited licensing procedures, and interim license procedures for a military service member, military veteran, or military spouse, in accordance with House Bill 5629, establish provisional license procedures for a military service member, military veteran, or

military spouse, in accordance with Senate Bill 1818, and make grammatical corrections.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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CHAPTER 291. PHARMACIES
SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.31

The Texas State Board of Pharmacy adopts amendments to §291.31, concerning Definitions. These amendments are adopted without changes to the proposed text as published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6289). The rule will not be republished.

The amendments add definitions for the terms "common ownership" and "owner of record."

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §291.52

The Texas State Board of Pharmacy adopts amendments to §291.52, concerning Definitions. These amendments are adopted without changes to the proposed text as published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6292). The rule will not be republished.

The amendments add definitions for the terms "common ownership" and "owner of record."

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.72

The Texas State Board of Pharmacy adopts amendments to §291.72, concerning Definitions. These amendments are adopted without changes to the proposed text as published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6294). The rule will not be republished.

The amendments add definitions for the terms "common ownership" and "owner of record."

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.120

The Texas State Board of Pharmacy adopts amendments to §291.120, concerning General. These amendments are adopted without changes to the proposed text as published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6297). The rule will not be republished.

The amendments add definitions for the terms "common ownership" and "owner of record."

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Daniel Carroll, Pharm.D.
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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.2

The Texas State Board of Pharmacy adopts amendments to §297.2, concerning Definitions. These amendments are adopted without changes to the proposed text as published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6298). The rule will not be republished.

The amendments add definitions for the terms "common ownership" and "owner of record."

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Daniel Carroll, Pharm.D.
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For further information, please call: (512) 305-8084

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22 TAC §297.10

The Texas State Board of Pharmacy adopts amendments to §297.10, concerning Registration for Military Service Members, Military Veterans, and Military Spouses. These amendments are adopted with changes to the proposed text as published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6298). The rule will be republished.

The amendments update the alternative registration procedures, expedited registration procedures, and interim registration procedures for a military service member, military veteran, or military spouse, in accordance with House Bill 5629, establish provisional registration procedures for a military service member,

military veteran, or military spouse, in accordance with Senate Bill 1818, and make grammatical corrections.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this adoption: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§297.10. Registration for Military Service Members, Military Veterans, and Military Spouses.

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

(1) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, or similar military service of another state.

(2) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) Military service member--A person who is on active duty.

(4) Military spouse--A person who is married to a military service member.

(5) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(b) Alternative registration procedure. For the purpose of §55.004, Occupations Code, a military service member, military veteran, or military spouse may complete the following alternative procedures to apply for a pharmacy technician registration if the applicant holds a current registration issued by another state that is similar in scope of practice to the registration in this state and is in good standing with that state's licensing authority or within the five years preceding the application date held a pharmacy technician registration in this state.

(1) Provisional registration. On receipt by the board of an application for a pharmacy technician registration in accordance with this subsection, the board shall issue a provisional registration to the applicant while the board processes the application. A provisional registrations issued under this subsection expires on the earlier of:

(A) the date the board approves or denies the provisional registration holder's application for the registration; or

(B) the 180th date after the date the provisional registration is issued.

(2) An applicant who holds a current registration as a pharmacy technician issued by another state but does not have a current pharmacy technician certification certificate shall meet the requirements for registration as a pharmacy technician trainee as specified in §297.3 of this chapter (relating to Registration Requirements).

(3) An applicant who held a pharmacy technician registration in Texas that expired within the five years preceding the application date who meets the following requirements may be granted a pharmacy technician registration. The applicant:

(A) shall complete the Texas application for registration that includes the following:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application;

(B) shall provide documentation to include:

(i) military identification indicating that the applicant is a military service member, military veteran, or military dependent, if a military spouse; and

(ii) marriage certificate, if the applicant is a military spouse; applicant's spouse is on active duty status;

(C) be exempt from the application fees paid to the board set forth in §297.4(a) and (b)(2) of this chapter (relating to Fees);

(D) shall meet all necessary requirements in order for the board to access the criminal history records information, including submitting fingerprint information and such criminal history check does not reveal any charge or conviction for a crime that §281.64 of this title (relating to Sanctions for Criminal Offenses) indicates a sanction of denial, revocation, or suspension; and

(E) is not required to have a current pharmacy technician certification certificate.

(c) Expedited registration procedure. For the purpose of §55.005, Occupations Code, a military service member, military veteran or military spouse may complete the following expedited procedures to apply for a pharmacy technician registration if the applicant holds a current registration issued by another state that is similar in scope of practice to the registration in this state and is in good standing with that state's licensing authority or within the five years preceding the application date held a pharmacy technician registration in this state.

(1) The applicant shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years;

(B) have taken and passed a pharmacy technician certification examination approved by the board and have a current certification certificate;

(C) complete the Texas application for registration that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application;

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees; and

(E) shall be exempt from the registration fee as specified in §297.4(b)(2) of this chapter.

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant shall be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number.

(3) All applicants for renewal of an expedited pharmacy technician registration issued to a military service member, military veteran, or military spouse shall comply with the renewal procedures as specified in §297.3 of this chapter.

(d) Registration renewal. As specified in §55.003, Occupations Code, a military service member who holds a pharmacy technician registration is entitled to two years of additional time to complete any requirements related to the renewal of the military service member's registration.

(1) A military service member who fails to renew their pharmacy technician registration in a timely manner because the individual was serving as a military service member shall submit to the board:

(A) name, address, and registration number of the pharmacy technician;

(B) military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal.

(2) A military service member specified in paragraph (1) of this subsection shall be exempt from fees specified in §297.3(d)(3) of this chapter.

(3) A military service member specified in paragraph (1) of this subsection is entitled to two additional years of time to complete the continuing education requirements specified in §297.8 of this title (relating to Continuing Education Requirements).

(e) Interim registration for military service member or military spouse. In accordance with §55.0041, Occupations Code, a military service member or military spouse may be issued an interim pharmacy technician registration if the member or spouse currently holds a registration similar in scope of practice issued by the licensing authority of another state and is in good standing with that licensing authority as specified in §55.0042, Occupations Code.

(1) Before engaging in pharmacy technician duties, the military service member or military spouse shall submit an application that includes:

(A) a copy of the member's military orders showing relocation to this state;

(B) if the applicant is a military spouse, a copy of the military spouse's marriage certificate; and

(C) a notarized affidavit affirming under penalty of perjury that:

(i) the applicant is the person described and identified in the application;

(ii) all statements in the application are true, correct, and complete;

(iii) the applicant understands the scope of practice for a pharmacy technician registration in this state and will not perform outside of that scope of practice; and

(iv) the applicant is in good standing in each state in which the applicant holds or has held a pharmacy technician registration.

(2) A military service member or military spouse applying for an interim registration under this subsection may not engage in pharmacy technician duties in this state until issued an interim pharmacy technician registration.

(3) For a military service member or military spouse applying for an interim registration under this subsection, the board shall:

(A) determine whether the state in which the applicant is registered issues registrations similar in scope of practice to a pharmacy technician registration issued by the board; and

(B) notify the applicant that:

(i) the board is issuing the interim registration;

(ii) the application is incomplete; or

(iii) the board is unable to issue the interim registration because a pharmacy technician registration issued by the board is not similar in scope of practice to the applicant's registration.

(4) A military service member or military spouse may engage in pharmacy technician duties under an interim registration issued under this subsection only for the period during which the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in this state.

(5) In the event of a divorce or similar event that affects a person's status as a military spouse, the former spouse may continue to engage in pharmacy technician duties under an interim registration issued under this subsection until the third anniversary of the date the spouse submitted the application required under paragraph (1) of this subsection.

(6) While engaged in pharmacy technician duties in this state, the military service member or military spouse shall comply with all other laws and regulations applicable to practicing as a pharmacy technician in this state.

(f) Relationship to federal law. This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

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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Daniel Carroll, Pharm.D.
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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8084

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER D. LOW-THC CANNABIS FOR COMPASSIONATE USE

25 TAC §1.61, §1.63

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §1.61, concerning Medical Conditions for which a Physician May Prescribe Low-THC Cannabis; and new §1.63, concerning Pulmonary Inhalation Devices for Low-THC Cannabis.

Section 1.61 is adopted without changes to the proposed text as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5868). This rule will not be republished.

Section 1.63 is adopted with changes to the proposed text as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5868). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The amendment and new section are necessary to comply with House Bill (HB) 46, by King et al, 89th Legislature, Regular Session, 2025, which amended Texas Occupations Code §169.003 to allow DSHS to receive physician requests to add medical conditions to the list of qualifying conditions for which physicians may prescribe low-THC cannabis under the Texas Compassionate Use Program at the Texas Department of Public Safety. HB 46 also amended Texas Occupations Code Chapter 169 to add §169.006 to allow physicians to prescribe pulmonary inhalation as the means of administration of low-THC cannabis and establish a timeline for reviewing and approving pulmonary inhalation devices.

COMMENTS

The 31-day comment period ended October 6, 2025.

During this period, DSHS received comments regarding the proposed rules from 13 stakeholders. DSHS received comments from East Texas Medicinal Meds; Goodblend; Marijuana Policy Project; PAXX; Texas Cannabis Clinic; Texas Cannabis Policy Center; Texas Original Compassionate Cultivation; The Center TX; Thrive Medical Cannabis; and five stakeholders not representing an organization. A summary of comments relating to the rules and DSHS' responses follows.

Comment: A commenter suggested deleting the requirement of DSHS providing forms requesting the addition of non-neurodegenerative diseases to the list of medical conditions to the Department of Public Safety (DPS) who will then submit requests to the legislature for consideration. The commenter suggests that DSHS in §1.61(c)(1) has the authority to add non-neurodegenerative diseases to the list without legislative approval.

Response: DSHS disagrees and declines to revise the rule in response to this comment. HB 46 requires any requests for non-neurodegenerative diseases added to the list must be approved by the legislature.

Comment: Several commenters suggested that §1.63(c) be revised so that qualifying physicians under Texas Occupations Code Chapter 169 may not be required to prescribe a pulmonary inhalation device for low-THC cannabis to a patient.

Response: DSHS partially agrees with this suggestion and added language that a qualified physician may, but is not required to, prescribe pulmonary inhalation as the means of administration for low-THC cannabis. The rule does not require physicians to prescribe a pulmonary inhalation device, and language was added to §1.63(c) to make this clear.

Comment: Several commenters suggested that §1.63(d) be revised so that dispensing organizations may submit a form to DSHS to request the addition of a pulmonary inhalation device to the list from which a physician may choose when prescribing and removing this responsibility from physicians.

Response: DSHS agrees with this suggestion and rule language in §1.63(d) has been modified to allow qualifying dispensing organizations to submit a form to DSHS requesting the addition of a pulmonary inhalation device.

Comment: A commenter suggested §1.63 be revised so that licensed dispensing organizations may provide an equivalent substitute for a physician prescribed pulmonary inhalation device.

Response: DSHS disagrees and declines to include this language. Instead, §1.63(d) has been modified to allow qualifying dispensing organizations to submit a form to DSHS to request approval of a pulmonary inhalation device that may be dispensed to a patient for the pulmonary inhalation of low-THC cannabis.

Comment: A commenter suggested that §1.63(d) be revised so pulmonary inhalation device manufacturers may submit a form to DSHS to request the addition of a pulmonary inhalation device to the list from which a physician may choose when prescribing and removing this responsibility from physicians.

Response: DSHS disagrees with this request and declines to edit this section. DSHS has modified rule language in §1.63(d) allowing licensed dispensing organizations to submit a form to DSHS requesting the addition of a pulmonary inhalation device.

Comment: Several commenters suggested that §1.63 be revised so that DSHS establishes pulmonary inhalation device safety standards.

Response: DSHS partially agrees. DSHS currently does not have the authority to set pulmonary inhalation device safety standards, but rule language has been added to new §1.63(f) requiring that a request for review of a pulmonary inhalation device must include an attestation from the requester that the proposed pulmonary inhalation device is safe and effective for the pulmonary inhalation of low-THC cannabis. Patients should follow the pulmonary inhalation device manufacturer safety guidelines.

Comment: Several commenters suggested that §1.63(f) be revised so that DSHS must review pulmonary inhalation devices within a shorter time frame than the proposed six months with stakeholders to determine potential changes to this section.

Response: DSHS agrees and has revised rule language in proposed §1.63(f), renumbered for adoption to §1.63(g), so that DSHS must review pulmonary inhalation devices within four months with stakeholders to determine potential changes to this section.

Comment: Several commenters suggested that §1.63 be revised to include cannabis flower as a way of prescription for low-THC cannabis.

Response: DSHS declines to revise the rule to include cannabis flower as a prescription option for low-THC cannabis. This request is out of scope of statutory changes based on HB 46.

DSHS made non substantive changes to the definition of pulmonary inhalation devices in §1.63(a) to clarify that the pulmonary inhalation device will be dispensed to patients.

STATUTORY AUTHORITY

The amendment and new section are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001 and Texas Occupations Code Chapter 169.

§1.63. Pulmonary Inhalation Devices for Low-THC Cannabis.

(a) A pulmonary inhalation device is a device designed, marketed, and dispensed to allow a patient to inhale an aerosolized or vaporized substance.

(b) A pulmonary inhalation device must not burn or ignite a substance for the purpose of inhaling smoke.

(c) A qualifying physician under Texas Occupations Code Chapter 169 may, but is not required to, prescribe pulmonary inhalation as the means of administration for low-THC cannabis to a patient who is qualified to receive a low-THC cannabis prescription.

(d) A licensed dispensing organization, as defined in Texas Health and Safety Code Chapter 487, may submit a form to DSHS to request approval of a pulmonary inhalation device that may be dispensed to a patient for the pulmonary inhalation of low-THC cannabis.

(e) A request under subsection (d) of this section must be submitted using the form, Request to Add Medical Conditions for Which a Physician May Prescribe Low-THC Cannabis or Add Pulmonary Inhalation Devices for Low-THC Cannabis, located on the DSHS website.

(f) A request under subsection (d) of this section must include an attestation from the requester that the proposed pulmonary inhalation device is safe and effective for the pulmonary inhalation of low-THC cannabis.

(g) The Texas Department of State Health Services must review pulmonary inhalation devices every four months with stakeholders to determine potential changes to 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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Cynthia Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-3554

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.1 and §809.2

Subchapter C. Eligibility for Child Care Services, §809.43

Amended §809.1 and §809.43 are adopted without changes to the proposal, as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5888), and, therefore, the adopted rule text will not be published.

Amended §809.2 is adopted with changes to the proposed text as published, and therefore the adopted rule text will be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendments to Chapter 809 is to improve the efficiency and delivery of child care services and allow TWC's three-member Commission (Commission) flexibility to implement new service delivery concepts or Commission-approved statewide initiatives or special projects within Commission-defined parameters. The proposed amendments also clarify that the provisions of Chapter 809 apply to any entity receiving Commission funds or benefits related to child care services.

Additionally, the amendments include child care waiting list priority for children of child care workers. Senate Bill (SB) 462, passed by the 89th Legislature, Regular Session, 2025, and signed by the governor, amended Texas Labor Code, Chapter 302, by adding §302.0064, which requires the Commission to establish a waiting list priority group for children of child care workers. The proposed amendments include the definition of a child care worker as provided in Texas Labor Code, §302.0064(a).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§809.1. Short Title and Purpose

Section 809.1(b) is amended to conform with TWC style practices.

Section 809.1(d) is amended to clarify that the provisions of Chapter 809 apply to all entities receiving Commission funds related to child care services. This amendment will ensure that all entities participating in and receiving benefits or funds from any Commission child care initiative will be subject to applicable rules, including rules related to fraud and improper payments, governing child care services and quality initiatives.

New §809.1(e) is added to allow the Commission to suspend a provision of Chapter 809 for a specified time, on either a statewide or other basis, if the Commission determines that sus-

pending the provision does not violate federal or state statutes or regulations and will improve the efficiency and delivery of child care services, or is necessary to implement new service delivery concepts or Commission-approved statewide initiatives or special projects within Commission-defined parameters.

This new subsection is designed to provide the Commission the flexibility to improve the delivery of child care services on a timely basis and to implement statewide initiatives or other special projects. In exercising this flexibility, the Commission intends to specify the provisions to be suspended and any applicable time limits on the suspension during public Commission meetings, and when the initiative or special project is approved by the Commission. The amended rule requires that the Commission must determine that the suspension does not violate federal or state statutes or regulations.

§809.2. Definitions

Section 809.2 is amended to add a definition of a child care worker for purposes of the waiting list priority in §809.43. The definition is identical to the definition provided in Texas Labor Code, §302.0064(a), and states that a child care worker is an individual employed by and working in a child care facility licensed under Texas Human Resources Code, Chapter 42, for a minimum of 25 hours per week. The term does not include the owner or director of a child care facility unless the owner's or director's child is served in a program other than a program directly supervised by the owner or director. The addition of the child care worker definition will be effective on January 5, 2026, to align with the implementation of changes to TWC's child care case management system.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

TWC adopts the following amendments to Subchapter C:

§809.43. Priority for Child Care Services

Section 809.43 is amended to add a waiting list priority group for children of child care workers as required by Texas Labor Code, §302.0064.

The Commission notes that Texas Labor Code, §302.0064(c), states that a child care worker whose child receives child care services under this priority group is subject to redetermination of the individual's eligibility for services in accordance with Commission rule each year. Therefore, once a child of a child care worker is initially authorized for child care under this priority, the child and child's family will be subject to eligibility redetermination as described in §809.42.

PART III. PUBLIC COMMENTS

The comment period ended on October 6, 2025. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.1, §809.2

PART IV. STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules relate to Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as demonstrated through continued enrollment in the program upon eligibility redetermination as described in §809.42 of this chapter.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and provider payment process related to child care, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.

(4) Child care desert--An area described in Texas Labor Code, §302.0461 in which the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission.

(5) Child Care Regulation (CCR)--Division in the Texas Health and Human Services Commission responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes.

(6) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(7) Child care subsidies--Commission-funded child care payments to an eligible child care provider for the direct care of an eligible child.

(8) Child care worker--for purposes of the waiting list priority described in §809.43 of this chapter, and pursuant to Texas Labor Code, §302.0064, a child care worker is an individual employed by and working in a child care facility licensed under Texas Human Resources Code, Chapter 42 for a minimum of 25 hours per week. The term does not include the owner or director of a child care facility unless the owner's or director's child is served in a program other than a program directly supervised by the owner or director. The child care worker definition is effective January 5, 2026.

(9) Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.

(10) Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

(11) Educational program--A program that leads to:

(A) a high school diploma;

(B) a Certificate of High School Equivalency; or

(C) an undergraduate degree from an institution of higher education.

(12) Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78 of this chapter.

(13) Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

(A) Two individuals, married--including by common-law, and household dependents; or

(B) A parent and household dependents.

(14) Household dependent--An individual living in the household who is:

(A) an adult considered a dependent of the parent for income tax purposes;

(B) a child of a teen parent; or

(C) a child or other minor living in the household who is the responsibility of the parent.

(15) Improper payments--Any payment of Child Care Development Fund (CCDF) funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

(A) to an ineligible recipient;

(B) for an ineligible service;

(C) for any duplicate payment; and

(D) for services not received.

(16) Job training program--A program that provides training or instruction leading to:

(A) basic literacy;

(B) English proficiency;

(C) an occupational or professional certification or license; or

(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(17) Listed family home--A family home, other than the eligible child's own residence, that is listed but not licensed or registered with CCR, pursuant to Texas Human Resources Code, §42.052(c).

(18) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(19) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(20) Protective services--Services provided when a child:

(A) is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without Texas Department of Family and Protective Services (DFPS) Child Protective Services (CPS) intervention;

(B) is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(21) Provider--A provider is defined as a:

(A) regulated child care provider;

(B) relative child care provider; or

(C) listed family home subject to the requirements in §809.91(e) of this chapter.

(22) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

(A) licensed by CCR;

(B) registered with CCR; or

(C) operated and monitored by the United States military services.

(23) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, the child's:

(A) grandparent;

(B) great-grandparent;

(C) aunt;

(D) uncle; or

(E) sibling (if the sibling does not reside in the same household as the eligible child).

(24) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with, and physically present with, the parent during the time period for which child care services are being requested or received.

(25) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(26) Texas Rising Star program--A quality-based rating system of child care providers participating in Commission-subsidized child care.

(27) Texas Rising Star provider--A regulated child care provider meeting the Texas Rising Star program standards. Texas Rising Star providers are:

(A) designated as an Entry Level Provider;

(B) certified as a Two-Star Provider;

(C) certified as a Three-Star Provider; or

(D) certified as a Four-Star Provider.

(28) Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;

(B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities; or

(C) engaging in job search at the time of eligibility determination or redetermination as described in §809.56 of this chapter.

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 November 12, 2025.

TRD-202504147
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 2, 2025
Proposal publication date: September 5, 2025.
For further information, please call: (737) 301-9662

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SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §809.43

The rule is adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rule relates to Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 November 12, 2025.

TRD-202504149
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: December 2, 2025
Proposal publication date: September 5, 2025.
For further information, please call: (737) 301-9662

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.84, §1.88

The Texas Department of Transportation (department) adopts amendments to §1.84 and §1.88, relating to Advisory Committees. The amendments to §1.84 and §1.88 are adopted without changes to the proposed text as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5892) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department's rules provide, in accordance with Government Code, §2110.008, that each of the Texas Transportation Commission's (commission) or department's advisory committees created by statute or by the commission or department is abolished on December 31, 2025. The commission has reviewed the need to continue the existence of those advisory committees beyond that date. The commission recognizes that the continuation of some of the existing advisory committees is necessary for improved communication between the department and the public and this rulemaking extends the duration of specified advisory committees for that purpose.

Amendments to §1.84, Statutory Advisory Committees, delete the references to and information about the Advanced Air Mobility Advisory Committee, which was created under Transportation Code, Section 21.0045. That statute expired January 1, 2025.

Amendments to §1.88, Duration of Advisory Committees, extend the dates on which the various advisory committees will be abolished and removes the provision related to the Advanced Air Mobility Advisory Committee.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and Government Code, §2110.008, which provides that a state agency by rule may designate the date on which an advisory committee will automatically be abolished.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2110, and Transportation Code, §§21.003, 21.0045, 201.114, 201.117, 201.623, and 455.004.

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 November 13, 2025.

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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Proposal publication date: September 5, 2025
For further information, please call: (512) 463-2407

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CHAPTER 25. TRAFFIC OPERATIONS

SUBCHAPTER A. GENERAL

43 TAC §25.1

The Texas Department of Transportation (TxDOT or department) adopts the amendments to §25.1 concerning Uniform Traffic Control Devices. The amendments to §25.1 are adopted without changes to the proposed rule text as published in the July 4, 2025 issue of the *Texas Register* (50 TexReg 3861) and will not be republished, but with changes to the Texas Manual on Uniform Traffic Control Devices that was proposed on same date and is adopted by reference in §25.1. The effective date of the amendments is January 18, 2026.

EXPLANATION OF ADOPTED AMENDMENTS

Under Transportation Code, §544.001, the Texas Transportation Commission is required to adopt a manual for a uniform system of traffic control devices. The statute further states that the manual must be consistent with the state traffic laws and to the extent possible conform to the system approved by the American Association of State Highway Transportation Officials. The edition of the manual that is currently effective is the 2011 Revision 2 version.

The national Manual on Uniform Traffic Control Devices (national MUTCD) is adopted and published by the Federal Highway Administration (FHWA) under Title 23, Code of Federal Regulations, Part 655, Subpart F. The national MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets, highways, pedestrian and bicycle facilities, and site roadways open to public travel. The Texas Manual on Uniform Traffic Control Devices (TMUTCD) is revised periodically to maintain substantial conformance with the national MUTCD to allow use of a single manual for local, state, and Federal-aid highway projects.

Amendments to §25.1 adopt the 2025 TMUTCD by reference and update the name and address of the relevant department division. The national MUTCD 11th Edition (national MUTCD) was published with an effective date of January 18, 2024, and Texas is required to adopt a state manual in substantial conformance with the national MUTCD by January 18, 2026. The purpose of the updates is to revise standards, guidance, options, and supporting information relating to the traffic control devices in all parts of the MUTCD. The changes will promote uniformity and incorporate technological advances in traffic control device application, ultimately improving and promoting the safe and efficient utilization of roads that are open to public travel.

The 2025 version of the TMUTCD is available online at the department's website, www.txdot.gov, and at the department's Traffic Safety Division office at 6230 East Stassney Lane in Austin, Texas. The national MUTCD is available online at mutcd.fhwa.dot.gov.

Prior to the publication of the proposed TMUTCD on July 4, 2025 for public comment, the department had requested FHWA to allow certain variations from the national MUTCD based on Texas laws and policies. Due to the federal deadline for state manual adoption, the department posted the proposed TMUTCD for public comment with the language recommended for the variations, even though the variations had not yet been approved by FHWA. This provided interested individuals the opportunity to comment on the department's recommended language as compared to the language in the national MUTCD.

Following discussions with FHWA, the following items (as numbered in the original list of pending issues published in the proposal on July 4, 2025) remain as they were in the proposed TMUTCD:

1. Section 2A.08 (Par. 3) - font choice

3. Sections 2B.30A, 2D.26 - Turnaround ONLY sign & plaque

4. Sections 2B.31, 31A, 31B and Sections 2C.30, 34 - sign text size

10. Sections 2E and 2G - use of LEFT EXIT or LEFT LANE panels

13. Section 2F (multiple Figures throughout) - Toll Road sign design

15. Section 2L.02 (Par. 2) - alert message types permitted on dynamic/changeable message signs

18. Figure 2N-1 - use of symbol on Hurricane Evacuation Route sign

21. Section 7C.02 (Par. 4) - use of school zone transverse line

The following items (as numbered in the original list of pending issues published in the proposal on July 4, 2025) were resolved through discussion with FHWA, resulting in changes to the proposed TMUTCD:

2. Sections 2B.27 (Par. 7), 2B.28 (Par. 3) - placement of Mandatory Movement Lane Control signs. TxDOT removed language allowing the Mandatory Movement Lane Control (R3-5) and Optional Movement Lane Control (R3-6 series) signs to be post-mounted and will conform to language from Sections 2B.28 and 2B.29 of the national MUTCD that limits these signs to be mounted overhead only.

5 and 6. Section 2B.72 - No Electronic Messaging by Driver sign format and Section 2B.74 - Seat Belt sign format. For both items 5 and 6, TxDOT added a yellow "STATE LAW" panel at the top of regulatory signs that reference "STATE LAW" in Chapters 2B and 6G to be in substantial conformance with the national MUTCD. This includes the Prohibited Electronic Messaging While Driving (R16-15T), Littering Prohibited $10-2000 Fine (R19-6T), and Fasten Safety Belts (R19-8T) signs in Figure 2B-33, and the State Law Obey Warning Signs (R20-3T) sign in Figure 6G-1.

7. Sections 2C.10 (Figure 2C-1) and 2C.43 (Figure 2C-10) - Large Arrow sign design. TxDOT removed the Chevron/Two-Direction Large Arrow (W1-7T) and Chevron/One-Direction Large Arrow (W1-9T) signs from Table 2C-1, Figures 2C-1 and 2C-10, and Sections 2C.10 and 2C.43, to conform to the national MUTCD and because an equivalent warning message can be achieved with the existing large arrow signs (W1-6 single or W1-7 double) in the national MUTCD with enhanced conspicuity as described in Section 2A.11.

8. Section 2C.25 (Figure 2C-6) - use of clearance arrow plaque. TxDOT removed the Downward Arrow (W12-3PT) plaque from Figure 2C-6 to conform to the national MUTCD, which includes the Clearance Overhead with arrow (W12-2b) sign that can be used instead.

9. Section 2C.41A - use of HIGHWAY INTERSECTION AHEAD sign. FHWA considers the HIGHWAY INTERSECTION AHEAD (W2-14aT) sign to be redundant to the intersection warning (symbol) signs shown in Figure 2C-10 and described in Section 2C.41. TxDOT removed the HIGHWAY INTERSECTION AHEAD (W2-14aT) sign from Figure 2C-10 to conform to the national MUTCD.

11. Section 2E.39A - use of Overhead Down Arrow guide signs. Retaining Section 2E.39A can cause confusion about the continued use of Overhead Down Arrow Guide Signs. This older sign design may only be considered for cases where an engineering study determines that the sign needs to be replaced but the sign structure cannot support a conforming Arrow-per-Lane sign. TxDOT removed Section 2E.39A.

12. Section 2E.42 (Figures 2E-44, 46) - Optional Exit Lane sign design. In Figures 2E-44 and 2E-46, TxDOT removed the optional Exit Lane sign design and adopted the mandatory Exit Lane sign design at the ramp gore to conform to the national MUTCD.

14. Section 2G (multiple Figures throughout) - Preferential and Managed Lane sign design. TxDOT updated HOV regulatory signs to conform to the format in the national MUTCD in Figure 2G-1 and other figures in Section 2G that include these signs. TxDOT's primary change was to remove the horizontal line in the body of the sign and to add the word ONLY, e.g., "HOV 2+ ONLY".

16. Section 2L.04 (Par. 07) - use of warning beacons on dynamic/changeable message signs (DMS/CMS). TxDOT reinstated language in Section 2L.04, Paragraph 7, related to warning beacons on CMS, to conform to the national MUTCD. TxDOT also added an Option paragraph to Section 2L.04 that allows warning beacons on DMS/CMS to flash for imminent dangers.

17. Figure 2M-9 - use of symbol on Destination Guide Sign for kayaking. TxDOT removed the Kayaking symbol (RS-118T) sign in Figure 2M-9 and Table 2M-1 to conform to the national MUTCD and because an FHWA study indicated that the Kayaking symbol had insufficient comprehension by the public. TxDOT will contact the Texas Parks and Wildlife Department about alternatives for their Texas Paddling Trails program.

19. Section 3A.04 (Par. 02) - definition of a "wide line." TxDOT reinstated the definition of a "wide line" in Section 3A.04 to be "at least twice the width of a normal line" to conform to the national MUTCD.

20. Section 6H.08B - use of Upward Sloping Arrow sign. TxDOT removed the Upward Sloping Arrow (CW1-6aT) sign from Table 6H-1, Figure 6H-1, and Section 6H.08B in Chapter 6H to conform to the national MUTCD.

After the publication of the proposed TMUTCD on July 4, 2025 for public comment, FHWA provided additional comments on Part 2F. Discussion with FHWA resulted in the following changes, which have been numbered in sequence from the original list of pending issues published in the proposal:

22. TxDOT modified Figure 2F-1A and subsequent figures in Chapter 2F to show a TOLL (W90-11T) panel integrated into the top of the guide sign instead of a TOLL ROAD (W90-11PT) plaque above the guide sign. This panel configuration conforms to the Standard language in Section 2F.12, Paragraph 5, in the national MUTCD.

23. TxDOT updated the Toll Rate (R90-2aT, R90-2bT) sign designs in Figure 2F-2 to more closely conform with the national MUTCD.

24. TxDOT removed the Standard statement in Section 2F.03 (previously Paragraph 2) to conform to the national MUTCD because this Texas-specific Standard statement related to displaying a purple background color or underlay panel is redundant to other language in the national MUTCD.

25. In Figure 2F-4, TxDOT removed the LAST FREE EXIT (W90-5PT) plaque and replaced it with the LAST EXIT BEFORE TOLL (W16-16P or W16-16aP) warning plaque, which has a similar meaning and conforms to the national MUTCD.

After the publication of the proposed TMUTCD for public comment on July 4, 2025, TxDOT made these additional changes:

26. TxDOT reinstated Figure 2I-3, "Examples of General Service Signs with and without Exit Numbering", to conform to the national MUTCD.

27. TxDOT requested clarification, and FHWA confirmed an error not currently documented in FHWA's List of Known Errors. TxDOT updated Figures 6P-29 and 9C-1 to show the sizes of the diagonal downward-pointing arrow (W16-7P and CW16-7P) plaques to be consistent with FHWA's Standard Highway Signs (SHS) publication and the language of the national MUTCD.

28. TxDOT also made minor corrections and clarifications.

COMMENTS

The department posted the rules for comment in the July 4, 2025 issue of the *Texas Register* and received comments through September 2, 2025. TxDOT received 27 comments from a total of 12 individuals and entities. The City of Austin and Safe Streets Austin each submitted comments with suggested changes to the proposed TMUTCD.

1. One comment noted the use of the Junction Auxiliary Plaque for the intersecting US Route 46 in Figure 2A-4 and recommended updating the sign assembly due to an update in route numbers for the other intersecting roadways. The Junction US Route 46 sign is still appropriate for illustration A, within Figure 2A-4 Sheet 1, as the intersecting road is both US Route 46 and US Route 90 West. No related revisions were made to the proposed TMUTCD.

2. One comment requested including more figures displaying the application of new signs. There are several new figures within the proposed TMUTCD that show the application of new signs. Additionally, Texas has supplemental guidance documents that will be updated to show the use of these new signs. No related revisions were made to the proposed TMUTCD.

3. One comment requested clarification on the use of the WATER CROSSING (W8-18aT) sign, requesting consideration for the application of this sign in areas with local heavy rains and flash floods. While this sign is not intended for that purpose, the language in Section 2C.34 provides for use of other signs for that purpose, including ROAD MAY FLOOD (W8-18). No related revisions were made to the proposed TMUTCD.

4. One comment noted an inconsistency between the proposed TMUTCD and the current Standard Highway Sign Designs for Texas (SHSD) for the design of object markers. The comment stated that the design of Type 3 Object Markers does not comply with TMUTCD Section 2C.02, Paragraph 1, but that paragraph does not apply to Object Markers. However, TxDOT concurs that the depiction of Type 3 Object Markers in the proposed TMUTCD does not match that depicted in the current SHSD. Instead, Figure 2C-17 in the proposed TMUTCD reflects the national MUTCD language in Section 2C.70, Paragraph 2, where the minimum width of the yellow and black stripes shall be 3 inches. Since Texas has chosen to set a standard stripe width of

4 inches, which is reflected in the current SHSD, TxDOT revised Figure 2C-17 to depict the 4-inch width.

5. One comment requested clarification of the text describing Object Markers for sign supports adjacent to the roadway. Per the national MUTCD Standard statement in Section 2C.72, Type 1 and Type 4 Object Markers shall not be used to mark obstructions adjacent to the roadway. Section 2C.72, Paragraphs 7 and 8 describe the acceptable means to mark a sign support (not an obstruction) adjacent to the roadway. TxDOT re-issued the Delineator and Object Marker standard sheet as D&OM(SIGN)-25A on September 23, 2025. To distinguish sign supports from obstructions, TxDOT revised Section 2C.70, Paragraph 1 to add "or sign supports."

6. One comment supported the removal of north arrows included in many figures of the national MUTCD. The comment noted that the north arrows are still included in Chapter 2D of the proposed TMUTCD and requested clarification on whether this was intentional. The north arrows are included on figures that have cardinal directions shown on signs/plaques. No related revisions were made to the proposed TMUTCD.

7. One comment noted a potential error in Figure 2D-4, which includes several signs (M1-1a through M1-3) that do not have rounded borders as required by Section 2A.10, Paragraph 2. As these are longstanding sign designs provided in the national MUTCD, Texas is conforming with the national MUTCD under the substantial conformance requirement. No related revisions were made to the proposed TMUTCD.

8. One comment noted an inconsistency between Section 2E.22, Paragraph 12, and Figure 2E-9. The text describes the word "LEFT" on the sign legend of the E1-5bP plaque despite the plaque not including "LEFT" on the sign legend in Figure 2E-9. FHWA has concurred this is a known error. TxDOT concurs with this comment. TxDOT revised Section 2E.22, Paragraph 12, to reference plaques E1-5fP through E1-5kP instead of E1-5bP. TxDOT also revised Figure 2E-9 to designate Texas-specific LEFT exit number plaques with a "T".

9. One comment noted the language in Section 2E.26, Paragraph 2, related to the arrow displayed on Exit Gore signs, may not allow flexibility for ramps with cloverleaf configurations. However, the text in Section 2E.26, Paragraph 2 allows use of the appropriate arrow based on the site and ramp configuration, and this language conforms to the national MUTCD. No related revisions were made to the proposed TMUTCD.

10. One comment requested removal of the requirement that an electric vehicle (EV) charging service provider adhere to the federal EV charger standards in 23 CFR 680.106 in order to qualify for a Specific Service Sign. The commenter stated that the federal regulation predates a shift in industry standards and is now out of date. The TMUTCD is required by federal law to be in substantial conformance with the national MUTCD. No related revisions were made to the proposed TMUTCD.

11. One comment requested the TMUTCD enhance the ability for cities to install painted transit lanes. Based on updates to the national MUTCD, Section 3H.07 of the proposed TMUTCD includes criteria allowing agencies to provide markings to increase the conspicuity of infrastructure reserved for public transit systems. No related revisions were made to the proposed TMUTCD.

12. One comment supported Chapters 3C and 3H being added to the MUTCD. TxDOT concurs with this comment. No related revisions were made to the proposed TMUTCD.

13. One comment noted concerns about the lack of flexibility of the Texas-specific Guidance statement in Section 3D.01, Paragraph 3, which states that markings should not require lane changes within a circular intersection to make a U-turn maneuver. The commenter also recommended retaining Figure 3D-4. TxDOT concurs with this comment. To allow flexibility for site-specific needs while still considering roundabout best practices, TxDOT reinstated Figure 3D-4 and converted the Guidance statement in Section 3D.01 to a Support statement.

14. One comment noted a concern of road users slipping if aesthetic surface treatments (paint) are used between transverse lines within a crosswalk. The comment suggested using a different color for each longitudinal bar of the crosswalk to achieve the aesthetic appearance without painting the entire crosswalk. However, both longitudinal and transverse lines in crosswalks are required to be white by Section 3C.03. Using any other color would interfere with the traffic control device and is not allowed per Section 3H.03, Paragraph 5. The comment also suggested permitting murals on sidewalks, but the TMUTCD provides criteria only for traffic control devices. Per direction by the US DOT Secretary of Transportation in July 2025, TxDOT added a new Standard statement in Section 3H.03 to further clarify the use of aesthetic treatments.

15. One comment noted the use of the rainbow crosswalks and requested these be allowed. Section 3H.03 of the proposed TMUTCD allows aesthetic surface treatments within the requirements of that section. Per direction by the US DOT Secretary of Transportation in July 2025, TxDOT added a new Standard statement in Section 3H.03 to further clarify the use of aesthetic treatments.

16. One comment noted that the rainbow crosswalk at UT Austin on Guadalupe Street is distracting and should be removed if other rainbow crosswalks are removed. Per direction by the US DOT Secretary of Transportation in July 2025, TxDOT added a new Standard statement to Section 3H.03 to further clarify the use of aesthetic treatments.

17. One comment noted that street art is not distracting and generally located in areas with lower speed limits. Section 3H.03 of the proposed TMUTCD allows aesthetic surface treatments within the requirements of that section. Per direction by the US DOT Secretary of Transportation in July 2025, TxDOT added a new Standard statement to Section 3H.03 to further clarify the use of aesthetic treatments.

18. One comment supported the changes, especially: Section 4F.19, Paragraph 4 (protection of pedestrian intervals when transitioning into preemption control); Section 4H.05, Paragraph 4 (limits flashing bicycle indications to flashing mode); Section 7B.05, Paragraphs 9-11 (yellow warning beacons for school zones); and the new Figure 7B-4A (buffered school speed zones). TxDOT concurs with this comment. No related revisions were made to the proposed TMUTCD.

19. One comment requested rewording to clarify the Guidance statement in Section 4C.02, Paragraph 9, related to the eight-hour volume warrant. The proposed language in Section 4C.02, Paragraphs 9 and 10 when read together are clear that the 8 hours used in Condition A are not required to be the 8 hours used in Condition B. No related revisions were made to the proposed TMUTCD.

20. One comment requested Figure 6P-8 be corrected to replace the labels that read "M1-6T" with "M1-5T". TxDOT concurs with this comment and revised Figure 6P-8 to replace the "M1-6T" labels with "M1-5T".

21. One comment noted that additional text would provide clarity on Figure 7B-4A, which illustrates the use of traffic control devices in a buffer school speed zone. TxDOT concurs with this comment. TxDOT revised Section 7B.05 to provide additional guidance.

22. One comment requested clarification on the interpretation provided in the public hearing presentation regarding turns on red across separated bicycle lanes and the Standard statement in Section 9E.07, Paragraph 12. The proposed language prohibits turns on red across separated bicycle lanes while bicyclists are allowed to proceed through the intersection. One of the examples shown in the Public Hearing presentation includes a travel lane and a parallel separated bicycle lane that are served by the same signal faces. When the red signal indication is displayed, bicyclists are not permitted to proceed through the intersection. Therefore, turns on red across the parallel separated bicycle lane are not required to be prohibited in this example. TxDOT concurs with this interpretation. No related revisions were made to the proposed TMUTCD.

23. One comment requested including a section related to signs for innovative intersections. Generally, the proposed TMUTCD is aligned with the national MUTCD sections due to the substantial conformance requirement. There are several sections and figures in the proposed TMUTCD that include signing for innovative intersections. Additionally, TxDOT has supplemental guidance documents that will be updated to show the use of signs in innovative intersections. No related revisions were made to the proposed TMUTCD.

24. One comment requested the TMUTCD include text that enables placemaking by allowing planters, benches, and other materials to be installed on neighborhood streets. The TMUTCD provides criteria for the use of traffic control devices. Planters, benches, and other similar items are not considered traffic control devices and are therefore not addressed in the TMUTCD. No related revisions were made to the proposed TMUTCD.

25. One comment requested the TMUTCD include additional flexibility for installing pedestrian infrastructure. The proposed TMUTCD includes flexibility for installing devices to improve safety for all road users. One example is in Warrant 4, in Section 4C.05, where there is a provision to allow for a reduction in the recommended pedestrian volume. Another example is in Section 4J.01, where the threshold for installing a pedestrian hybrid beacon is allowed to be reduced. No related revisions were made to the proposed TMUTCD.

26. One comment noted that the TMUTCD is structured heavily towards automobiles and requested the TMUTCD give more considerations to all road users. Conforming to the national MUTCD, the proposed TMUTCD includes new content for vulnerable road users and updates to improve safety for all road users. No related revisions were made to the proposed TMUTCD.

27. One comment requested a comprehensive overhaul of the national MUTCD by the US Department of Transportation to focus more on equity and accessibility. The TMUTCD is required by federal law to be in substantial conformance with the national MUTCD. No related revisions were made to the proposed TMUTCD.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code §544.001, which requires the commission to adopt a manual of uniform traffic control devices.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 544

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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