TEXAS REGISTER

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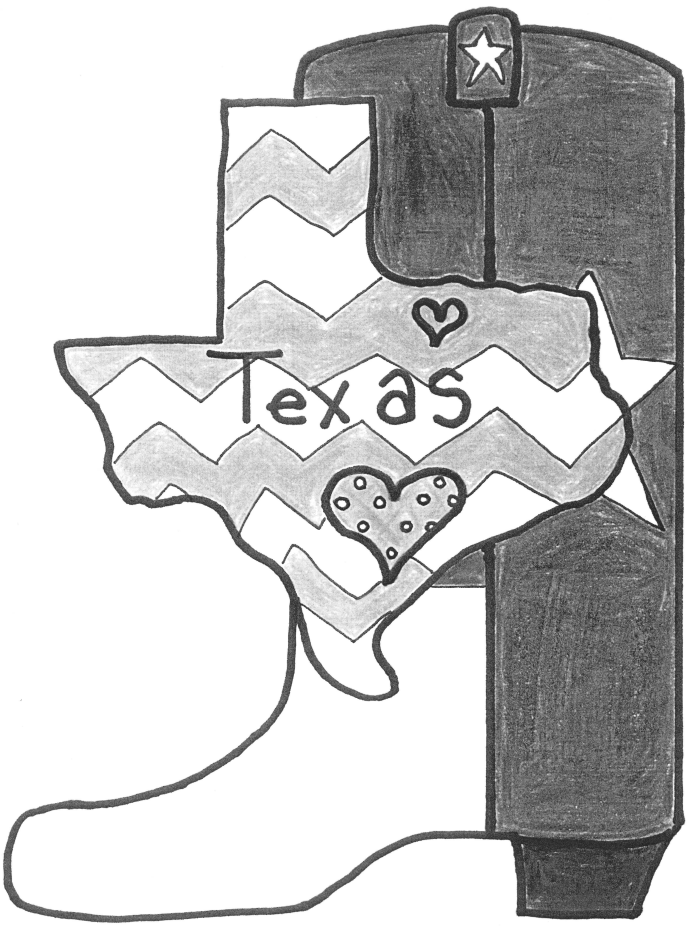
Texas

THE GOVERNOR

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

Proclamation 41-4247

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 18th day of December, 2025.

Greg Abbott, Governor

TRD-202504710

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Proclamation 41-4248

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions persist in certain counties in Texas and that the presence of drought conditions in certain counties contributes to increased wildfire danger;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bexar, Blanco, Brewster, Brooks, Burnet, Caldwell, Cameron, Childress, Clay, Collingsworth, Colorado, Comal, Comanche, Culberson, DeWitt, Dimmit, Donley, Duval, Fayette, Foard, Frio, Gillespie, Gonzales, Grayson, Guadalupe, Hall, Hardeman, Hays, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kendall, Kerr, Kinney, Kleberg, Lavaca, Live Oak, Llano, Lubbock, Matagorda, McMullen, Medina, Midland, Nueces, Pecos, Presidio, Real, San Patricio, Terrell, Travis, Uvalde, Val Verde, Victoria, Wharton, Willacy, Williamson, Wilson, and Zapata Counties.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 18th day of December, 2025.

Greg Abbott, Governor

TRD-202504713

♦ ♦ ♦

Proclamation 41-4249

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 4, 2025, as amended and renewed in several subsequent proclamations, certifying that the heavy rainfall and flooding event that began on July 2, 2025, that included heavy rainfall and flash flooding, caused widespread and severe property damage, injury, or loss of life in several counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend

and renew the aforementioned proclamation and declare a disaster in Bandera, Bexar, Burnet, Caldwell, Coke, Comal, Concho, Edwards, Gillespie, Guadalupe, Hamilton, Kendall, Kerr, Kimble, Kinney, Lampasas, Llano, Mason, Maverick, McCulloch, Menard, Real, Reeves, San Saba, Schleicher, Sutton, Tom Green, Travis, Uvalde, and Williamson Counties;

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

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. Any statutes that might prevent the transfer of bodies to families as soon as possible are hereby suspended, including Sections 264.514 and 264.515 of the Texas Family Code and Articles 49.04, 49.05, 49.10, and 49.25 of the Texas Code of Criminal Procedure. Further, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 18th day of December, 2025.

Greg Abbott, Governor

TRD-202504714

♦ ♦ ♦

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 10. COMMUNITY DEVELOPMENT

PART 9. TEXAS ADVANCED NUCLEAR ENERGY OFFICE

CHAPTER 331. GRANTS

The Office of the Governor, the Texas Advanced Nuclear Energy Office (TANEO) proposes rulemaking to 10 TAC §§331.1 - 331.32.

EXPLANATION AND JUSTIFICATION OF THE RULES

The Texas Advanced Nuclear Energy Office (TANEO) proposes new 10 Texas Administrative Code (TAC) §§331.1 - 331.32 relating to the Texas Advanced Nuclear Development Fund, the Project Development and Supply Chain Reimbursement Program, and the Advanced Nuclear Construction Reimbursement Program. This proposed rulemaking will implement Texas Government Code Chapter 483 as enacted by House Bill (HB) 14 during the Texas 89th Regular Legislative Session. The proposed rulemaking establishes the policies and procedures governing the reimbursement programs, including the application process, eligibility requirements, and details related to the program's grant agreements. The proposed rules also establish the framework TANEO will use to award grants, enter grant agreements, and distribute the proceeds of a grant award on a rolling basis, as required by Section 483.204(g), Texas Government Code.

SECTION BY SECTION SUMMARY

Proposed rulemaking to Title 10, Texas Administrative Code, provide the rules for the Texas Advanced Nuclear Energy Office, including but not limited to, the application process and review process for the Texas Advanced Nuclear Development Fund. Subchapter A explains and provides the rules for the project development and supply chain reimbursement program.

The following rulemaking covers 10 TAC §§331.1 - 331.32.

TANEO proposes new 10 TAC §§331.1 - 331.32, relating to Grants, including §331.1, concerning Definitions, §331.2, concerning Eligible Recipients; Eligible Expenses, §331.3, concerning Application Process and Requirements Generally, §331.4, concerning Application Requirements, §331.5, concerning Grant Evaluation and Review Process, §331.6, concerning Amount of Grant Award Recommendations and Decisions, §331.7, concerning Grant Decision Notification Process, §331.8, concerning Grant Agreement, §331.9, concerning Waiver of Rules, §331.20, concerning Eligible Projects, §331.21, concerning Limitations on Maximum Grant Amount, §331.30, concerning Eligible Projects, §331.31, concerning Limitations on Maximum Grant Amount; Prerequisites to Grant Funding, §331.32, concerning Grant Agreement.

House Bill 14 (89-R) directed the Texas Advanced Nuclear Energy Office to adopt rules regarding the procedure for awarding grants to an applicant under Chapter 483, Texas Government Code.

Proposed new §331.1 establishes definitions TANEO will utilize in its grant making process.

Proposed new §331.2 establishes eligibility requirements related to eligible recipients and eligible activities.

Proposed new §331.3 describes the application process and explains how TANEO will maintain a formal application available online and may, at any time, change the terms of the formal application document. The rule also establishes process requirements for grant applications, including electronic submission.

Proposed new §331.4 establishes requirements for grant applications.

Proposed new §331.5 establishes the grant review process for TANEO to consider an application, as well as minimum grant-review standards.

Proposed new §331.6 establishes grant funding decisions. The rule specifies that grants will be allocated on a competitive basis and will be awarded based on the efficient and effective use of public funds.

Proposed new §331.7 establishes the grant decision notification process, including notifying an applicant in writing of the decision regarding a grant award. The rule further specifies that TANEO will make conditional awards of grant funds; an award may only become final after a grantee enters a grant agreement with TANEO.

Proposed new §331.8 describes the grant agreement between a grant recipient and TANEO that is a prerequisite for receiving a grant.

Proposed new §331.9 explains that TANEO may waive any provision of the rules of this subchapter if it would further the public interest and is consistent with applicable statutory law.

Proposed new §331.20 describes the projects that are eligible for a Project Development and Supply Chain Reimbursement Program reimbursement grant.

Proposed new §331.21 establishes the maximum amount of funds permitted to be awarded to applicants under the Project Development and Supply Chain Reimbursement Program.

Proposed new §331.30 describes the projects that are eligible for an Advanced Nuclear Construction Reimbursement Program reimbursement grant.

Proposed new §331.31 establishes funding levels and prerequisites to eligibility to receive grant funds. The rule specifies the

maximum amount of funds permitted to be awarded to applicants under the Advanced Nuclear Construction Reimbursement Program.

Proposed new §331.32 describes the milestone-based plan TANEO will use in grant agreements to distribute grant funds on a rolling basis to grantees under the Advanced Nuclear Construction Reimbursement Program. The rule specifies that, even if a grantee submits potentially-eligible expenses to TANEO, TANEO will not reimburse any such expenses until a grantee can demonstrate it has reached specified milestones.

FISCAL NOTE

Jarred Shaffer, Director of the Texas Advanced Nuclear Energy Office, Office of the Governor, has determined that for the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction of cost, or loss or increase in revenue to the state or local governments due to the enforcement or administration of the rules. Additionally, because the programs' administrative expenses will be paid through the Texas Advanced Nuclear Development Fund, TANEO has determined that enforcing or administering the rules does not have foreseeable implications related to the costs or revenues of state or local government.

PUBLIC BENEFIT

Mr. Shaffer has determined for the first five-year period the proposed rules are in effect there will be a benefit to applicants and the public because the proposed rules provide a framework for the Texas Advanced Nuclear Development Fund as well as transparency and governance for the administration of the Project Development and Supply Chain Reimbursement Program and the Advanced Nuclear Construction Reimbursement Program. The public will also benefit from the programs established by these rules, as the programs will further incentivize capital investments for advanced nuclear energy projects, thereby growing opportunities for small businesses, workforce development, and additional generation capacity for the electrical grid in Texas. Mr. Shaffer has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated due to the enforcement of the rules will be to provide clarity to applicants, grant awardees, and the public and to ensure the efficient operation of the Texas Advanced Nuclear Development Fund's programs.

PROBABLE ECONOMIC COSTS

Mr. Shaffer has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with the proposed rules.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESS AND RURAL COMMUNITIES

Mr. Shaffer has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Therefore, TANEO is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Texas Government Code.

LOCAL IMPACT STATEMENT

Mr. Shaffer has determined that the proposed rules will have a positive impact on local employment and local economies across the State of Texas. In a recent study published by the University of Texas at Austin, there will be more than 10,000 advanced nuclear jobs tied to announced advanced nuclear power projects in Texas over the next 3-5 years. Further, according to an IC²'s Bureau of Business Research report, with the development of advanced nuclear reactor projects in Texas, Texas could stand to benefit over $50 billion in new economic output and over $27 billion in income for Texas workers by 2055.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Shaffer has determined that during each year of the first five years in which the proposed rules are in effect, the rules:

1) will not create or eliminate government programs;

2) will not require the creation of new employee positions;

3) will not require an increase or decrease in future legislative appropriations to TANEO;

4) will not require an increase or decrease in fees paid to TANEO;

5) will create new regulations;

6) will not expand certain existing regulations, limit certain existing regulations, or repeal existing regulations;

7) will increase the number of individuals subject to the applicability of the rules; and

8) will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

Mr. Shaffer has determined that there are no private real property interests affected by the proposed amendments. Thus, TANEO is not required to prepare a takings impact assessment pursuant to Section 2007.043, Texas Government Code.

REQUEST FOR PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Margaux Fox, Office of the Governor, Texas Advanced Nuclear Energy Office, P.O. Box 12428, Austin, Texas 78711, or by email to *taneo@gov.texas.gov* with the subject line "2025 TANEO Rule Proposal." The deadline for receipt of comments is 5:00 p.m., Central Time, on February 2, 2026, which is at least 30 days from the date of publication in the *Texas Register*. Comments should be organized in a manner consistent with the proposed rules. Each set of comments should include a bulleted list on the last page of the filing that covers each substantive recommendation made in the comments. The bulleted list must be clearly labeled with the submitting entity's name.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§331.1 - 331.9

STATUTORY AUTHORITY

Section 483.101, Texas Government Code, authorizes TANEO to adopt and enforce rules necessary to carry out the programs established in Chapter 483, Texas Government Code. Section 483.203, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Project Development and Supply Chain Reimbursement Program. Section 483.204, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Advanced Nuclear Construction Reimbursement Program.

§331.1. Definitions.

All definitions found in section 483.001, Texas Government Code, are adopted by reference for this chapter. Additionally, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Director--The director of the Texas Advanced Nuclear Energy Office.

(2) Fund--The Texas Advanced Nuclear Development Fund as established under Subchapter C, Chapter 483 Texas Government Code.

(3) Grant agreement--A written agreement executed by the Office of the Governor and a grantee that establishes the terms, duties, reporting requirements, and other responsibilities of each party in relation to a grant awarded by the Office of the Governor.

(4) Grant funds--Funds selected applicants may be awarded to carry out the purpose of the grant as established under the grant agreement.

(5) Grant recipient or Grantee--An applicant named as the recipient of the award in the grant agreement.

(6) License--A license issued by the United States Nuclear Regulatory Commission that authorizes the license holder to construct and operate a nuclear power facility, such as a nuclear plant at a specific site, with specified conditions.

(7) OOG--The Office of the Governor.

(8) TANEO--The Texas Advanced Nuclear Energy Office established under Subchapter B, Chapter 483, Texas Government Code.

(9) Regulatory Commission--The United States Nuclear Regulatory Commission.

§331.2. Eligible Recipients; Eligible Expenses.

(a) TANEO may only provide grants to eligible businesses, nonprofit organizations, and governmental entities, including institutions of higher education.

(b) To be eligible for reimbursement of expenses, an applicant must provide sufficient documentation to support incurred expenses. The OOG, in its sole discretion, determines when an applicant has submitted sufficient documentation.

(c) An applicant for a grant under this chapter may receive financial assistance or incentives from a local, state, or federal source, but TANEO may not expend grant funds to reimburse expenses paid by a grant recipient or the grant recipient's project partner using financial assistance or incentives from the local, state, or federal source. TANEO, in its sole discretion, may terminate a grant agreement and a grantee must, at a minimum, return to the OOG the amount equal to the amount of funds the grantee received under the grant agreement.

§331.3. Application Process and Requirements Generally.

(a) TANEO will maintain a formal application available electronically at the TANEO website.

(b) TANEO will post notice of the application schedule of the grant programs described in this chapter at the TANEO website.

(c) Applicants must submit an application in the form and manner prescribed by TANEO on or before the deadlines specified in the posted notice. TANEO may require that applicants submit applications electronically.

(d) TANEO may change the requirements set forth in the formal application at any time. An applicant may be required to provide supplemental information if TANEO makes a change to the notice.

(e) TANEO may reject an application that is not submitted in accordance with the requirements established by TANEO.

(f) TANEO may reject and take no further action on an application that TANEO determines does not comply with applicable program requirements.

§331.4. Application Requirements.

(a) As set forth in greater detail in the instructions prescribed by TANEO in formal applications, each application response must include:

(1) the grant applicant's exact name;

(2) a description of the project, projected milestone dates, and proposed services;

(3) information relating to funding priority or funding consideration;

(4) proof of funding availability;

(5) project area and location to be served;

(6) proposed grant budget;

(7) the project's potential benefit to this state;

(8) information required by the application; and

(9) any other information or documentation TANEO may require.

(b) Prior to an applicant's submission of an application, TANEO may require a potential applicant to submit a Notice of Intent to apply to determine an applicant's eligibility to submit a full application for a project under this chapter.

§331.5. Grant Evaluation and Review Process.

(a) TANEO may establish and specify any selection criteria it considers relevant to the grant.

(b) TANEO shall evaluate each application for a grant based on, at a minimum:

(1) the grant applicant's:

(A) quality of services and management;

(B) efficiency of operations;

(C) access to resources essential for operating the project for which the grant is requested, such as land, water, and reliable infrastructure, as applicable;

(D) application for or docketing of a permit or license with the regulatory commission; and

(E) ability to repay the grant if project benchmarks are not met; and

(2) the project's potential benefit to this state.

(c) TANEO shall not consider incomplete applications.

(1) An application is complete when an applicant has submitted all required documentation to TANEO, including any supplemental documentation TANEO requests from the applicant.

(2) If TANEO specifies an application deadline, an applicant must submit all required documentation to TANEO on or before that deadline.

(d) TANEO will initially screen each completed application for eligibility. TANEO will not consider ineligible applications.

(e) Notwithstanding Subsection (c)(2), TANEO may request additional information from an applicant regarding its application after the application deadline. If an applicant does not provide requested information on or before the date specified by TANEO in its request for

additional information, TANEO may reject the application as incomplete.

(f) TANEO may reject an application at any point during the review and evaluation process.

(g) TANEO's approval of an award shall not obligate TANEO to make any additional, supplemental, or other awards.

(h) TANEO may only issue the grant after the grant agreement is fully executed by the grant recipient and TANEO.

(i) Providing false information, knowingly or unknowingly, on a grant application may result in TANEO denying an application or, if a grant has been awarded, terminating the grant agreement and, at a minimum, recouping any grant funds distributed to a grantee.

§331.6. Amount of Grant Award Recommendations and Decisions.

(a) TANEO will award grant funds on a competitive basis.

(b) TANEO, in its sole discretion and based on the efficient and effective use of public funds, shall make all determinations regarding grant award recommendations and decisions, including, but not limited to, actions relating to an applicant's eligibility, evaluation, award, and funding amount.

(c) TANEO is not obligated to fund a grant at the amount requested by the grant applicant. All grant funding is contingent upon the availability of funds, upon approval of a grant application by TANEO, and a grantee's adherence to the terms of the grant agreement. Neither this chapter nor a grant agreement creates any entitlement or right to grant funds by a grant applicant.

§331.7. Grant Decision Notification Process.

(a) TANEO shall notify an applicant in writing of TANEO's decision regarding a grant award. If TANEO determines an applicant satisfies grant criteria, TANEO may provide a conditional grant award to the applicant.

(b) For applicants that receive notice of a conditional grant award, TANEO may establish a deadline by which the applicant must execute a grant agreement. If an applicant fails to execute a grant agreement on or before the deadline specified under chapter, TANEO may withdraw the grant award.

(c) All grant funding decisions made by TANEO are final and are not subject to appeal.

§331.8. Grant Agreement.

An applicant may not receive a grant under this chapter until it has entered a grant agreement with TANEO. A written agreement under this chapter must:

(1) specify benchmarks and milestones for the completion of the project for which the grant is provided;

(2) require the grant recipient to repay to the state money received from that grant if the recipient fails to reach the specified benchmarks; and

(3) include any additional terms or requirements set forth in subchapter B or C of this chapter.

§331.9. Waiver of Rules.

The director or designee, may, in the director's sole discretion, waive any provision of this chapter upon a finding that the public interest would be furthered by granting a waiver. Any such waiver must be consistent with applicable statutory law.

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

Filed with the Office of the Secretary of State on December 15, 2025.

TRD-202504647
Jarred Shaffer
Director, Texas Advanced Nuclear Energy Office
Texas Advanced Nuclear Energy Office
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 463-2000

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SUBCHAPTER B. PROJECT DEVELOPMENT AND SUPPLY CHAIN REIMBURSEMENT PROGRAM

10 TAC §331.20, §331.21

STATUTORY AUTHORITY

Section 483.101, Texas Government Code, authorizes TANEO to adopt and enforce rules necessary to carry out the programs established in Chapter 483, Texas Government Code. Section 483.203, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Project Development and Supply Chain Reimbursement Program. Section 483.204, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Advanced Nuclear Construction Reimbursement Program.

§331.20. Eligible Projects.

TANEO may provide a reimbursement grant from the Fund under this subchapter for the expenses associated with or required for initial development of an advanced nuclear project in this state.

§331.21. Limitations on Maximum Grant Amount.

A grant provided under this subchapter may not exceed the lesser of:

(1) 50 percent of the amount of qualifying expenses associated with the project; or

(2) $12.5 million.

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

Filed with the Office of the Secretary of State on December 18, 2025.

TRD-202504715
Jarred Shaffer
Director, Texas Advanced Nuclear Energy Office
Texas Advanced Nuclear Energy Office
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 463-2000

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SUBCHAPTER C. ADVANCED NUCLEAR CONSTRUCTION REIMBURSEMENT PROGRAM

10 TAC §§331.30 - 331.32

STATUTORY AUTHORITY

Section 483.101, Texas Government Code, authorizes TANEO to adopt and enforce rules necessary to carry out the programs established in Chapter 483, Texas Government Code. Section 483.203, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Project Development and Supply Chain Reimbursement Program. Section 483.204, Texas Government Code, authorizes TANEO to establish by rule procedures for the application for and provision of a grant under the Advanced Nuclear Construction Reimbursement Program.

§331.30. Eligible Projects.

(a) TANEO may provide a reimbursement grant from the Fund under this subchapter for the expenses associated the construction of an advanced nuclear project in this state.

(b) An applicant that has received state-appropriated money for an advanced nuclear reactor is not eligible to receive a grant under this subchapter.

§331.31. Limitations on Maximum Grant Amount; Prerequisites to Grant Funding.

(a) A grant provided under this subchapter may not exceed the lesser of:

(1) 50 percent of the amount of qualifying expenses associated with the project; or

(2) $120 million.

(b) TANEO may not provide a reimbursement grant for a project under this subchapter until the regulatory commission has docketed a construction permit or license application for the project.

§331.32. Grant Agreement.

(a) Before entering a grant agreement for a grant under this subchapter, TANEO will establish a milestone-based plan to distribute grant funds on a rolling basis in accordance with:

(1) a project's respective regulatory commission license or permit regulatory pathway; and

(2) the grant recipient's financial investment decisions as it relates to the project.

(b) To determine the milestones included in a grant agreement, TANEO may consider, but is not limited to, the following considerations:

(1) the applicant's progress and completion of the regulatory commission's regulatory stages and other requirements related to a license or permit, including the:

(A) application schedule and resource letter published;

(B) application safety review;

(C) application environmental review; and

(D) issuance of license or permit; and

(2) the recipient's financial investment decisions related to a project, including:

(A) a comprehensive description of the entire project management process;

(B) anticipated timing of decisions and associated prerequisites for a project to proceed through a gating process; and

(C) a comprehensive financing and capital expenditure plan for the project, including details relating to sources of funding and project-specific investment decisions and timelines.

(c) Notwithstanding subsection (b)(1), TANEO may, in its sole discretion, accept approvals that applicants receive from other federal agencies.

(d) TANEO may withhold reimbursements of grant funds based on an applicant's completion, or failure to complete, specified milestones described in the grant agreement.

(e) TANEO may require a grant recipient to submit any documentation or information TANEO determines is necessary to assess whether a grantee has met a milestone in whole or in part for the purpose of distributing grant funds.

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

Filed with the Office of the Secretary of State on December 18, 2025.

TRD-202504716
Jarred Shaffer
Director, Texas Advanced Nuclear Energy Office
Texas Advanced Nuclear Energy Office
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 463-2000

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.513

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.513, relating to Texas Energy Fund - Texas Backup Power Package Program. The proposed rule will implement Public Utility Regulatory Act (PURA) §§34.0204, 34.0205, and 35.005(g) as enacted by Senate Bill 2627 during the Texas 88th Regular Legislative Session. The proposed rule will establish procedures for applying for a grant or loan for procurement, installation, and operation of Texas Backup Power Packages (TBPPs), terms for an applicant to request a grant or loan, as well as conditions under which a TBPP loan may be forgiven. The proposed rule excludes TBPPs that source power from electric school bus batteries (ESBs) from the scope of this rulemaking because the logistical and technical complexities inherent to such assets are significantly different from stationary TBPP assets. The commission will take additional time to study and integrate TBPPs that source power from ESBs at a future date; the commission invites interested stakeholders to provide information related to ESBs in the TBPP Program in a question below. Additionally, the proposed rule includes other questions for public comment related to implementation of the TBPP program.

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

David Gordon, Executive Counsel, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal impacts for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections. However, local governments may participate in the program addressed in the rule, which could benefit local governments by obviating expenditures on backup power systems for qualifying governmental facilities.

Public Benefits

David Gordon, Executive Counsel, has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be availability of backup power for critical facilities on which communities rely for health, safety, and well-being. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by January 30, 2026. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be filed by January 30, 2026. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission also requests any data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 59024.

In addition to comments on the text of the proposed rule, the commission invites interested persons to address the following questions related to implementation and administration of the TBPP Program.

Should the commission require TBPP awardees to contribute a dollar amount towards the total TBPP cost as a condition of the award of a loan or a grant (the "cost-share")? If yes, what is an appropriate cost-share amount for the applicant? Should the cost-share be expressed in nominal dollars, on a dollar-per-kilowatt basis, or some other metric?

What technical specifications, asset characteristics, and operational requirements are needed to implement TBPPs that source power from an electric school bus?

Should the rule accommodate any restrictions that would otherwise prohibit a public entity applicant from granting a secured interest in a TBPP facility that is financed with a loan?

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

Statutory Authority

The new rule is proposed under PURA §34.0204, which authorizes the commission to use money in the Texas Energy Fund without further appropriation to provide a grant or loan for a TBPP; §34.0205, which authorizes the commission to establish procedures for the application for and award of a grant or loan; §35.005(g), which authorizes the commission to adopt procedures to expedite an electric utility interconnection request for a TBPP; and §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statute: Public Utility Regulatory Act §§ 34.0204; 34.0205; 35.005(g); and 14.002.

§25.513. Texas Backup Power Package Program.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §§34.0204, 34.0205, and 35.005(g), and establish requirements and terms to provide grants and loans for funding Texas Backup Power Packages (TBPPs).

(b) Eligibility.

(1) Applicant eligibility. To be eligible for a grant or loan under this section, an applicant must be the owner of a critical facility.

(A) A critical facility may be owned by a corporation, municipality, county, district, or a utility.

(B) A critical facility must be a facility located in the state of Texas that provides essential services which a community relies on for health, safety, and well-being.

(C) A critical facility must be one of the following facility types:

(i) a hospital, ambulance dispatch facility, healthcare treatment facility, police station, fire station, or critical water or wastewater facility;

(ii) a medical facility or facility providing hospice, nursing, assisted living, or end-stage renal disease treatment and dialysis;

(iii) a community heating or cooling center, storm shelter, or homeless shelter;

(iv) an evacuation route fuel station or a gas station or grocery store in an urban or rural area with limited access to essential supplies;

(v) a communications facility that serves 911 call centers and radio and television emergency alert systems; or

(vi) a food bank or gathering place, including a public school, public library, town hall or municipal building, or house of worship which is identified as critical by the presiding officer of the governing body of a political subdivision.

(D) The applicant must control the site at which a TBPP may be installed, either through ownership or a lease of the property for the duration of the TBPP compliance and monitoring period.

(2) Vendor eligibility. To be eligible to participate in a TBPP project at an eligible critical facility, a vendor must be selected by the commission through a competitive solicitation process. The commission will maintain an approved vendor list.. Approved vendors servicing TBPPs that fail to operate may be removed from the approved vendor list.

(3) TBPP eligibility. To receive a grant or loan under this section, an applicant must contract with an approved vendor to install a TBPP that meets the following requirements.

(A) The TBPP must:

(i) be connected behind-the-meter at an eligible critical facility;

(ii) be engineered to minimize operation costs;

(iii) use interconnection technology and controls that enable immediate islanding from the power grid and stand-alone operation for the critical facility;

(iv) be capable of operating for at least 48 continuous hours without refueling or connecting to a separate power source;

(v) be designed so that one or more TBPPs can be aggregated onsite to serve not more than 2.5 megawatts of load at the critical facility; and

(vi) provide power sourced from a combination of natural gas or propane with photovoltaic panels and battery storage; and

(vii) be able to produce energy from the battery storage component sufficient to serve the critical facility's monthly average peak demand for one hour and produce energy from photovoltaic panels sufficient to recharge the battery storage component within six hours.

(B) The TBPP must not be used by the owner or the facility operator for the wholesale or retail sale of energy, ancillary services, or other reliability services products.

(c) TBPP funding. A TBPP may be funded in whole or in part by a grant, loan, or a combination of both.

(1) Grants. Grant funds may be used for the following cost categories:

(A) Design costs. Eligible costs under this category include costs for site specific plans, drawings, and studies.

(B) Installation costs. Eligible costs under this category include:

(i) costs for site installation, including labor;

(ii) costs for permitting, utility coordination, and code compliance;

(iii) costs for standard site preparation inputs, including foundations and pads; and

(iv) costs for inspection, testing, and commissioning; or

(C) any other costs necessary to facilitate the ownership or operation of the TBPP that are not expressly excluded under subsection (d) of this section.

(2) Loans. Loan funds may only be used for the following cost categories:

(A) Procurement. Eligible costs under this category include:

(i) costs for material and equipment delivery, and temporary storage and staging;

(ii) costs for equipment, such as the generator, battery storage system, photovoltaic modules and inverters, switchgear, controllers, and associated hardware; and

(iii) any other costs necessary to procure a TBPP that are not expressly excluded under subsection (d) of this section.

(B) Operating costs. Eligible operating costs include costs for operations and routine preventative maintenance, and warrantied repair services during the compliance period.

(d) Funding exclusions. Grant or loan funds received under this section must not be used for:

(1) A facility that:

(A) is a commercial energy system, a private school, or a for-profit entity that does not directly service public safety and human health;

(B) is a private residence;

(C) operates under a land lease agreement that expires prior to the end of the project compliance period or that does not have the lessor's written consent to install a TBPP;

(D) installs a source of backup power that does not follow the design and use standards of a TBPP; or

(E) uses the TBPP for the wholesale or retail sale of energy, ancillary services, or other reliability services products.

(2) Project costs that are:

(A) not included in a quotation provided by an approved vendor;

(B) for integrating existing backup power equipment into a TBPP installation, unless it aligns with vendor's TBPP design and the vendor offers the same warranties and performance guarantees as for a comparable TBPP of entirely new backup equipment;

(C) for building or electrical upgrades to a critical facility, except for the purpose of segregating critical circuits;

(D) related to segregating existing backup power equipment;

(E) associated with any enhanced system features outside the standard TBPP offering from an approved vendor;

(F) for critical facility or owner personnel;

(G) associated with operating costs incurred by the critical facility that are not directly required by the TBPP; or

(H) refueling costs or additional operations and maintenance costs outside the service agreement with the approved vendor.

(e) Application requirements and process. An application must be submitted by an eligible applicant in the form and manner prescribed by the commission. An applicant may submit one or more applications for an award under this section. Each application must only contain one critical facility project. An application must contain the information required by this subsection. An applicant may withdraw an application at any time while under commission review.

(1) Applicant.

(A) A corporate sponsor or the most senior parent corporation or owner entity may submit an application on behalf of a subsidiary applicant. An application for a TBPP with multiple owners must be submitted by the highest level of the entity with managing authority over the critical facility (e.g., owner with controlling interest, managing partner, or cooperative).

(B) Each application must include information about the applicant, including:

(i) the applicant's legal name;

(ii) the applicant's form of organization;

(iii) the applicant's relationship to the critical facility in the proposed project;

(iv) the applicant's primary contact name and title, mailing address, business telephone number, business e-mail address, and web address;

(v) information showing that the applicant is in good financial standing with relevant financial institutions and is meeting all compliance requirements;

(vi) the applicant's agreement to adhere to TBPP performance requirements;

(vii) description of any past grant and loan management and administration experience, if applicable;

(viii) information showing that control of the site at which a TBPP may be installed for a duration is at least as long as the compliance and monitoring period;

(ix) an attestation that the applicant is authorized to operate the TBPP at the critical facility; and

(x) the applicant's justification for seeking loan funds to cover a portion of TBPP costs.

(2) Critical facility information. For the critical facility for which an applicant is seeking a TBPP, the application must include:

(A) Critical facility information, including:

(i) the facility's name;

(ii) the facility type as enumerated under subsection (b)(1)(C) of this section;

(iii) the facility's physical address and mailing address;

(iv) the facility's owners and details about facility ownership;

(v) the key personnel associated with TBPP project operation;

(vi) a description of activities that the critical facility undertakes to support community welfare;

(vii) a description of the facility's community impact, including the service area and the quantity and type of population served;

(viii) a statement describing the manner in which a TBPP installation will enhance the community impact of the critical facility;

(ix) average daily energy consumption measured in kilowatt-hours and maximum daily demand measured in kilowatts; and

(x) for an applicant that submits more than one application at the same time, a ranked priority for each of the proposed critical facility projects.

(B) Backup power information, including:

(i) information related to any existing backup power system, including a description of the type of technology used and the system's rated maximum capacity; and

(ii) the facility's required backup power capacity and requested TBPP size.

(3) Project information. For the critical facility for which an applicant is seeking a TBPP, the application must include project information required by this subsection, as provided by the vendor. An eligible applicant authorized by the commission to coordinate with an approved vendor must provide all relevant project information to the vendor to satisfy the requirements of this subsection.

(A) Project information, including:

(i) the total TBPP project budget;

(ii) the respective portions of the project budget to be funded through a grant and loan;

(iii) the respective portions of the project budget by site preparation, package costs, installation, and maintenance;

(iv) any ineligible costs that the applicant will fund separately; and

(v) the vendor quotation and an indication of applicant approval of the quotation.

(B) A project work plan, including:

(i) a proposed installation schedule;

(ii) information demonstrating the feasibility of the project, including documentation establishing that the TBPP can be installed at the critical facility;

(iii) documentation that all permissions, approvals, and permits required by applicable laws and regulations have been obtained, or a detailed plan for obtaining all required permissions, approvals, and permits; and

(iv) an operation and maintenance plan.

(4) Information submitted to the commission as part of the application process is confidential and not subject to disclosure under Chapter 552, Government Code.

(f) Application review.

(1) Applicant approval. An applicant must be approved as eligible and obtain notice of eligibility before submitting a TBPP project proposal under paragraph (2) of this subsection.

(A) The TxEF administrator will review applications in the order in which they are received.

(B) The TxEF administrator will review the application to determine applicant eligibility in accordance with subsection (b)(1) of this section.

(C) The executive director or his or her designee will determine applicant eligibility and will provide notice that an eligible applicant is authorized to coordinate with an approved vendor for the purpose of submitting a TBPP project application to the commission.

(2) Project approval. The executive director or his or her designee will approve, deny, or approve with modifications an application submitted by an eligible applicant for each TBPP project based on the screening and evaluation criteria outlined in this subsection.

(A) Each proposed TBPP project will be evaluated based on:

(i) the project cost;

(ii) the timeline for TBPP installation and commissioning;

(iii) the TBPP's expected benefits and impact. While evaluating benefits and impact, the executive director or his or her designee will consider factors such as the applicant's facility type and the criticality of services offered, the number of people served by the facility, and geography served by the critical facility;

(iv) the applicant's resources to implement the project and comply with compliance and performance requirements;

(v) the critical facility's current backup power capabilities;

(vi) the applicant's stated priority level for the facility, if the applicant has applied for more than one critical facility; and

(vii) the creditworthiness of the applicant to determine eligibility for a loan.

(B) The TxEF administrator may request additional information associated with the items in this subsection if necessary to evaluate any project.

(g) Award amount. Eligible applicants may receive a grant or a loan towards eligible costs in accordance with subsection (c) of this section.

(1) The amount of the award will be determined by the executive director or his or her designee based on availability of program funds and evaluation of the applicant and project by the TxEF administrator.

(2) A grant award may not exceed $500 per kilowatt.

(3) A loan award will be structured as a forgivable loan consistent with subsection (h)(5) of this section.

(h) Funding structure and terms.

(1) To receive an award payment under this section, an applicant must enter into an award agreement or agreements in the form and manner specified by the commission.

(2) Any costs funded by a grant or loan under this section must not be collected from customers or constituents of the critical facility.

(3) An uncured breach of the executed award agreement will be grounds for the TxEF administrator to determine that an applicant is ineligible to obtain any future payments or forgiveness under this section.

(4) Funding terms for grants.

(A) Payment terms for a project will be specified in the corresponding grant agreement. An awardee must comply with all terms and conditions outlined in the grant agreement, including all reporting requirements, and all federal or state statutes, rules, regulations, or guidance applicable to the grant award to be eligible for grant fund disbursement.

(B) Grant funds will be paid directly to an approved vendor as a reimbursement payment upon submission of required documentation in accordance with the grant agreement.

(C) All other costs required for project completion must be financed by the applicant or awarded through a loan under this section.

(D) The commission will withhold or require the return of payments for costs that are found ineligible or if an awardee fails to comply with the requirements described in subsection (i) of this section.

(5) Funding structure and terms for loans.

(A) Loan structure. An approved loan will have the following characteristics:

(i) Loan term. The loan will have a term of 1 to 5 years, which will be contingent upon the size of the loan, attributes of the critical facility, and financial capabilities of the applicant.

(ii) Forgivability. Up to 100 percent of the loan funds are forgivable, if the awardee meets the performance expectations delineated in the loan agreement. Loans will be forgiven on a prorated basis based on the duration of performance during the com-

pliance period. Failure to meet any requirements for loan forgiveness will result in the full loan amount plus any accrued interest becoming immediately due and payable.

(iii) Loan interest rate. Unforgiven loan amounts will bear an interest rate equal to the effective federal funds rate published the date an award agreement is executed plus one percent.

(B) Loan terms and agreements. Each awardee must enter into one or more award agreements with the commission and approved vendor. Such agreements may include a:

(i) credit agreement, which is the primary award agreement between the awardee and the commission that will govern the terms and conditions under which the commission will loan funds to the awardee; and

(ii) performance covenant, which requires that a TBPP that is financed by a loan under this section must comply with the performance milestones, performance metrics and targets, and deliverables.

(i) Compliance and monitoring period.

(1) Each project will be subject to a compliance period of up to 5 years, based on the cost of the TBPP, which will be stated in the award agreement. Any specific project milestones which are stated in the award agreement will apply during this period.

(2) During the compliance and monitoring period, the TBPP must be available to operate during any period of time when the critical facility experiences a power outage.

(A) An awardee must ensure the routine maintenance and testing of the TBPP. Such maintenance and testing must be performed under contract by an approved vendor.

(B) Failure of the TBPP to be available to operate during an outage event may result in the commission demanding the return of a grant payment or determining that a loan payment is unforgivable.

(3) An awardee must continue to provide critical services at the critical facility during the compliance period. Change in status as a critical facility during the compliance period may result in the commission demanding the return of an award payment or termination of the award agreement.

(4) Reporting requirements.

(A) Vendor reporting. An approved vendor must annually file with the commission a report in accordance with the grant and loan reporting requirements.

(B) Critical facility reporting. Each awardee must annually submit to the commission a report containing an attestation that the TBPP was maintained in good working condition and was available to provide backup power during the compliance period; and that the awardee continued to provide critical services at the critical facility during the compliance period. Each awardee must also submit an after-action report with the commission that contains details of the TBPP performance in the event of a distribution system outage lasting more than 12 consecutive hours.

(j) No contested case or appeal. An application for a grant or loan under this section is not a contested case. A commission decision on a grant or loan award is not subject to a motion for rehearing or appeal under the commission's procedural rules.

(k) Relationship to distribution service provider network. An applicant requesting to install a TBPP at a critical facility in a manner that involves interactivity with the distribution network must coordinate with the appropriate distribution service provider to facilitate safe operation for the TBPP and the distribution network. The distribution service provider must expedite a request from a customer with a commission-approved TBPP application.

(l) Expiration. This section expires September 1, 2050.

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

Filed with the Office of the Secretary of State on December 19, 2025.

TRD-202504760
Seaver Myers
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 936-7433

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PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §321.37

The Texas Racing Commission (Commission) proposes amendments to 16 Texas Administrative Code §321.37, relating to Cashed Tickets and Vouchers. The amendments modernize recordkeeping requirements by clarifying secure procedures for digitally stored files associated with cashed tickets, vouchers, and outstanding ticket and voucher files.

Background and Purpose

The Commission's existing rules reference physical storage of tickets and vouchers. As wagering systems and audit records move to digital formats, the rule text is updated to require secure procedures for accessing and maintaining digitally stored files and to clarify access limitations. These changes support integrity of pari-mutuel wagering operations and modern auditing practices.

Fiscal Note

David Holmes, Interim Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for state or local governments.

Public Benefit/Cost Note

For each year of the first five years the amendments are in effect, the public benefit anticipated is an increase in the integrity and auditability of pari-mutuel wagering through clearer security and access controls for digitally stored files. There are no anticipated costs to persons required to comply beyond ordinary costs associated with implementing and maintaining reasonable information security procedures.

Government Growth Impact Statement

For each year of the first five years the rule is in effect, the proposed amendments do not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing positions; (3) require an increase or decrease in future appropriations; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation beyond the clarifications described; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect the state's economy.

Local Employment Impact Statement

The proposed amendments are not expected to have an adverse effect on local employment in any locality.

Economic Impact Statement and Regulatory Flexibility Analysis

The proposed amendments are not anticipated to have an adverse economic effect on small businesses, micro-businesses, or rural communities, as the changes clarify security procedures applicable to licensed associations that already maintain wagering systems with digital records. Therefore, a regulatory flexibility analysis is not required.

Takings Impact Assessment

The Commission has determined that no private real property interests are affected by this rulemaking and that the proposal does not burden, restrict, or limit an owner's right to property that would otherwise exist in the absence of government action. Accordingly, a takings impact assessment under Texas Government Code §2007.043 is not required.

Public Comment

Comments on the proposal may be submitted to the Texas Racing Commission Interim Executive Director, David Holmes, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under Texas Occupations Code §2023.001, which authorizes the Commission to license and regulate all aspects of horse and greyhound racing in this state, and §2023.004, which requires the Commission to adopt rules for conducting racing that involves wagering and for administering the Texas Racing Act.

Cross-Reference to Statute

Texas Occupations Code §§2023.001 and 2023.004.

§321.37. Cashed Tickets and Vouchers.

(a) An association shall maintain [~~facilities and use~~] procedures that ensure the security of physically or digitally stored files of scanned and manually cashed tickets and vouchers and the integrity of physically or digitally stored files [~~records~~] of outstanding tickets and outstanding vouchers.

(b) The association shall maintain secure procedures for accessing digitally stored files or store cashed tickets and vouchers in a secure area.

(c) The association shall prohibit individuals other than the association's mutuel manager from having access to physically or digitally stored files of [~~the~~] cashed tickets and vouchers or digitally stored files of [~~to storage areas for~~] outstanding ticket files [~~records~~] and outstanding voucher files [~~records~~].

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

Filed with the Office of the Secretary of State on December 17, 2025.

TRD-202504695
David Holmes
Interim Executive Director
Texas Racing Commission
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 833-6699

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16 TAC §321.39

The Texas Racing Commission (Commission) proposes the repeal of 16 Texas Administrative Code §321.39, relating to Altering Cashed Tickets and Cashed Vouchers. The amendment is proposed in conjunction with amendments to §321.37 that modernize requirements for secure handling and access to digitally stored files of cashed tickets and vouchers, rendering §321.39 unnecessary for digitally stored files.

Background and Purpose

Section 321.39 required physical alteration of cashed or refunded mutuel tickets and cashed vouchers to indicate their status without destroying identity. With contemporary digital records and scanning practices addressed in §321.37, separate alteration requirements in §321.39 are not necessary if the records are kept digitally.

Fiscal Note

David Holmes, Interim Executive Director, has determined that for the first five-year period the proposed repeal is in effect, there will be no significant fiscal implications for state or local governments.

Public Benefit/Cost Note

For each year of the first five years the repeal is in effect, the public benefit anticipated is regulatory clarity by eliminating duplicative provisions and aligning rule text with modern digital record-keeping practices. There are no anticipated costs to persons required to comply.

Government Growth Impact Statement

For each year of the first five years the amendment is in effect, the proposed action does not: (1) create or eliminate a government program; (2) require the creation of new positions or the elimination of existing positions; (3) require an increase or decrease in future appropriations; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation beyond the repeal described; (7) increase or decrease the number of individuals subject to regulation; or (8) positively or adversely affect the state's economy.

Local Employment Impact Statement

The proposed amendment is not expected to have an adverse effect on local employment in any locality.

Economic Impact Statement and Regulatory Flexibility Analysis

The proposed amendment is not anticipated to have an adverse economic effect on small businesses, micro-businesses, or rural communities. Accordingly, a regulatory flexibility analysis is not required.

Takings Impact Assessment

The Commission has determined that this action does not affect private real property interests and does not impose a burden that would constitute a taking under Texas Government Code §2007.043. A takings impact assessment is not required.

Public Comment

Comments on the proposal may be submitted to the Texas Racing Commission Interim Executive Director, David Holmes, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Occupations Code §2023.001, which authorizes the Commission to license and regulate all aspects of horse and greyhound racing in this state, and §2023.004, which requires the Commission to adopt rules for conducting racing that involves wagering and for administering the Texas Racing Act.

Cross-Reference to Statute

Texas Occupations Code §§2023.001 and 2023.004.

§321.39. Altering Cashed Tickets and Cashed Vouchers.

Whether it is stored physically or digitally an [~~An~~] association shall ensure that each cashed or refunded mutuel ticket and cashed voucher is altered in a manner that indicates the mutuel ticket or voucher has been cashed or refunded, but does not destroy the identity of the ticket or voucher.

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

Filed with the Office of the Secretary of State on December 17, 2025.

TRD-202504696
David Holmes
Interim Executive Director
Texas Racing Commission
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 833-6699

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SUBCHAPTER B. TOTALISATOR REQUIREMENTS AND OPERATING ENVIRONMENT

16 TAC §321.101

The Texas Racing Commission (Commission) proposes amendments to 16 Texas Administrative Code §321.101, relating to Totalisator Requirements and Operating Environment, in Chapter 321, Pari-Mutuel Wagering, Subchapter B. The amendments update the incorporated technical standards for totalisator systems and remove outdated address language.

Background and Purpose

Section 321.101 requires each association to conduct wagering using a Commission-approved pari-mutuel system that meets specified technical standards. The proposal updates the reference to the Association of Racing Commissioners International (ARCI) Totalisator Technical Standards to the version amended in December 2020, and prospectively to subsequent amendments, and removes obsolete mailing address references for where standards are available. These changes align the rule with current industry standards and Commission practice.

Fiscal Note

David Holmes, Interim Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for state or local governments.

Public Benefit/Cost Note

For each year of the first five years the amendments are in effect, the public benefit anticipated is enhanced consistency with current totalizator technical standards, which supports wagering integrity and interoperability. There are no anticipated costs to persons required to comply beyond ordinary costs associated with maintaining and updating systems to meet recognized industry standards.

Government Growth Impact Statement

For each year of the first five years the rule is in effect, the proposed amendments do not: (1) create or eliminate a government program; (2) require the creation of new positions or the elimination of existing positions; (3) require an increase or decrease in future appropriations; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation beyond the clarifications described; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect the state's economy.

Local Employment Impact Statement

The proposed amendments are not expected to have an adverse effect on local employment in any locality.

Economic Impact Statement and Regulatory Flexibility Analysis

The proposed amendments are not anticipated to have an adverse economic effect on small businesses, micro-businesses, or rural communities. Accordingly, a regulatory flexibility analysis is not required.

Takings Impact Assessment

The Commission has determined that no private real property interests are affected by this rulemaking and that the proposal does not burden, restrict, or limit an owner's right to property that would otherwise exist in the absence of government action. A takings impact assessment under Texas Government Code §2007.043 is not required.

Public Comment

Comments on the proposal may be submitted to the Texas Racing Commission Interim Executive Director, David Holmes, via webpage comment form at https://www.txrc.texas.gov/texas-

rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at 512-833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under Texas Occupations Code §2023.001, which authorizes the Commission to license and regulate all aspects of horse and greyhound racing in this state, and §2023.004, which requires the Commission to adopt rules for conducting racing that involves wagering and for administering the Texas Racing Act.

Cross-Reference to Statute

Texas Occupations Code §§2023.001 and 2023.004.

§321.101. Totalisator Requirements and Operating Environment.

Each association shall conduct wagering using a pari-mutuel system approved by the Commission. The pari-mutuel system shall operate in accordance with applicable laws and rules and meet the technical standards set forth in the Association of Racing Commissioners International Totalisator Technical Standards as amended in December 2020 and any subsequent amendments [~~July 2012~~]. Copies of the Totalisator Technical Standards are available at the Texas Racing Commission, Austin Headquarters office [~~P.O. Box 12080, Austin, Texas 78711, or at the Commission office at 8505 Cross Park Dr., #110, Austin, Texas 78754~~].

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

Filed with the Office of the Secretary of State on December 17, 2025.

TRD-202504697
David Holmes
Interim Executive Director
Texas Racing Commission
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

DIVISION 3. RESOURCE CAMPUSES

19 TAC §97.1081

The Texas Education Agency (TEA) proposes new §97.1081, concerning accreditation status, standards, and sanctions. The proposed new rule would implement House Bill (HB) 2, 89th Texas Legislature, Regular Session, 2025, related to designation of resource campuses, including application requirements and eligibility.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §97.1081 would define requirements for the resource campus designation authorized under Texas Education Code (TEC), §29.934. The resource campus designation is a school turnaround model designed to improve student outcomes at historically low-performing campuses by incentivizing districts to implement evidence-backed strategies such as accelerated campus excellence (ACE), teacher incentive allotment (TIA), high-quality instructional materials (HQIM), and additional days school year (ADSY) to transform student outcomes and accelerate academic growth. The designation provides state funding and comprehensive supports to accelerate academic growth and sustain improvements over time.

Proposed new §97.1081(b) would define key words and concepts related to the resource campus designation.

Proposed new §97.1081(c) would outline application requirements, including application elements and the process school districts must follow in order to be designated by TEA. This process would include submission of a letter of intent and application form, attendance at mandatory training sessions, and alignment to eligibility approval criteria.

Proposed new §97.1081(d) would outline eligibility requirements for the resource campus designation.

Proposed new §97.1081(e) would outline requirements and procedures for continued eligibility of the designation.

Proposed new §97.1081(f) would outline the standards for eligibility for a closed campus to maintain the resource campus designation.

Proposed new §97.1081(g) would outline the standards for removal and revocation of the resource campus designation, including the timeline for TEA to make renewal and revocation decisions and the criteria by which TEA will make renewal or revocation decisions.

Proposed new §97.1081(h) would specify the finality of the commissioner's decision.

FISCAL IMPACT: Andrew Hodge, associate commissioner for system innovation, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking

would be in effect, it would create a new regulation to define the requirements for a resource campus designation.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Hodge has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to ensure the implementation of evidence-based strategies that significantly improve academic performance and accountability ratings. It would provide students attending historically low-performing campuses with access to highly effective teachers, extended learning time, and comprehensive supports, while providing dedicated funding for districts to sustain these improvements over time. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: TEA has determined that the proposed new rule would have a data and reporting impact for campuses that choose to apply for the resource campus designation. Eligible campuses must submit an application that collects the following information: campuses participating in the resource campus program through a new designation process; Targeted Improvement Plan, if not previously submitted to TEA; ACE Turnaround Plan, if not previously submitted to TEA; teacher roster showing at least 50% of foundation curriculum teachers of record hold a current TIA designation; ADSY calendar; HQIM plan and timeline to develop and implement HQIM; HQIM professional development plan; HQIM evidence of school board adoption; HQIM master schedule; teacher roster showing that all foundation curriculum teachers of record have at least two years of experience; resume of certified school counselor; resume of appropriately licensed professional; copy of positive behavior plan; and copy of family engagement plan.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins January 2, 2026, and ends February 2, 2026. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 2, 2026. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §29.934, as amended by House Bill 2, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to establish and administer the resource campus designation to incentivize and support campuses with a history of unacceptable ratings through a comprehensive plan for school turnaround. Subsection (j) allows the commissioner to adopt rules to implement the statute.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.934, as amended by House Bill 2, 89th Texas Legislature, Regular Session, 2025.

§97.1081. Resource Campuses.

(a) Applicability. This section applies only to a school district that intends to apply for a resource campus designation for a campus or campuses under Texas Education Code (TEC), §29.934.

(b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.

(1) Applicant--This term refers to the school district submitting the application for a resource campus designation.

(2) Closed campus--This term refers to a campus whose county-district-campus number has been retired by the commissioner of education or the school district under §97.1066 of this title (relating to Campus Repurposing and Closure).

(3) County-district-campus number (CDCN)--This term refers to the nine-digit identifier assigned to a campus under §97.1051 of this title (relating to Definitions).

(4) Receiving campus--This term refers to a campus that enrolls students previously served by a closed campus.

(5) Resource campus--This term has the meaning assigned by TEC, §29.934.

(6) Resource campus designation--This term refers to a campus that has satisfactorily met the eligibility criteria included in TEC, §29.934, and this section and is eligible for additional funding as provided by TEC, §48.252.

(c) Application requirements.

(1) To apply to be designated as a resource campus, the campus must have received an overall performance rating under TEC, §39.054, of D, F, or NR/NR1365 for three years over a 10-year period at the time of application.

(A) The calculation of the 10-year period begins with the school year prior to the year in which the applicant submits the request for the resource campus designation, regardless of whether a rating was issued.

(B) An Academically Unacceptable or Improvement Required rating will be considered an unacceptable rating for determining eligibility.

(C) The three D, F, or NR/NR1365 ratings do not have to be consecutive.

(2) Annually, the Texas Education Agency (TEA) will release a list of campuses that meet the application eligibility requirement described in paragraph (1) of this subsection and application package requirements, which may include, but are not limited to:

(A) a letter of intent;

(B) an application form;

(C) the application deadline;

(D) requirements, including mandatory training sessions for school districts and campuses, that must be met in order for applications to be approved; and

(E) eligibility approval criteria aligned to subsection (d) of this section.

(3) If TEA determines that an application package is not complete and/or the applicant does not meet the eligibility criteria in TEC, §29.934, and this section, TEA may notify the applicant and allow 10 business days for the applicant to submit any missing or explanatory (supplementary) documents.

(A) If, after giving the applicant the opportunity to provide supplementary documents, TEA determines that the resource campus designation request remains incomplete and/or the eligibility requirements of TEC, §29.934, have not been met, the resource campus designation request will be denied.

(B) If the documents are not timely submitted, TEA shall remove the resource campus designation request without further processing.

(C) Failure by TEA to identify any deficiency or notify an applicant thereof does not constitute a waiver of the requirement and does not bind the commissioner.

(4) TEA staff may interview applicants, specify individuals from the school district and campus required to attend the interview, and require the submission of additional information and documentation prior to an interview.

(d) Eligibility criteria.

(1) To be eligible for a resource campus designation, a school district must demonstrate that a campus meets all criteria provided in TEC, §29.934, related to the resource campus designation beginning in the school year in which it applies for the designation.

(2) The school district must provide evidence that the campus is:

(A) implementing a targeted improvement plan as described by TEC, Chapter 39A, Subchapter A, and §97.1061(e)(4) of this title (relating to Interventions and Sanctions for Campuses) and has established a school community partnership team;

(B) adopting and implementing an accelerated campus excellence (ACE) turnaround plan as provided by TEC, §39A.105(b), which must include:

(i) a staffing plan that aligns with the staffing provisions in paragraph (3) of this subsection and includes:

(I) the requirement that the principal assigned to the campus must have:

(-a-) demonstrated a history of improvement in student academic growth at campuses at which the principal has previously worked; and

(-b-) final authority over personnel decisions at the campus;

(II) the requirement that at least 60% of classroom teachers assigned to the campus must satisfy the requirements for demonstrated instructional effectiveness under TEC, §39A.105(b)(3);

(III) a detailed description of the employment and compensation structures for the principal and classroom teachers, which must include significant incentives for a high-performing principal or teacher to remain at the campus and a commitment by the district to continue incentives for the principal and teachers. Teacher compensation structures must align to the approved local optional teacher designation system;

(IV) a plan that describes how the district will determine that the principal and classroom teachers are meeting determined student growth measures aligned to the campus compensation model; and

(V) the requirement that by August 1 of the school year in which the campus will begin receiving funding for the resource campus designation, the campus principal and all teachers must have applied for a position to continue at the campus at the beginning of ACE implementation, regardless of past employment or assignment to the campus, and the district must demonstrate that the leader continues to meet requirements in the district's blueprint;

(ii) a board policy that includes the commitment to continue incentives for principals and teachers, and no other board policy related to staffing compensation in the district may contradict the staffing and compensation provisions in the ACE plan; and

(iii) policies and procedures for the implementation of best practices at the campus described in TEC, §39A.105(b)(4), including:

(I) a performance management system providing at least weekly insight for all administrators and at least monthly insights for all teachers on classroom instructional delivery;

(II) a system of observation of classroom teachers and feedback for classroom teachers;

(III) positive student culture on the campus;

(IV) family and community engagement;

(V) extended learning opportunities for students, which may include service or workforce learning opportunities; and

(VI) providing student services before or after the instructional day that improve student performance, which may include tutoring, extracurricular activities, counseling services, and offering breakfast, lunch, and dinner to all students at the campus;

(C) developing and implementing a plan to utilize both full-subject high-quality instructional materials (HQIM) and supplemental instructional materials to support intervention tiers with detailed descriptions of how accelerated support will be provided to students who have not yet mastered prior content in English language arts (ELA) and mathematics at full fidelity that have been approved through the instructional materials review and approval (IMRA) process.

(i) If the campus has already adopted and can demonstrate implementation of HQIM as described in this subparagraph, it may receive full approval for the resource campus designation based on review and acceptance by TEA.

(ii) If there are no IMRA-approved materials in ELA or mathematics for a grade level served by the campus at the time of application, the campus may submit a plan to adopt and implement materials as soon as available.

(iii) Conditional approval may be granted if high-quality instructional materials are not yet implemented as described in this subparagraph, but to receive full approval and benefits, the campus must submit artifacts by May 31 of the same school year as the application that the campus will fully implement HQIM in the subsequent school year. Campuses that do not submit verification artifacts will not be fully approved and will not receive the resource campus designation or funding;

(D) implementing, if serving a grade level from prekindergarten-Grade 8, an Additional Days School Year (ADSY) calendar for funding under TEC, §48.0051, designed to include a base calendar of 175 days plus at least six additional ADSY days for all students;

(E) implementing a campus-level positive behavior program as provided by TEC, §37.0013, that aligns with the ACE plan described in subparagraph (B) of this paragraph;

(F) developing partnerships with parent and community groups and implementing a family engagement plan as described by TEC, §29.168, that aligns with the ACE plan described in subparagraph (B) of this paragraph;

(G) demonstrating that all teachers of record assigned to foundation curriculum subjects, as defined in TEC, §28.002, have a minimum of two years' experience serving as a classroom teacher as defined in TEC, §5.001, prior to the start of the school year in which the resource campus designation is awarded;

(H) demonstrating that at least 50% of teachers of record assigned to foundation curriculum subjects, as defined in TEC, §28.002, currently hold a designation under a local optional teacher designation system as described in TEC, §21.3521;

(I) verifying that at least one full-time school counselor is dedicated to the campus for every 300 students with fractional school counselor assignment allowed if over 300 students (i.e., 1.5 FTE for 450 students); and

(J) verifying that at least one appropriately licensed professional, either directly employed or contracted, is assigned full time to the campus to support the social and emotional needs of students and staff. This individual must be dedicated solely to the campus and must be one of the following:

(i) a family and community liaison;

(ii) a clinical social worker;

(iii) a specialist in school psychology; or

(iv) a professional counselor.

(3) A campus that receives a resource campus designation must be in a school district that has adopted an approved local optional teacher designation system under TEC, §21.3521, that includes the campus to receive the resource campus designation. The local designation system must:

(A) meet all requirements under §150.1041 of this title (relating to Local Optional Teacher Designation System) for all foundation subject teachers in all grade levels served by the resource campus; and

(B) receive full approval by TEA no later than the school year prior to the year that the resource campus designation begins.

(e) Continued eligibility.

(1) To maintain the resource campus designation and receive benefits under TEC, §29.934 and §48.252, the school district and campus holding the resource campus designation must continuously meet the requirements in subsection (d) of this section.

(2) The school district and campus holding the resource campus designation must comply with all information requests or monitoring visits deemed necessary by TEA staff to monitor the ongoing eligibility of the resource campus designation.

(A) TEA will annually release monitoring requirements and timelines.

(B) School districts will submit data and information required by TEA to assess fidelity of implementation upon request by TEA.

(C) A school district or campus holding the resource campus designation that fails to respond to implementation monitoring requests by the published deadline will be subject to subsection (g) of this section related to removal of resource campus designation.

(3) TEA will annually notify school districts of their resource campus designation status.

(f) Closed campus eligibility to maintain resource campus designation.

(1) A receiving campus may maintain resource campus designation if:

(A) the receiving campus assumes the CDCN of the closed resource campus or is otherwise assigned its accountability performance history by the commissioner; and

(B) the receiving campus continues to meet all requirements for resource campus designation under TEC, §29.934, and this chapter.

(2) The district must submit a request to the commissioner to maintain the resource campus designation for the receiving campus.

(A) The request must include documentation demonstrating compliance with subsections (d) and (e) of this section.

(B) The commissioner may approve the request if all conditions are met.

(g) Removal of resource campus designation.

(1) A campus fails to maintain status as a resource campus if:

(A) the campus or school district does not continuously meet the requirements in subsection (d) of this section; or

(B) the campus or school district fails to comply with information requests or monitoring visits by TEA staff needed to determine the ongoing implementation of resource campus eligibility criteria.

(2) If a campus fails to maintain status as a resource campus for two consecutive years, the campus is not eligible for designation as a resource campus.

(A) The financial benefits awarded to a campus under TEC, §48.252, will end at the end of the second consecutive school year in which the campus failed to maintain its resource campus status.

(B) A campus subject to this subsection may reapply for designation as a resource campus if the campus qualifies under TEC, §29.934(b).

(h) Decision finality. A decision of the commissioner made under this section is final and is not subject to appeal, including under TEC, §7.057.

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

Filed with the Office of the Secretary of State on December 19, 2025.

TRD-202504768
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 173. OFFICE-BASED ANESTHESIA SERVICES

SUBCHAPTER B. PARENTERAL KETAMINE THERAPY

22 TAC §§173.6 - 173.15

The Texas Medical Board (Board) proposes new rule concerning Chapter 173, Office-Based Anesthesia Services, Subchapter B, concerning Parenteral Ketamine Therapy, §§173.6 - 173.15.

The proposed new sections are as follows:

New §173.6, Definitions, set forth definitions for ketamine administration and psychotropic ketamine therapy.

New §173.7, Exception for Licensed Hospice Provider, provides an exception to the application of the rules under the subchapter for patients enrolled in a hospice program licensed by Texas Health and Human Services.

New §173.8, Mandatory Registration, proposes to require registration for practice settings providing psychotropic ketamine therapy and provides exceptions to registration for certain practice settings.

New §173.9, Operation of PKT Clinics, proposes to limit the provision of psychotropic ketamine therapy to physicians, midlevel providers, or RNs. The new section further specifies training, certification, and delegation requirements for the provision of psychotropic ketamine therapy.

New §173.10, Physician Requirements, sets forth requirements for physicians ordering PKT for psychiatric indications.

New §173.11, Minimum Standards When Administering PKT, proposes to set forth minimum standards related to medical record documentation, patient evaluation, diagnosis, informed consent, and monitoring, and equipment standards when providing psychotropic ketamine therapy.

New §173.12, Prohibited PKT Uses, prohibits any home use, prescribing, or administration of parenteral ketamine.

New §173.13, Complaints and Investigations, proposes to clarify that the medical director and physician owner(s) are responsible for the clinic's operations and regulatory compliance.

New §173.14, Renewal of PKT Clinic Registration, proposes to set forth a registration term of two years and registration renewal requirements.

New §173.15, Audits, Inspections, and Investigations, proposes that psychotropic ketamine therapy clinics will be subject to audits, inspection and investigations as outlined in Chapter 172 of the Board rules related to pain management clinics.

Mr. Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of enforcing these proposed new rules will be to enhance the safety of the public health and welfare through the establishment of minimum standards for the provision of psychotropic ketamine therapy.

Mr. Freshour has also determined that for the first five-year period these proposed new rules are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed new sections are in effect there will be a probable minimal economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed new sections and determined that for each year of the first five years these proposed new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed, and the agency has determined that for each year of the first five years these proposed new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed new sections;

(3) there is no estimated loss and no increase in revenue to the state or to local governments as a result of enforcing or administering these proposed new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed new sections. For each year of the first five years these proposed new sections will be in effect, Mr. Freshour has determined the following:

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

(2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rules do not require an increase in fees paid to the agency;

(5) the proposed rules do create a new regulation;

(6) the proposed rules do not expand, limit, or repeal an existing regulation;

(7) the proposed rules do not increase the number of individuals subject to the rule's applicability; and

(8) the proposed rules do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link https://forms.cloud.microsoft/g/WrgW5yPyKm or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The proposed new rule(s) are proposed pursuant to Texas Occupations Code Section 153.001.

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

§173.6. Definitions.

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

(1) Ketamine Administration--The administration of parenteral ketamine (IV, subcutaneous and IM) is the practice of medicine under §157.002 of the Act and is subject to regulation by the Texas Medical Board, including required registration under this Chapter.

(2) Psychotropic Ketamine Therapy (PKT)--The administration of parenteral ketamine in a low-dose for psychiatric indications that have been evaluated and diagnosed by a physician such as PTSD, treatment-resistant depression and suicidal ideation.

§173.7. Exception for Licensed Hospice Provider.

The rules promulgated under this subchapter do not apply to ketamine administration for patients enrolled in a hospice program licensed by Texas Health and Human Services.

§173.8. Mandatory Registration.

(a) Any medical practice, clinic or facility providing PKT must be registered with the Board, except the following:

(1) a medical school or an outpatient clinic associated with a medical school;

(2) a hospital, including any outpatient facility or clinic of a hospital;

(3) a facility maintained or operated by this state;

(4) a medical clinic maintained or operated by the United States; or

(5) a health organization certified by the board under Section 162.001 of the Act.

(b) Registration requires completion of a board-approved application filed by a physician owner or medical director of the clinic including providing all required information and documentation.

(c) Applications are valid for 180 days from the date of submission. If the applicant fails to provide all required information and documentation the application will be deemed withdrawn.

(d) If the application is approved, the registration is good for two years from the date of approval.

§173.9. Operation of PKT Clinics.

(a) The provision of PKT must comply with all applicable federal and state laws.

(b) The physician prescribing PKT for psychiatric indications must have successfully completed:

(1) training in mental health treatment; or

(2) a course on the use of ketamine for psychiatric conditions.

(c) The physician ordering the PKT must have a properly established physician/patient relationship and have properly documented and diagnosed psychiatric indication supporting PKT.

(d) PKT may be administered only by a physician, advanced practice registered nurse (APRN), physician assistant (PA), or registered nurse (RN) acting under appropriate delegation by a licensed physician for psychiatric indication as identified in the definition of PKT.

(e) A physician, APRN, PA, or RN working under physician delegation must have formal airway management education or must have completed a course on airway management for moderate sedation.

(f) There must be an APRN, PA, or RN present at all times when administering PKT, and the delegating physician must be immediately available onsite for in-person consultation and emergency management throughout the PKT administration.

(g) Any location administering PKT must keep and maintain an adverse event reporting log, organized by year. Each log must be maintained for a period of at least three years. The log must list any event involving airway intervention, EMS transport, hospitalization, or death. The log must include the following information:

(1) patient name;

(2) date of adverse event;

(3) type of adverse event; and

(4) outcome, if known.

§173.10. Physician Requirements.

(a) The physician ordering PKT for psychiatric indications must have successfully completed:

(1) training in mental health treatment; or

(2) a course on the use of ketamine for psychiatric conditions.

(b) The physician ordering the PKT must have a properly established physician/patient relationship and have properly documented and diagnosed psychiatric indication supporting PKT.

(c) The physician ordering PKT must review the Prescription Monitoring Program when establishing a physician/patient relationship and on at least a quarterly basis for existing patients.

(d) If the physician ordering the PKT delegates the administration of PKT, they need to have protocols or standing delegation orders issued and maintained at the location where the PKT is being administered.

§173.11. Minimum Standards When Administering PKT.

(a) The physician, APRN, PA or RN administering PKT must:

(1) verify the PKT order from the delegating physician, if applicable;

(2) follow the standard of care;

(3) obtain informed consent including:

(A) a discussion of known risks of PKT; and

(B) the identity and licensure credentials of the person administering the PKT;

(4) implement a time out period immediately prior to beginning administration of PKT;

(5) maintain complete, contemporaneous, and legible medical records regarding patient monitoring and status throughout the administration of PKT.

(b) Patient monitoring and status must include continuous appropriate physiologic monitoring of the patient, both during and post procedure until ready for discharge.

(c) Continuous monitoring of the following:

(1) blood pressure;

(2) pulse;

(3) respiration;

(4) O2 saturation;

(5) cardiovascular status; and

(6) appropriate responsiveness to verbal stimuli.

(d) Discharge assessment requires:

(1) A minimum 30-minute observation period upon completion of PKT;

(2) at least two blood pressure readings 10 minutes apart; and

(3) a full cognitive assessment (including an Aldrete score).

(e) Minimum Equipment Requirements. The following equipment must be utilized for continuous cardiorespiratory monitoring of the patient during and after administration of PKT:

(1) pulse oximetry;

(2) incremental blood pressure checks; and

(3) an end-tidal carbon dioxide (CO2) analyzer.

(f) The following items must be on-site at all times and readily available, in case of an emergency:

(1) Supplemental oxygen,

(2) a bag-valve mask, and

(3) an AED (or defibrillator).

§173.12. Prohibited PKT Uses.

Any home use, prescribing, or administration of parenteral ketamine is prohibited.

§173.13. Complaints and Investigations.

The Medical Director and physician owner(s) are responsible for the clinic's operations and patient care and ensuring compliance with all applicable regulations.

§173.14. Renewal of PKT Clinic Registration.

(a) Registration is effective for two years following the date of initial registration. At least 60 days prior to the expiration of the PKT registration, a physician, clinic or facility seeking renewal must submit:

(1) a board-approved application; and

(2) an attestation stating that the requirements, standards and equipment comply with all applicable laws and board rules.

(b) Upon expiration of the current registration, the clinic must cease PKT operations until the registration is renewed.

§173.15. Audits, Inspections, and Investigations.

PKT clinics are subject to audits, inspection and investigations as outlined in Chapter 172 of the Board rules related to pain management clinics.

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

Filed with the Office of the Secretary of State on December 18, 2025.

TRD-202504730
Scott Freshour
General Counsel
Texas Medical Board
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 305-7059

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.4

The Texas Optometry Board (Board) proposes 22 TAC Title 14 Chapter 271 - Examinations, new §271.4 - Licensing for Military Service Member, Military Veteran, and Military Spouse to incorporate legislation passed by the 89th Texas Legislature. The current rule relating to military licensing (§273.14 - License Applications for Military Service Member, Military Veteran, and Military Spouse) is being repealed in a separate *Texas Register* submission.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

HB 5629 and SB 1818, adopted by the 89th Legislature, Regular Session, established new criteria for licensing agencies to consider upon receipt of an application by a member of the military, veteran or a military spouse. Both bills took effect on September 1, 2025.

The purpose of this new rule is to incorporate the updated statutory provisions into language of the current rule (found at TAC §273.14). Additionally, the agency is moving the language related to military licensing from Chapter 273 to Chapter 271 to consolidate agency rules related to licensing into the same chapter for ease of use by applicants and interested parties.

HB 5629 changes the threshold of military licensing from those that have licensing requirements that are substantially equivalent to instead require the Board to consider licenses that are similar in scope of practice and that are in good standing. HB 1818 requires the Board to immediately issue a 180-day provisional license to military applicants while an application for full licensure is pending.

SECTION-BY-SECTION SUMMARY

Section (a) incorporates definitions as found in Chapter 55 of the Texas Occupations Code.

Section (b) outlines how the agency will identify states with similar scope.

Section (c) outlines that the Executive Director can waive licensing requirements except for requiring graduation from optometry school and passage of nationally accepted exams.

Section (d) requires applicants to complete a criminal background check.

Section (e) outlines what it means for a person to be in good standing with another state's licensing board.

Section (f) outlines the procedure the agency will use to license military members, spouses and veterans. It includes language to provide for a 180-day provisional license to be issued while the application is being processed.

Section (g) provides for the recognition of out of state licenses if certain conditions are met. Individuals whose out of state licenses are recognized would not be licensed in Texas and will not be issued an active Texas license number. No verification from Texas will be provided for these recognized licenses.

Section (h) outlines which fees an applicant under this section would be required to pay.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Janice McCoy, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Additionally, Mrs. McCoy has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mrs. McCoy has determined that the proposed rule will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. McCoy has determined for the first five-year period the proposed rule is in effect, the intended public benefit will be a reduction of the complexity of the administrative rules related to the licensing of members of the military, veterans, and military spouses.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mrs. McCoy has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

The proposed new rules will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, for the first five-year period the proposed rules are in effect Ms. McCoy has determined the following:

The proposed rule does not create or eliminate a government program.

The proposed rule does not require the creation or elimination of employee positions.

The proposed rule does not require the increase or decrease in future legislative appropriations to the agency.

The proposed rule does not require an increase or decrease in fees paid to the agency.

The proposed rule does not create a new regulation.

The proposed rule does not expand, limit, or repeal an existing regulation.

The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

The proposed rule does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT

Ms. McCoy has determined that there are no private real property interests affected by the proposed rules. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

PUBLIC COMMENTS

Comments on the amended rules may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The Board proposes this rule pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties. The statutory provisions affected by the proposed rules are those set forth in Chapter 55 of the Tex. Occ. Code.

No other sections are affected by the rulemaking.

§271.4. Licensing for Military Service Member, Military Veteran, and Military Spouse.

(a) The Board adopts by reference the definitions set forth in Chapter 55 of the Occupations Code.

(b) The Board has sole discretion in determining whether an applicant's out-of-state license is similar in scope to a license issued by the Board. Applicants may only practice optometry to the extent allowed by Texas law.

(c) To protect the health and safety of the citizens of this state, a license to practice optometry or therapeutic optometry requires a doctorate degree in optometry and passing scores on nationally accepted examinations. An alternative method to demonstrate competency is not available.

(d) An applicant under this section must pass a criminal-background check. The Board may deny an application is the applicant has a disqualifying criminal history.

(e) A person is in good standing with another state's licensing authority if the person:

(1) holds a license that is current, has not been suspended or revoked, and has not been voluntarily surrendered during an investigation for unprofessional conduct;

(2) has not been disciplined by the licensing authority with respect to the person's practice of optometry or therapeutic optometry; and

(3) is not currently under investigation by the licensing authority for unprofessional conduct related to the practice of optometry or therapeutic optometry.

(f) Alternate licensing procedure for military service member, military spouse, or military veteran authorized by Texas Occupations Code §55.004.

(1) A license shall be issued to a military service member, military veteran, or military spouse upon proof of one of the following:

(A) the applicant holds a current license in another state that is similar in scope of practice to Texas scope of practice and is in good standing with the other state's licensing authority; or

(B) within the five years preceding the application date, the applicant held the license sought in this state.

(2) As part of the application process, the Executive Director may waive any prerequisite for obtaining a license, other than the requirements listed in subsection (c) and (d) of this rule, if it is determined that the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought. No waiver may be granted where a military service member or military veteran holds a license issued by another jurisdiction that has been restricted.

(3) While a license application is being processed, the applicant shall be issued a provisional license to practice. The provisional license shall expire on the earlier of the date the agency approves or denies the license application or the 180th day after the date the provisional license is issued.

(4) Not later than 10 days after receipt of a complete application including required supplemental documents and fingerprint criminal history background check, the agency shall process the application.

(5) An applicant applying as a military spouse must submit proof of marriage to a military service member.

(6) The initial renewal date for a license issued pursuant to this rule shall be set in accordance with the agency's rule governing initial renewal dates.

(g) Recognition of out-of-state license of military service member or military spouse authorized by Texas Occupations Code §55.0041

(1) Notwithstanding any other law a military service member or military spouse may engage in the practice of optometry or therapeutic optometry without obtaining a Texas license if the applicant currently holds a license similar in scope of practice to Texas issued by the licensing authority of another state and is in good standing with that licensing authority.

(2) In order for an out-of-state license to be recognized, a military service member or military spouse must submit an application on a form prescribed by the Board that includes:

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

(B) if the applicant is a military spouse, a copy of the military spouse's marriage license and spouse's order showing relocation to Texas; 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 the applicable license in this state and will not perform outside of that scope of practice; and

(D) the applicant is in good standing in each state in which the applicant holds or has held an applicable license.

(3) Not later than 10 days after receipt of an application for recognition of an out-of-state license, the agency shall notify the applicant:

(A) the agency recognizes the applicant's out-of-state license;

(B) the application is incomplete; or

(C) the agency is unable to recognize the applicant's out-of-state license because the agency does not issue a license similar in scope of practice to the applicant's license in another state or the applicant has a disqualifying criminal history.

(4) In order to ensure the public can verify if a person is recognized to practice optometry or therapeutic optometry in Texas, the Board will post the person's name and out of state license number on its website. The person is not considered licensed by the Board and no license verifications will be issued.

(5) A service member or military spouse authorized to practice with a recognized out of state license is subject to the enforcement authority granted under the Texas Optometry Act, and the laws and regulations applicable to a licensed provider.

(6) A service member or military spouse may practice under this recognized status only while the service member is stationed at a military installation in this state.

(7) In the event of a divorce or similar event (e.g., annulment, death of spouse) affecting a military spouse's marital status, a former spouse who relied upon this rule to obtain authorization to practice may continue to practice under the authority of this rule until the third anniversary of the date of confirmation referenced in paragraph (3)(A) of this subsection.

(8) In order to obtain and maintain the privilege to practice without a license in this state, a service member or military spouse must remain in good standing with every licensing authority that has issued a license to the service member or military spouse at a similar scope of practice and in the discipline applied for in this state.

(h) Pursuant to Texas Occupations Code §55.002, application fees are waived for military service members, military veterans, and military spouses. The applicant is responsible for paying any examination fees that are charged by a third-party examination vendor.

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

Filed with the Office of the Secretary of State on December 17, 2025.

TRD-202504679
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 305-8500

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CHAPTER 273. GENERAL RULES

22 TAC §273.14

The Texas Optometry Board (Board) proposes to repeal to §273.14 -- License Applications for Military Service Member, Military Veteran, and Military Spouse. The rule is being re-proposed under Chapter 271-Examinations with changes to incorporate legislation passed by the 89th Texas Legislature in a separate *Texas Register* submission.

EXPLANATION OF AND JUSTIFICATION FOR THE REPEAL

HB 5629 and SB 1818, adopted by the 89th Legislature, Regular Session, established new criteria for licensing agencies to consider upon receipt of an application by a member of the military, veteran or a military spouse. Both bills take effect on September 1, 2025. In the scope of incorporating the new provisions of the legislation, the Board has determined it makes sense to move the current rule regarding licensing military related optometrist to the Chapter of its rules related to licensing.

The substance of the language will be proposed for amendment to Chapter 271 in a separate rule submission with the *Texas Register*.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Janice McCoy, Executive Director, has determined that for each year of the first five years that the proposed repeal is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Additionally, Mrs. McCoy has determined that for each year of the first five years the proposed repeal is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mrs. McCoy has determined that the proposed repeal will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. McCoy has determined for the first five-year period the proposed repeal is in effect, the intended public benefit will be a reduction of the complexity of the administrative rules related to the licensing of members of the military, veterans, and military spouses.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mrs. McCoy has determined that for each year of the first five-year period the proposed repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

The proposed new repeal will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

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

The proposed repeal does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, for the first five-year period the proposed repeal is in effect Ms. McCoy has determined the following:

1. The proposed repeal does not create or eliminate a government program.

2. The proposed repeal does not require the creation or elimination of employee positions.

3. The proposed repeal does not require the increase or decrease in future legislative appropriations to the agency.

4. The proposed repeal does not require an increase or decrease in fees paid to the agency.

5. The proposed repeal does not create a new regulation.

6. The proposed repeal does not expand, limit, or repeal an existing regulation.

7. The proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT

Ms. McCoy has determined that there are no private real property interests affected by the proposed repeal. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

PUBLIC COMMENTS

Comments on the proposed repeal may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The Board proposes this repeal pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with

the authority to adopt rules necessary to perform its duties. No other sections are affected by the repeal.

§273.14. License Applications for Military Service Member, Military Veteran, and Military Spouse.

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

Filed with the Office of the Secretary of State on December 17, 2025.

TRD-202504681
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 305-8500

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CHAPTER 279. INTERPRETATIONS

22 TAC §279.16

The Texas Optometry Board (Board) proposes amendments to 22 TAC Title 14 Chapter 279 - Interpretations §279.16 - Telehealth Services.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The proposed rule specifies the informed consent documentation that is required when licensees perform telehealth services for optometry. The Board proposes this rule in accordance with House Bill 1700 of the 89th Texas Legislature, Regular Session (2025), and Chapter 111, Texas Occupations Code.

SECTION-BY-SECTION SUMMARY

The amendment adds language that informed consent for the provision of telehealth services shall be in writing and must be maintained in the patient record. However, it does provide that if the informed consent was obtained in an audio-only format, the licensee shall document in the patient record the time and date that the consent was granted.

It goes to list minimum requirements for the written informed consent to include: (1) the patient's consent to treatment by the optometrist or therapeutic optometrist via telehealth services; (2) the patient's acknowledgement that patient's health data is being collected and shared using electronic and digital communication; and (3) the patient's acknowledgement of a potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Janice McCoy, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Additionally, Mrs. McCoy has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mrs. McCoy has determined that the proposed rule will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. McCoy has determined for the first five-year period the proposed rule is in effect, the intended public benefit will be clarity for patients and optometrists to know when and how the requirements of an initial visit must be met.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mrs. McCoy has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

The proposed new rules will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, for the first five-year period the proposed rules are in effect Ms. McCoy has determined the following:

The proposed rule does not create or eliminate a government program.

The proposed rule does not require the creation or elimination of employee positions.

The proposed rule does not require the increase or decrease in future legislative appropriations to the agency.

The proposed rule does not require an increase or decrease in fees paid to the agency.

The proposed rule does not create a new regulation.

The proposed rule does not expand, limit, or repeal an existing regulation.

The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

The proposed rule does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT

Ms. McCoy has determined that there are no private real property interests affected by the proposed rules. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

PUBLIC COMMENTS

Comments on the amended rules may be submitted electronically to: janice.mccoy@tob.texas.gov or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The Board proposes this rule pursuant to the authority found in §351.151 of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties. The statutory provisions affected by the proposed rules are those set forth in §111.004 of the Tex. Occ. Code.

No other sections are affected by the amendments.

§279.16. Telehealth Services.

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

(d) Notice.

(1) Privacy Practices and Informed Consent.

(A) Unless previously provided, optometrists or therapeutic optometrists that communicate with patients by electronic communications other than telephone or facsimile must provide patients with written notification of the optometrists' or therapeutic optometrists' privacy practices prior to evaluation or treatment, with a good faith effort to obtain the patient's written acknowledgement, including by e-mail, of the notice.

(B) The notice of privacy practices shall include language that is consistent with federal standards under 45 C.F.R. Parts 160 and 164 relating to privacy of individually identifiable health information.

(2) The optometrist or therapeutic optometrist providing or facilitating the use of telehealth services shall ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telehealth services are provided.

(A) A licensee shall maintain a patient's informed consent in the patient record and, whenever possible, shall be in writing. If the licensee must obtain the informed consent in an audio-only format, the licensee must document in the patient record the time and date that the patient granted the consent.

(B) At a minimum, the informed consent must include:

(i) the patient's consent to treatment by the optometrist or therapeutic optometrist via telehealth services;

(ii) the patient's acknowledgement that patient's health data is being collected and shared using electronic and digital communication; and

(iii) the patient's acknowledgement of a potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care.

(3) Complaints to the Board. Optometrists or therapeutic optometrists that use telehealth services must provide notice of how patients may file a complaint with the Board on the optometrist's or therapeutic optometrist's website or with informed consent materials provided to patients prior to rendering telehealth services.

(e) - (g) (No change.)

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

Filed with the Office of the Secretary of State on December 18, 2025.

TRD-202504708
Janice McCoy
Executive Director
Texas Optometry Board
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 305-8502

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 507. END STAGE RENAL DISEASE FACILITIES

SUBCHAPTER Z. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

26 TAC §507.516

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §507.516, concerning Tables.

BACKGROUND AND PURPOSE

The purpose of this proposal is to repeal the staffing table located in Texas Administrative Code (TAC) Title 26, Chapter 507, End Stage Renal Disease Facilities, Subchapter Z, Physical Plant and Construction Requirements, §507.516, Tables. A new staffing table was adopted in 26 TAC §507.60 and was effective on December 23, 2025.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeal is in effect:

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

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

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

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

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

(6) the proposed repeal will not expand, limit, or repeal existing regulations;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed repeal does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule. The proposed repeal is only removing outdated information that has already been updated and adopted in §507.60 of the same chapter.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this repeal because the repeal does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the repeal is in effect, the public benefit will be improved clarity and accuracy for staffing levels of patient care staff and ensure stakeholders can easily find relevant, up-to-date regulations.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal because the proposed repeal is only removing outdated information that has already been updated and adopted in §507.60 of the same chapter.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 14 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R035" in the subject line.

STATUTORY AUTHORITY

The repeal is 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; and Texas Health and Safety Code §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The repeal affects Texas Government Code §524.0151 and Texas Health and Safety Code §251.003 and §251.014.

§507.516. Tables.

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

Filed with the Office of the Secretary of State on December 16, 2025.

TRD-202504652
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 221-9021

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER L. THIRD-PARTY CERTIFICATION SYSTEMS FOR MASS BALANCE ATTRIBUTION

30 TAC §§328.301, 328.302, 328.304

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§328.301, 328.302, and 328.304.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes this rulemaking to implement House Bill (HB) 4413, 89th Texas Legislature, 2025. HB 4413 amended Texas Health and Safety Code (THSC), §361.421 (Definitions) by adding definitions for "renewable biomass" and "renewable chemical," and §361.4215 (Mass Balance Attribution) by requiring TCEQ to adopt rules to identify third-party mass balance attribution certification systems for the purpose of identifying a renewable chemical.

Although renewable biomass feedstocks may be used to produce a renewable chemical, HB 4413 does not exempt renewable biomass from regulation as a solid waste or any other applicable statutes or rules.

Section by Section Discussion

§328.301, Purpose and Applicability

The commission proposes to amend §328.301(a)(3) by including recycled plastics and a renewable chemical as recycled material in subparagraph (A) and replacing subparagraph (B) with the content of subparagraph (C). This amendment would expand the purpose of the subchapter to include the identification of a renewable chemical and clarify that the term recycled material includes both recycled plastics and a renewable chemical.

§328.302, Definitions

The commission proposes to amend §328.302(1), the definition of "mass balance attribution," by applying the term to a renewable chemical.

The commission proposes to amend §328.302(2), to expand the definition of "recycled material," to include a renewable chemical.

The commission proposes new §328.302(5) to add the definition of "renewable biomass or renewable biomass feedstocks."

The commission proposes new §328.302(6) to add the definition of "renewable chemical."

The commission proposes to amend renumbered §328.302(7), the definition of "third-party certification system", by including recycled plastics and a renewable chemical as recycled material for the purpose of third-party certification.

§328.304, Recycled Products

The commission proposes to amend §328.304(b) by adding a renewable chemical to the materials that may be included when determining the minimum content of a recycled product using mass balance attribution certified by a third-party certification system.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be compliance with state law, specifically HB 4413 from the 89th Regular Legislative Session (2025). The proposed rulemaking is not anticipated to result in fiscal implications for individuals or businesses during the first five-year period the proposed rules are in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking under the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code §2001.0225 applies to a "Major environmental rule," which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

The rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to promulgate rules that: (1) establish a renewable chemical as eligible to be considered part of a recycled product in accordance with THSC, §361.4215 and §361.427; and (2) identify third-party certification systems for mass balance attribution in THSC, §361.421.

Additionally, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the proposed rules is not anticipated to be significant with respect to the economy as a whole or with respect to a sector of the economy, and therefore the rulemaking will not adversely affect the economy in a material way.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements.

This proposed rulemaking does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property. The commission proposes this rulemaking for the purpose of promulgating rules that: (1) establish a renewable chemical as eligible to be considered part of a recycled product in accordance with THSC, §361.4215 and §361.427; and (2) identify third-party certification systems for mass balance attribution in THSC, §361.421.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). HB 4413 amended THSC, §361.421 (Definitions) and §361.4215 (Mass Balance Attribution). These statutory enactments require the commission to promulgate rules to: (1) establish a renewable chemical as eligible to be considered part of a recycled product in accordance with THSC, §361.4215 and §361.427; and (2) identify third-party certification systems for mass balance attribution in THSC, §361.421, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these proposed rule changes because the proposed rulemaking falls within the exception under Texas Government Code, §2007.003(b)(4).

Consistency with the Coastal Management Program

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

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on January 27, 2026 at 10:00 a.m. in Building E, Conference Room E201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by January 23, 2026. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 26, 2026, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTA1YTllYjEtYmIxMi00M2MzLThiYmMtY2NmNDg3NDQ3MzQ4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%223aa8b0dc-fc48-48e4-98da-84f3b2eb020c%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

If you need translation services, please contact TCEQ at 800-687-4040. Si desea información general en español, puede llamar al 800-687-4040.

Submittal of Comments

Written comments may be submitted to Vanessa Onyskow-Lang, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2025-026-328-WS. The comment period closes on February 3, 2026. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides

the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; THSC, §361.0151, which requires the commission to base its goals or requirements for recycling or the use of recycled materials on the definitions and principles established by Subchapter N, THSC, §§361.421 through 361.431; THSC, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; THSC, §361.041, which conditionally excludes post-use polymers and recoverable feedstock from classification as solid waste when are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products or valuable final products, that include plastic monomers, chemicals, waxes, lubricants, and chemical feedstocks; THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; THSC, §361.4215 which authorizes the commission to identify third-party certification systems for mass balance attribution that may be used for the purposes of THSC, §361.421(6) and (6-a); THSC, §361.425 which provides that the commission shall adopt rules for administering governmental entity recycling programs; THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products; and THSC, §361.427 which authorizes the commission to promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product.

The proposed amendments to §§328.301, 328.302, and 328.304, would implement House Bill (HB) 4413, 89th Texas Legislature, 2025, by adding the definitions of "Renewable biomass" and "Renewable chemical" so that they are consistent with the definitions under THSC, §361.421. The proposed amendments to §328.302 and §328.304 would also implement HB 4413 by amending the definition of "Mass balance attribution" so that it is consistent with the definitions under THSC, §361.4215.

§328.301. Purpose and Applicability.

Purpose. The purpose of this subchapter is to:

(1) establish guidelines by which a product is eligible to be considered a recycled product;

(2) identify what is not eligible to be considered a recycled product; and

(3) identify third-party certification systems for mass balance attribution to certify:

(A) "Recycled material," including "Recycled plastics" and a "Renewable chemical"; and

(B) the portion of the total content of a product that consists of recycled material.

~~[(B) "Recycled plastics"; and]~~

~~[(C) the portion of the total content of a product that consists of recycled material.]~~

(b) Applicability. This subchapter is applicable to determining that a product is eligible to be considered a recycled product and third-party certification systems for mass balance attribution.

§328.302. Definitions.

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

(1) Mass balance attribution--A chain of custody accounting methodology with rules defined by a "Third-party certification system" that enables the attribution of "Recycled material," including "Recycled plastics," and a "Renewable chemical" [~~" and "Recycled plastics~~]," as those terms are defined in this section, to a "Recycled product," as described in §328.304 of this title (relating to Recycled Products).

(2) Recycled material--Materials, goods, or products that consist of recovered "Recyclable material," as defined in §330.3 of this title (relating to Definitions), materials derived from "Recoverable feedstocks" or "Post-use polymers" as those terms are defined in §330.3 of this title, or postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product or that are certified under a "Third-party certification system" for "Mass balance attribution," as those terms are defined in this section. The term includes "Recycled plastics" and a "Renewable chemical" as defined in this section.

(3) Recycled plastics--Products that are produced from:

(A) mechanical recycling of post-use polymers; or

(B) nonmechanical recycling of "Recoverable feedstocks" or "Post-use polymers" as those terms are defined in §330.3 of this title, that are certified under a "Third-party certification system" for "Mass balance attribution," as those terms are defined in this section.

(4) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the manufacture of new products. The term includes the conversion of post-use polymers and recoverable feedstocks through pyrolysis, gasification, solvolysis, or depolymerization, but does not include waste-to-energy processes or incineration of plastics in an incinerator as defined in §335.1 of this title (relating to Definitions).

(5) Renewable biomass or renewable biomass feedstocks--

(A) materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands, as that term is defined by 43 U.S.C. Section 1702, that:

(i) are byproducts of preventive treatments that are removed:

(I) to reduce hazardous fuels;

(II) to reduce or contain disease or insect infestation; or

(III) to restore ecosystem health;

(ii) would not otherwise be used for higher value products; and

(iii) are harvested in accordance with:

(I) applicable law and land management plans; and

(II) requirements for old growth stand maintenance, restoration, and management direction and large tree retention under Sections 102(e) and (f), Healthy Forests Restoration Act of 2003 (16 U.S.C. Sections 6512(e) and (f)); or

(B) any organic matter that is available on a renewable or recurring basis from nonfederal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) renewable plant material, including:

(I) feed grains and other agricultural commodities;

(II) plants and trees;

(III) algae; and

(IV) microorganisms; and

(ii) waste material, including:

(I) crop residue;

(II) vegetative waste material, including wood waste and wood residue;

(III) animal waste and byproducts, including fats, oils, greases, and manure;

(IV) food waste and yard waste;

(V) plant-derived waste oils;

(VI) municipal solid waste; and

(VII) waste derived from a wastewater treatment facility.

(6) Renewable chemical--A monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass feedstocks or certified under a "Third-party certification system" for "Mass balance attribution" as these terms are defined in this section.

(7) [~~(5)~~] Third-party certification system--An international or multinational third-party certification system that consists of a set of rules to implement "Mass balance attribution" approaches for attribution of "Recycled material," including "Recycled plastics," and a "Renewable chemical," to a "Recycled product" as these terms are defined in this section.

§328.304. Recycled Products.

(a) A product is eligible to be considered a recycled product when it conforms with the minimum content of recycled material as specified in the Comprehensive Procurement Guidelines (CPG) and the Recovered Materials Advisory Notice (RMAN) published by the Environmental Protection Agency (EPA) as described in §328.7(4) of this title (relating to Definitions of Terms and Abbreviations).

(b) Manufacturers may use a third-party certification system for mass balance attribution as identified under §328.303 of this title (relating to Third-party Certification Systems for Mass Balance Attribution) to identify the portion of the total content of a product which consists of recycled material, recycled plastics, and renewable chemicals [~~and recycled plastics~~].

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

Filed with the Office of the Secretary of State on December 18, 2025.

TRD-202504700
Amy L. Browning
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 239-0682

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §§363.2, 363.17, 363.402, 363.405, 363.1302, 363.1304, and §363.1305.

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

Chapter 363 contains the TWDB's programmatic rules for many of the agency's state funded financial assistance programs. The TWDB proposes to amend the rules to implement legislation.

House Bill 3582, 88th R.S. (2023) and Senate Bill 469, 88th R.S. (2023), amended Chapters 15 of the Water Code by adding two similar but non-identical general definitions of "rural political subdivision." Senate Bill 971, 89th R.S. (2025) repealed SB 469's definition of rural political subdivision. HB 3582 also amended Chapter 15 of the Water Code by making a conforming change to a permissible use of funds category in the Flood Infrastructure Fund program by substituting "a rural political subdivision" in place of "an area outside of a metropolitan statistical area". This rulemaking implements HB 3582's definition of "rural political subdivision" applicable to the agency's state funded financial assistance programs in Chapter 363.

Senate Bill 1967, 89th R.S. (2025), amended Chapter 15 of the Water Code by specifying that under the TWDB's Water Loan Assistance Fund program, certain drainage districts are eligible to receive grants for water supply projects, including projects that contain a flood control element, and prohibits disqualification because a district lacks historical data water use, does not provide retail water service, or does not have a certificate of convenience and necessity. This rulemaking implements SB 1967's grant eligibility of certain drainage districts under the Water Loan Assistance Fund program rules in Chapter 363.

SB 1967 also amended Chapter 15 of the Water Code by adding additional criterion that TWDB must consider when prioritizing

projects for financial assistance under the State Water Implementation Fund for Texas (SWIFT) program. When prioritizing projects under the SWIFT program, the TWDB must also consider whether a project is a water supply project that contains a flood component, regardless of whether the applicant holds a certificate of convenience and necessity. This rulemaking implements SB 1967's additional prioritization consideration under the SWIFT program rules in Chapter 363.

SB 1967 additionally amended Chapter 15 of the Water Code by expanding the definition of "Flood project" applicable to the TWDB's Flood Infrastructure Fund (FIF) program. The definition of "Flood project" now includes the construction of multi-purpose flood mitigation and drainage infrastructure projects that control, divert, capture, or impound flood water, stormwater, agricultural runoff water, or treated wastewater effluent and treat and distribute the water for the purpose of creating an additional source of water supply. This rulemaking implements SB 1967's expanded definition of a Flood Project under the FIF program rules in Chapter 363.

Senate Bill 1261, 89th R.S. (2025), amended TWDB's SWIFT Program in Chapter 15 of the Water Code by specifying the not to exceed term for an "eligible project", as defined by Section 1373.001 of the Government Code. The loan term for an "eligible project" may not exceed the lesser of the expected useful life of the facility or 40 years. This rulemaking implements SB 1261's not to exceed term parameters for an "eligible project" under TWDB's SWIFT program rules in Chapter 363.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Chapter 363 Financial Assistance Programs

Subchapter A. General Provisions

Division 1. Introductory Provisions

§363.2. Definitions of Terms.

The proposed amendment revises the definition of rural political subdivision in §363.2(26) to implement HB 3582.

Division 2. General Application Provisions

§363.17. Grants from Water Loan Assistance Fund.

The amendment proposes §363.17(c) and (d) to implement SB 1967, expanding grant eligibility of certain drainage districts under the Water Loan Assistance Fund program as well as a renumbering of the remaining subsections.

Subchapter D. Flood Financial Assistance.

§363.402. Definitions.

The proposed amendment expands the definition of flood project by the addition of §363.402(6)(G) to implement SB1967. The proposed amendment also removes the definition of a metropolitan statistical area currently in §363.402(8) to implement HB 3582 and renumbers the remaining subsections. To avoid duplicative definitions across Subchapters in Chapter 363, TWDB intends to rely on the proposed amended definition of rural political subdivision in §363.2(26) for TWDB's FIF program projects.

§363.405. Use of Funds.

The proposed amendment revises §363.405(a)(2) to substitute "a rural political subdivision" in place of "an area outside of a metropolitan statistical area" to implement HB 3582.

Subchapter M. State Water Implementation Fund for Texas and State Water Implementation Revenue Fund for Texas Water Development Board

§363.1302. Definition of Terms.

The amendment proposes to add a definition of flood control component and to remove the definition of rural political subdivision currently in §363.1302(15) and to renumber the subsections accordingly. Unless in conflict, Subchapter A of Chapter 363 applies to projects under Subchapter M of Chapter 363. To avoid duplicative definitions across Subchapters in Chapter 363, TWDB intends to rely on the proposed amended definition of rural political subdivision in §363.2(26) for TWDB's SWIFT program projects.

§363.1304. Prioritization Criteria.

The amendment proposes §363.1304(12) to implement SB 1967's additional criterion that TWDB must consider when prioritizing SWIFT projects for financial assistance and renumbers the remaining subsection. The amendment proposes awarding one point for water supply projects that contain a flood control component and zero points for water supply projects that do not contain a flood component. An amendment is also proposed for §363.1304(6) to correct a typographical error and to account for the addition of proposed criterion.

§363.1305. Use of Funds.

The amendment proposes a revision to §363.1305(a)(2)(B) to implement SB 1261, which establishes "not to exceed" term parameters for an "eligible project" under TWDB's SWIFT Program, as defined by §1373.001 of the Texas Government Code.

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

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

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments as the rules are necessary to implement legislation and participation in TWDB's financial assistance programs is voluntary. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

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

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

Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies eligibility requirements for TWDB applicants and implements legislation. Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

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

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

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

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

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §6.101, §15.011, §15.439, §15.472, and §15.537. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

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

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislation and clarify requirements for borrowers. The proposed rule would substantially advance this stated purpose by aligning the rule's definitions, permissible use of funds, eligibility, and loan term parameters with Water Code, Chapter 15.

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

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule is merely an amendment to conform with statutory changes by aligning the rule's definitions, permissible use of funds, borrower eligibility, and loan term parameters with Water Code, Chapter 15. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy. The rules are not regulatory and participation in TWDB programs is voluntary.

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

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. If sent via email, all public comments should be sent directly to rulescomments@twdb.texas.gov. Please do not submit

comments through any third-party forms or websites. Receipt of third-party submissions cannot be guaranteed. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include Chapter 363 in the subject line of any comments submitted.

SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.2

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

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.011, §15.439, §15.472, and §15.537.

This rulemaking affects Water Code, Chapter 15.

§363.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Applicant--The entity applying for financial assistance, including the entity that receives the financial assistance, the entity that owns the project funded under this chapter, or an entity authorized to act on behalf of the applicant.

(2) Alternative Delivery Guidance--A document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

(3) Board--Texas Water Development Board.

(4) Building--Erecting, building, acquiring, altering, remodeling, improving, or extending a water supply project, treatment works, or flood control measures.

(5) Certification of trust--An instrument executed by a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the loan proceeds in accordance with §114.086, Texas Property Code.

(6) Closing--The time at which the requirements for loan closing have been completed under §363.42 of this title (relating to Loan Closing) and an exchange of debt for delivery of funds to either the applicant, an escrow agent bank, or a trust agent has occurred.

(7) Commission--Texas Commission on Environmental Quality.

(8) Commitment--An offer by the board to provide financial assistance to an applicant who timely fulfills the conditions required in a board resolution.

(9) Community Water System - Has the meaning assigned by 30 TAC §290.38.

(10) Construction account--A separate account created and maintained for the deposit of loan funds and utilized by the applicant to pay eligible expenses of the project.

(11) Corporation--A nonprofit water supply corporation created and operating under Texas Water Code, Chapter 67.

(12) Debt--All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.

(13) Department--Texas Department of State Health Services.

(14) Escrow account--A separate account maintained by an escrow agent for the board's deposit of escrowed funds until such funds are eligible for release to the construction account.

(15) Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral as designated in accordance with Texas Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

(16) Executive administrator--The executive administrator of the board or a designated representative.

(17) Financial assistance--Loans, grants, or state acquisition of facilities by the board pursuant to the Texas Water Code, Chapters 15, Subchapters B, C, E, G, H, O, P, and Q; Chapter 16, Subchapters E, and F; Chapter 17, Subchapters D, F, G, I, K, and L; and Chapter 36, Subchapter L.

(18) Grants--Financial assistance provided by the board for which repayment is not required.

(19) Innovative technology--Nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation or other technologies which represent a significant advance in the state of the art.

(20) Legislative Designation--A designation made by the legislature in accordance with §16.051(f) and (g), Texas Water Code.

(21) Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals developed pursuant to a water conservation plan.

(22) Pre-design commitment--A commitment by the board prior to completion of planning or design pursuant to §363.16 of this title (relating to Pre-design Funding Option).

(23) Private placement memorandum--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(24) Release--The time at which funds are made available to the loan or grant recipient or to a state participation recipient pursuant to a master agreement.

(25) Risk-Based Review-- Method of review of plans, specifications, and related documents for sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to Texas Water Code §17.276.

(26) Rural Political Subdivision--

(A) a [A] nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, no part of the service area of which is located in an urban area with a population of more than 50,000;

(B) a municipality:

(i) with a population of 10,000 or less no part of the service area of which is located in an urban area with a population of 50,000 or more; or

(ii) located wholly in a county in which no urban area has a population of more than 50,000;

(C) a county in which no urban area has a population of more than 50,000; or

(D) an entity that:

(i) is a nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code, a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, municipality, county, or other political subdivision of the state, or an interstate compact commission to which the state is a party; and

(ii) demonstrates in a manner satisfactory to the board that the entity is rural or the area to be served by the project is a wholly rural area despite not otherwise qualifying under subparagraph (A), (B), (C) of this paragraph.

(27) SWIFT--The state water implementation fund for Texas.

(28) SWIRFT--The state water implementation revenue fund for Texas.

(29) Water Plan--The current state water plan prepared and adopted in accordance with Texas Water Code, §16.051.

(30) WIF--The water infrastructure fund.

(31) WLAF--The water loan assistance fund.

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

Filed with the Office of the Secretary of State on December 18, 2025.

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Ashley Harden
General Counsel
Texas Water Development Board
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For further information, please call: (512) 475-1673

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DIVISION 2. GENERAL APPLICATION PROCEDURES

31 TAC §363.17

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

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.537.

This rulemaking affects Water Code, Chapter 15.

§363.17. Grants from Water Loan Assistance Fund.

(a) The board may provide grants from the Water Loan Assistance Fund for projects that include supplying water or wastewater service to areas in which:

(1) water supply services:

(A) from a community water system do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC 290, Subchapter D, and any applicable standards of any governmental unit with jurisdiction over such area;

(B) from individual wells after treatment do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC 290, Subchapter D, and any applicable standards of any governmental unit with jurisdiction over such area; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(2) sewer services:

(A) from any organized sewage collection and treatment facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 305;

(B) for on-site sewerage facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 285; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(3) for purposes of any federal funds for colonias deposited in the water assistance fund, such area meets the federal criteria for use of such funds.

(b) The board may also provide grants from the Water Loan Assistance Fund for projects:

(1) for which federal grant funds are placed in the loan fund;

(2) for which a specific legislative appropriation is made; or

(3) for water conservation, desalination, brush control, weather modification, and regionalization and for providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

(c) The board may also provide grants to drainage districts established under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, for water supply projects, including projects that contain a flood control component.

(d) The board may not disqualify a drainage district from receiving a grant under subsection (c) of this section because the district does not:

(1) notwithstanding §16.012(m) of the Texas Water Code and §358.5 of this title (relating to Ground Water and Surface Water Use Surveys), have historical data about water use;

(2) provide retail water service to consumers; or

(3) have a certificate of convenience and necessity under which it provides retail water or wastewater service.

(e) [~~(c)~~] Grant funds will be administered according to the terms of an agreement between the board and the grantee.

(f) [~~(d)~~] For purposes of this section, conservation means those practices, techniques, and technologies that will reduce the consumption of water, reduce the real or apparent loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

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

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Ashley Harden
General Counsel
Texas Water Development Board
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SUBCHAPTER D. FLOOD FINANCIAL ASSISTANCE

31 TAC §363.402, §363.405

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

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.439 and §15.472.

This rulemaking affects Water Code, Chapter 15.

§363.402. Definitions.

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

(1) Drainage--includes, but is not limited to, the construction or rehabilitation of bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(2) Eligible political subdivision--a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a district or river authority that is subject to Chapter 49 of the Texas Water Code and participates in cooperative flood control planning, a municipality, or a county.

(3) Flood control--the construction or rehabilitation of structural mitigation or anything that retains, diverts, redirects, impedes, or otherwise modifies the flow of water.

(4) Flood mitigation--the implementation of actions, including both structural and nonstructural solutions, to reduce flood risk to protect against the loss of life and property.

(5) Flood Intended Use Plan--a document adopted by the board that identifies the uses of the funds for flood projects.

(6) Flood project--a drainage, flood mitigation, or flood control project, including:

(A) planning and design activities;

(B) work to obtain regulatory approval to provide nonstructural and structural flood mitigation and drainage;

(C) construction of structural flood mitigation and drainage projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk;

(D) construction and implementation of nonstructural projects, including projects that use nature-based features to protect, mitigate, or reduce flood risk;

(E) nonstructural or natural flood control strategies; [~~and~~]

(F) a federally authorized project to deepen a ship channel affected by a flooding event; and [~~.~~]

(G) construction of multi-purpose flood mitigation and drainage infrastructure projects that control, divert, capture, or impound floodwater, stormwater, agricultural runoff water, or treated wastewater effluent and treat and distribute the water for the purpose of creating an additional source of water supply.

(7) Nonstructural flood mitigation--includes, but is not limited to, measures such as acquisition of floodplain land for use as public open space, acquisition and removal of buildings located in a floodplain, relocation of residents of buildings removed from a floodplain, flood warning systems, educational campaigns, land use planning policies, watershed planning, flood mapping, and acquisition of conservation easements.

[~~(8) Metropolitan statistical area--an area so designated by the United States Office of Management and Budget.~~]

(8) [~~(9)~~] Project Watershed--the area upstream and downstream substantially affected by the proposed flood project, as documented in the project application and sealed by a Professional Engineer or Professional Geoscientist.

(9) [~~(10)~~] Structural flood mitigation--includes, but is not limited to, measures such as construction of storm water retention basins, enlargement of stream channels, modification or reconstruction of bridges, coastal erosion control measures, or beach nourishment.

§363.405. Use of Funds.

(a) The board may use the funds for financial assistance to eligible political subdivisions as follows:

(1) to make a loan to an eligible political subdivision at or below market interest rates for a flood project;

(2) to make a grant or loan at or below market interest rates to an eligible political subdivision for a flood project to serve a rural political subdivision [an area outside of a metropolitan statistical area] in order to ensure that the flood project is implemented;

(3) to make a loan at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a flood project;

(4) to make a grant to an eligible political subdivision to provide matching funds to enable the eligible political subdivision to participate in a federal program for a flood project;

(5) to make a grant to an eligible political subdivision for a flood project if the board determines that the eligible political subdivision does not have the ability to repay a loan;

(6) to meet matching requirements for projects funded partially by federal money; and

(7) to make a loan to an eligible political subdivision below market interest rates and under flexible repayment terms, including a line of credit or loan obligation with early repayment terms, to provide financing for the local share of a federally authorized ship channel improvement project.

(b) The board may also use the fund to make transfers to the research and planning fund created under Texas Water Code Section 15.402, which may be used to provide money for flood control planning, as described in Texas Water Code Chapter 15, Subchapter F and 31 Texas Administrative Code Chapter 355.

(c) The board reserves the right to limit the amount of funding available to an individual entity.

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

Filed with the Office of the Secretary of State on December 18, 2025.

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Ashley Harden
General Counsel
Texas Water Development Board
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For further information, please call: (512) 475-1673

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SUBCHAPTER M. STATE WATER IMPLEMENTATION FUND FOR TEXAS AND STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS

31 TAC §§363.1302, 363.1304, 363.1305

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

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.439 and §15.472.

This rulemaking affects Water Code, Chapter 15.

§363.1302. Definition of Terms.

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

(1) Agricultural water conservation--Those practices, techniques or technologies used in agriculture, as defined in Texas Agriculture Code, which will improve the efficiency of the use of water and further water conservation in the state, including but not limited to those programs or projects defined in Texas Water Code §§17.871 - 17.912.

(2) Agricultural irrigation project--Those projects which improve water delivery or application efficiency on agricultural lands, or involve purchase and installation on agricultural public or private property of new water sources, new irrigation systems, or devices designed to indicate the amount of water withdrawn for agricultural irrigation purposes.

(3) Alternate facility--A construction project that would be necessary to serve the excess capacity of the area to be served by the facility in the event that the facility was not initially constructed to meet the excess capacity.

(4) Commission--The Texas Commission on Environmental Quality or its successor.

(5) Entity--A political subdivision or nonprofit water supply or sewer service corporation.

(6) Excess capacity--The difference between the foreseeable needs of the area to be served by the useful life of the facility and the existing needs for the area to be served by the facility.

(7) Executive administrator--The executive administrator of the board or a designated representative.

(8) Existing needs--Maximum capacity necessary for service to the area receiving service from the facility for current population and including the service necessary to serve the estimated population in the area ten years from the date of the application.

(9) Facility--A regional facility for which an application has been submitted requesting board participation and that includes sufficient capacity to serve the existing needs of the applicant and excess capacity.

(10) Flood control component--A component that provides a quantified reduction of risk and impact of flooding to life and property.

(11) [~~(10)~~] Historically Underutilized Business--The meaning assigned by Government Code §2161.001, and the regulations adopted pursuant thereto.

(12) [~~(11)~~] Household Cost Factor--The average annual cost of service per household divided by the median household income.

(13) [~~(12)~~] Nonprofit water supply or sewer service corporation--A water or sewer service corporation operating under Texas Water Code, Chapter 67.

(14) [~~(13)~~] Political subdivision--Includes a city, county, district or authority created under the Texas Constitution Article III, Section 52, or Article XVI, Section 59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code, Chapter 67.

(15) [~~(14)~~] Reuse--The beneficial use of groundwater or surface water that has already been beneficially used.

[~~(15) Rural political subdivision--A nonprofit water supply or sewer service corporation, district, or municipality with a service area of 10,000 or less in population based upon the most current data available from the U.S. Bureau of the Census or board-approved projections, or that otherwise qualifies for financing from a federal agency; or a county in which no urban political subdivision exceeds 50,000 in population based upon the most current data available from the U.S. Bureau of the Census or board-approved projections.~~]

(16) Rural population--Residents of a rural political subdivision.

(17) Urban population--Residents of a political subdivision with a population of more than 10,000 individuals based upon the most current data available from the U.S. Bureau of the Census or board-approved projections.

(18) Water conservation--Those practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water, so that a water supply is made available for future or alternative uses.

(19) Water plan project--A project that is a recommended water management strategy in the current board-adopted state water plan.

(20) Water supply need--Projected water demands in excess of existing supply as identified in the state water plan.

§363.1304. Prioritization Criteria.

The executive administrator will prioritize applications based on the following point system:

(1) Projects will be evaluated on the criteria provided in paragraphs (2) - (5) of this section. The points awarded for paragraphs (2) - (5) of this section shall be the lesser of the sum of the points for paragraphs (2) - (5) of this section, or 50 points.

(2) Either stand-alone projects or projects in conjunction with other recommended water management strategies relying on the same volume of water that the project relies on, in accordance with Chapter 357 of this title (relating to Regional Water Planning), that will serve in total when the project water supply volume is fully operational:

(A) at least 10,000 population, but not more than 249,999 population, 6 points; or

(B) at least 250,000 population, but not more than 499,999 population, 12 points; or

(C) at least 500,000 population, but not more than 749,999 population, 18 points; or

(D) at least 750,000 population, but not more than 999,999 population, 24 points; or

(E) at least 1,000,000 population, 30 points; or

(F) less than 10,000 population, zero points.

(3) Projects that will serve a diverse urban and rural population:

(A) serves one or more urban populations and one rural population, 10 points; and

(B) for each additional rural population served, 4 points up to a maximum of 30 points; or

(C) serves only an urban population, or only a rural population, zero points.

(4) As specified in the application, projects which provide regionalization:

(A) serves additional entities other than the applicant, 5 points per each political subdivision served for a maximum of 30 points; or

(B) serves only applicant, zero points.

(5) Projects that meet a high percentage of the water supply needs of the water users to be served calculated from those served and needs that will be met during the first decade the project becomes operational, based on state water plan data:

(A) at least 50 percent of needs met, 10 points; or

(B) at least 75 percent of needs met, 20 points; or

(C) at least 100 percent of needs met, 30 points; or

(D) less than 50 percent of needs met, zero points.

(6) Projects will receive additional points of the project's score on each of the criteria of paragraphs (7) - (13) [~~(17)~~ - ~~(12)~~] of this section.

(7) Local contribution to be made to implement the project, including federal funding, and including up-front capital, such as funds already invested in the project or cash on hand and/or in-kind services to be invested in the project, provided that points will not be given for principal forgiveness or grants from the board:

(A) other funding at least 10 percent, but not more than 19 percent, of total project cost, 1 point; or

(B) other funding at least 20 percent, but not more than 29 percent, of total project cost, 2 points; or

(C) other funding at least 30 percent, but not more than 39 percent, of total project cost, 3 points; or

(D) other funding at least 40 percent, but not more than 49 percent, of total project cost, 4 points; or

(E) other funding at least 50 percent of total project cost, 5 points; or

(F) other funding less than 10 percent of total project cost, zero points.

(8) Financial capacity of the applicant to repay the financial assistance provided:

(A) applicant's household cost factor is less than or equal to 1 percent, 2 points; or

(B) applicant's household cost factor is greater than 1 percent but not more than 2 percent, 1 point; or

(C) applicant's household cost factor is greater than 2 percent, zero points.

(9) Projects which address an emergency need:

(A) applicant, or entity to be served by the project, is included on the list maintained by the Commission of local public water systems that have a water supply that will last less than 180 days without additional rainfall, or is otherwise affected by a Commission emergency order, and drought contingency plan has been implemented by the applicant or entity to be served, 3 points; plus

(B) water supply need is anticipated to occur in an earlier decade than identified in the most recent state water plan, 1 point; plus

(C) applicant has used or applied for federal funding for emergency, 1 point; or

(D) none of the above, zero points.

(10) Projects which are ready to proceed:

(A) preliminary planning and/or design work (30 percent of project total) has been completed or is not required for the project, 3 points; plus

(B) applicant is able to begin implementing or constructing the project within 18 months of application deadline, 3 points; plus

(C) applicant has acquired all water rights associated with the project or no water rights are required for the project, 2 points; or

(D) none of the above, zero points.

(11) Entities that have demonstrated water conservation or projects which will achieve water conservation, including preventing the loss of water:

(A) for municipal projects, applicant has already demonstrated significant water conservation savings, as determined by comparing the highest rolling four-year average total gallons per capita per day within the last twenty years to the average total gallons per capita per day for the most recent four-year period based on board water use data; or significant water conservation savings will be achieved by implementing the proposed project, as determined by comparing the conservation to be achieved by the project with the average total gallons per capita per day for most recent four-year period:

(i) 2 to 5.9 percent total gallons per capita per day reduction, 2 points; or

(ii) 6 to 9.9 percent total gallons per capita per day reduction, 4 points; or

(iii) 10 to 13.9 percent total gallons per capita per day reduction, 6 points; or

(iv) 14 to 17.9 percent total gallons per capita per day reduction, 8 points; or

(v) 18 percent or greater total gallons per capita per day reduction, 10 points; or

(vi) less than 2 percent total gallons per capita per day reduction, zero points.

(B) for municipal projects, applicant has achieved the water loss threshold established by §358.6 of this title (relating to Water Loss Audits), as demonstrated by most recently submitted water loss audit:

(i) less than the threshold, 5 points; or

(ii) at or above the threshold, zero points.

(C) for wholesale water providers, applicant has already demonstrated significant water conservation savings, as determined by comparing the highest rolling four-year average total gallons per capita per day within the last twenty years to the average total gallons per capita per day for the most recent four-year period based on board water use data for customers affiliated with the application; or significant water conservation savings will be achieved by implementing the proposed project, as determined by comparing the conservation to be achieved by the project with the average total gallons per capita per day for the most recent four-year period for customers affiliated with the application.

(i) 2 to 5.9 percent total gallons per capita per day reduction, 2 points; or

(ii) 6 to 9.9 percent total gallons per capita per day reduction, 4 points; or

(iii) 10 to 13.9 percent total gallons per capita per day reduction, 6 points; or

(iv) 14 to 17.9 percent total gallons per capita per day reduction, 8 points; or

(v) 18 percent or greater total gallons per capita per day reduction, 10 points; or

(vi) less than 2 percent total gallons per capita per day reduction, zero points.

(D) for agricultural projects, significant water efficiency improvements will be achieved by implementing the proposed project, as determined by the projected percent improvement:

(i) 1 to 1.9 percent increase in water use efficiency, 1 point; or

(ii) 2 to 5.9 percent increase in water use efficiency, 3 points; or

(iii) 6 to 9.9 percent increase in water use efficiency, 6 points; or

(iv) 10 to 13.9 percent increase in water use efficiency, 9 points; or

(v) 14 to 17.9 percent increase in water use efficiency, 12 points; or

(vi) 18 percent or greater increase in water use efficiency, 15 points; or

(vii) less than 1 percent increase in water use efficiency, zero points.

(12) If the project is a water supply project that contains a flood control component, regardless of whether the applicant holds a certificate of convenience and necessity under which it provides retail water or wastewater service:

(A) does contain a flood control component, 1 point; or

(B) does not contain a flood control component, zero points.

(13) [~~(12)~~] If two or more projects receive the same priority ranking, priority will be assigned based on the relative score(s) from paragraph (11) of this section. If after considering the relative scores of the projects based on the criteria of paragraph (11) of this section, then priority will be assigned based on the relative score(s) from paragraph (9) of this section.

§363.1305. Use of Funds.

(a) The board may use the funds for financial assistance to political subdivisions as follows:

(1) to make loans at or below market interest rates, but not lower than 50 percent of the board's market rate;

(2) to make loans with terms not to exceed the lesser of:

(A) the expected useful life of the project assets; or

(B) 30 years or, for an eligible project, as defined by §1373.001 of the Texas Government Code, 40 years;

(3) to defer loan repayments, including deferral of principal and interest or accrued interest under criteria developed by the board;

(4) to make loans with incremental repurchase terms for an acquired facility, including terms for no initial repurchase payment followed by progressively increasing incremental levels of interest payment, repurchase of principal and interest, and ultimate repurchase of the entire state interest in the facility using simple interest calculations; or

(5) a combination of the financing outlined in paragraphs (1) - (4) of this subsection.

(b) The board may make funding available under subsection (a) of this section only for implementation of water plan projects.

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

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Ashley Harden
General Counsel
Texas Water Development Board
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 5. PROGRAM COMPLETION AND RELEASE

37 TAC §380.8565

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC, Part 11, §380.8565, Discharge of Youth with Determinate Sentences upon Transfer to TDCJ or Expiration of Sentence.

SUMMARY OF CHANGES

Amendments to §380.8565 will include adding that TJJD requests a juvenile court hearing to recommend the transfer of a youth to the Texas Department of Corrections (TDCJ), Correctional Institutions Division, if the youth is adjudicated or convicted of conduct that meets the following criteria: 1) the adjudication or conviction is classified as a first- or second-degree felony or is the offense of assault of a public servant; 2) the conduct occurred while the youth was committed to TJJD custody; 3) the youth was at least 16 years old when the conduct occurred; and 4) the youth has not completed the sentence.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Director, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to clarify that youth who have engaged in certain conduct defined in the section are transferred to TDCJ.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. No private real property rights are affected by adoption of the section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs; and §244.014(a-1), Human Resources Code, which requires TJJD to refer a child with a determinate sentence to the juvenile court for a hearing for possible transfer to the TDCJ for confinement if the child is convicted or adjudicated for certain conduct.

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

§380.8565. Discharge of Youth with Determinate Sentences upon Transfer to TDCJ or Expiration of Sentence.

(a) Purpose. This rule establishes criteria and an approval process for:

(1) requesting court approval to transfer sentenced offenders to adult prison; and

(2) discharging sentenced offenders:

(A) whose sentences have expired; or

(B) who did not previously qualify for release or transfer by completing required programming.

(b) Applicability.

(1) This rule applies only to the disposition of a youth's determinate sentence(s).

(2) This rule applies only to sentenced offenders.

(3) This rule does not apply to:

(A) sentenced offenders who qualify for release or transfer to parole by completing required programming. See §380.8559 of this chapter; or

(B) sentenced offenders adjudicated for capital murder. See §380.8569 of this chapter.

(c) General Requirements.

(1) By law, a sentenced offender is transferred from the custody of the Texas Juvenile Justice Department (TJJD) no later than the youth's 19th birthday.

(2) The youth must serve the entire minimum period of confinement that applies to the committing offense in a high-restriction facility unless:

(A) the youth is transferred by the committing court to the Texas Department of Criminal Justice-Correctional Institutions Division (TDCJ-CID);

(B) the youth is approved by the committing court to attain parole status before completing the minimum period of confinement;

(C) the youth's sentence expires before the minimum period of confinement expires; or

(D) the executive director waives the requirement that the youth be assigned to a high-restriction facility. This subparagraph does not allow a youth to be placed on parole status.

(3) TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

(B) when the minimum period of confinement is complete;

(C) when the youth becomes 16 years of age;

(D) when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation for transfer to TDCJ-CID or to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD);

(E) within 45 days after revocation of parole, if applicable; and

(F) at other times as appropriate, such as after a major rule violation is proven at a Level II hearing.

(4) TJJD jurisdiction is terminated and a youth is discharged when:

(A) the youth is transferred to TDCJ; or

(B) the youth's sentence has expired, except when the youth is committed to TJJD under concurrent determinate and indeterminate commitment orders as described in §380.8525 of this chapter.

(d) Transfer Criteria.

(1) Transfer to TDCJ-CID for Youth Whose Conduct Occurs While on Parole Status. TJJD may request a juvenile court hearing to recommend transfer of a youth to TDCJ-CID if all of the following criteria are met:

(A) the youth's parole has been revoked or the youth has been adjudicated or convicted of a felony offense occurring while on parole status;

(B) the youth is at least age 16;

(C) the youth has not completed the sentence; and

(D) the youth's conduct indicates that the welfare of the community requires the transfer.

(2) Transfer to TDCJ-CID for Youth Whose Conduct Occurs While in a High-Restriction Facility. TJJD may request a juvenile court hearing to recommend transfer of a youth in a high-restriction facility to TDCJ-CID if the following criteria are met:

(A) the youth is at least age 16; and

(B) except as provided by subparagraph (D)(i) of this paragraph, the youth has spent at least six months in high-restriction facilities, which is counted as follows:

(i) if the youth received a determinate sentence for conduct that occurred in the community, the six months begins upon admission to TJJD; or

(ii) if the youth received a determinate sentence for conduct that occurred in a TJJD or contract facility, the six months begins upon the youth's initial admission to TJJD, regardless of whether the initial admission resulted from a determinate or indeterminate commitment; and

(C) the youth has not completed the sentence; and

(D) the youth meets at least one of the following behavior criteria:

(i) the youth has engaged in conduct meeting the elements of a felony or Class A misdemeanor while assigned to a residential facility; however, if the conduct meets the elements of the offense of assault of a public servant as defined in §22.01, Penal Code, subparagraph (B) of this paragraph does not apply; or

(ii) the youth has committed major rule violations as proven at a Level II due process hearing on three or more occasions; or

(iii) the youth has engaged in conduct that has resulted in at least five security program admissions or extensions in one month or ten in three months (see §380.9740 of this chapter for information on the security program); or

(iv) the youth has demonstrated an unwillingness to progress in the rehabilitation program due to persistent non-compliance with objectives; and

(E) alternative interventions have been tried without success; and

(F) the youth's conduct indicates that the welfare of the community requires the transfer.

(3) Transfer to TDCJ-CID for Youth Engaged in Certain Conduct. Notwithstanding paragraphs (1) and (2) of this subsection, TJJD shall request a juvenile court hearing to recommend transfer of a youth if the youth is adjudicated for or convicted of conduct that meets the following criteria:

(A) the adjudication or conviction is classified as a first-degree felony or a second-degree felony, or is the offense of assault of a public servant under §22.01(b)(1), Penal Code;

(B) the conduct occurred while the youth was committed to TJJD custody;

(C) the youth was at least age 16 when the conduct occurred; and

(D) the youth has not completed the sentence.

(4) [~~(3)~~] Transfer to TDCJ-PD for Youth in Residential Facilities. A youth in a residential facility who has not met program completion criteria in §380.8559 of this chapter and who has not received court approval for transfer to TDCJ-CID must be transferred to TDCJ-PD no later than the youth's 19th birthday.

(5) [~~(4)~~] Transfer to TDCJ-PD for Youth on TJJD Parole. A youth on TJJD parole must be transferred to TDCJ-PD no later than the youth's 19th birthday.

(e) Transfer Recommendation for Youth Who Will Not Complete the Minimum Period of Confinement before Age 19. TJJD requests a court hearing for any youth who cannot complete the minimum period of confinement by the 19th birthday. The purpose of the hearing is to determine whether the youth will be transferred to TDCJ-CID or to TDCJ-PD. Notwithstanding the criteria in subsection (d)(2) of this section, TJJD considers the following factors in forming a recommendation for the committing court:

(1) length of stay in TJJD;

(2) youth's progress in the rehabilitation program;

(3) youth's behavior while in TJJD;

(4) youth's offense/delinquent history; and

(5) any other relevant factors, such as:

(A) risk factors and protective factors the youth possesses as identified in the youth's psychological evaluation;

(B) the welfare of the community; and

(C) participation in or completion of statutorily required rehabilitation programming, including but not limited to:

(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this chapter;

(ii) participation in a positive behavior support system to the extent required under §380.9155 of this chapter; and

(iii) completion of at least 12 hours of a gang intervention education program, if required by court order.

(f) Discharge Criteria. TJJD discharges youth from its jurisdiction when one of the following occurs:

(1) expiration of the sentence imposed by the juvenile court, unless the youth is under concurrent commitment orders as described in §380.8525 of this chapter; or

(2) the youth has been transferred to TDCJ-CID under court order or transferred to TDCJ-PD.

(g) Approval Process for Transfer to TDCJ-CID or TDCJ-PD.

(1) Before staff submit a recommendation for transfer to TDCJ-CID or TDCJ-PD, a determinate sentence review shall be held.

(2) TJJD notifies the youth and the youth's parent/guardian of a pending determinate sentence review. The notification informs the recipients that they have the opportunity to present information in person or to submit written comments to TJJD. The notification also specifies the date by which the comments or the request to present in-person information must be received.

(3) Approval from the final decision authority is required before requesting a hearing with the committing juvenile court or initiating a transfer to TDCJ-PD.

(4) A hearing with the committing juvenile court shall be requested when a youth cannot complete the minimum period of confinement before age 19.

(5) The final decision authority ensures the youth's community reentry/transition plan adequately addresses risk factors before approving the transfer from a high-restriction facility to TDCJ-PD.

(6) A youth may not be transferred to TDCJ-CID unless the committing juvenile court orders the transfer.

(h) Active Warrants. At least ten calendar days before the youth's transfer or release, TJJD notifies any entity that has issued an active warrant for the youth.

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

Filed with the Office of the Secretary of State on December 16, 2025.

TRD-202504676
Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 490-7130

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SUBCHAPTER B. TREATMENT
DIVISION 1. PROGRAM PLANNING

37 TAC §380.8702

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC, Part 11, §380.8702, Rehabilitation Program Overview.

SUMMARY OF CHANGES

Amendments to §380.8702 will include: 1) adding information related to the residential treatment model framework; 2) describing the core tools used in the treatment model framework, including behavior analysis, treatment targets, behavior modification principles, skills training, and youth and family involvement; 3) adding the expectation that residential treatment is oriented around clear behavioral expectations and privileges associated with progress; 4) outlining TJJD staff priorities that encourage motivation and engagement, including goal-setting with youth, collaborative planning, validating engagement, adaptation of treatment delivery to fit the youth, and explicit linkage between participation in treatment and youth's goals; 5) adding

that the TJJD environment will be structured to reinforce skillful behavior in real time, block or weaken outcomes that reinforce unsafe or unskillful behavior, provide opportunities for skillful behavior, generalize skills across settings and staff, and teach youth to structure their own environments and select effective skills that maximize success; and 6) adding descriptions of egregious maladaptive behavior categories that TJJD staff will target, including life-threatening and aggressive; escape, abscond, and evasion; treatment-interfering and program-destroying; and quality-of-life-interfering.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Director, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to provide specific information pertaining to TJJD's residential treatment model framework.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. No private real property rights are affected by adoption of the section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.8702. Rehabilitation Program Overview.

(a) Purpose. The purpose of this rule is to identify the philosophy and approach of the Texas Juvenile Justice Department (TJJD) to the rehabilitation of youth in TJJD's care in order to reduce future delinquent behavior and increase public safety.

(b) Applicability. This rule applies to youth committed to TJJD.

(c) Definitions. See §380.8501 of this chapter for definitions of terms used in this rule.

(d) General Provisions.

(1) TJJD provides a trauma-informed rehabilitative program that is focused on delivering needed treatment, assessing behavioral progress, assessing increases in protective factors and decreases in risk factors, and assessing the ability of youth to use skills learned in treatment and programming.

(2) All treatment and programming is delivered in the least restrictive setting appropriate to the youth, consistent with the rules of this chapter.

(3) To the extent possible, TJJD's rehabilitative program offers programs that ensure youth receive appropriate rehabilitation services, including those recommended by the committing court.

(4) All aspects of the TJJD rehabilitation program are individualized and performance-based, with clearly defined expectations as set forth in §380.8703 of this chapter.

(5) Each youth's individual progress is reviewed monthly. The review addresses identified risk and protective factors and individual abilities.

(6) As youth progress in the rehabilitation program, there are increased expectations for demonstrating developed skills and social responsibility, a decreased need for staff intervention, and an increase in earned privileges.

(7) TJJD facilities maintain a structured daily schedule for all youth. Each day, youth work on components of the rehabilitation program.

(8) TJJD facilities provide for and youth are required to participate in a structured, individually appropriate educational program or equivalent, with appropriate supports.

(9) TJJD facilities provide and eligible youth may participate in work experiences.

(10) TJJD facilities must provide and youth are given the opportunity to participate in regular large-muscle exercise and recreation programs.

(11) Staff members receive appropriate training and certification related to their role in the rehabilitation program and the types of services they provide.

(12) TJJD may pilot new programs or program components for youth whose needs cannot be met by existing program components.

(e) Residential Treatment Model Framework.

(1) TJJD delivers rehabilitation through a residential, milieu-based model. Treatment occurs where youth live, learn, and recreate skillful behavior, and treatment is reinforced across daily routines.

The model coordinates core tools to directly target problem behavior and build replacement skills, including:

(A) behavior analysis (including behavior chain analysis);

(B) TJJD treatment target hierarchy;

(C) behavior modification principles (e.g., reinforcement, shaping, extinction, contingency management);

(D) skills training model and curriculum; and

(E) youth and family involvement in treatment.

(2) Residential treatment delivery is oriented around clear behavioral expectations and privileges associated with progress. Treatment links participation to the youth's own goals and introduces motivation and commitment strategies for staff use (e.g., attainable goal setting, reinforcement of adaptive/skillful behavior, structuring routines and the environment, and providing opportunities to practice skills).

(3) TJJD staff encourage motivation and engagement by prioritizing:

(A) conversations with youth oriented around specific goals and the future;

(B) collaborative planning and unified efforts among staff;

(C) consistent interactions and validating engagement with youth;

(D) adaptation of the treatment delivery to a youth's developmental and cognitive level; and

(E) explicit linkage between participation in treatment and the youth's goals and progress.

(4) TJJD structures the environment so investment in treatment is continuously expected. Daily schedules, living-unit routines, and programming are organized to allow staff to:

(A) prompt, model, and reinforce skillful behavior in real time;

(B) block or weaken outcomes that previously reinforced unsafe or unskillful behavior;

(C) provide frequent, predictable opportunities for shaping successful use of skillful behavior;

(D) generalize skills across settings and staff; and

(E) teach youth to structure their own environments, recognize triggers, select effective skills, and arrange protective factors that maximize short- and long-term success.

(5) Staff prioritize behavior targets using the TJJD treatment hierarchy and concentrate efforts on the most egregious maladaptive behaviors engaged in by a youth at any given time to help ensure meaningful treatment delivery.

(A) Life-Threatening and Aggressive Behavior Targets. Assaultive conduct, sexual aggression, and other dangerous behavior are prioritized in the treatment hierarchy because these behaviors directly threaten others' safety and security and interrupt the youth's treatment participation. When such behavior occurs, staff use an immediate, effective response to protect safety and return the youth to programming as quickly as possible.

(B) Escape, Abscond, and Evasion Behavior Targets. Escape, abscond, and evasion behaviors are the second priority in the treatment hierarchy because a youth cannot access treatment or consistently practice skills when a youth is absent or intent on evasion of treatment. These behaviors are addressed to restore engagement and stabilize predictable participation.

(C) Treatment-Interfering and Program-Destroying Behavior Targets. This category of the treatment hierarchy is considered third in severity and includes behaviors that erode treatment effectiveness (e.g., minimal or sporadic participation, disruption of group work or milieu routines, and conduct that discourages the motivation of staff and providers). Interventions focus on responsivity, restoring predictable expectations and routines, and protecting the treatment milieu to provide all youth the opportunity to participate in programming.

(D) Quality-of-Life-Interfering Behavior Targets. This category includes behaviors that destabilize overall individual functioning, such as: substance abuse; persistent negative thought patterns, beliefs, or interpersonal interactions; or conduct that undermines basic needs (e.g., neglecting education, hygiene, clothing, or health). These behaviors are addressed to create or restore the stability and engagement required for skill acquisition and sustained progress.

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

Filed with the Office of the Secretary of State on December 16, 2025.

TRD-202504677
Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 490-7130

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SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §§380.9503 - 380.9505

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC, Part 11, §380.9503, Rules and Consequences for Residential Facilities, and §380.9504, Rules and Consequences for Youth on Parole. TJJD also proposes new §380.9505, Egregious Behavior Protocol.

SUMMARY OF CHANGES

Amendments to §380.9503 will include: 1) updating language related to major rule violations to include that major rule violations are considered the most serious incidents and are categorized in the TJJD treatment hierarchy as life-threatening behavior targets; escape, abscond, and evasion behavior targets; or treatment-interfering or program-destroying behavior targets; 2) clarifying that responsive treatment is based on the degree of interference or intrusiveness such conduct has on any youth's ability to effectively engage in treatment; 3) adding *chunking fluids other than bodily fluids* as a major rule violation; 4) moving *threatening others* from a minor rule violation to a major rule violation; and 5) updating language related to minor rule violations to clarify that minor rule violations are considered treatment-interfering behavior targets, program-destroying behavior targets, or quality-of-life-interfering behavior targets.

Amendments to §380.9504 will include updating language related to parole rule violations to include that parole rule violations are categorized in the TJJD treatment hierarchy based on the degree of interference or intrusiveness such conduct has on any youth's ability to engage effectively in treatment.

New §380.9505 will include: 1) the rule's applicability and general provisions; and 2) information pertaining to the egregious behavior protocol, safety-based measures, and youth returning to regular programming.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new and amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Director, has determined that for each year of the first five years the new and amended sections are in effect, the public benefit anticipated as a result of administering the sections will be: 1) to align existing rules with TJJD's current treatment model; 2) to update what constitutes major and minor rule violations; and 3) to provide information pertaining to TJJD's egregious behavior protocol, safety-based measures, and youth returning to regular programming.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new and amended sections as proposed. No private real property rights are affected by adoption of the sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new and amended sections are in effect, the sections will have the following impacts.

(1) The proposed sections do not create or eliminate a government program.

(2) The proposed sections do not require the creation or elimination of employee positions at TJJD.

(3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed sections do not impact fees paid to TJJD.

(5) The proposed sections do not create a new regulation.

(6) The proposed sections do not expand, limit, or repeal an existing regulation.

(7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new and amended sections are proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.9503. Rules and Consequences for Residential Facilities.

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing disciplinary consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Attempt to Commit--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) Direct Someone to Commit--occurs when:

(A) a youth communicates with another youth;

(B) the communication is intended to cause the other youth to commit a rule violation; and

(C) the other youth commits or attempts to commit a rule violation.

(4) Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) General Provisions.

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. An incident report or other document describing conduct is not something that can be appealed or grieved; only the results of a hearing or rule-violation review may be appealed, as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter.

(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) Disciplinary Consequences.

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;

(B) restriction from planned activities;

(C) trust-fund restriction; and

(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;

(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;

(C) subjecting a youth to personal injury;

(D) subjecting a youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping;

(F) purposeless or degrading work, including group exercise as a consequence;

(G) placement in the intervention program under §380.9510 of this chapter;

(H) disciplinary isolation; and

(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) This paragraph applies only to youth in high-restriction facilities. To impose a disciplinary consequence that does not require a Level II hearing, a rule-violation review is required. A rule-violation review is a process by which staff review evidence to determine whether a rule violation occurred. A rule-violation review results in a finding that the alleged violation is proven, the alleged violation is not proven, or a different rule was violated than the one alleged. A rule violation is proven if a preponderance of the evidence proves behavior meeting the definition of a rule violation occurred. The following steps are to be taken for every rule-violation review, regardless of whether a consequence is sought:

(A) a written description of the incident must be prepared;

(B) staff must notify the youth which rule violation the youth allegedly committed;

(C) staff must notify the youth which disciplinary consequence(s) staff is considering imposing, if any;

(D) the youth must be given the opportunity to review the relevant evidence considered by staff and to present the youth's own relevant evidence; and

(E) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter.

(f) Review and Appeal of Consequences.

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter.

(5) The findings and disposition from a rule-violation review are not grievable, but they may be appealed to the facility administrator or designee on the grounds that the youth did not commit the rule violation found proven during the review, that the consequence is not appropriate, or that the youth was not provided with the requisite notice or opportunity to be heard. If the result of a rule-violation review is overturned, that fact shall be documented appropriately.

(g) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following conduct.[:] Major rule violations are considered the most serious incidents and are categorized in the TJJD treatment hierarchy as life-threatening behavior targets; escape, abscond, and evasion behavior targets; or treatment-interfering or program-destroying behavior targets. Responsive treatment is based on the degree of interference or intrusiveness such conduct has on any youth's ability to effectively engage in treatment, including placing a youth on the egregious behavior protocol and other appropriate levels of intervention.

(1) Assault of Another Youth (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) Assault of Staff (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) Assault Causing Bodily Injury to Another Youth--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Chunking Other Fluids--causing a person to contact any fluid or liquid not considered a bodily fluid with the intent to harass, alarm, or annoy another person.

(8) [~~(7)~~] Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(9) [~~(8)~~] Escape--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(10) [~~(9)~~] Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(11) [~~(10)~~] Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(12) [~~(11)~~] Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(13) [~~(12)~~] Fighting That Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(14) [~~(13)~~] Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(15) [~~(14)~~] Misuse of Medication--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(16) [~~(15)~~] Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(17) [~~(16)~~] Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(18) [~~(17)~~] Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(19) [~~(18)~~] Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(20) [~~(19)~~] Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(21) [~~(20)~~] Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.

(22) [~~(21)~~] Refusing a Search--refusing to submit to an authorized search of person or area.

(23) [~~(22)~~] Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(24) [~~(23)~~] Sexual Misconduct--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(25) [~~(24)~~] Stealing--intentionally taking property with an estimated value of $100 or more from another without permission.

(26) [~~(25)~~] Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(27) [~~(26)~~] Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(28) [~~(27)~~] Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(29) Threatening Others--making verbal or physical threats toward another person or persons.

(30) [~~(28)~~] Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(31) [~~(29)~~] Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(32) [~~(30)~~] Vandalism--intentionally causing $100 or more in damage to state property or personal property of another.

(33) [~~(31)~~] Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following conduct.[:] In terms of the TJJD treatment hierarchy, minor rule violations are considered treatment-interfering behavior targets, program-destroying behavior targets, or quality-of-life-interfering behavior targets.

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under $100 from another without permission.

[~~(14) Threatening Others--making verbal or physical threats toward another person or persons.~~]

(14) [~~(15)~~] Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(15) [~~(16)~~] Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(16) [~~(17)~~] Undesignated Area--being in any area without the appropriate permission to be in that area.

(17) [~~(18)~~] Vandalism--intentionally causing less than $100 in damage to state or personal property.

§380.9504. Rules and Consequences for Youth on Parole.

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision. Violations of the rules may result in disciplinary consequences, including revocation of parole, that are proportional to the severity and extent of the violation. Appropriate due process must be followed before imposing consequences.

(b) Applicability.

(1) This rule applies to youth on parole status who are assigned to a home placement.

(2) For parole revocation purposes, this rule also applies to youth on parole status who are assigned to a residential placement as a home substitute. However, this rule does not apply to the daily rules of conduct for these youth. For the daily rules of conduct, see §380.9503 of this chapter.

(c) General Provisions.

(1) Conditions of parole are provided to the youth before release on parole.

(2) Conditions of parole, including the rules of conduct, are reviewed with youth when they initially meet with their parole officers and at other times as necessary.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(d) Definition [~~Definitions~~]. Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(e) Parole Rule Violations. It is a violation to knowingly commit, attempt to commit, or aid someone else in committing any of the following conduct.[~~:~~] Parole rule violations are categorized in the TJJD treatment hierarchy based on the degree of interference or intrusiveness such conduct has on any youth's ability to effectively engage in treatment.

(1) Abscond--leaving a home placement or failing to return from an authorized leave when:

(A) the youth's parole officer did not give permission; and

(B) the youth's whereabouts are unknown to the youth's parole officer.

(2) Failure to Comply with Electronic Monitoring Program Conditions--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(3) Failure to Comply with Sex Offender Conditions of Parole--intentionally or knowingly failing to comply with one of the following conditions present in the youth's sex offender conditions of parole addendum:

(A) do not have unsupervised contact with children under the age specified by the conditions of parole;

(B) do not babysit or participate in any activity where the youth is responsible for supervising or disciplining children under the age specified by the conditions of parole; or

(C) do not initiate physical contact or touching of any kind with a child, victim, or potential victim.

(4) Failure to Report an Arrest or Citation--failing to report an arrest or receipt of a citation to the youth's parole officer within 24 hours of arrest or citation.

(5) Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs. (This parole violation applies only to youth assigned to a residential placement as a substitute for home placement.)

(6) Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(7) Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(8) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen.

(9) Repeated Non-Compliance with a Written, Reasonable Request of Staff--failing on two or more occasions to comply with a specific condition of release under supervision and/or a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(10) Photos, Videos, or Social Media Posts with Weapon, Ammunition, or Unauthorized Substance--appearing in photos, videos, or other images, whether or not posted to social media, with any weapon, ammunition, or unauthorized substance or related paraphernalia, including any object that reasonably resembles a weapon, ammunition, or unauthorized substance or related paraphernalia. The term weapon includes, but is not limited to, guns, explosive devices, knives, blades, and clubs. The term related paraphernalia includes, but is not limited to, items used to make or deliver unauthorized substances.

(11) Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(12) Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(13) Possession or Use of Unauthorized Substances--possessing, ingesting, inhaling, or otherwise consuming any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol or tobacco products, or related paraphernalia such as that used to deliver or make any unauthorized substance.

(14) Violation of Any Law--violating a federal or state law or municipal ordinance.

(f) Possible Consequences.

(1) A parole rule violation may result in a Level I hearing or a Level hearing conducted in accordance with §380.9551 or §380.9557 of this chapter, respectively.

(A) This subparagraph applies only to youth alleged to have engaged in conduct classified as a first- or second-degree felony while on parole. Except as provided by this subparagraph, a Level I hearing shall be requested on these youth. The hearing may be deferred when requested by local prosecutors, as provided in §380.9551 of this chapter. The designated staff person may determine that, given all circumstances, a Level I hearing is not appropriate. Such decision shall be documented. If a Level I hearing is held and the youth's parole is revoked, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(B) Parole officers are encouraged to be creative in determining a consequence appropriate to address and correct the youth's behavior. Staff should use evidence-based interventions that relate to the youth's risk, needs, and responsivity when appropriate. All assigned consequences should be related to the misconduct when possible.

(2) Consequences through a Level hearing for a youth on parole include, but are not limited to:

(A) Verbal Reprimand--conference with a youth including a verbal reprimand that draws attention to the misbehavior and serves as a warning that continued misbehavior could result in more severe consequences.

(B) Curfew Restriction--an immediate change in existing curfew requirements outlined in the youth's conditions of parole.

(C) Community Service Hours--disciplinary assignment of a specific number of hours the youth is to perform community service in addition to the hours assigned when the youth was placed on parole. In no event may more than 20 community service hours be assigned through a Level hearing.

(D) Increased Level of Supervision--an assigned increase in the number of primary contacts between the youth and parole officer in order to increase the youth's accountability.

(E) Electronic Tracking--assignment to a system that electronically tracks a youth's movement and location.

(F) Writing Assignment--an assignment designed for the youth to address the misbehavior and identify appropriate behavior in similar situations.

(3) Consequences through a Level I hearing for a youth on parole, including youth assigned to a residential placement as a home substitute, include:

(A) parole revocation and placement in any high- or medium-restriction program operated by or under contract with the Texas Juvenile Justice Department; and

(B) assignment of a length of stay consistent with §380.8525 of this chapter.

§380.9505. Egregious Behavior Protocol.

(a) Purpose. The Texas Juvenile Justice Department (TJJD) addresses disruptive or unsafe youth behavior by using appropriate levels of intervention, including the egregious behavior protocol.

(b) Applicability.

(1) This rule applies to high-restriction facilities.

(2) This rule does not supersede requirements established by other policies and procedures regarding self-harming or suicidal behavior and ideation.

(c) General Provisions.

(1) Placing a youth out-of-program, as described in this procedure, is used to maintain safety and is not considered a disciplinary consequence.

(2) Being out-of-program includes the following stipulations:

(A) The youth programs individually during group activities on the dorm, generally in an assigned seat. Time is spent working on treatment assignments (e.g., completing Behavior Chain Analysis, practicing skills, working on correction), often with staff assistance.

(B) The youth cannot approach other youth or leave the assigned seat without staff permission.

(C) Other youth cannot approach the out-of-program youth without staff permission.

(D) Recreation is individual, if staffing permits.

(E) Stage privileges do not apply.

(F) Direct-care staff:

(i) assign treatment work, including Behavior Chain Analysis;

(ii) assist the youth with practicing skills to use the next time a similar situation occurs; and

(iii) document the youth's progress, focusing on a behavioral description of the youth's level of engagement and motivation to complete treatment work.

(d) Placing Youth Out-of-Program- Egregious Behavior Protocol.

(1) A direct-care staff member may place the youth on the Egregious Behavior Protocol and the youth is considered out-of-program when: a youth fails to respond positively to redirection from staff, maladaptive behavior escalates, and/or the youth engages in behavior that creates an immediate danger to safety or security or that prevents others from receiving programming.

(2) The staff member:

(A) tells the youth that the youth is out-of-program;

(B) explains the requirements associated with being out-of-program and expectations to return to programming;

(C) gives the youth an opportunity to address the maladaptive behavior and use skillful behavior, including the completion of a Behavior Chain Analysis; and

(D) documents a summary of the incident and engagement strategies.

(e) Additional Safety-Based Measures. Additional safety-based measures may include, but are not limited to:

(1) assigning color-coded clothing to indicate a high risk for unsafe behavior or aggression;

(2) placing the youth on a behavior plan or safety plan; or

(3) referral to a program in the Intervention Program.

(f) Returning Youth to Regular Programming.

(1) Removing the youth from out-of-program status is based on the youth completing all treatment assignments and verbally committing to safe behavior and/or using skills to avoid disruptive behavior. Other factors, such as the youth's level of commitment to work on target behaviors and to make progress in treatment, are considered.

(2) Designated staff members:

(A) review documentation of the youth's behavior;

(B) decide when to remove the youth from out-of-program status; and

(C) document the youth's return to regular programming.

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

Filed with the Office of the Secretary of State on December 16, 2025.

TRD-202504678
Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 490-7130

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER A. GENERAL

The Texas Department of Transportation (department) proposes the repeal of §9.4, a new §9.4, and amendments to §§9.2, 9.6, and 9.8, concerning procedures generally applicable to contract and grant management.

EXPLANATION OF PROPOSED AMENDMENTS, REPEAL, AND NEW SECTIONS

This rulemaking provides a new dispute resolution process for the department's design-build projects that are entered into under Transportation Code, Chapter 223, Subchapter F.

Amendments to §9.2, Contract Claim Procedure, provide that a claim concerning a design-build contract authorized by Subchapter F, Chapter 223 of the Transportation Code will be processed under the design-build claim process proposed in new TAC §9.4.

Section 9.4, Civil Rights-Title VI Compliance, is repealed. The substance of §9.4 is combined with and added to §9.8, Enhanced Contract and Performance Monitoring, in order to make a section within Chapter 9, Subchapter A, available for the new rule.

New §9.4, Design-Build Contract Claim Procedure, provides a new procedure for the processing and resolution of a claim under Transportation Code, §201.112, that arises under certain design-build contracts. Under the procedure the claim must be brought by a design-build contractor for a remedy under a design-build contract entered into under Transportation Code, Chapter 223, Subchapter F and administered by the department.

Subsection (f) of the new section details the new procedure. The procedure permits a design-build contractor, after completing the informal dispute resolution process, to file a contract claim request to be evaluated by the executive director. Subsection (f)(2) provides the requirements of a complete contract claim request, the process for filing the contract claim request, and the actions to be taken by the department after receipt of the contract claim request. Subsection (f)(3) sets out the executive director's responsibilities in evaluating and resolving a contract claim request. Subsection (f)(3) further provides the steps to be taken after the executive director gives a written decision on the contract claim request and provides a process for the design builder, if it objects to the executive director's decision on the contract claim, to request a contested case hearing to litigate the contract claim request. Subsection (f)(4) addresses the executive director's responsibilities if a contested case hearing is held. Subsection (f)(6) provides that if there is clear and convincing evidence that a person practiced, or attempted, fraud related to a claim, the claim is forfeited.

Amendments to §9.6, Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts, clarify that §9.6 applies only to a design-build contract that is entered into under Transportation Code, Chapter 223, Subchapter E, and only if such a contract is for a specified amount. The amendments to §9.6 do not change the procedure currently applicable to those contracts.

Amendments to §9.8, Enhanced Contract and Performance Monitoring, add to that section the substance of §9.4, Design-Build Contract Claim Procedure, which is repealed by this rulemaking. The heading of §9.8 is conformed to reflect that addition.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or Texas Transportation Commission's (commission) enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Greg Snider, Alternative Delivery Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Greg Snider has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be an improved alignment of the design-build informal and formal dispute resolution procedures resulting in a streamlined and expedited dispute resolution process for design-build projects.

COSTS ON REGULATED PERSONS

Greg Snider has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Greg Snider has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Greg Snider has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Any person that is required to comply with the proposed rule or any other interested person may provide information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis, or may submit written comments on the repeal of §9.4, the adoption of new §9.4, and the amendments to §§9.2, 9.6, and 9.8. The information or comments must be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "DB Dispute Resolution." The deadline for receipt of comments is 5:00 p.m. on February 2, 2026. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

43 TAC §§9.2, 9.4, 9.6, 9.8

STATUTORY AUTHORITY

The new rule and amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 223, Subchapters E and F.

§9.2. Contract Claim Procedure.

(a) Applicability. A claim shall satisfy the requirements in paragraphs (1) - (3) of this subsection.

(1) The claim is under a contract entered into and administered by the department, acting in its own capacity or as an agent of a local government, under one of the following statutes:

(A) Transportation Code, §22.018 (concerning the designation of the department as agent in contracting and supervising for aviation projects);

(B) Transportation Code, §391.091 (concerning erection and maintenance of specific information logo, major area shopping guide, and major agricultural interest signs);

(C) Transportation Code, Chapter 223 (concerning bids and contracts for highway projects), subject to the provisions of subsection (c) of this section; or

(D) Government Code, Chapter 2254, Subchapters A and B (concerning professional or consulting services).

(2) The claim is for compensation, or for a time extension, or any other remedy.

(3) The claim is brought by a prime contractor.

(b) Pass-through claim; claim and counter claim.

(1) A prime contractor may make a claim on behalf of a subcontractor only if the prime contractor is liable to the subcontractor on the claim.

(2) Only a prime contractor may submit a claim to begin a claim proceeding under this section. After a claim proceeding has begun the department may make a counter claim.

(3) This section does not abrogate the department's authority to file a claim in a court of competent jurisdiction. The procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.

(c) Claim concerning comprehensive development agreement or [~~certain~~] design-build contracts. A claim under a comprehensive development agreement (CDA) [~~entered into under Transportation Code, Chapter 223, Subchapter E,~~] or under a design-build to which [~~contract, as defined in~~] §9.6 of this subchapter (relating to Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts) applies, may be processed under this section if the parties agree to do so in the CDA or design-build contract, or if the CDA or design-build contract does not specify otherwise. However, if the CDA or such a design-build contract specifies that a claim procedure authorized by §9.6 of this subchapter applies, then any claim arising under the CDA[,] or design-build contract shall be processed and resolved in accordance with the claim procedure authorized by §9.6 of this subchapter and not by this section. This section does not apply to a claim under a design-build contract to which §9.4 of this subchapter (relating to Design-Build Contract Claim Procedure) applies. Such a claim may be processed only under §9.4 of this subchapter.

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise[~~, except that when used in subsection (c) of~~

~~this section, the terms claim, comprehensive development agreement, CDA, and design-build contract shall have the meanings given such terms stated in §9.6 of this subchapter~~].

(1) Claim--A claim for compensation, for a time extension, or for any other remedy arising from a dispute, disagreement, or controversy concerning respective rights and obligations under the contract.

(2) Commission--The Texas Transportation Commission.

(3) Committee--The Contract Claim Committee.

(4) Department--The Texas Department of Transportation.

(5) Department office--The department district or[~~,~~] division that is[~~, or office~~] responsible for the administration of the contract.

(6) Department office director--The chief administrative officer of the responsible department office; the officer shall be a district engineer or[~~,~~] division director[~~, or office director~~].

(7) District--One of the 25 districts of the department.

(8) Executive director--The executive director of the Texas Department of Transportation.

(9) Prime contractor--An individual, partnership, corporation, or other business entity that is a party to a written contract with the state of Texas which is entered into and administered by the department under Transportation Code, §22.018, §391.091, Chapter 223, or Government Code, Chapter 2254, Subchapters A and B.

(10) Project--The portion of a contract that can be separated into a distinct facility or work unit from the other work in the contract.

(e) Contract claim committee. The executive director or the director's designee shall name the members and chair of a committee or committees to serve at the executive director's or designee's pleasure. The chair may add members to the committee, including one or more district engineers who will be assigned to the committee on a rotating basis, with a preference, if possible, for district engineers of districts that do not have a current contractual relationship with the prime contractor involved in a contract claim.

(f) Negotiated resolution. To every extent possible, disputes between a prime contractor and the department's project engineer should be resolved during the course of the contract.

(g) Procedure.

(1) Exclusive procedure. Except as provided in subsection (c) of this section, a prime contractor shall file a claim under the procedure in this subsection. A claim filed by the prime contractor must be considered first by the committee before the claim is considered in a contested case hearing.

(2) Filing claim.

(A) The prime contractor shall file a claim after completion of the contract or when required for orderly performance of the contract. For a claim resulting from the enforcement of a warranty, a prime contractor shall file the claim no later than one year after expiration of the warranty period. For all other types of claims, a prime contractor shall file the claim no later than one year after the earlier of the date that the department sends to the contractor notice:

(i) that the contractor is in default;

(ii) that the department terminates the contract; or

(iii) notice of final acceptance of the project that is the subject of the contract.

(B) To file a claim, a prime contractor shall file a contract claim request and a detailed report that provides the basis for the claim. The detailed report shall include relevant facts of the claim, cost or other data supporting the claim, a description of any additional compensation requested, and documents supporting the claim. For a request for additional compensation, the prime contractor may not use a method, however denominated, by which the amount requested is determined by subtracting the contractor's bid prices from the contractor's actual performance costs. The prime contractor shall file the claim with the department's construction division, the department engineer under whose administration the contract was or is being performed, or the committee.

(C) A claim filed by a prime contractor shall include a certification as follows: I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the department is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(D) A defective certification shall not deprive the department of jurisdiction over the claim. Prior to the entry by the department of a final decision on the claim the department shall require a defective certification to be corrected.

(E) The construction division or department engineer shall forward the contract claim request and detailed report to the committee.

(F) The deadline for the department to file a counter claim is 45 days before the committee holds an informal meeting under paragraph (3) of this subsection.

(3) Evaluation of claim by the committee.

(A) The committee's responsibility is to gather information, study the relevant issues, and meet informally with the prime contractor if requested. The committee shall attempt to resolve the claim.

(B) The committee shall secure detailed reports and recommendations from the responsible department office and may confer with any other department office deemed appropriate by the committee. The committee shall give the prime contractor the opportunity to submit a responsive report and recommendation concerning a counter claim filed by the department.

(C) If the department disputes the prime contractor's claim, the committee shall afford the prime contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the prime contractor an opportunity to present relevant information and respond to information the committee has received from the department office. The committee chair, in the chair's sole discretion, may reschedule a meeting. Proceedings before the committee are an attempt to mutually resolve a claim without litigation and are not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a claim are part of the attempt to mutually resolve a claim without litigation and are also not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph.

(D) The committee chair shall give written notice of the committee's decision on the claim to the department and prime contractor. The department and prime contractor are presumed to receive the decision three days after it is sent by United States mail.

(i) If the prime contractor does not object to the committee's decision, the prime contractor shall file a written statement with the committee's chair stating that the prime contractor does not object. The prime contractor shall file the statement no later than 20 days after receipt of the committee's decision. The chair shall then prepare a document showing the settlement of the claim including, when required, payment to the prime contractor, and the prime contractor's release of all claims under the contract. The prime contractor shall sign it. The executive director may approve the settlement or may request the commission to approve the settlement by issuance of an order. The executive director shall then implement the resolution of the claim. If contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(ii) If the prime contractor objects to the committee's decision the prime contractor shall file a petition with the executive director no later than 20 days after receipt of the committee's decision requesting an administrative hearing to litigate the claim under the provisions of §§1.21 et seq. of this title (relating to Procedures in Contested Cases).

(iii) If the prime contractor fails to file a written petition under clause (ii) of this subparagraph within 20 days of receipt of the committee's decision, the prime contractor waives his right to a contested case hearing. All further litigation of claims on the project or contract by the prime contractor shall be barred by the doctrines of issue and claim preclusion. The chair shall then prepare an order implementing the resolution of the claim under the committee's decision and stating that further litigation on the claim is prohibited. The executive director shall then issue the order and implement the resolution of the claim. If contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(4) Decision after contested case hearing. This paragraph applies if a contested case hearing has been held on a claim. The administrative law judge's proposal for decision shall be submitted to the executive director for adoption. The executive director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The executive director shall provide a written statement containing the reason and legal basis for any change.

(5) This section does not abrogate the department's authority to enforce in a court of competent jurisdiction a final department order issued under the section.

(h) Claim forfeiture. A claim against the department shall be forfeited to the department by any person who corruptly practices or attempts to practice any fraud against the department in the proof, statement, establishment, or allowance thereof. In such cases the department shall specifically find such fraud or attempt and render judgment of forfeiture. This subsection applies only if there is clear and convincing evidence that a person knowingly presented a false claim for the purpose of getting paid for the claim.

(i) Relation of contract claim proceeding and sanction proceeding.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the processing of a contract claim under this section is a separate proceeding.

(2) If a contested issue arises that is relevant both to a contract claim proceeding and a sanction proceeding concerning the same contract, the issue shall be resolved in the proceeding that the executive director refers first for a contested case hearing under Chapter 1, Subchapter E of this title (relating to Procedures in Contested Cases). If the issue is decided in the first proceeding that decision shall apply to and be binding in all subsequent department proceedings.

(3) This paragraph applies to a contract under which the parties agreed to submit questions which may arise to the decision of a department engineer. If a dispute under the contract leads to a contract claim proceeding or sanction proceeding, the engineer's decision shall be upheld unless it was based on fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest judgment.

§9.4. Design-Build Contract Claim Procedure.

(a) Purpose. This section provides the procedure for the processing and resolution of a claim under Transportation Code, §201.112, that arises under a design-build contract.

(b) Applicability. To use the procedure under this section, the claim must be:

(1) made under a design-build contract entered into and administered by the department, acting in its own capacity or as an agent of a local government or transportation corporation, under Transportation Code, Chapter 223, Subchapter F;

(2) for compensation, a time extension, or any other remedy; and

(3) brought by a design-build contractor.

(c) Pass-through claim; claim and counter claim.

(1) A design-build contractor may make a claim on behalf of a subcontractor only if the design-build contractor is liable to the subcontractor on the claim, and the claim is actionable by the design-build contractor against the department and arises from work, materials, or other services provided or to be provided under the design-build contract.

(2) The department may make a counter claim against the design-build contractor.

(3) This section does not abrogate the department's authority to file a claim in a court of competent jurisdiction. The procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.

(4) This section does not affect or impede the department's or the design-build contractor's rights to seek judicial relief in connection with the following types of actions or proceedings, and the claim procedures and provisions in this section do not apply to such an action:

(A) equitable relief that the department is permitted to seek to the extent allowed by law; or

(B) other matters or disputes expressly excluded from the dispute resolution procedures authorized by this section, as specified in the design-build contract.

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

(1) Claim--A claim for compensation, time extension, or other contract modification, or any other dispute under the design-build contract.

(2) Contested case hearing--A binding administrative law hearing held before an administrative law judge of the State Office of

Administrative Hearings in which the legal rights, duties, or privileges of a party are to be determined.

(3) Department--The Texas Department of Transportation.

(4) Department office--The department division, which may be specified in the design-build contract, that is responsible for the administration or oversight of the design-build contract.

(5) Department office director--The division director who is responsible for the department office.

(6) Design-build contract--An agreement with a design-build contractor for a highway project entered into under Transportation Code, Chapter 223, Subchapter F, that includes both design and construction services for the construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of the highway project.

(7) Design-build contractor--A partnership, corporation, or other legal entity or team that enters into a design-build contract with the department.

(8) District--One of the 25 districts of the department.

(9) Executive director--The executive director of the Texas Department of Transportation.

(e) Negotiated resolution. To every extent possible, disputes between a design-build contractor and the department should be resolved during the course of the contract.

(f) Procedure. For a claim to be considered under the procedure provided by this section, a design-build contractor must file a contract claim request in accordance with this subsection.

(1) Exclusive procedure. A claim must be considered first through the informal dispute resolution process set forth in the design-build contract before the claim may be considered by the executive director under this section and must be considered by the executive director under this section before the claim may be considered in a contested case hearing.

(2) Filing contract claim request.

(A) The design-build contractor may file a contract claim request after the completion of the informal dispute resolution process if that process does not timely resolve the dispute.

(B) The contract claim request must include a detailed report that provides the basis for the claim. The detailed report must include relevant facts of the claim, cost or other data supporting the claim, a description of any additional compensation or time extension requested, and documents supporting the claim. For a request for additional compensation, the design-build contractor may not use a method, however denominated, by which the amount requested is determined by subtracting the design-build contractor's proposal prices from the design-build contractor's actual performance costs. The design-build contractor must file the contract claim request with the department office director.

(C) A contract claim request filed by a design-build contractor must include a certification as follows: I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the design-build contractor believes the department is liable; and that I am duly authorized to certify the claim on behalf of the design-build contractor.

(D) A defective certification does not deprive the department of jurisdiction over the claim. Prior to the entry by the department of a final decision on the claim the department will require a defective certification to be corrected.

(E) The department office director will forward the contract claim request to the executive director not later than the seventh day after the date on which a complete contract claim request is received by the department.

(F) The department may file a counter claim not later than the 21st day after the date on which a complete contract claim request is received by the department. Not later than the 21st day after the design-build contractor receives notice of the counter claim, the design-build contractor shall submit to the executive director a responsive report and recommendation concerning the counter claim.

(3) Evaluation of claim by the executive director.

(A) The executive director's responsibility is to gather information, study the relevant issues, and meet with the design-build contractor, if requested. The executive director will attempt to resolve the claim.

(B) The executive director will secure detailed reports and recommendations from the department office and may confer with any other department personnel deemed appropriate by the executive director.

(C) If the department disputes the design-build contractor's claim, the executive director will give the design-build contractor an opportunity for a meeting to discuss the disputed matters, present relevant information, and respond to information that the executive director has received from the department. Proceedings before the executive director are an attempt to mutually resolve a claim without litigation and are not admissible for any purpose in a contested case hearing provided in subparagraph (D)(ii) of this paragraph. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a claim are part of the attempt to mutually resolve a claim without litigation and are also not admissible for any purpose in a contested case hearing provided in subparagraph (D)(ii) of this paragraph.

(D) The executive director will give written notice of the executive director's decision on the contract claim request to the department office director and design-build contractor. The department office director and design-build contractor are presumed to receive the notice on the third day after the day on which the notice is mailed.

(i) If the design-build contractor does not object to the decision, the design-build contractor shall file with the executive director not later than the 20th day after the date of receipt of the notice under this subparagraph a written statement that the design-build contractor does not object. The executive director will then prepare a document showing the settlement of the contract claim request, including, when required, payment to the design-build contractor, and providing for the design-build contractor's release of all claims under the contract. The design-build contractor shall sign that document. The executive director may request the commission to approve the settlement by issuance of an order. The executive director will then implement the resolution of the contract claim request. If contemplated in the decision, the executive director will expend funds as specified in the decision or will order the design-build contractor to make payment to the department.

(ii) If the design-build contractor objects to the decision, the design-build contractor may file with the executive director not later than the 20th day after the date of receipt of the decision a petition requesting a contested case hearing to litigate the contract claim request under §§1.21 et seq. of this title (relating to Procedures in Contested Cases).

(iii) If the design-build contractor fails to file a written petition within the period prescribed by clause (ii) of this subparagraph, the design-build contractor waives the right to a contested case hearing. All further litigation of claims on the project or contract by the design-build contractor are barred by the doctrines of issue and claim preclusion. The executive director will then prepare an order implementing the resolution of the contract claim request under the decision and stating that further litigation on the contract claim request is prohibited. The executive director will issue the order and implement the resolution of the contract claim request. If contemplated in the decision, the executive director will expend funds as specified in the decision or will order the design-build contractor to make payment to the department.

(4) Decision after contested case hearing. This paragraph applies if a contested case hearing has been held on a contract claim request. The administrative law judge's proposal for decision will be submitted to the executive director for adoption. The executive director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The executive director shall provide a written statement containing the reason and legal basis for any change.

(5) Final order enforcement. This section does not abrogate the department's authority to enforce in a court of competent jurisdiction a final department order issued under the section.

(6) Claim forfeiture. If there is clear and convincing evidence that a person, for the purpose of getting paid for a claim against the department, knowingly practices, or attempts to practice, any fraud against the department in the proof, statement, establishment, or allowance of the claim, the claim shall be forfeited to the department by that person. In such a case the executive director will specifically find such a fraud or attempt and render judgment of forfeiture.

(g) Delegation by executive director. The executive director may delegate to an employee of the department any duty required of, or authority granted to, the executive director under this section except for the preparation of an order under subsection (f)(3)(D)(iii) or modification of an administrative law judge's proposal for decision under subsection (f)(4) of this section.

§9.6. Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts.

(a) Purpose. This section concerns processing and resolution of a claim under Transportation Code, §201.112 that arises under a comprehensive development agreement (CDA) or design-build contract, as defined by subsection (c) of this section.

(b) Applicability.

(1) The executive director may enter into a CDA or a design-build contract to which this section applies containing a claim procedure and provisions authorized by this section. When a claim arises under a CDA or design-build contract containing a claim procedure authorized by this section, the requirements of this section apply, §9.2 of this subchapter (relating to Contract Claim Procedure) does not apply, and the parties shall follow the claim procedure contained in the CDA or design-build contract and shall be bound by the outcome of the claim procedure. If a CDA or design-build contract does not contain a claim procedure authorized by this section, either by express reference to this section or by inclusion of provisions required or permitted by this section, then a claim under the agreement shall be processed and resolved under §9.2 of this subchapter.

(2) The claim procedure and provisions authorized by this section may be applied to claims that arise under the CDA or design-build contract, related agreements that collectively constitute a CDA or design-build contract, or other agreements entered into with or for the benefit of the department in connection with the CDA or design-build contract. A CDA or design-build contract shall identify the related agreements and any other agreements to which the claim procedure and provisions apply.

(3) This section and §9.2 of this subchapter do not affect or impede the department's or the developer's or design-build contractor's rights to seek judicial relief in connection with the following types of actions or proceedings, and the claim procedures and provisions in this section or in §9.2 of this subchapter do not apply to such actions:

(A) equitable relief that the department is permitted to seek to the extent allowed by law;

(B) mandamus action that a developer or design-build contractor is permitted to bring against the department or the executive director under Government Code, §22.002(c);

(C) mandamus relief sought by a developer under Transportation Code, §223.208(e) (relating to termination compensation and related security obligations); or

(D) other matters or disputes expressly excluded from the dispute resolution procedures authorized by this section, as specified in the CDA or design-build contract or other related agreement between the department and the developer or design-build contractor that is part of the CDA or design-build contract.

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

(1) Claim--A claim for compensation, or other dispute, disagreement, or controversy concerning respective rights, obligations, and remedies under the CDA or design-build contract, or under related agreements that collectively constitute a CDA or design-build contract or other agreements entered into with or for the benefit of the department in connection with the CDA or design-build contract, including any alleged breach or failure to perform.

(2) Comprehensive development agreement (CDA)--An agreement with a developer that, at a minimum, provides for the design and construction, reconstruction, extension, expansion, or improvement of a project described in Transportation Code, §223.201(a), and may also provide for the financing, acquisition, maintenance, or operation of such a project. A CDA is also authorized under Transportation Code, §91.054 (rail facilities). A CDA includes related agreements that collectively constitute a CDA or other agreements entered into with or for the benefit of the department in connection with the CDA.

(3) Department--The Texas Department of Transportation.

(4) Design-build contract--An agreement with a design-build contractor that is entered into under Transportation Code, Chapter 223, Subchapter E and that is for a highway project with estimated total project costs of $500 million or more that includes both design and construction services for the construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of the highway project.

(5) Design-build contractor--A partnership, corporation, or other legal entity or team that enters into a design-build contract with the department.

(6) Developer--The private entity or entities that enter into a CDA with the department.

(7) Disputes board--A group of one or more individuals appointed under the terms of a CDA or design-build contract to fairly and

impartially consider and decide a claim between the department and a developer or design-build contractor.

(8) Disputes board error--One or more of the following actions:

(A) a disputes board acted beyond the limits of its authority established under subsection (b)(3) of this section;

(B) a disputes board failed, in any material respect, to properly follow or apply the procedure for handling, hearing and deciding a claim established under the CDA or design-build contract and the failure prejudiced the rights of a party;

(C) a disputes board decision was procured by, or there was evident partiality by a disputes board member due to a conflict of interest (which may be defined in the CDA or design-build contract), misconduct (which may be defined in the CDA or design-build contract), corruption, or fraud; or

(D) any other error that the parties agree may be the subject of a contested case hearing, as set out in the CDA or design-build contract.

(9) Executive director--The executive director of the Texas Department of Transportation.

(10) Party--The department, or a developer or design-build contractor who has entered into a CDA or design-build contract with the department. The department and the developer or design-build contractor are together referred to as the "parties."

(11) SOAH--State Office of Administrative Hearings.

(d) Mandatory requirements. A CDA or design-build contract that authorizes the use of a claim procedure authorized by this section shall include (or incorporate by reference) provisions substantially consistent with the provisions in this subsection, but such provisions need not apply to claims excluded from the claim procedure under subsection (b)(3) of this section.

(1) A claim under the CDA or design-build contract that is not resolved by the informal dispute resolution process set forth in the CDA or design-build contract shall be referred to a disputes board for rendering of a disputes board decision on the claim.

(2) The processing of a claim shall include a mandatory informal dispute resolution process, such as mediation, and a mandatory dispute resolution procedure using a disputes board.

(3) The party making a claim shall include in its notice of the claim a certification by an authorized or designated representative to the effect that:

(A) the claim is made in good faith;

(B) to the current knowledge of the party, except as to matters stated in the notice of claim as being unknown or subject to discovery, the supporting data is reasonably believed by the party to be accurate and complete, and the description of the claim contained in the certification accurately reflects the amount of money or other right, remedy, or relief to which the party asserting the claim reasonably believes it is entitled; and

(C) the representative is duly authorized to execute and deliver the certificate on behalf of the party.

(4) The certification required under paragraph (3) of this subsection, if defective, shall not deprive a disputes board of jurisdiction over the claim. Prior to the entry by the disputes board of a final decision on the claim, the disputes board shall require a defective certification to be corrected.

(e) Permissive requirements. A CDA or design-build contract that provides for a claim procedure authorized by this section may include (or incorporate by reference) any or all of the provisions in this subsection, or provisions substantially consistent with them, and other terms and conditions regarding claim resolution that are not contrary to the mandatory requirements of this section.

(1) The executive director shall adopt the decision of a disputes board as a ministerial act, subject to a party's right to request a contested case hearing in accordance with the terms of the CDA or design-build contract as to whether disputes board error occurred.

(2) A decision by a disputes board, upon completion of the procedure required in Transportation Code, §201.112, this section, and in the CDA or design-build contract, is final, conclusive, binding upon, and enforceable against the parties, subject to any appeals allowed by the CDA or design-build contract or this section.

(3) A disputes board, upon issuing a decision on a claim, is authorized to direct that an award be paid from the proceeds of any trust or other pool of project funds that the CDA or design-build contract provides shall be available for payment of such claims.

(4) The executive director's discretion or actions in connection with the resolution of a claim are limited or may be purely ministerial in certain circumstances, including:

(A) adoption of the disputes board's decision absent disputes board error;

(B) referral of a disputes board decision to SOAH to determine whether disputes board error occurred; and

(C) issuance of a final order based on the SOAH administrative law judge's proposal for decision.

(5) Certain claims may be categorized and treated by the parties as expedited claims, and informal resolution procedures shall be expedited for such claims.

(6) Certain claims may be categorized and treated by the parties as small claims, and informal resolution procedures shall be expedited for such claims.

(7) The parties may execute a related disputes board agreement, or similar agreement, which shall be part of the CDA or design-build contract and which may govern all aspects of the creation of and procedures to be followed by a disputes board.

(8) The evidence presented to a SOAH administrative law judge in a hearing regarding a claim, and to the Travis County District Court in any appeal, may include: the disputes board's written findings of fact, conclusions of law, and decision; any written dissenting findings, recommendation, or opinions of a disputes board member; all submissions to the disputes board by the parties; and an independent engineer's written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications, or other determinations, if any, delivered to the parties pursuant to the CDA or design-build contract and related to the claim under consideration.

(9) Certain decisions, orders, or determinations of the executive director may be deemed to have been issued as of a certain date, or after a prescribed number of days, and setting out the parameters of the deemed decision, order, or determination.

(10) The parties are authorized and required to comply with all or certain categories of interim orders of the disputes board, including discovery and procedural orders.

(11) Except as agreed to by the parties in writing, a disputes board shall have no power to alter or modify any terms or provisions

of the CDA or design-build contract, or to render any award that, by its terms or effects, would alter or modify any term or provision of the CDA or design-build contract. Notwithstanding the prior sentence, a disputes board decision that contains error in interpretation or application of a term or provision of the CDA or design-build contract but does not otherwise purport to alter or modify terms or provisions of the CDA or design-build contract may not be appealed on grounds of such error; and such error does not deprive the disputes board of power or authority over the claim.

(12) A developer's claim for termination compensation, or to enforce the department's security obligations that secure payment of termination compensation, is not to be resolved under any dispute resolution procedure in the CDA. Rather, a developer may exercise its rights under Transportation Code, §223.208(e) (relating to Terms of Private Participation) by seeking mandamus against the department.

(13) At all times during the processing of a contract claim, the developer or design-build contractor and its subcontractors shall continue with the performance of the work and their obligations, including any disputed work or obligations, diligently and without delay, in accordance with the CDA or design-build contract, except to the extent enjoined by order of a court or otherwise ordered or approved by the department in its sole discretion.

(f) Pass-through claim. A CDA or design-build contract may provide that a developer or design-build contractor who is a party to a CDA or design-build contract with the department may make a claim on behalf of a subcontractor. In order to make such a claim the developer or design-build contractor must be liable to the subcontractor on the claim.

(g) Mandatory requirements concerning disputes board. A CDA or design-build contract that authorizes the use of a disputes board shall include (or incorporate by reference) provisions substantially consistent with the provisions in this subsection.

(1) A disputes board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in the CDA or design-build contract, including, if applicable, any disputes board agreement.

(2) A disputes board member shall not have a financial interest in the CDA or design-build contract, in any contract or the facility that is the subject of the CDA or design-build contract, or in the outcome of any claim decided under the CDA or design-build contract, except for payments to that member for services on the disputes board. Any person appointed as a disputes board member shall disclose to the parties any circumstances likely to give rise to justifiable doubt as to such disputes board member's impartiality or independence, including any bias or any financial or personal interest in the result of the dispute resolution or any past or present relationship with the parties or their representatives, or developer's subcontractors and affiliates.

(3) The scope of a SOAH contested case hearing on an appeal of a disputes board decision is limited solely to whether disputes board error occurred.

(h) Punitive damages. A disputes board shall have no power or jurisdiction to award punitive damages.

(i) Permissive requirements concerning disputes board. A CDA or design-build contract that authorizes the use of a disputes board may include (or incorporate by reference) any or all of the provisions in this subsection, or provisions substantially consistent with them, and other terms and conditions regarding the disputes board that are not contrary to the specific requirements of this section.

(1) Each party shall endeavor to have a standing list of candidates from which to select a disputes board member. The CDA or design-build contract may specify the qualifications to be a board member, the procedure by which a party nominates a person to the list of candidates, and the method by which the other party may review and object to a proposed candidate. All disputes board members are chosen from the list of candidates of the department or of the developer or design-build contractor.

(2) A disputes board conducts its proceedings in accordance with procedural rules specified in the CDA or design-build contract. The disputes board may allow for discovery similar to that allowed under the Texas Rules of Civil Procedure, and the admission of evidence conforming to the Texas Rules of Evidence, but may allow for exceptions to or deviations from such requirements and rules.

(3) The parties may jointly modify the procedure applicable to the disputes board's proceedings, under the provisions of the CDA or design-build contract.

(4) During the period that a disputes board member is serving on a disputes board, neither party may communicate ex parte with that member. A party may not communicate ex parte with a person on its list of candidates to be a disputes board member regarding the substance of a dispute.

(5) Each party is responsible for paying one-half the costs of all facilities, fees, support services costs, and other expenses of a disputes board.

(6) A disputes board does not have the authority to order that one party compensate the other party for attorney's fees and expenses.

(j) Permissive requirements on a contested case hearing. A CDA or design-build contract that authorizes the use of a contract claim procedure authorized by this section may include (or incorporate by reference) any or all of the provisions in this subsection, or provisions substantially consistent with them, and other terms and conditions regarding a contested case hearing that are not contrary to the specific requirements of this section.

(1) The executive director's referral of a developer's request to SOAH for a contested case hearing as to whether a decision by a disputes board was affected by disputes board error is a purely ministerial act.

(2) If a determination is made after a contested case hearing that disputes board error occurred, the dispute shall be remanded to a disputes board for further consideration, except that if the error is lack of authority to hear the claim, the decision of the disputes board shall be vacated.

(3) The executive director's issuance of a final order following a contested case hearing is a purely ministerial act, and that if by inaction the executive director does not issue a final order within the time frame established by the CDA or design-build contract, then a final order in a form recommended by the administrative law judge shall be deemed to be automatically issued.

(4) As allowed by Government Code, §2001.144 and §2001.145, an order issued by the executive director after a contested case hearing is final on the date issued and no motion for rehearing is required to appeal the final order.

(5) An executive director's order remanding a dispute to a disputes board, or an executive director's order implementing a disputes board decision following a contested case hearing before SOAH, are subject to judicial review under Government Code, Chapter 2001,

under the substantial evidence rule. Review is limited to whether disputes board error occurred.

(k) Other department rules on a contested case hearing.

(1) The parties may agree in the CDA or design-build contract to adopt, modify or not follow procedural provisions, deadlines, evidentiary rules, and any other matters set out in Chapter 1, Subchapter E of this title (relating to Procedures in Contested Cases).

(2) In the event of any conflict or difference between the procedures set out in this section or a CDA or design-build contract, and in Chapter 1, Subchapter E, of this title, the procedures in this section or the CDA or design-build contract shall govern with respect to any proceeding before SOAH.

(3) In the event of an appeal to SOAH of a disputes board decision:

(A) the department shall present a copy of this section to SOAH as a written statement of applicable rules or policies, under Government Code, §2001.058(c); and

(B) the parties shall request that the administrative law judge modify and supplement SOAH contested case procedures as necessary or appropriate, and consider this section, consistent with 1 TAC §155.3 (relating to Application and Construction of this Chapter).

(C) the parties shall provide the administrative law judge with a stipulation that the substantive provisions, scope of review, and procedural provisions of this section and the CDA or design-build contract shall apply to and govern the contested case proceeding before SOAH, consistent with 1 TAC §155.417 (relating to Stipulations).

(l) Mandamus relief. Nothing in this section shall restrict a developer's or design-build contractor's rights to seek mandamus relief pursuant to Government Code, §22.002(c) if the executive director fails to perform one or more of the ministerial acts set out in this section and included in the CDA or design-build contract as a ministerial act, or any other act specified in the CDA or design-build contract as a ministerial act.

(m) Confidential information.

(1) The parties may agree that, with respect to the mandatory informal dispute resolution process required under subsection (d)(2) of this section, communications between the parties to resolve a dispute, and all documents and other written materials furnished to a party or exchanged between the parties during any such informal resolution procedure, shall be considered confidential and not subject to disclosure by either party.

(2) The parties may agree that with respect to a proceeding before the disputes board, an administrative hearing before an administrative law judge, or a judicial proceeding in court, either or both parties may request a protective order to prohibit disclosure to third persons of information that the party believes is a trade secret, proprietary, or otherwise entitled to confidentiality under applicable law.

§9.8. Enhanced Contract and Performance Monitoring; Civil Rights-Title VI Compliance.

(a) The department shall monitor and report to the Texas Transportation Commission, on a quarterly basis, the performance and status of each contract, other than a low-bid construction and maintenance contract, that is valued at $50 million or more or that the department determines constitutes a high-risk to the department.

(b) The department immediately shall notify the commission of any serious issue or risk that is identified in a contract and that has not been reported in a quarterly report provided under subsection (a) of this section.

(c) Subsections (a) and (b) of this [~~This~~] section do [~~does~~] not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

(d) The department will conduct annual Title VI reviews of its special emphasis program areas (planning, project development, right-of-way, construction and research) and Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other subrecipients of Federal-aid highway funds to determine the effectiveness of program area activities at all levels in accordance with Title 42, United States Code, Section 2000d, et seq., and with Title 23, Code of Federal Regulations, Part 200.

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

Filed with the Office of the Secretary of State on December 16, 2025.

TRD-202504661
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 298-8987

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43 TAC §9.4

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING Transportation Code, Chapter 223, Subchapters E and F.

§9.4. Civil Rights-Title VI Compliance.

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

Filed with the Office of the Secretary of State on December 16, 2025.

TRD-202504662
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: February 1, 2026
For further information, please call: (512) 298-89877

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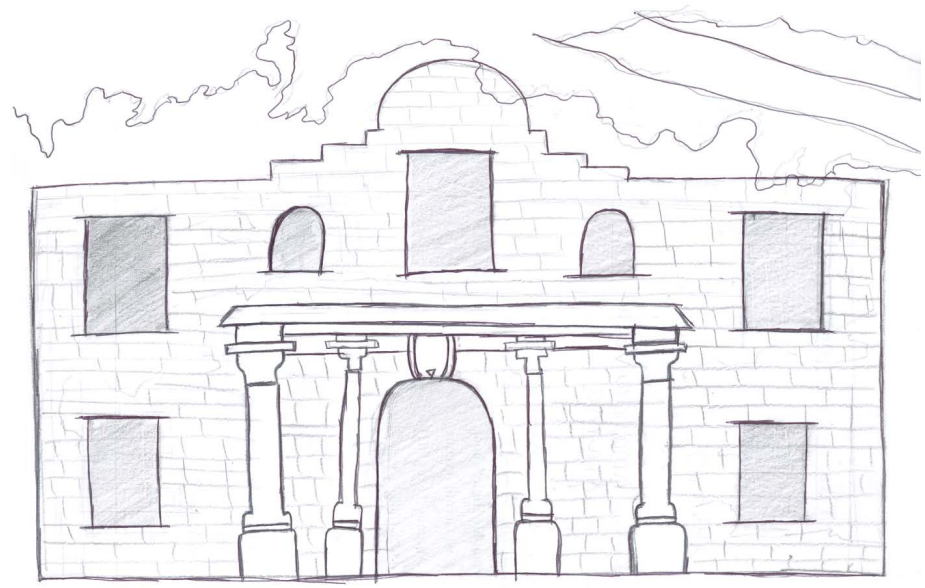

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). 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 B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §351.851

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §351.851, concerning the Interested Parties Advisory Group.

Section 351.851 is adopted with changes to the proposed text as published in the October 31, 2025, issue of the *Texas Register* (50 TexReg 7087). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with 42 Code of Federal Regulations (42 CFR) §447.203(b)(6), which requires HHSC to "establish an advisory group for interested parties to advise and consult on provider rates with respect to service categories under the Medicaid State Plan, 1915(c) waiver, and demonstration programs, as applicable, where payments are made to direct care workers specified in 42 CFR §441.311(e)(1)(ii) for the self-directed or agency-directed services found at §440.180(b)(2) through (4), and (6)."

New §351.851 establishes the Interested Parties Advisory Group (IPAG) to advise and consult with HHSC on current and proposed payment rates, Home and Community Based Services (HCBS) payment adequacy data as required by 42 CFR §441.311(e), and access to care metrics described in 42 CFR §441.311(d)(2), associated with services found in 42 CFR §440.180(b)(2) through (4) and (6).

The IPAG is intended to advise the executive commissioner and HHSC on certain current and proposed Medicaid provider payment rates to ensure the relevant Medicaid payment rates are sufficient to ensure Medicaid beneficiaries access to personal care, home health aide, homemaker, and habilitation services.

COMMENTS

The 31-day comment period ended December 1, 2025.

During this period, HHSC did not receive any comments regarding the proposed rule.

HHSC made a correction in subsection (e)(1). The IPAG is established to comply with federal regulation.

Subsection (f)(1)(A) was also revised for clarification.

STATUTORY AUTHORITY

The new section is 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 Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §532.0051 which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §532.0057(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32; and Texas Government Code §523.0203, which provides that the executive commissioner of HHSC shall establish and maintain advisory committees and adopt rules governing such advisory committees in compliance with Chapter 2110 of the Texas Government Code.

§351.851. Interested Party Advisory Group.

(a) Statutory authority. Interested Party Advisory Group (IPAG) is established under 42 CFR 447.203(b)(6) and is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The IPAG advises the executive commissioner and Health and Human Services Commission (HHSC) on certain current and proposed Medicaid provider payment rates to ensure the relevant Medicaid payment rates are sufficient to ensure Medicaid beneficiaries access to personal care, home health aide, homemaker, and habilitation services.

(c) Tasks. The IPAG performs the following tasks:

(1) advises and consults with HHSC on current and proposed payment rates with respect to service categories under the Medicaid State plan, 1915(c) waiver, and demonstration programs, as applicable, where payments are made to the direct care workers based on current and proposed payment rates, Home and Community-Based Services (HCBS) payment adequacy data, and access to care metrics; and

(2) adopts bylaws to guide how the IPAG operates.

(d) Reporting requirements. HHSC will publish IPAG's recommendations within one month of the group's recommendation to the agency.

(e) Meetings.

(1) Open meetings. The IPAG complies with the requirements for open meetings under Texas Government Code, Chapter 551, as if it were a governmental body.

(2) Frequency. The IPAG will meet at least every two years and no more than once annually.

(3) Quorum. A majority of all voting members constitutes a quorum for the purpose of transacting official business.

(f) Membership.

(1) The IPAG is composed of 12 members appointed by the executive commissioner. In selecting voting members to serve on the IPAG, HHSC considers the applicants' qualifications, background, interest in serving, and geographic location.

(A) Eleven voting members representing the following categories. The IPAG must have at least one voting member representing each of the categories in clauses (i) through (iii).

(i) Direct care workers.

(ii) Medicaid beneficiaries.

(iii) Medicaid beneficiaries' authorized representatives.

(iv) Other interested parties impacted by the service rates in question outlined in subsection (c)(1) of this section which may consist of:

(I) a rural Medicaid contracted provider who is contracted to provide HCBS services outlined in subsection (c)(1) of this section and who employs direct care workers;

(II) an urban Medicaid contracted provider who is contracted to provide HCBS services outlined in subsection (c)(1) of this section and who employs direct care workers;

(III) a provider who provides 1915(c) waiver services;

(IV) a provider who provides HCBS state plan services;

(V) an association or associations representing Medicaid providers who provide services outlined in subsection (c)(1) of this section;

(VI) an association or associations representing Medicaid beneficiaries who receive services outlined in subsection (c)(1) of this section; and

(VII) other disciplines with expertise in Medicaid finance, delivery, or access to care.

(B) One non-voting, ex officio member representing HHSC, who serves at the pleasure of the executive commissioner.

(2) Voting members are appointed for staggered terms so the terms of an equal or almost equal number of members expire on December 31 of each even-numbered year. Regardless of the term limit, a member serves until their replacement is appointed. This ensures there is membership representation to conduct IPAG business.

(A) If a vacancy occurs, the executive commissioner appoints a person to serve the unexpired portion of that term.

(B) Except as may be necessary to stagger terms, the term of each member is four years. A member may not serve more than two full terms.

(g) Officers. The IPAG selects a chair and a vice chair from among its members.

(1) The chair serves until January 1 of each even-numbered year. The vice chair serves until January 1 of each odd-numbered year.

(2) A member may serve as chair or vice chair for up to two terms in a row.

(h) Required training. Each member must complete training on relevant laws and rules, including this section and §351.801 of this division and Social Security Act §§1902, 1905, and 1915, 42 CFR §§440.1-440.395 and §§441.300-441.595; Texas Government Code Chapters 551, 552, and 2110; the HHS Ethics Policy; the Advisory Committee Member Code of Conduct; and other relevant HHS policies. Training will be provided by HHSC.

(i) Travel reimbursement. Unless allowed by the current General Appropriations Act, members are not paid to participate in the IPAG or reimbursed for travel to and from meetings.

(j) Abolishment date. The IPAG is required by federal regulation and will continue if the federal law requiring it remains in effect.

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 December 17, 2025.

TRD-202504680
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 6, 2026
Proposal publication date: October 31, 2025
For further information, please call: (512) 730-7475

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.65

The Public Utility Commission of Texas (commission) adopted new 16 Texas Administrative Code (TAC) §25.65, relating to Firming Program Requirements for Electric Generation Facilities in the ERCOT Region, with changes to the proposed text as published in the August 15, 2025 issue of the *Texas Register* (50 TexReg 5287). The new rule implements Public Utility Regulatory Act (PURA) §39.1592 as enacted by House Bill (HB) 1500 during the Texas 88th Regular Legislative Session. The new rule will establish performance requirements for electric generation facilities in the ERCOT region. The rule will also establish a framework for ERCOT to impose financial penalties on electric generation facilities that fail to comply with the requirements and provide financial incentives to electric generation facilities that

exceed the requirements. This section is adopted under Project Number 58198. The rule will be republished.

The commission received written comments on the proposed section from Advanced Power Alliance and American Clean Power Association (APA and ACP); Electric Reliability Council of Texas, Inc. (ERCOT); Eolian, LP (Eolian); esVolta, LP (esVolta); Grid Resilience in Texas (GRIT); Hunt Energy Network, LLC (HEN); Lone Star Chapter of the Sierra Club (Sierra Club); Lone Star Energy Storage Alliance (LESA); Lower Colorado River Authority (LCRA); NextEra Energy Resources, LLC (NextEra); NRG Energy, Inc. (NRG); Octopus Energy LLC (Octopus Energy); Office of Public Utility Counsel (OPUC); Potomac Economics (Potomac); Solar Energy Industries Association (SEIA); Southern Power Company (Southern Power); Tesla, Inc. (Tesla); Texas Advanced Energy Business Alliance (TAEBA); Texas Competitive Power Advocates (TCPA); Texas Electric Cooperatives, Inc. (TEC); Texas Energy Buyers Alliance (TEBA); Texas Industrial Energy Consumers (TIEC); Texas Oil and Gas Association (TXOGA); Texas Public Policy Foundation (TPPF); Texas Public Power Association (TPPA); Texas Solar + Storage Association (TSSA); and Vistra Corporate Service Company (Vistra).

The commission invited interested persons to address two questions related to the proposed rule.

1. What level of Physical Responsive Capability (PRC) should be used to define a low operation reserve hour?

When PRC falls below 6,000 megawatts (MW)

TPPF recommended that the triggering threshold be when PRC falls below 6,000 MW. TPPF noted that hourly average PRC was below 3,000 MW for only seven total hours from 2020 to 2024, with no hours below 4,500 MW in 2024 or 2025. According to TPPF if this trend continues, compliance with the proposed rule will only be measured during emergency conditions that are unlikely to occur every year, and generators will likely opt to pay the penalty or procure short-duration energy storage rather than procure truly firm assets that will help protect the grid when emergencies arise. Differences in reliability and variations in performance, particularly between intermittent resources and dispatchable resources, do not present only during emergencies. Those differences are always present and must be accounted for even in years when emergency conditions are not reached. Moreover, a 3,000 MW threshold will make the firming program more of an incentive to improve resiliency--that is, performance during emergencies--rather than a program that improves the valuation of reliability and volatility every year.

Commission Response

The commission disagrees with TPPF that the triggering threshold to define a low operation reserve hour should be when PRC falls below 6,000 MW. The commission disagrees that the definition of a low operation reserve hour should be designed to ensure a low operation reserve hour is triggered each season just as the definition of a low operation reserve hour should not be designed to avoid a low operation reserve hour in any season.

When PRC falls below 3,000 MW (similar to criteria for declaration of a Watch)

APA and ACP, LCRA, NextEra, NRG, SEIA, TEBA, TIEC, TXOGA, TPPA, TSSA, TXOGA, and Vistra recommended that the proposed rule establishes an appropriate threshold of 3,000 MW. If the commission is inclined to take a conservative approach, then Southern Power recommended, as an alternative to its primary recommendation to set the triggering threshold at 2,500 MW, that the triggering threshold should be when PRC falls below 3,000 MW. Commenters were split on whether the triggering threshold should be when PRC falls below 3,000 MW for 15 minutes or 30 minutes. NextEra recommended that the triggering threshold should be when PRC falls below 3,000 MW for an entire 15-minute ERCOT settlement interval. NRG, TXOGA, and TPPA recommended that the triggering threshold should be when PRC falls below 3,000 MW for at least 15 minutes, consistent with the definition for low operation reserve hour in proposed §25.65(b)(4). On the other hand, APA and ACP, Southern Power, and TSSA recommended modifying the definition for low operation reserve hour to an hour when PRC falls below 3,000 MW for at least 30 minutes instead of 15 minutes. SEIA recommended modifying the definition for low operation reserve hour to an hour when PRC falls below 3,000 MW and is not expected to return to more than 3,000 MW within 30 minutes, consistent with the criteria ERCOT uses to declare a Watch. LCRA, NextEra, TEBA, TIEC, TXOGA, TPPA, TSSA, and Vistra were silent on the 15-minute duration that was included in the proposed definition for low operation reserve hour. However, TEBA and Vistra supported the definition for low operation reserve hour as stated in proposed §25.65(b)(4).

Commenters recommended that defining a low operation reserve hour as one in which PRC falls below 3,000 MW is consistent with ERCOT's conservative operational posture and ancillary service methodology, which seek to avoid entering a Watch. Moreover, because ERCOT is procuring sufficient ancillary services to avoid Watch conditions, it is reasonable that the metric for determining firming hours, which should reflect the hours of highest reliability risk, be set at the same level (or below) the Watch criteria to avoid interfering with pricing signals and ERCOT operations that encourage new investment. TEBA noted that, if the triggering threshold is set too low, then firming will never be triggered but if it is much higher, it could interfere with normal operations and commitment decisions in the ERCOT market. TXOGA recommended that this threshold should be an initial statewide trigger for 2026-2027 and that ERCOT should evaluate and recommend changes to this threshold in a biennial review of the program.

Commission Response

The commission agrees with commenters that the triggering threshold for defining a low operation reserve hour should be when PRC falls below 3,000 MW, which is consistent with when ERCOT declares a Watch. However, the commission declines to modify the triggering threshold to be longer than 15 minutes. The commission notes that a Watch is declared when the reserves fall below the 3,000 MW threshold and are expected to remain below that threshold for 30 minutes, not after reserves have been below that level for 30 minutes. A 30-minute triggering threshold would make it possible for ERCOT to declare a Watch without having the triggering threshold met.

When PRC falls below 2,500 MW (consistent with declaration of Energy Emergency Alert (EEA) Level 1)

APA and ACP recommended, as an alternative to their primary recommendation described above, that, if ERCOT's conservative operational posture were to change, then the metric to define a low operation reserve hour should be when PRC falls below 2,500 MW or an EEA Level 1. Eolian, OPUC, SEIA, Sierra Club, and TAEBA also recommended that the metric to define a low operation reserve hour should be when PRC falls below 2,500 MW. APA and ACP, Eolian, and OPUC noted that an EEA Level

1 coincides with ERCOT taking actions to stabilize the grid and minimizes impacts on the energy-only market thereby reflecting true emergency conditions. Similarly, Southern Power's primary recommendation was that the triggering threshold for defining a low operation reserve hour should be when PRC falls below 2,500 MW and is not expected to recover within 30 minutes.

Commission Response

The commission disagrees with commenters that a low operation reserve hour should be defined as an hour in which PRC falls below 2,500 MW because setting the threshold this low may interfere with pricing signals and ERCOT operations that encourage new investment.

When PRC falls below 2,000 MW (consistent with declaration of EEA Level 2)

Potomac recommended modifying the definition for low operation reserve hour to an hour when ERCOT issues an EEA Level 2 (i.e., when PRC falls below 2,000 MW) to align with actual system reliability risk when ERCOT requires additional powers to stabilize system frequency and manage system demand.

Commission Response

The commission disagrees with Potomac that a low operation reserve hour should be defined as an hour in which PRC falls below 2,000 MW because setting the threshold this low may interfere with pricing signals and ERCOT operations that encourage new investment.

1,000 MW

HEN recommended that the exact value used to define the low operation reserve hour should be developed as a parameter with the system and initially be set at 1,000 MW so that the impact to the market during the transition of real-time co-optimization plus batteries (RTC+B) is minimal and unobtrusive. If the commission and ERCOT determine that firming is a more critical issue post RTC+B familiarization, then HEN recommended that ERCOT could initiate a nodal protocol revision request to update the parameter, as necessary.

Commission Response

The commission disagrees with HEN that a low operation reserve hour should initially be defined as an hour in which PRC falls below 1,000 MW because setting the threshold this low may interfere with pricing signals and ERCOT operations that encourage new investment. Additionally, the performance requirements in this rule will impact electric generating facilities with a signed standard generation interconnection agreement (SGIA) SGIA after January 1, 2027 and that are in operation for at least a year at the start of the season. This means that the earliest potential low operation reserve hours where these performance requirements would apply is Spring 2028, which will give sufficient time for RTC+B implementation and familiarization, as that goes live on December 5, 2025.

Dynamic

TEC recommended that the level of PRC should not be set at a specific numerical level. Rather, the commission should analyze a set number of hours in each season with the lowest levels of PRC regardless of PRC levels reached.

Commission Response

The commission disagrees with TEC that the level of PRC should not be set at a specific numerical level. Analyzing a set number of hours in each season with the lowest level of PRC regardless of PRC levels reached introduces unnecessary administrative complexities and creates market uncertainty. Not every season, or even every year, will have hours of high reliability risk that are due to low operation reserves. Requiring a set number of hours in each season, regardless of whether the level of reserves is below the commission's threshold of a "low operation reserve hour," is not consistent with the language in statute.

1. Should the low operation reserve hour be tied to the deployment of or a shortage in aggregate real-time awards relative to the Ancillary Service Plan for ERCOT Contingency Reserve Service (ECRS)?

APA and ACP, Eolian, HEN, LCRA, NextEra, NRG, OPUC, Potomac, SEIA, Southern Power, TAEBA, TEBA, TEC, TIEC, TX-OGA, TSSA, and Vistra answered no.

APA and ACP, Eolian, SEIA, and TSSA noted that once RTC+B is implemented, ERCOT will primarily deploy ECRS when it is economically efficient to convert ECRS capacity to energy based on real-time energy prices. Therefore, using ECRS deployments or shortage as the trigger risks applying performance requirements based on energy prices rather than on reliability needs.

HEN and Vistra noted that coupling the low operation reserve hour with ECRS would unnecessarily complicate the evaluation. LCRA recommended that decoupling these programs will mitigate impacts to price formation and protect the commission's flexibility in adjusting the firming policy in response to actual market outcomes.

NRG and TIEC explained that ECRS is deployed in situations other than just EEAs. ECRS is also deployed for frequency recovery and to manage net load ramps. As a result, a shortage of real-time awards of ECRS compared to the desired procurement amounts in the Ancillary Service Plan could occur temporarily in small amounts well before any period of low reserves.

TEC and TIEC recommended that the performance requirements should be tied to PRC without consideration of any other factors, such as the deployment of ancillary services. TIEC noted that this approach provides simplicity and predictability whereas using the deployment or shortage of ECRS relative to the Ancillary Service Plan introduces unnecessary uncertainty that will be difficult, if not impossible, to predict. The PRC level indicates when the ERCOT market is entering into emergency conditions, and as PRC declines, prices will inevitably increase to incentivize generation resources to provide energy to the grid. By relying on a PRC level for determining the low operation reserve hours, it will ensure resources can predict when the firming requirement will be triggered, and it will ensure the performance requirement is only triggered when there is an actual reliability risk. Moreover, NextEra noted that use of PRC as a trigger for an EEA is consistent with NERC standards, has been in practice for more than two decades in ERCOT, and is widely understood by stakeholders.

Commission Response

The commission agrees with commenters that the low operation reserve hour should not be tied to the deployment of or a shortage in aggregate real-time awards relative to the Ancillary Service Plan for ECRS. Additionally, the commission agrees with TIEC that the performance requirements set forth in the rule should be tied to PRC because the PRC level indicates when the ERCOT market is entering into emergency conditions.

General Comments

Counterfactual and forecasted analysis

TPPF recommended that before the rule is adopted, the commission use historical data to evaluate whether the proposed rule would have improved the reliability of the generation fleet at a reasonable cost had it already been in place for several years. TPPF also recommended that the commission create projections, based on its best estimate of the future resource mix, to ensure that the proposed rule will continue to encourage generators to meet the reliability standard well into the future.

Commission Response

The commission declines to adopt TPPF's recommendation to conduct a historical analysis evaluating whether the proposed rule would have improved the reliability of the generation fleet at a reasonable cost had it already been in place for several years. The commission also declines to adopt TPPF's recommendation that the commission create projections based on its best estimate of the future resource mix. Both types of analysis, counterfactual and forecasted, are inherently difficult and reliant upon assumptions about behavioral changes in response to differing conditions. A backwards looking analysis is beyond the scope of this project as the performance requirements are required by statute, regardless of the results of any such analysis. Moreover, a forward-looking analysis to estimate the impacts of the adopted rule in isolation is unnecessary given that ERCOT is already required to conduct a periodic, holistic assessment to determine whether the reliability standard is being met.

Portfolio-based compliance

Eolian, NextEra, TAEBA, TPPA, and Vistra recommended modifying the proposed rule to evaluate compliance, impose financial penalties, and provide financial incentives on a portfolio basis instead of at the resource level. Eolian noted that the framework in the proposed rule creates asymmetries by penalizing individual units even when the portfolio as a whole complies, while failing to provide corresponding credit for overperformance. Additionally, Eolian highlighted that PURA §39.1592(b) requires that owners or operators of electric generating facilities annually demonstrate that their overall portfolio can meet or exceed the seasonal average generation capability during periods of highest reliability risk. In support, Eolian provided a side-by-side comparison of the senate version of House Bill 1500, which uses the term "facility," and the enrolled version, which uses the term "owner or operator." TAEBA reasoned that pinning any reliability measurement to the individual resource is not necessarily reflective of system reliability, and allowing resource owners to account for generators not meeting performance expectations with other portfolio resources is more reflective of how the grid system functions.

Commission Response

The commission declines to adopt Eolian, NextEra, TAEBA, TPPA, and Vistra's recommendation to evaluate compliance, impose financial penalties, and provide financial incentives on a portfolio basis instead of at the resource level. The commission disagrees with Eolian that the reference in PURA §39.1592(b) to the owner or operator's portfolio means the owner or operator's overall portfolio. The statute does not use the term "overall" and electric generating facilities make up an owner or operator's portfolio. Therefore, it is appropriate to evaluate compliance of each electric generating facility in a portfolio and to impose financial penalties and provide financial incentives accordingly. However, the commission modifies the adopted rule to clarify that, for operational and settlement purposes, ERCOT will look to the Qualified Scheduling Entity (QSE) that represents the electric generating facility on behalf of the owner or operator. This approach complies with the statute and aligns with ERCOT's existing settlement system. Moreover, to comply with the statutory requirements to allow for other resources to satisfy the performance requirements, the commission modifies the adopted rule to make it explicit that an electric generating facility's performance requirements, either in part or in whole, can be satisfied through a trade arrangement with a firming resource. This can be done at any time prior to the final settlement of the season, and will ensure that the owner or operator of an electric generating facility can satisfy the performance requirements with other resources, either within their own portfolio or a portfolio managed by another owner or operator.

Firming requirement applicability

APA and ACP, Eolian, NextEra, Sierra Club, and TSSA recommended modifying the proposed rule to clarify that the performance requirement, and therefore the seasonal average generation capability (SAGC) calculation, applies only to an electric generating facility that is subject to PURA §39.1592 and the proposed rule. APA and ACP, Eolian, NextEra, and TSSA recommended that resources not subject to the performance requirements should not be held to a SAGC to determine the capacity that is available to firm other resources because PURA §39.1592 explicitly exempts existing electric generating facilities and energy storage resources from being subject to a SAGC for any purpose, including to determine the available capacity to supplement other resources subject to firming.

Commission Response

The commission adopts APA and ACP, Eolian, NextEra, Sierra Club, and TSSA's recommendation to clarify the applicability of the performance requirements. However, the commission disagrees with APA and ACP, Eolian, NextEra, and TSSA's interpretation of PURA §39.1592 to explicitly exempt existing resources and energy storage resources from being subject to a SAGC for any purpose. PURA §39.1592 explicitly requires an owner or operator of an electric generating facility to demonstrate the ability to operate or be available to operate when called on for dispatch at or above the SAGC. PURA §39.1592 is silent with respect to whether existing resources can provide firming and is also silent with respect to what capacity a resource, including an energy storage resource, may provide to firm an electric generating facility that is subject to the performance requirements.

Exempt energy storage resources from the application of the SAGC metric

APA and ACP, esVolta, LESA, NextEra, SEIA, Southern Power, TEBA, and Tesla recommended exempting energy storage resources from the application of the SAGC metric. According to commenters, doing otherwise is inconsistent with PURA §39.1592. Based on the statute's plain language, Southern Power recommended that the SAGC determination should not be applied to energy storage resources. The statute states that "an owner or operator of an electric generating facility, other than a battery energy storage resource, shall demonstrate to the commission the ability . . . to operate or be available to operate when called on for dispatch at or above the seasonal average generation capability" in times of high reliability risk. The requirement for resources to meet their SAGC is derived from this section only. The term seasonal average generation capability does not appear anywhere else in Chapter 39 of PURA. And, importantly, the sentence which includes this requirement expressly excludes energy storage resources.

esVolta, LESA, and SEIA recommended that overlaying a SAGC metric on energy storage resources reduces the effective capacity of storage available to the system. By defining an energy storage resource's ability to provide firming as its capacity in excess of its calculated SAGC, the proposed rule effectively prohibits energy storage resources from providing firming or otherwise incentivizes nonproductive uses of the assets. esVolta, LESA, and SEIA recommended that no metric should be used that would restrict an energy storage resource's ability to provide firming. As an alternative to the methodology in the proposed rule, esVolta, LESA, and SEIA recommended accounting for the availability of firming capacity similar to how an energy storage resource's capability to provide ancillary services into the ERCOT market for security constrained economic dispatch (SCED) dispatch is determined.

Southern Power recommended energy storage resources should be able to provide firming capacity, up to the energy storage resource's seasonal rated capacity, to supplement an owner or operator's portfolio or be sold to a third party via a contractual arrangement.

Commission Response

The commission agrees with APA and ACP, esVolta, LESA, NextEra, SEIA, Southern Power, TEBA, and Tesla that an energy storage resource, as long as it is operating or available to operate, should be able to provide its full capacity to firm an electric generating facility that is subject to the performance requirements set forth in the adopted rule. Therefore, the commission makes conforming changes to adopted §25.65(e)(2)(B). Additionally, because the commission makes this change, esVolta, LESA, and SEIA's alternative recommendation to account for the availability of an energy storage resource to provide firming is unnecessary.

Exempt existing resources from the application of the SAGC metric

APA and ACP, NextEra, and Southern Power recommended that existing electric generating facilities not required to meet the performance requirements should be able to provide firming capacity without regard to whether such electric generating facilities exceeded their SAGC. Southern Power reasoned that existing electric generating facilities are expressly excluded from the firming requirements by the first sentence of PURA §39.1592, which states "this section applies only to an electric generation facility in the ERCOT power region for which a standard generator interconnection agreement is signed on or after January 1, 2027." Southern Power recommended existing electric generating facilities should be able to provide firming capacity, up to the electric generating facility's seasonal rated capacity, to supplement an owner or operator's portfolio or be sold to a third party via a contractual arrangement.

Commission Response

The commission disagrees with APA and ACP, NextEra, and Southern Power that existing electric generating facilities that are not required to meet the performance requirements under PURA §39.1592 should be able to provide firming capacity without regard to whether those electric generating facilities exceeded their SAGC. The commission determines that existing electric generating facilities should be able to provide firming to satisfy the requirements of new electric generating facilities only if the existing electric generating facilities themselves would satisfy the performance requirement.

Formulas

TPPA recommended that the proposed rule include formulas for SAGC and effective value of lost load (VOLL) to clearly communicate how these variables will be calculated.

Commission Response

The commission agrees with TPPA and provides formulas in the adopted rule where appropriate, including the following:

Here, SAGC denotes Seasonal Average Generation Capability, HSL denotes High Sustained Limit, and SRC denotes Seasonal Rated Capacity. The first term in the minimum function calculates the ratio of real-time telemetered HSL and SRC across all intervals (i) that occurred during the prior five years of the same season (denotes the total number of such intervals); if less than five years of operating data exist, all available data from the same season will be used. The minimum of this ratio and 0.75 is multiplied by the SRC at the start of the compliance season (j) to determine SAGC. The second term in the minimum function (0.75) effectively creates an upper bound on the resulting SAGC.

Expand the types of resources that can provide firming

APA and ACP, Eolian, Octopus Energy, SEIA, and TSSA recommended modifying proposed §25.65(d)(1) to allow demand response and aggregate distributed energy resources (ADERs) to provide firming. Eolian also recommended adding a definition for ADER. TEBA and TIEC recommended expanding proposed §25.65(d) to allow load resources to provide firming.

GRIT recommended the proposed rule expressly allow qualifying distribution generation resources (DGRs), distribution energy storage resources (DESRs) and settlement only distribution generators (SODGs) to provide firming to an electric generating facility subject to the performance requirements. GRIT reasoned that the smaller scale and geographic diversity of these resources enhance overall system resilience by reducing dependence on any single facility or location while their fast-start capability enables rapid response to ERCOT dispatch instructions. GRIT also noted that many of these resources already participate in programs with an established performance obligation, such as Emergency Response Service (ERS). Therefore, these resources have proven metering and verification pathways, making them well-suited for integration into the firming program without adding unnecessary administrative complexity. If the commission adopts this recommendation, then GRIT recommended that compliance could be demonstrated through net demand change energy. In the alternative, ERCOT could measure the resource's power quality or revenue meter data for compliance purposes.

Commission Response

The commission adopts TEBA and TIEC's recommendation to allow load resources to satisfy the performance requirements of electric generating facilities that are subject to the performance requirements. The commission modifies the adopted rule to include load resources and directs ERCOT, as part of its development of protocols to implement the adopted rule, to establish the necessary protocols to validate a load resource's performance.

The commission agrees with recommendations to include DGRs and DESRs, as these resources are dispatched by SCED and ERCOT has telemetry from these resources. The commission modifies the rule to include DGRs and DESRs and directs ERCOT, as part of the protocol development for this rule, to establish the necessary protocols to validate their performance.

The commission declines to include ADERs at this time. These terms are not currently in the ERCOT protocols.

The commission declines to include SODGs on the list of firming resources that can satisfy the performance requirements of electric generating facilities. Validation of the performance of these resources would be difficult or infeasible, as ERCOT does not have telemetry or resource statuses for these resources, and they are not dispatched by SCED.

Dynamic firming penalty and bilateral market

LCRA recommended the development of a dynamic firming penalty, which would require resource owners to be notified of their resource-specific firming penalty with sufficient time to contract with third parties to manage risk associated with high financial penalties. LCRA also recommended that commission staff and ERCOT develop protocols with stakeholder input to clarify the following:

(i) what new contract data must be provided to ERCOT from QSEs to support a bilateral market;

(ii) how much notice is required for resource owners to manage their seasonal firming risk through bilateral contracts with a third-party resource owner; and

(iii) the cutoff date (if any) for bilateral contracting.

Commission Response

The commission declines to implement the dynamic firming penalty recommended by LCRA. The owner or operator of an electric generating facility that signs a SGIA after January 1, 2027 is expected to be available for dispatch up to the facility's SAGC when system conditions are tight. A high performing electric generating facility that is expected to be available but is unavailable when system conditions are tight should be subject to a financial penalty. However, to ensure that high-performing electric generating facilities are not overly penalized, the commission modifies the SAGC formula to cap it at 75% of an electric generating facility's seasonal rated capacity. This avoids disincentivizing a high-performing electric generating facility to continue to perform at a high level during all available hours.

Periodic adjustments to financial penalty linked to the effective VOLL

LCRA recommend that under a VOLL-based penalty design, any change to the effective VOLL should trigger a review of the firming program to ensure that incentives are balanced appropriately. This will help to address the fact that as ERCOT updates its effective VOLL within the protocols, an electric generating facility's risk exposure will change accordingly.

Commission Response

The commission acknowledges LCRA's concern that the risk exposure of the owner or operator of an electric generating facility will change anytime there is a change to the effective VOLL and modifies the adopted rule so that the financial penalty amount is no longer based on the effective VOLL. Instead, the commission links the financial penalty amount to the system-wide offer cap, which will require a rulemaking to take place before the financial penalty amount may be changed.

Demonstration of ability to operate

Potomac noted that PURA §39.1592(b) requires that each year, post-2027, electric generating facilities must demonstrate their ability to operate at or above their SAGC during times of highest reliability risk due to low operation reserve hours. The proposed rule does not address how this demonstration will take place if no low operation reserve hours take place during a given year.

Similarly, APA and ACP and TSSA noted that the proposed rule does not address expectations in a season where there are more or less than 15 low operation reserve hours. For clarification, APA and ACP and TSSA recommended adding a sentence to proposed §25.65(b)(4), defining "low operation reserve hour," that states the low operation reserve hours are limited to a maximum of 15 hours per season and a sentence that states there is no performance requirement under the proposed rule in a season that does not experience any low operation reserve hours.

Commission Response

The commission adopts APA and ACP and TSSA's recommendation to substantively clarify that the low operation reserve hours are limited to a maximum of 15 hours per season and there is no performance requirement under the adopted rule in a season that does not experience any low operation reserve hours. However, the commission modifies adopted §25.65(d), relating to performance requirement, to include this substantive clarification instead of including the clarification in the definition for low operation reserve hour.

Reporting requirements related to the firming program

TXOGA recommended that ERCOT be required to develop a biennial assessment of the costs and benefits of this firming program and that the independent market monitor be required to include, in its annual state of the market report to the commission, the impacts of this firming program on all aspects of the ERCOT market and any concerns regarding market manipulation.

Potomac recommended requiring a report that measures the performance of the firming requirement on a regular basis and differentiates normal market behavior from the additional reliability benefits that the firming program introduces.

Commission Response

The commission declines to modify the rule to provide the specific reporting requirements requested by TXOGA and Potomac, as these reviews would be an inefficient use of resources since PURA §39.1592 requires the firming program. The commission notes that Potomac is free to include any observations regarding the ERCOT market and provide assessments and recommendations in its annual State of the Market Report.

Effective date of the proposed rule

TSSA recommended that the commission clarify the proposed rule by specifying that the rule is not effective until January 1, 2028 because this is the earliest firming could be used given the statutory requirement that the performance requirements and therefore firming apply to an electric generating resource with a signed SGIA after January 1, 2027 and after one year of operations.

Commission Response

The commission declines to adopt TSSA's recommendation to specify that the rule is not effective until January 1, 2028, because it is unnecessary.

Proposed §25.65(a) - Applicability

Proposed §25.65(a) specifies that battery energy storage resources, settlement only generators, and self generators are not required to comply with the performance requirements set forth

in the proposed rule. Proposed §25.65(a) also specifies that an electric generating facility must comply with the performance requirements set forth in the proposed rule if the electric generating facility meets one of two conditions. The first is that the electric generating facility signs an SGIA on or after January 1, 2027 and has been in operation for at least one year. The second is that the electric generating facility completes upgrades resulting in an increase of 50% or more to the facility's nameplate capacity and requires a new SGIA after January 1, 2027.

Battery energy storage resource

TPPA recommended striking "battery" in front of "energy storage resource" to avoid ambiguity, as "energy storage resource" is already a defined term in the commission's rules. Including "battery" before the term could create ambiguity in the proposed rule's applicability and whether the term is intended to capture a different set of resources.

Commission Response

The commission declines to adopt TPPA's recommendation to remove the word "battery" before the term "energy storage resource" in adopted §25.65(a), because the commission modified the rule to relocate the exemptions to the performance requirements to §25.65(d). However, the commission makes the requested edit in that location, exempting energy storage resources from the performance requirements of this section. While there are other storage technologies currently participating in the ERCOT wholesale market, the capacity of these resources is de minimis, and applying the performance requirements of this section to these resources would place administrative burdens on the owners of these technologies, ERCOT, and the commission while providing little or no intrinsic value to the market. This approach is consistent with the public interest and consistent with statutory interpretation principles that a just and reasonable result, and a result feasible of implementation, is intended. The commission may revisit this interpretation, as required, in a future rulemaking.

Self-generators

TPPA recommended striking the reference to self-generators in proposed §25.65(a). TPPA reasoned that self-generators cannot legally sell power and therefore do not meet the definition of an electric generating facility, which is limited to entities that generate electricity for compensation.

Commission Response

The commission declines to adopt TPPA's recommendation to remove the reference to self-generators in proposed §25.65(a). The explicit exclusion of self-generators from the rule's applicability is consistent with PURA §39.1592 and avoids ambiguity. However, the commission modifies the adopted rule to specify in adopted §25.65(d) instead of adopted §25.65(a) that the performance requirements set forth in subsection (d) do not apply to a self-generator.

Overly broad

Potomac noted that it is unclear which provisions of the proposed rule apply to electric generating facilities placed in operation before January 1, 2027 versus those that begin operation after that date. Specifically, if "electric generating facility" applies to those facilities interconnecting after January 1, 2027, the language currently implies that: (1) pre-2027 electric generating facilities are ineligible to firm up electric generating facilities interconnecting after that date; and (2) pre-2027 electric generating facilities do not receive an SAGC from ERCOT or their SAGC is 0 MW.

Commission Response

The commission acknowledges the lack of clarity that Potomac raises relating to the rule's use of "electric generating facility" to describe pre-2027 and post-2027 resources and makes clarifying changes throughout the rule to distinguish between these two groups of electric generating facilities to more clearly articulate which facilities must comply with the performance requirements.

Co-located generation and private use networks (PUNs)

TIEC recommended modifying proposed §25.65(a) to state that the proposed rule applies to "the grid-dedicated capacity of an electric generating facility. . . ." TIEC highlighted that a third-party electric generating facility that enters into a purchase power agreement with a co-located customer(s) is required to register as a power generation company, creating asymmetry in the proposed rule's application to these types of electric generating facilities, settlement-only generators, and self-generators, the latter of which the proposed rule exempts. As a practical matter, these third-party electric generating facilities are similarly situated to self-generators and settlement-only generators in that the co-located customer(s) directly bears the physical and financial risks of the electric generating facility's performance. Rather than create exemptions to the proposed rule's applicability based on registration status, TIEC reasoned that only an electric generating facility's "excess" generation regularly made available to the grid should be subject to compliance with the performance requirements set forth in the proposed rule.

NRG, TCPA, and Vistra recommended modifying proposed §25.65(a) to exempt an electric generating facility co-located with a load in a PUN from complying with the performance requirements set forth in the proposed rule if the electric generating facility will provide more than 50% of its nameplate capacity to the load within the PUN and is therefore primarily dedicated to that load. NRG, TCPA, and Vistra cautioned that requiring an electric generating facility co-located with a load in a PUN to comply with the performance requirements could disincentivize co-located electric generating facilities to interconnect to the ERCOT system.

TEBA recommended broadening the self-generator exemption by modifying §25.65(a) to also exempt an electric generating facility that shares a point of interconnection with a load in the ERCOT region.

Commission Response

The commission agrees with TIEC, NRG, TCPA, Vistra, and TEBA that an exemption should be granted for an electric generating facility that is co-located with a load. The commission adopts NRG, TCPA, and Vistra's recommendation to exempt an electric generating facility co-located with a load in a PUN from the performance requirements if more than 50% of the electric generating facility's nameplate capacity is dedicated to serving the load within the PUN. This strikes the best balance of recognizing that the co-located load bears the risk of the electric generating facility's performance while ensuring electric generating facilities that intend to sell a majority of their output at wholesale do not co-locate with load simply to avoid being subject to the performance requirements. Accordingly, the commission declines to adopt TIEC's recommendation to apply the performance requirements to the "grid-dedicated capacity" of an electric generating facility. The commission also declines to

adopt TEBA's recommendation to exempt the entire output of an electric generating facility that shares a point of interconnection with load.

Proposed §25.65(a)(1) - Signed SGIA on or after January 1, 2027 and in operation for at least one year

Proposed §25.65(a)(1) states that the performance requirements set forth in the proposed rule apply to an electric generating facility that: (A) has a SGIA that is signed on or after January 1, 2027, and (B) has been in operation for at least one year.

Eolian and TCPA recommended modifying proposed §25.65(a)(1) to specify that the performance requirements set forth in the proposed rule apply to an electric generating facility with "an original" SGIA signed on or after January 1, 2027. Eolian and TCPA reasoned that a SGIA that is executed before January 1, 2027 does not fall within the statutory scope of PURA §39.1592 even if the SGIA is later modified.

TCPA also recommended adding a new subsection that explicitly states that amendments to SGIAs that were signed before January 1, 2027 do not constitute an original SGIA for purposes of the performance requirements.

SEIA, TCPA, and TSSA recommended modifying §25.65(a)(1) to clarify that the performance requirements set forth in the rule apply to an electric generating facility that is operational for one year prior to the beginning of a season. Otherwise, an electric generating facility may not have sufficient operational data to calculate its SAGC for that full season.

Commission Response

The commission adopts Eolian and TCPA's recommendation to clarify adopted §25.65(a)(1) by adding "an original" in front of "standard generation interconnection agreement" to denote that the rule's applicability is based on the date that the SGIA is initially signed. The commission declines to adopt TCPA's recommendation to add a new subsection that explicitly states that amendments to SGIAs that were signed before January 1, 2027, do not constitute an original SGIA for purposes of the performance requirements because it is unnecessary since the commission removes the provision related to the adopted rule's applicability to upgrades. The commission adopts SEIA, TCPA, and TSSA's recommendation to include clarifying language in adopted §25.65(a)(1) that the rule applies to an electric generating facility that has been in operation for at least one year prior to the beginning of a season to ensure that there is at least one full season's worth of operational data for each season prior to the performance requirement applying to an electric generating facility.

Proposed §25.65(a)(2) - Upgrades increasing nameplate capacity

Proposed §25.65(a)(2) states that the performance requirements set forth in the proposed rule apply to an electric generating facility that completes upgrades resulting in an increase of the nameplate capacity by 50% or more and requires a new or amended SGIA.

Strike

APA and ACP, Eolian, NextEra, SEIA, TCPA, TEBA, TPPA, TSSA, and Vistra recommended striking proposed §25.65(a)(2), reasoning that PURA §39.1592 applies only to an electric generating facility with a SGIA signed on or after January 1, 2027. APA and ACP, Eolian, SEIA, TCPA, TEBA, TPPA, TSSA, and Vistra reasoned that proposed §25.65(a)(2) is inconsistent with the plain language of the statute and disincentivizes upgrades to facilities that may seek to increase efficiency or output, which are needed to meet increasing load growth.

Commission Response

The commission adopts APA and ACP, Eolian, NextEra, SEIA, TCPA, TEBA, TPPA, TSSA, and Vistra's recommendation to modify the adopted rule to remove proposed §25.65(a)(2), which states that the performance requirements apply to an electric generating facility that completes upgrades resulting in an increase of the nameplate capacity by 50% or more and requires a new or amended SGIA. However, the commission disagrees that proposed §25.65(a)(2) is inconsistent with the plain language of PURA §39.1592. PURA §39.1592 is silent as to whether the SGIA signed on or after January 1, 2027 must be an original SGIA, an amended SGIA, or an amended and restated SGIA. As demonstrated by the commenters that recommended clarifying the rule applies to an electric generating facility with an original SGIA, PURA §39.1592 is ambiguous. Therefore, it is appropriate for the commission to interpret this provision.

Limited application to upgraded facilities

TIEC recommended applying the performance requirements only to new, incremental capacity (i.e., the increased nameplate capacity above 50%). If NextEra and TCPA's primary recommendation to strike proposed §25.65(a)(2) is not adopted by the Commission, then NextEra and TCPA also recommended, in the alternative, that the performance requirements apply only to the increased nameplate capacity above 50%. TIEC reasoned that adding capacity at an existing site is a more cost-effective way to increase available generation than developing a greenfield site. However, subjecting a facility to the performance requirements because the facility updates or replaces existing units would deter these valuable investments from a reliability standpoint.

Commission Response

The Commission declines to adopt TIEC's recommendation and NextEra and TCPA's alternative recommendation to apply the performance requirements only to new, incremental capacity added by an electric generating facility (i.e., the increased nameplate capacity above 50%). Instead, the commission modifies the adopted rule to remove this provision.

Apply the firming requirements after the facility has been in operation, following the upgrades, for at least one year

ERCOT recommended applying the performance requirements to an electric generating facility that increases its nameplate capacity by 50% or more only after the facility has been in operation for at least one year after the upgrades have been completed. ERCOT explained that at least some operating data would be helpful to calculate the SAGC for the facility's upgrades and one year of data is consistent with the requirement for other electric generating facilities subject to the firming requirements under the proposed rule.

Commission Response

The Commission declines to adopt ERCOT's recommendation to apply the performance requirements to an electric generating facility that increases its nameplate capacity by 50% or more after the facility has been in operation for at least one year from the date that the upgrades have been completed for consistency with how other electric generating facilities subject to the perfor-

mance requirements are treated. This change is unnecessary because the commission modifies the adopted rule to remove this provision.

Expand to apply the firming requirements to all electric generating facilities that amend the SGIA after January 1, 2027

TPPF recommended expanding proposed §25.65(a)(2) to include any electric generating facility that requires a new or amended SGIA after January 1, 2027. TPPF explained that the proposed rule would enable electric generating facilities with an SGIA that was signed before January 1, 2027 to exempt themselves from the performance requirements indefinitely, effectively creating a permanent bifurcated market, which is counter to the legislative intent. TPPF noted that a permanent bifurcated market where pre-2027 electric generating facilities are not required to comply with the performance requirements could create market distortions and reliability problems.

Commission Response

The Commission declines to adopt TPPF's recommendation to expand the applicability of the rule to any electric generating facility that requires an amended SGIA after January 1, 2027 in order to avoid a bifurcated market. PURA §39.1592 clearly demarcates a future point in time by when the firming requirements inure to electric generating facilities to provide regulatory and market certainty for developers of future electric generating facilities. The commission implements the statute as required. Additionally, a bifurcated market is not permanent in so far as all electric generating facilities eventually retire.

Decrease the threshold from 50 percent to 20 percent

HEN recommended applying the performance requirements to an electric generating facility that increases its nameplate capacity by 20% rather than 50%. This would align the proposed rule with ERCOT Planning Guide 5.2.4(4). ERCOT Planning Guide 5.2.4(4) requires the interconnecting entity to submit a new interconnection request for the additional capacity or for the entire project if the interconnecting entity increases the requested amount of capacity by more than 20% of the amount requested in the initial application. Alignment of the rule and ERCOT protocols would reduce confusion and provide consistency.

Commission Response

The commission declines to adopt HEN's recommendation to apply the performance requirements to an electric generating facility that increases its nameplate capacity by 20% rather than 50%. Instead, the commission modifies the adopted rule to remove this provision.

Proposed §25.65(b) - Definitions

Proposed §25.65(b) sets forth definitions for (1) electric generating facility, (2) high-risk hour, (3) in operation, (4) low operation reserve hour, (5) owner or operator, (6) season, and (7) seasonal average generation capability.

Additional definitions- ancillary service or reliability service

TPPA recommended adding a definition for "ancillary service or reliability service." TPPA recommended defining "ancillary service or reliability service" as a service, not including energy, which can be procured by ERCOT in the day-ahead market (DAM) or real-time market.

Commission Response

The commission declines to adopt TPPA's recommendation to provide a specific definition for ancillary service or reliability service and to provide a specific list of these services. The commission determines it is more appropriate to address these recommendations in the ERCOT stakeholder process. This will allow flexibility in identifying all of the ancillary service and reliability service products and incorporating new ancillary service and reliability service products if and when new ones are added.

Additional definitions- covered entity

Eolian recommended adding a definition for "covered entity" to conform with its recommended changes to proposed §25.65(c) and (d). Eolian recommended defining "covered entity" as any natural person, partnership, municipal corporation, cooperative corporation, association, governmental subdivision, or public or private organization that owns or controls an electric generation facility and is registered with ERCOT as a resource entity as defined in the ERCOT protocols.

Commission Response

The commission declines to adopt Eolian's recommendation to add a definition for covered entity because it is unnecessary. The adopted rule defines an "owner or operator" and a "QSE" consistent with PURA §39.1592.

Additional definitions- energy storage resource

TPPA recommended adding a definition for "energy storage resource." TPPA recommended mirroring the definition for energy storage resource in §25.55(b)(1).

Commission Response

The commission declines to adopt TPPA's recommendation to add a definition for energy storage resource that mirrors the definition used in §25.55(b)(1) of this Title (relating to Weather Emergency Preparedness). The commission adds a definition for energy storage resource but aligns the definition with the definition used in the ERCOT protocols to better maintain consistency across commission rules and ERCOT protocols.

Additional definitions- force majeure event

Southern Power recommended adding a definition for "force majeure event" to conform with its recommended changes to proposed §25.65(e)(2)(A). Southern Power recommended defining a "force majeure event" as an event caused by an act of God, including, without limitation, fires, landslides, lightning strikes, earthquakes, hurricanes, tornadoes, storms, or floods, or any event beyond the reasonable control of the owner of an electric generating facility such as wars, riot, pandemics, insurrections, acts of public enemies, governmental orders, blockades, quarantines, or other similar acts. For avoidance of doubt, the inherent variable electric generation output of an electric generating facility caused by changes in typical weather patterns will not constitute a force majeure event.

Commission Response

The commission declines to adopt Southern Power's recommendation to add a definition for force majeure event because the commission declines to adopt Southern Power's recommended changes to proposed §25.65(e)(2)(A) to include reference to a force majeure event, making the additional definition unnecessary.

Additional definitions- grid-dedicated capacity

TIEC recommended adding a definition for "grid-dedicated capacity" to conform with its recommended changes to proposed §25.65(a). TIEC recommended defining "grid-dedicated capacity" as the SAGC of an electric generating facility minus the sum of the seasonal maximum non-coincident peak demands of any metered loads.

Commission Response

The commission declines to adopt TIEC's recommendation to add a definition for grid-dedicated capacity because the commission declines to adopt TIEC's recommended changes to adopted §25.65(a), making the additional definition unnecessary.

Additional definitions- interval

TPPA recommended adding a definition for "interval." TPPA recommended that the definition specify whether the measurement refers to a 15-minute interval, a five-minute interval, or each instance in which Security-Constrained Economic Dispatch (SCED) runs.

Commission Response

The commission adopts TPPA's recommendation to add a definition for interval, defining it as each instance in which SCED runs

Additional definitions- firming penalty- low, medium, and high performance threshold

LCRA recommended adding definitions for firming penalty- low, medium, and high performance threshold to conform with its suggested changes to proposed §25.65(e)(1). LCRA recommended defining "firming penalty - low performance threshold" to mean for each season, ERCOT must calculate the ratio of real-time telemetered HSL to the seasonal rated capacity for all electric generating facilities across all intervals during the prior three years. The low performance threshold is the X lowest percentage of availability as measured by the ratio of real-time telemetered HSL to the seasonal rated capacity across all resources. LCRA recommended defining "firming penalty - medium performance threshold" to mean for each season, ERCOT must calculate the ratio of real-time telemetered HSL to the seasonal rated capacity for all electric generating facilities across all intervals during the prior three years. The median performance threshold is the median availability as measured by the ratio of real-time telemetered HSL to the seasonal rated capacity across all resources. Finally, LCRA recommended defining "firming penalty - high performance threshold" to mean for each season, ERCOT must calculate the ratio of real-time telemetered HSL to the seasonal rated capacity for all electric generating facilities across all intervals during the prior three years. The high-performance threshold is the X highest percentage of availability as measured by the ratio of real-time telemetered HSL to the seasonal rated capacity across all resources.

Commission Response

The commission declines to add the definitions proposed by LCRA for firming penalty- low, medium, and high performance threshold because the commission declines to include LCRA's dynamic penalty structure in the adopted rule. Therefore, these definitions are unnecessary.

Additional definitions- morning ramp periods and evening ramp periods

NextEra recommended adding a definition for "morning ramp periods" and "evening ramp periods" based on the load ramp, which is reflective of when customers need the assurance of power and is the period that has the most operational risk to ERCOT.

Commission Response

The commission declines to adopt NextEra's recommendation to add a definition for morning ramp periods and evening ramp periods because it is appropriate for ERCOT to develop the standards for defining morning ramp periods and evening ramp periods. However, the commission notes that under PURA §39.151(g-6), new or revised protocols may not take effect until the commission approves a market impact statement describing the new or revised protocols. Accordingly, ERCOT's development of the standards remains subject to the commission's oversight.

Additional definitions- peak net load hour

TPPA recommended adding a definition for "peak net load hour" because the term has unique meaning and may not be commonly understood by a layperson. TPPA recommended defining "peak net load hour" as an hour in which, after the reduction of renewable resources from the generation supply, the highest load demand was recorded in a 15-minute settlement interval.

Commission Response

The commission declines to include TPPA's definition for peak net load hour in the adopted rule because the high-risk baseline hours will no longer be based off historic hours with the highest peak net load.

Additional definitions- seasonal rated capacity

TPPA recommended adding a definition for "seasonal rated capacity" because the term has unique meaning and may not be commonly understood by a layperson. TPPA recommended defining "seasonal rated capacity" as the maximum generating capability of an electric generating facility, expressed in MW, that the owner or operator of an electric generating facility declares it can sustain under expected ambient conditions for a given season and as determined at the start of that season and documented on ERCOT's Resource Asset Registration Form.

Commission Response

The commission adopts TPPA's recommendation to add a definition for seasonal rated capacity to add clarity. Moreover, the commission substantially adopts TPPA's recommendation to define seasonal rated capacity. The commission defines seasonal rated capacity as the maximum generating capability of an electric generating facility, expressed in MW, that the owner or operator of an electric generating facility declares it can sustain under expected ambient conditions for a given season, according to the value that the electric generating facility reported to ERCOT.

Additional definitions- self-generator

If the Commission declines to adopt TPPA's recommendation to strike self-generator, then TPPA recommended adding a definition for "self-generator."

Commission Response

The commission adopts TPPA's recommendation to define self-generator to add clarity to the proposed rule.

Additional definitions- settlement-only generator

TPPA recommended adding a definition for "settlement-only generator." TPPA recommended defining "settlement-only

generator" as an electric generating facility that is settled for exported energy only but may not participate in the ancillary service market or be dispatched by ERCOT.

Commission Response

The commission adopts TPPA's recommendation to add a definition for a settlement-only generator. However, the commission adopts a definition that aligns with the definition used in the ERCOT protocols to better maintain consistency across commission rules and ERCOT protocols.

Proposed §25.65(b)(1) - Electric generating facility

Proposed §25.65(b)(1) defines an electric generating facility as a generation resource, as defined in ERCOT protocols.

Mirror statutory language

ERCOT recommended changing the term from "electric generating facility" to "electric generation facility" to mirror the term used in PURA §39.1592.

Commission Response

The commission adopts ERCOT's recommendation to change the defined term from "electric generating facility" to "electric generation facility" to mirror the term used in PURA §39.1592 and to make conforming changes throughout the adopted rule.

Must-run alternative (MRA) units, reliability must-run (RMR) units, contracts for capacity, and mobile generation units

ERCOT recommended modifying proposed §25.65(b)(1) to clarify that the following resources are excluded from the definition of an electric generating facility: (1) a resource that operates as a MRA unit, a resource that operates as a RMR unit, and (3) a resource that contracts with ERCOT under a "contract for capacity." In the alternative, ERCOT recommended that MRA units and RMR units provide "reliability services" with a performance obligation and therefore should be exempt from the firming requirements set forth in the proposed rule consistent with the exemption in proposed §25.65(e)(2)(D). Additionally, ERCOT recommended explicitly stating that the proposed rule does not apply to the Prime Power Solutions LLC d/b/a Life Cycle Power mobile generation units that are operating for reliability reasons pursuant to a contract with ERCOT.

Commission Response

The commission agrees with ERCOT's recommendation to clarify that the following resources are excluded from the definition of an electric generating facility for purposes of compliance with the performance requirements: (1) a resource that operates as a MRA unit; (2) a resource that operates as a RMR unit; and (3) a resource that contracts with ERCOT under a "contract for capacity." However, the commission modifies adopted §25.65(d) instead of modifying the definition for electric generating facility to reflect that the performance requirements set forth in the rule do not apply to these resources. The commission agrees with ERCOT's interpretation that the performance requirements set forth in the rule do not apply to the Prime Power Solutions LLC d/b/a Life Cycle Power mobile generation units that are operating for reliability reasons pursuant to a contract with ERCOT.

Clarify whether energy storage resource is included in or excluded from the definition

Potomac recommended modifying proposed §25.65(b)(1) to clarify whether an energy storage resource meets the definition. Eolian recommended modifying proposed §25.65(b)(1) to explicitly state that energy storage resources are excluded from the definition of an electric generating facility, consistent with the referenced definition for generation resource in ERCOT protocols.

Commission Response

The commission declines to adopt Potomac's recommendation to clarify whether an energy storage resource meets the definition of an electric generating facility. The commission also declines to adopt Eolian's recommendation to explicitly exclude energy storage resources from the definition of an electric generating facility. Instead, the commission clarifies how the adopted rule applies to energy storage resources by modifying adopted §25.65(a) relating to applicability, §25.65(b)(13) defining seasonal average generation capability, and §25.65(d) relating to performance requirements.

Replace reference to ERCOT protocols in definition

TPPA recommended replacing the reference to ERCOT protocols with a definition. TPPA reasoned that the commission delegated authority to ERCOT to create the protocols, and the commission's rules govern ERCOT protocols. Therefore, the commission's rules should avoid referencing ERCOT protocols.

Commission Response

The commission declines to adopt TPPA's recommendation to replace the reference to ERCOT protocols with a definition. The commission has oversight and approval authority over ERCOT protocols and therefore any change to the relevant definitions in ERCOT protocols must still be reviewed and approved by the commission prior to implementation.

Proposed §25.65(b)(2) - High-risk hour

Proposed §25.65(b)(2) defines a high-risk hour as a daily hour encompassing all seasonal morning and evening ramp hours, as determined by ERCOT, and any hour where at least 5% of the highest decile of net load hours occurred during that season in the prior three years.

NextEra recommended adding an objective formula instead of leaving ERCOT to determine the parameters for a high-risk hour. NextEra also recommended limiting the definition to a daily hour encompassing all seasonal morning and evening ramp periods.

TAEBA recommended excluding the morning and evening ramp hours because morning and evening ramping hours are well understood and accounted for in the marketplace, rendering them unnecessary for inclusion in the definition. Additionally, inclusion of the morning and evening ramp hours is punitive to solar resources.

TCPA and Vistra recommended basing the high-risk hour on the North American Electric Reliability Corporation (NERC) Probabilistic Assessment that ERCOT must conduct. The NERC Probabilistic Assessment uses the same probabilistic reliability model (Strategic Energy Risk Valuation Model, or SERVM) that will be used for the Reliability Assessment required by the commission's reliability standard. Additionally, the NERC Probabilistic Assessment has the added benefit of being an existing risk assessment process used to determine high-risk hours and does not require additional calculations by commission staff or stakeholders to validate the results.

APA and ACP, SEIA, and TSSA recommended replacing "high-risk hour" with "baseline period" to better align with PURA §39.1592 and avoid confusion since the low operation reserve

periods determine the periods of high reliability risk. Additionally, APA and ACP and SEIA recommended defining the baseline period as a daily hour. TSSA recommended defining the baseline period as all daily hours.

APA and ACP, SEIA, and TSSA noted that the Probabilistic Reserve Risk Model (PRRM) that ERCOT uses to generate the monthly Outlook for Resource Adequacy (MORA) report accounts for current system conditions that impact reliability and the ramp down of renewable output, which is simulated using more than 42 weather years of data. Therefore, APA and ACP, SEIA, and TSSA recommend that the hour(s) used for the baseline period should be determined by using ERCOT's Monthly Outlook for Resource Adequacy (MORA) report to identify when the probability is at least 5% that the Capacity Available for Operating Reserves (CAFOR) will be less than 3,000 MW. These changes would reflect the expected hourly resource availability of a generation resource and would not assign a targeted threshold for solar output generation at night.

If its primary recommendation is not adopted by the commission, then TSSA recommended, in the alternative, that the proposed rule define the baseline period as hours encompassing all seasonal morning and evening ramp hours and any daily hour identified by ERCOT using the MORA report to identify when the probability is at least 5% that the CAFOR falls below 3,000 MW.

LCRA noted that the definition of "high-risk hour" may be overbroad in including both morning and evening ramps and "any hour where at least 5% of the highest decile of net load hours occurred during that season in the prior three years." Analysis of historic peak net load data from July 2023 through June 2025 reveals moderate exposure for performance penalties for all resources. Even with ERCOT pre-announcing the qualifying hours, there is still a significant penalty risk each season for non-exempted resources seeking to perform during the top 15 hours.

Sierra Club raised concerns that the definition in proposed §25.65(b)(2) unnecessarily expands the baseline period (high-risk hours) to approximately half of all hours. In practice, the methodology in the proposed rule would extend into the evening and nighttime hours. If a firming hour were to occur during the night, then solar would be required to firm even though the statute requires that the calculation be based upon the "expected resource availability." Because the expected resource availability for a solar resource is zero at night, there should not be a firming obligation imposed on solar at night.

Commission Response

The commission agrees with APA and ACP, SEIA, and TSSA that "high-risk hour" should be replaced with "baseline period." The usage of baseline period aligns with the language in PURA §39.1592(d)(3), which establishes the hours when a financial penalty could be imposed.

The commission declines to adopt NextEra's recommendation to include a formula for morning and evening ramps periods in the adopted rule. ERCOT protocols allow for flexibility to adjust these periods as the resource mix, load profile, etc. change and the morning and evening ramp hours change.

The commission declines to adopt TAEBA's recommendation to exclude morning and evening ramp periods. PURA §39.1592 explicitly calls for the morning and evening ramp periods to be included in the baseline hours in which ERCOT may impose financial penalties.

The commission adopts TCPA and Vistra's recommendation to utilize the NERC Probabilistic Assessment, as ERCOT already conducts this analysis annually and this will provide the most holistic snapshot of the high-risk hours on a looking-forward basis. The commission modifies the adopted rule to require ERCOT to utilize this analysis to identify high-risk hours for inclusion in the baseline period.

The commission declines to adopt APA and ACP, SEIA, and TSSA's recommendation to utilize the MORA to identify the high-risk hours that are included in the baseline period with the morning and evening ramp periods. While the commission agrees this is an improvement over the methodology in the proposed rule, the commission moves forward with the NERC Probabilistic Assessment recommended by TCPA and Vistra. This will also provide owners and operators with more notice on which hours will be included within the baseline period in each season.

The commission acknowledges LCRA and Sierra Club's concern that the proposed definition includes overly broad hours. The adopted definition for baseline period, which will utilize a probabilistic assessment to identify high-risk hours beyond the morning and evening ramp periods, addresses this concern by better reflecting the expected hours of highest risk.

The commission disagrees with Sierra Club that there should not be a performance requirement imposed on solar at night. PURA §39.1592 requires a new electric generating facility to operate or be available to operate at or above its seasonal average capability, not its hourly capability within a season.

Proposed §25.65(b)(3) - In operation

Proposed §25.65(b)(3) defines in operation as the resource commissioning date, as defined in the ERCOT protocols.

To avoid misinterpretation, ERCOT recommended specifying that in operation is the timeframe beginning with the resource commissioning date.

NextEra recommended specifying the resource commissioning date is when the resource completes the interconnection process and is approved for participation in ERCOT market operations.

APA and ACP and TSSA recommended using the commercial operations date defined in ERCOT Protocols.

TPPA recommended replacing the reference to ERCOT protocols with a definition. TPPA reasoned that the commission delegated authority to ERCOT to create the protocols, and the commission's rules govern ERCOT protocols. Therefore, the commission's rules should avoid referencing ERCOT protocols.

Commission Response

The commission clarifies that the definition of "in operation" means the date that ERCOT approves the electric generating facility for commercial operation.

Proposed §25.65(b)(5) - Owner or operator

Proposed §25.5(b)(5) defines an owner or operator as a resource entity that owns an electric generating facility represented by a QSE.

APA and ACP, HEN, SEIA, and TSSA recommended modifying proposed §25.65(b)(5) to include an operator. APA and ACP and TSSA recommended modifying the definition in alignment with ERCOT protocols, which require that each resource entity that owns a resource submit a declaration to ERCOT as to which De-

cision Making Entity has control of each of its resources. SEIA recommended modifying the definition to state a resource entity that owns or operates an electric generating facility. HEN recommended modifying the definition to state a resource entity that owns or controls an electric generating facility.

Commission Response

The commission declines to adopt HEN's recommendation to modify the definition to add "controls." Instead, the commission adopts APA and ACP, HEN, SEIA, and TSSA's recommendation to add "operates" to the definition because the term aligns better with the statute. The commission declines to adopt APA and ACP and TSSA's recommendation to have resource entities declare a Decision Making Entity within the context of the owner or operator definition. Settlements in ERCOT go through an associated QSE and therefore an electric generating facility must be represented by a QSE for portfolio settlement purposes.

Proposed §25.65(b)(6) - Season

Proposed §25.65(b)(6) defines season as winter (December 1 through February 29), Spring (March 1 through May 31), Summer (June 1 through September 30), and Fall (October 1 through November 30.

Categorization of September

Southern Power recommended modifying proposed §25.65(b)(6) to split September between the summer and fall months to more accurately reflect the transitional nature of weather and load shapes that occur in September.

Commission Response

The commission declines to adopt Southern Power's recommendation to split September between the summer and fall months. The weather and load shapes that occur in Texas throughout the month of September are most consistent with the weather and load shapes in the summer months. Additionally, including the entirety of September in the summer season best aligns with the seasonal definition ERCOT uses in other studies and programs.

Shoulder months

TEC recommended removing the shoulder months from proposed §25.65(b)(6). TEC reasoned that most maintenance outages occur during the shoulder months and compliance with the performance requirements during those months will place additional strain on an already strained electric generating facility that is seeking one of the limited outage slots available for maintenance needs during the shoulder months. Because the grid need is elevated in the summer and winter months, TEC recommended that the proposed rule focus on those months.

Commission Response

The commission declines to adopt TEC's recommendation to remove the shoulder months from adopted §25.65(b)(12). The adopted rule provides for exemptions from the performance requirement for electric generating facilities that are on planned maintenance outages. Additionally, while the summer and winter months might currently have an elevated need and there may be little to no risk during shoulder months, the performance requirement should account for the increasing potential for high-risk hours in the shoulder months due to changes in the generation fleet.

Proposed §25.65(b)(7) - Seasonal average generation capability

Proposed §25.65(b)(7) defines SAGC for each season as the average of the ratio of real-time telemetered HSL to the seasonal rated capacity of an electric generating facility across all intervals during the prior three years multiplied by the seasonal rated capacity of the electric generating facility at the beginning of the relevant season. For an electric generating facility that has been in operation for less than three years, ERCOT will use the operational data that is available for each season.

Calculation for energy storage resources

Potomac recommended clarifying whether and how energy storage resources should receive a calculated SAGC. During charging intervals, energy storage resources are incentivized to telemeter an HSL of 0 MW (or a negative HSL, if rules allow it) to minimize their future SAGC. Therefore, if energy storage resources are to receive an SAGC, then Potomac recommended that their SAGC's calculation exclude charging intervals.

Commission Response

The commission declines to adopt Potomac's recommendation to clarify whether and how energy storage resources should receive a calculated SAGC. Instead, the commission clarifies in adopted §25.65(e) that an energy storage resource may provide its full HSL in a given hour to firm an electric generating facility subject to the performance requirements under the adopted rule. Therefore, an SAGC does not need to be calculated for an energy storage resource and further clarification is unnecessary.

Potential for gaming

Potomac noted that because the definition for SAGC is a function of real-time HSL across all intervals in a given season, generators that telemeter a higher HSL will be held to a higher benchmark during compliance intervals while those telemetering a lower HSL will be held to a lower benchmark. By averaging all intervals in its definition for the SAGC, the proposed rule invites electric generating facilities to lower their telemetered HSL during intervals where they likely would not be awarded at their HSL. Potomac acknowledged that this constitutes a violation of ERCOT protocols and would be subject to enforcement action but wanted to note the incentive.

Commission Response

The commission acknowledges Potomac's concerns that the proposed rule invites electric generating facilities to lower their telemetered HSL during intervals where they likely would not be awarded at their HSL. However, as Potomac notes such actions would constitute a violation of ERCOT protocols and would be subject to enforcement action. Therefore, the commission declines to modify the adopted rule.

Calculation based on all available intervals

HEN recommended modifying proposed §25.65(b)(7) by inserting "available" before "intervals."

Commission Response

The commission declines to adopt HEN's recommendation to insert "available" before "intervals." This would substantively change the calculation by basing it only on intervals where the resource is available, which would artificially inflate the SAGC of an electric generating facility. The SAGC should factor in availability rather than be based solely on performance when the electric generating facility is available.

Hourly seasonal standard

APA and ACP, NextEra, SEIA, TEBA, TIEC, and TSSA recommended modifying proposed §25.65(b)(7) to use an hourly seasonal 1x24 standard to calculate each electric generating facility's SAGC. According to these commenters, the seasonal 1x24 standard aligns with the requirement in PURA §39.1592 that an electric generating facility "be available to operate when called on . . . at or above the seasonal average generation capability . . . based upon expected resource availability" for each hour in an operating day. Specifically, the 1x24 standard captures a zero percent capacity factor for solar during night hours and thus aligns with the statutory requirement to base the SAGC on expected resource capability.

Commission Response

The commission declines to adopt APA and ACP, NextEra, SEIA, TEBA, TIEC, and TSSA's recommendation to use an hourly seasonal 1x24 standard to calculate each electric generating facility's SAGC. PURA §39.1592 requires demonstration of the ability to dispatch at or above the SAGC, not the hourly capability within a season. Moreover, the commission disagrees that "expected resource availability" implies that the SAGC should include 24 individual, hourly capabilities. The SAGC accounts for expected resource availability for all hours within a season and uses that information to determine the average capability of an electric generating facility.

Five years of operating data

APA and ACP, SEIA, and TSSA recommended using five years of operating data, when available, to calculate the SAGC. This ensures a variety of weather year output profiles are considered for weather dependent resources.

Commission Response

The commission adopts APA and ACP, SEIA, and TSSA's recommendation to modify the definition of SAGC in adopted §25.65(b)(13) to base the SAGC on five years of operating data, when available, instead of three years of operating data.

Seasonal net max sustainability ratings

NRG, TCPA, and Vistra recommended modifying proposed §25.65(b)(7) to refer to the Capacity, Demand, and Reserve (CDR) "seasonal net max sustainability ratings," which relies on both the historical and upcoming seasonal values as the multiplier to set the SAGC. According to these commenters, the applicable seasonal net maximum rating reflects each electric generating facility's normal maximum operating output at a temperature that correlates to typical peak load for each season and accounts for uprates if they occur. NRG, TCPA, and Vistra also recommended multiplying 75% of the seasonal rated capacity of the electric generating facility to calculate the SAGC. TCPA noted that using 75% of the seasonal net max sustainable rating to set the benchmark specifically accounts for different ambient temperature conditions that impact output without relation to actual performance, and accounts for reasonably expected derates associated with normal operations. Vistra noted that this approach recognizes that renewables cannot realistically achieve 100% of the seasonal net max sustainable rating but also sends a signal that additional firming capabilities should be developed or acquired. Finally, Vistra noted that the approach in the proposed rule inherently holds less reliable electric generating facilities to a lower standard and punishes more reliable electric generating facilities, particularly thermal dispatchable resources that will have higher HSLs during more moderate temperatures and lower HSLs during higher temperatures.

Commission Response

The commission declines to adopt NRG, TCPA, and Vistra's recommendation to outright replace the SAGC formula with a flat rating of 75% of the seasonal net max sustainability for each electric generating facility. This would impose a requirement on certain electric generating facilities that exceeds their average capability in a season. However, the commission acknowledges that the performance requirements are not intended to impose an undue burden on electric generating facilities that are high performing. Therefore, the commission modifies the adopted rule to set a maximum value for the SAGC of an electric generating facility. The commission sets the maximum value to 75% of the electric generating facility's seasonal rated capacity.

Proposed §25.65(c) - Notice of seasonal average generation capability

Proposed §25.65(c) states that prior to each season, ERCOT will (1) notify an electric generating facility of its SAGC; and (2) release the high-risk hours for the upcoming season.

Convert to a mandatory provision

Eolian and NextEra recommended modifying proposed §25.65(c) to require ERCOT to take the actions specified in proposed §25.65(c) by replacing "will" with "shall."

Commission Response

The commission adopts Eolian and NextEra's recommendation to replace "will" with a mandatory term that imposes a requirement. However, the commission replaces "will" with "must" instead of "shall" to maintain consistency with the commission's rule drafting practices.

Notice to owner or operator

Eolian recommended modifying proposed §25.65(c) to specify that ERCOT must notify the covered entity because, by practice and by rule, ERCOT communicates with the Resource Entities or QSEs, not with facilities. Similarly, SEIA recommended modifying proposed §25.65(c) to specify that notice must be provided to the owner or operator of the electric generating facility that is subject to the firming requirements set forth in the proposed rule.

Commission Response

The commission agrees with Eolian that notice should be provided to the owner or operator that is responsible for firming an electric generating facility. However, the commission declines to adopt the proposed term "covered entity" and instead uses the term "owner or operator" to maintain consistency with the language used in PURA §39.1592. The commission adopts SEIA's recommendation to clarify that notice must be provided for the electric generating facility that is subject to the performance requirements.

Two to three year lead time

NextEra recommended adding a requirement for ERCOT to calculate the SAGC two to three years before the compliance period begins to allow future electric generating facilities enough lead time to prepare for meeting the performance requirements set forth in the proposed rule. This lead time would be used to identify expected incremental costs of firming, negotiate contracts for new electric generating facilities, and develop new supply, or execute a bilateral contract to meet the performance requirements.

Commission Response

The commission declines to adopt NextEra's recommendation to add a requirement for ERCOT to calculate the SAGC two to three years before the compliance period begins. Specific timelines should be addressed in ERCOT protocols, which are developed with input from stakeholders and ultimately approved by the commission. Moreover, PURA §39.1592 becomes binding on certain electric generating facilities as soon as 2028 rendering NextEra's recommendation difficult, if not impossible, to implement.

Timeline to notice ahead of season

To allow an owner or operator sufficient time to economically structure their firming arrangements, Southern Power, TXOGA, and TPPA recommended specifying the time period that ERCOT must provide information under proposed §25.65(c). Southern Power recommended at least 45 days prior to the start of each season. TXOGA recommended at least 30 days prior to the start of each season. TPPA recommended at least six months in advance.

Commission Response

The commission declines to adopt Southern Power, TXOGA, and TPPA's recommendation to specify the time period by which ERCOT must provide the information described in adopted §25.65(c). ERCOT is best situated to determine the appropriate timeline based on its processes and workflow. Therefore, the commission leaves the timeline to be addressed in ERCOT protocols, which are developed with input from stakeholders and ultimately approved by the commission.

Content of notice and publication

TXOGA recommended modifying proposed §25.65(c) to require ERCOT to publish the high-risk hours, the methodologies, data summaries, and supporting statistics used to determine the SAGC values and the seasonal high-risk hours (and any seasonal PRC threshold). TPPA recommended requiring ERCOT to publicly publish the notice of high-risk hours.

Commission Response

The commission declines to adopt TXOGA's recommendation to require ERCOT to publish the methodologies, data summaries, and supporting statistics used to determine the SAGC values and the seasonal high-risk hours (and any PRC threshold) because it is unnecessary. ERCOT is required to notify the owner and operator of the SAGC values of their electric generating facilities, and ERCOT can provide additional information to the owner or operator upon request.

The commission agrees with TXOGA and TPPA that the high-risk hours should be published publicly. Accordingly, the commission makes clarifying changes to adopted §25.65(c).

Exigent circumstances

TEC recommended modifying proposed §25.65(c) to account for exigent circumstances that may be unknown to ERCOT that directly impact the ability of an electric generating facility to perform up to its SAGC by authorizing ERCOT to use a deadband or sliding scale to assess penalties. In essence, this approach would give resources with consistent overperformance greater leeway to continue overperformance without the increased risk of incurring a financial penalty. In contrast, the approach in the proposed rule would penalize an electric generating facility that consistently overperforms by including its overperformance in the calculation of the facility's SAGC thus increasing the facility's SAGC over time.

Commission Response

The commission agrees with TEC that high-performing electric generating facilities should not be punished for continued high availability. However, rather than establish a deadband or sliding scale to assess penalties, as recommended by TEC, the commission modifies the SAGC formula to cap it at 75% of an electric generating facility's seasonal rated capacity. This avoids disincentivizing a high performing electric generating facility to continue its high performance during all available hours.

Proposed §25.65(d) - Reliability requirement

Proposed §25.65(d) requires an electric generating facility to operate or be available to operate when called on for dispatch at or above the SAGC during a low operation reserve hour that occurs within a high-risk hour.

Clarifications

TPPA recommended using the term "firming" in place of "reliability" to ensure clarity in future discussions and to avoid conflating concepts such as the reliability standard and firming requirements.

Commission Response

The commission adopts TPPA's recommendation to remove the term "reliability" to provide clarity and avoid conflating concepts such as the reliability standard and firming. Additionally, the commission makes clarifying changes throughout the adopted rule to distinguish between performance requirements, firming a portfolio, providing firming service, and assuming a firming obligation.

SAGC applicability

TPPA recommended clarifying that the SAGC is specific to each electric generating facility and is not a uniform value applied to all facilities.

Commission Response

The commission adopts TPPA's recommendation to clarify that the SAGC is specific to each electric generating facility and is not a uniform value applied to all facilities. However, the commission adds the clarification to adopted §25.65(c)(1).

Existing electric generating facility's capacity to firm

NextEra and TCPA recommended specifying that an existing electric generating facility can be used to meet a new electric generating facility's performance requirement.

Commission Response

The commission declines to adopt NextEra and TCPA's recommendation to specify that an existing electric generating facility can be used to meet a new electric generating facility's performance requirement because it is unnecessary. An existing electric generating facility meets the definition of an electric generating facility and adopted §25.65(e)(1) states that an owner or operator of an electric generating facility may meet the performance requirements by supplementing or contracting with another electric generating facility.

Ability to provide full capacity for firming

APA and ACP, Eolian, NextEra, and TSSA recommended that an electric generating facility that provides firming should be able to provide all of its capacity for firming and not be limited to providing only that capacity that exceeds the SAGC.

Similarly, Tesla recommended modifying proposed §25.65(d) to specifically recognize that all output specifically from an energy storage resource may be used to meet an electric generating facility's firming requirement regardless of the energy storage resource's SAGC.

Commission Response

The commission declines to adopt APA and ACP, Eolian, NextEra, and TSSA's recommendation to allow an electric generating facility that provides firming to provide all of its capacity for firming. All electric generating facilities with a SGIA signed after January 1, 2027 must meet the performance requirements. Additionally, while existing electric generating facilities are not subject to the performance requirements, the commission determines that existing electric generating facilities should be able to provide firming to satisfy the performance requirements of new electric generating facilities only if the existing electric generating facilities themselves would satisfy the performance requirement. The commission agrees with Tesla's recommendation to recognize that the full output from an energy storage resource may be used to satisfy the performance requirements of an electric generating facility. Accordingly, the commission modifies adopted §25.65(e)(2)(B) to clarify that an energy storage resource may provide its full capacity to firm an electric generating facility that is subject to the performance requirements.

Sustained operation

GRIT recommended specifying that an electric generating facility must be capable of sustained operation for three to four hours during high-risk periods. According to GRIT, this requirement would help address reliability needs during extended events and would ensure that electric generating facilities providing firming capacity can deliver consistent output for the duration of the risk period.

Commission Response

The commission declines to adopt GRIT's recommendation to specify that an electric generating facility must be capable of sustained operation for three to four hours during high-risk periods because it is unnecessary. The risk of failing to meet the performance requirements is borne by the owner or operator of an electric generating facility subject to the performance requirements. If there is an expectation of longer duration risk within a season, that will be captured within the baseline period that may be subject to a financial penalty. Moreover, if the owner or operator of an electric generating facility relies on a firming resource that is incapable of being dispatched for the baseline period, the owner or operator of the firming resource that undertook the firming obligation is subject to the financial penalty for the low operation reserve hours in which the firming resource was unavailable.

Physical performance limitations

TAEBA recommended adding language to make explicit that performance hour expectations apply only when resources can physically perform to avoid punishing electric generating facilities for their inherent operational characteristics.

Commission Response

The commission declines to add TAEBA's recommended language explicitly stating that performance hour expectations apply only when resources can physically perform. The expected availability of an electric generating facility is accounted for by using the historical average availability across all hours in the season to determine the SAGC of an electric generating facility. An electric generating facility is expected to be available to dispatch up to its SAGC, or firm to do so, during times of highest reliability risk due to low operation reserves.

Mechanism for trade arrangements

NextEra recommended modifying proposed §25.65(d) to require ERCOT to develop a market mechanism by which owners or operators are able to contractually arrange to meet their firming obligations by trading firming MW after an event occurs in which penalties could be triggered.

Commission Response

The commission agrees with NextEra's recommendation to add language to the adopted rule requiring ERCOT to create a mechanism in the ERCOT protocols to allow owners or operators to arrange to meet their performance requirements by trading. The commission modifies the adopted rule accordingly.

Proposed §25.65(d)(1) - Firming

Proposed §25.65(d)(1) specifies that an owner or operator of an electric generating facility may meet the firming requirements set forth in the proposed rule by supplementing the owner or operator's portfolio or contracting with: (A) another electric generating facility that is either on-site or off-site; or (B) an on-site or off-site battery energy storage resource.

Full capacity can be provided for firming purposes

APA and ACP, SEIA, and TSSA recommended modifying proposed §25.65(d)(1) to specify that resources that are not subject to the performance requirements set forth in the proposed rule can offer their entire capacity, either by physical co-location or financial contracting, to firm an electric generating facility that is subject to the performance requirements set forth in the proposed rule.

Commission Response

The commission declines to adopt APA and ACP, SEIA, and TSSA's recommendation to specify that resources that are not subject to the performance requirements can offer their entire capacity. While existing electric generating facilities are not subject to the performance requirements, the commission determines that existing electric generating facilities should only be able to provide firming to satisfy the performance requirements of new electric generating facilities if the existing electric generating facilities themselves would satisfy the performance requirements.

Capacity in excess of SAGC

APA and ACP and TSSA recommended modifying proposed §25.65(d)(1) to specify that if an electric generating facility subject to the performance requirements has capacity in excess of its SAGC, the facility may provide that excess capacity to firm other electric generating facilities.

Commission Response

The commission adopts APA and ACP and TSSA's recommendation to specify that if an electric generating facility subject to the firming requirements has capacity in excess of its SAGC, the facility may provide that excess capacity to firm other electric generating facilities. Accordingly, the commission makes this clarification to adopted §25.65(e)(2)(A).

Proposed §25.65(d)(2) - Disclosure to ERCOT

Proposed §25.65(d)(2) requires an owner or operator that supplements from its portfolio or contracts with another electric generating facility or battery energy storage resource to meet its firming requirements to disclose the arrangement to ERCOT and provide ERCOT with any additional information reasonably required for ERCOT to perform its duties under the proposed rule.

Timeline for disclosure

APA and ACP, Eolian, SEIA, and TSSA recommended modifying proposed §25.65(d)(2) to specify that the disclosure must be made no later than two weeks following the end of each season.

Commission Response

The commission declines to adopt APA and ACP, Eolian, SEIA, and TSSA's recommendation to specify that the disclosure must be made no later than two weeks following the end of each season. This timeline is better addressed in ERCOT protocols, which are developed with input from stakeholders and must ultimately be approved by the commission.

Required disclosure should apply only for contractual arrangements outside of the owner or operator's portfolio

NextEra recommended modifying proposed §25.65(d)(2) to clarify that the disclosure requirements apply if an owner or operator contracts with another electric generating facility or energy storage resource "outside of its portfolio."

Commission Response

The commission declines to adopt NextEra's recommendation to state that the disclosure requirements apply if an owner or operator contracts with another electric generating facility or energy storage resource "outside of its portfolio" because ERCOT must be made aware of all arrangements, whether within the same portfolio or across portfolios, for settlement purposes.

Limiting the disclosed information

Because these arrangements are likely to include sensitive commercial information that is not necessary for ERCOT to perform its duties under the proposed rule, Southern Power recommended modifying proposed §25.65(d)(2) to limit the information provided to ERCOT to information that is strictly necessary, such as confirmation from the contracting parties of the trading arrangement and the MW capability transacted over the relevant season. For avoidance of doubt, Southern Power also recommended including a sentence that states parties to a trade will not be required to disclose copies of any contractual arrangements to such trade.

TPPA recommended modifying proposed §25.65(d)(2) to specifically identify the information that ERCOT requires to verify trade arrangements by clarifying that only the executed trade agreement is necessary.

Commission Response

The commission declines to adopt Southern Power and TPPA's recommendations to limit the information provided to ERCOT to specific information identified in the rule. The adopted rule already limits the information to that which is reasonably required by ERCOT to perform its duties under the rule. Any further specification is appropriately addressed in ERCOT protocols, which are developed with input from stakeholders and are ultimately approved by the commission.

ERCOT processes and procedures

TXOGA recommended requiring ERCOT to develop and document new procedures to prevent double-counting and to ensure verifiability of contracted firming resources. Similarly, TPPA recommended making ERCOT responsible for confirming that any trade arrangements established to meet the firming requirements set forth in the proposed rule are unique and that multiple electric generating facilities are not relying on the same contracted capacity to satisfy their obligation. Additionally, TPPA recommended requiring ERCOT to notify the parties to a trade arrangement if ERCOT is unable to confirm the trade arrangement or the trade arrangement relies on the same capacity that is already provide in another trade arrangement.

Commission Response

The commission agrees with TXOGA and TPPA's recommendations to require ERCOT to verify trade arrangements between an electric generating facility subject to the performance requirements and a firming resource that assumes a firming obligation. Accordingly, the commission modifies the rule to require ERCOT to develop new processes for confirming arrangements related to firming and notifying parties in a firming arrangement if ERCOT is unable to confirm the arrangement.

Load resource

TIEC recommended modifying proposed §25.65(d)(2) to include reference to a load resource to conform with TIEC's recommended modification to proposed §25.65(d)(1).

Commission Response

The commission declines to adopt TIEC's recommendation to explicitly include reference to a load resource in adopted §25.65(e)(4) to conform with its recommended modification to proposed §25.65(d)(1) because it is unnecessary. The commission restructures the adopted rule and identifies that a load resource may provide firming in adopted §25.65(e)(1).

Proposed §25.65(e)(1) - Financial penalty

Proposed §25.65(e)(1) requires ERCOT to impose a financial penalty on an electric generating facility if the electric generating facility fails to operate or is unavailable to operate when called on for dispatch at or above the SAGC during a low operation reserve hour that occurs within a high-risk hour and did not supplement effectively from its portfolio or by contractual arrangement disclosed to ERCOT for any shortages. Proposed §25.65(e)(1) also states that a financial penalty imposed must be 20% of the effective value of lost load used to determine the ancillary service demand curves (ASDCs) for the DAM and real-time market and applied to the shortage megawatt hours (MWh). Moreover, in seasons where more than 15 low operation reserve hours occur during the seasonal high-risk hours, only the 15 low operation reserve hours with the lowest level of PRC will be subject to the financial penalty.

SAGC should account for actual dispatchability in compliance interval

Potomac recommended that application of the language "an electric generating facility must operate or be available to operate when called on for dispatch at or above the SAGC during a low operation reserve hour that occurs within a high-risk hour" should take into consideration actual dispatchability in the compliance interval and not rely on telemetered availability status. For example, a firming resource with a two-hour start time cannot firm another resource in an hour where the firming resource is not currently operating at its low sustained limit

(LSL) or higher even if its status is "available" with a high telemetered HSL. The actual ability of a resource to provide energy or ancillary services to support the firming capacity should be accounted for in both the calculation of the SAGC and the accounting to determine if financial penalties are appropriate in any compliance intervals.

Commission Response

The commission declines to modify the adopted rule to accommodate Potomac's concern because it is unnecessary. The statute requires the owner or operator of an electric generating facility to demonstrate that their portfolio can operate or be available to operate when called on, and the adopted rule captures this language and requirement. This approach is also consistent with how the commission accounted for availability in the Texas Energy Fund Loan Program.

Resource-specific financial penalty relative to an average market resource

LCRA recommended modifying proposed §25.65(e)(1) to make the firming penalty resource-specific and reflective of the historic availability of each resource relative to an average market resource. In essence, LCRA recommended replacing the flat VOLL used to assess financial penalties across all resources, with a penalty that is based upon individual historic availability, and scaled or discounted based on the resource's historic contribution to system reliability. To effectuate this recommendation, LCRA also recommended modifying proposed §25.65(e)(1) to require ERCOT to calculate and publish a low, medium, and high performance threshold ahead of each season, along with each resource's calculated penalty.

Commission Response

The commission declines to adopt the scaled penalty structure proposed by LCRA. However, to mitigate concerns that financial penalties may have an oversized impact on high-performing electric generating facilities, the commission modifies the definition for SAGC to incorporate a cap set at 75% of an electric generating facility's seasonal rated capacity.

Specify the penalty amount instead of linking to VOLL

APA and ACP, Eolian, SEIA, TCPA and TSSA recommended modifying proposed §25.65(e)(1) to provide regulatory certainty by specifying that the penalty is $1,000 per MWh. APA and ACP and TSSA also recommended clarifying that if the peaker net margin threshold is reached and the system-wide offer cap is set to the low system-wide offer cap, then the penalty is $400 per MWh. SEIA recommended clarifying that a financial penalty may be assessed on fewer than 15 low operation reserve hours in a season, with the potential that there may be no low operation hours in a season.

Commission Response

The commission declines to adopt APA and ACP, Eolian, SEIA, TCPA and TSSA's recommendation to set the financial penalty to a specific dollar per MWh value in the adopted rule. However, to provide regulatory certainty that the value of the financial penalties will not change without a commission rulemaking taking place, the commission modifies the adopted rule to reference the system-wide offer cap that is in effect.

Equate the penalty to 20% of the system-wide offer cap and implement a tolerance band

NextEra recommended modifying proposed §25.65(e)(1) to equate the penalty to 20% of the system-wide offer cap for a maximum of 15 hours per season. NextEra also recommended for purposes of calculating financial penalties, implementing a tolerance band for shortages that is equal to the higher of 10 MW or 10% of the seasonal rated capacity.

Commission Response

The commission adopts NextEra's recommendation to modify the adopted rule to equate the penalty to 20% of the system-wide offer cap that is in effect. However, the commission declines to implement a tolerance band for shortages, as the statute requires financial penalties for failing to comply with the performance requirements, even at a de minimis level.

Base the penalty on the real-time system lambda or 20% of the effective VOLL

TXOGA recommended modifying proposed §25.65(e)(1) to base the financial penalty on the lower of the real-time system lambda or 20% of the effective VOLL.

Commission Response

The commission declines to adopt TXOGA's recommendation to tie the financial penalty value to the real-time system lambda. Instead, the commission modifies the adopted rule to set the financial penalty at 20% of the system-wide offer cap that is in effect. Having a clearly defined financial penalty provides certainty on the potential exposure to financial penalties in each season.

Gaming opportunities

Potomac recommended that during compliance hours, eligible electric generating facilities are considered to commit their SAGC into the market under the same rules imposed by the DAM. An electric generating facility that operates below its SAGC during compliance intervals would be required to pay an imbalance payment in the real-time market. During extremely tight conditions, the resulting firming penalty would be valued closer to VOLL while less tight conditions result in a lower penalty. This would eliminate gaming opportunities and scale the penalty to the reliability risk that the grid experiences.

Commission Response

The commission declines to adopt Potomac's recommendation to scale the financial penalties. Financial penalties for failure to meet the performance requirements under the adopted rule would only be imposed during low operation reserve hours, which are the times when ERCOT is facing tight conditions. Therefore, scaling the financial penalties based on how tight the tight conditions are is unnecessary.

Goal of the firming program

TPPF recommended that the financial penalty be based on the cost of new entry (CONE) multiplied by the unit's average annual firming requirement. TPPF cautioned that by basing the financial penalty amount on VOLL, the proposed rule advances the notion that the firming program is designed to incentivize greater resiliency--namely, performance during emergency conditions--rather than to improve the valuation of generator reliability on a consistent annual basis. TPPF recommended that the firming program should be set with two key points in mind (1) the financial penalty sets the maximum amount that generators will pay for firming resources (if firming costs more than the financial penalty, then generators will prefer to pay the financial penalty); and (2) the true value of "full firming" is the CONE for a dispatch-

able generator--such as a gas combustion turbine and not a duration limited resource such as energy storage--that is equal in size to the variable generator's performance requirement. At a broad level, the goal of the firming program should be to ensure that new units entering the ERCOT market each year are meeting the reliability standard, either individually or at least in the aggregate. If that goal is achieved, then ERCOT can be assured of meeting the reliability standard in the future; conversely, not achieving that goal means that at some point the resource mix will not be able to meet the reliability standard. Therefore, the commission should assess whether the financial penalty necessary to achieve that goal is equal to the full firming cost or less than that.

Commission Response

The commission disagrees with TPPF that the purpose of the firming program is to ensure that new units entering the ERCOT market each year are meeting the reliability standard, either individually or in the aggregate. The purpose of the performance requirements established by PURA §39.1592 is to incentivize owners or operators of electric generating facilities to ensure that their electric generating facilities are available at their average capability in a given season during hours with tight conditions due to low operation reserves that occur within that season. The adopted rule satisfies this objective by requiring the owner or operator of an electric generating facility subject to the performance requirements to demonstrate that they can perform during these hours with low operation reserves, supplement or contract with firming resources that can perform during those hours, or risk being penalized for failing to do so.

The commission also disagrees with TPPF's recommendation to base the financial penalty on the cost of new entry of a firming resource, specifically a new combustion turbine. The statute specifically states that the owner or operator of an electric generating facility is allowed to supplement or contract with an energy storage resource to satisfy these performance requirements, indicating that the cost of new entry for any specific dispatchable technology would not be the appropriate threshold to set the financial penalties for failing to meet the performance requirements.

Base the penalty on 10% of ancillary service pricing

TAEBA recommended modifying proposed §25.65(e)(1) to base the penalty on 10% of ancillary service pricing that is required to cover any shortfalls of expected generation.

Commission Response

The commission declines to adopt TAEBA's recommendation to base the penalty on 10% of ancillary service pricing that is required to cover any shortfalls of expected generation. The financial penalty in the adopted rule strikes the balance of providing a deterrence for non-compliance and providing the owner or operator of an electric generating facility with certainty as to the potential financial penalty they could face if their portfolio fails to satisfy the performance requirements.

Decrease the number of hours that generators must firm

TAEBA recommended decreasing the number of hours that generators must firm on an annual basis from 60 to 40. TAEBA reasoned that 60 hours seems excessive when EEAs are so rare.

Commission Response

The commission disagrees with TAEBA and declines to decrease the number of hours in which a financial penalty could potentially be imposed on the owner or operator of an electric generating facility that fails to satisfy the performance requirements. While it is possible that there could be 60 low operation reserve hours in a year, financial penalties would only be assessed for a maximum of 15 hours in any given season. If there are 60 low operation reserves hours with an associated financial penalty throughout the year, that would mean that ERCOT is experiencing tight conditions in all seasons, and the proposed number of penalty hours would be warranted.

Set the penalty at a level that does not result in market distortions

Vistra recommended modifying proposed §25.65(e)(1) by replacing the requirement that the financial penalty imposed be 20% of the effective VOLL used to determine the ASDCs with a requirement that the financial penalty be set at a level that does not result in distortions for the DAM and real-time market.

Commission Response

The commission declines to modify the rule to align with Vistra's recommendation to state generally that the financial penalty must be set at a level that does not result in distortions for the DAM and real-time market. The financial penalty in the adopted rule strikes the balance of providing a deterrence for non-compliance and providing the owner or operator of an electric generating facility with certainty as to the potential financial penalty they could face if their portfolio fails to satisfy the performance requirements.

Align with requirement to deposit penalties into state treasury

Eolian recommended modifying proposed §25.65(e)(1) to align with PURA §15.033 and Texas Government Code §404.094, which require that penalties collected under PURA be deposited into the state treasury and credited to the General Revenue Fund unless otherwise authorized by statute.

Commission Response

The commission disagrees with Eolian that the financial penalties contemplated in PURA §39.1592 are subject to the requirements of PURA §15.033 and Texas Government Code §404.094, which require that penalties collected under PURA be deposited into the state treasury and credited to the General Revenue Fund unless otherwise authorized by statute. PURA §39.1592 not only contemplates that ERCOT, not the commission, must impose financial penalties but also that ERCOT must provide financial incentives for the firming program. Importantly, PURA §39.1592 is silent with respect to how the financial incentives for the firming program should be funded.

A more careful reading of PURA in its entirety suggests that the commission must require ERCOT to impose financial penalties to underperformers and provide financial incentives to overperformers under PURA §39.1592 independent of PURA Chapter 15. Throughout Subchapter B of Chapter 15, the term "penalty" is used to more broadly describe "administrative penalty" and "civil penalty." PURA §15.027 requires an administrative penalty collected under Subchapter B, Enforcement and Penalties, of Chapter 15, Judicial Review, Enforcement, and Penalties, be sent to the comptroller. PURA §15.033 requires fines or penalties collected under another provision of PURA (i.e., not collected under Subchapter B of Chapter 15 and therefore not collected under PURA §15.027) be paid to the commission. Although PURA §15.033 uses the broader term "penalties," context from the rest of Subchapter B of Chapter 15 suggests that the term "penalties" is used to describe administrative penalties and civil penalties that are collected under a provision of PURA

that falls outside of Subchapter B of Chapter 15. In essence, PURA §15.027 and PURA §15.033 both address the disposition of administrative penalties and civil penalties. Those administrative penalties and civil penalties that are collected under Chapter 15 must be sent to the comptroller and those administrative penalties and civil penalties that are collected under any other provision in PURA, must be paid to the commission. The financial penalties that are contemplated in PURA §39.1592 are neither an administrative penalty nor a civil penalty. As the more specific provision, PURA §39.1592 prevails over the more general Chapter 15 provisions, including PURA §15.033.

Moreover, in instances where a provision of Chapter 39 is to be administered in accordance with PURA Chapter 15, the Texas Legislature has explicitly stated so. See PURA § 39.101(e) (stating the commission may assess civil and administrative penalties under Section 15.023 and seek civil penalties under Section 15.028); PURA § 39.151(d-4)(5) (stating the commission may assess administrative penalties against ERCOT and the attorney general may apply for a court order to require ERCOT to comply with commission rules and orders in the manner provided by Chapter 15); PURA § 39.157(a) (stating the commission may seek civil penalties as necessary to eliminate or to remedy market power abuse or a violation as authorized by Chapter 15 or by imposing an administrative penalty as authorized by Chapter 15); PURA 39.357 (stating that the commission may impose an administrative penalty, as provided by Section 15.023 for violations described by Section 39.356); and PURA § 39.661 (stating that the commission may use any enforcement mechanism established by Chapter 15 against any entity that fails to remit excess receipts from the uplift balance financing under Section 39.653(e) or otherwise misappropriates or misuses amounts received from the uplift balance financing Subchapter N). In contrast, PURA § 39.1592 does not reference PURA Chapter 15.

Finally, Texas Government Code §311.021(3), (4), and (5) collectively state that in enacting a statute, it is presumed that a just and reasonable result is intended; a result feasible of execution is intended; and public interest is favored over any private interest. The Texas Legislature did not appropriate money to fund the firming program contemplated in PURA §39.1592. That leaves two remaining options to fund the required financial incentives: (1) load serving entities; or (2) the pool of financial penalties imposed and collected by ERCOT. Because the purpose of the firming program is to ensure that new electric generating facilities are operating or available to operate during tight conditions, electric generating facilities that are unable to do so should bear the cost for failing to meet the performance requirements, not load serving entities. Additionally, ERCOT routinely settles market payments based on electric generating facilities' availability and performance. Therefore, the commission determines that when reading PURA in its entirety, Chapter 15 is not applicable to the financial penalties imposed by ERCOT under PURA §39.1592. Additionally, the commission determines that it is reasonable to require that the financial incentives be provided from the pool of financial penalties that are imposed and collected by ERCOT.

Consequences of a bilateral trade

ERCOT recommended modifying proposed §25.65(e)(1) to state that if a QSE enters into a bilateral trade on behalf of an electric generating facility in its portfolio such that another QSE's electric generating facility assumes responsibility for providing the energy or ancillary service subject to the trade, ERCOT will look to that entity for performance and settlement purposes.

Commission Response

The commission agrees with ERCOT's recommendation and modifies the adopted rule to clarify that a firming resource that supplements the portfolio of, or contracts with, the owner or operator of an electric generating facility that is subject to the performance requirements assumes a firming obligation, including the financial penalties associated with the performance requirement. Additionally, the commission modifies the adopted rule to clarify that if a QSE enters into a bilateral trade on behalf of an electric generating facility in its portfolio such that another QSE's electric generating facility assumes responsibility for providing the energy or ancillary service subject to the trade, ERCOT must look to that entity for performance and settlement purposes.

Clarification

TPPA recommended clarifying that if the system does not face actual risk during the lowest reserve hours, then no penalty should be assessed. TPPA also recommended clarifying that an electric generating facility that fails to meet its performance requirement will not be subject to any penalties beyond the financial penalty outlined in proposed §25.65(e)(1).

Commission Response

The commission agrees with TPPA and adopts TPPA's recommendation to clarify that there will not be a financial penalty imposed in a season with no low operation reserve hours. However, the commission declines to adopt TPPA's recommendation to clarify that an electric generating facility that fails to meet its performance requirement will not be subject to any penalties beyond the financial penalty outlined in the adopted rule. The financial penalty outlined in adopted §25.65(f) is the only penalty created by this rule, but being assessed this financial penalty does not prevent additional penalties from being assessed for things unrelated to the performance requirements in the adopted rule.

Proposed §25.65(e)(2) - Financial penalty exemption

Proposed §25.65(e)(2) exempts an electric generating facility from a financial penalty if the electric generating facility is: (A) unavailable during the applicable hour due to a planned maintenance outage or derate that was approved by ERCOT, or a transmission outage; (B) a switchable generation resource committed to a neighboring independent system operator (ISO) or regional transmission operator (RTO); (C) awarded in the DAM; or (D) awarded ancillary service or reliability service that has an associated penalty for failure to perform.

Entities that assume a firming obligation

ERCOT recommended modifying proposed §25.65(e)(2) to state that an entity that accepts a contractual arrangement to provide firming to an electric generating facility is not exempt from financial penalties.

Commission Response

The commission agrees with ERCOT's recommendation to clarify that a firming resource that accepts a contractual arrangement to provide firming to an electric generating facility is not exempt from financial penalties and modifies the adopted rule accordingly. A QSE representing a firming resource that assumes a firming obligation could be subject to a financial penalty if their firming resource fails to satisfy that obligation.

Gaming

HEN raised a concern that because proposed §25.65(c)(2) requires ERCOT to publish the high-risk hours for the upcoming season, owners may conveniently request outages during those periods to avoid the potential for financial penalties under proposed §25.65(e).

Commission Response

The commission disagrees with HEN that publishing the high-risk hours for the upcoming season may incentivize owners of electric generating facilities to request outages during the baseline periods to avoid the potential for financial penalties. The published baseline periods are hours that occur every day within a season where an owner or operator of an electric generating facility could face a financial penalty if their electric generating facility is unable to satisfy the performance requirements in the adopted rule. This would mean that the owner or operator would need to request outages only during specific hours during the season, which is not consistent with the process that ERCOT uses to approve planned outage requests.

Opportunity outage

TCPA and Vistra recommended modifying proposed §25.65(e)(2)(A) to exempt an electric generating facility from financial penalties if the electric generating facility is unavailable due to an opportunity outage, which occurs at times when an electric generating facility is forced offline but has been previously approved for a planned outage within the next two days.

Commission Response

The commission adopts TCPA and Vistra's recommendation to exempt an electric generating facility from financial penalties if the electric generating facility is unavailable due to an opportunity outage. ERCOT protocols describe opportunity outages as a special category of Planned Outages, which are distinct from planned maintenance outages. The commission modifies the adopted rule accordingly.

Curtailment

APA and ACP, Eolian, NextEra, SEIA, and TSSA recommended modifying proposed §25.65(e)(2)(A) to exempt an electric generating facility from financial penalties if the electric generating facility is curtailed by ERCOT to manage transmission congestion or other reliability issues.

Commission Response

The commission declines to adopt APA and ACP, Eolian, NextEra, SEIA, and TSSA's recommendation to exempt an electric generating facility from financial penalties if the electric generating facility is curtailed by ERCOT. Electric generating facilities that receive curtailment instructions from ERCOT would not have their high sustained limit impacted by the curtailment. Therefore, the curtailment instruction would not impact the ability of the electric generating facility to satisfy the performance requirements, and no exemption is warranted.

Force majeure event

APA and ACP, LCRA, NRG, Southern Power, TEC, and TSSA recommended modifying proposed §25.65(e)(2)(A) to exempt an electric generating facility from financial penalties if the electric generating facility is unavailable due to a force majeure event.

Commission Response

The commission declines to adopt APA and ACP, LCRA, NRG, Southern Power, TEC, and TSSA's recommendation to include a specific exemption for unavailability during a force majeure event. An electric generating facility is expected to operate during extreme weather. However, as noted below, the commission modifies the adopted rule to exempt an electric generating facility that is unavailable due to a market suspension, which is defined in ERCOT protocols to include force majeure events that disable all, or a significant portion of, the necessary data and/or infrastructure for operations of ERCOT's systems and markets.

Forced outage or derate

LCRA recommended modifying proposed §25.65(e)(2)(A) to exempt an electric generating facility from financial penalties if the electric generating facility is unavailable due to a forced outage or derate having lasted longer than 60 days. LCRA noted that the addition of a $1,000/MWh financial penalty necessarily increases the cost of: (1) managing through a small maintenance issue, such as a tube leak, or (2) entering a forced outage for a small maintenance issue, such as a tube leak.

Commission Response

The commission declines to adopt LCRA's recommendation to add an exemption that accommodates extended forced outages. While the owner or operator of an electric generating facility experiencing an extended forced outage would face increased risk to a financial penalty for the duration of that electric generating facility's extended forced outage, the owner or operator could contract with a firming resource to satisfy the performance requirements while their electric generating facility is offline. Additionally, the performance of that electric generating facility would result in a decreased SAGC in future years, meaning that the owner or operator could earn additional incentives if the electric generating facility is able to perform in those future years.

Market suspension

ERCOT recommended modifying proposed §25.65(e)(2)(A) to exempt an electric generating facility from penalties if the electric generating facility is unavailable due to a market suspension, as that term is defined in the ERCOT protocols.

Commission Response

The commission adopts ERCOT's recommendation to add an exemption for unavailability due to a market suspension.

Environmental compliance requirements

LCRA and NRG recommended modifying proposed §25.65(e)(2)(A) to exempt an electric generating facility if the electric generating facility is unavailable due to environmental compliance requirements.

Commission Response

The commission agrees with LCRA and NRG's recommendation to exempt an electric generating facility if the electric generating facility is unavailable due to environmental compliance requirements. Electric generating facilities that are available to perform but restricted due to environmental compliance requirements should not be assessed a penalty for failure to satisfy the performance requirements. The commission modifies the adopted rule accordingly.

Contractual arrangement

OPUC recommended modifying proposed §25.65(e)(2)(A) to account for an instance where an owner or operator of an electric

generating facility has a contractual arrangement to supplement its portfolio to meet the performance requirements.

Commission Response

The commission declines to adopt OPUC's recommendation to modify the rule to include an exemption for the owner or operator of an electric generating facility that has a contractual arrangement in place to meet its performance requirements. However, the commission does modify the adopted rule to make clear that a firming obligation (or partial firming obligation) is assumed by the owner or operator of a firming resource once the contract has been received and verified by ERCOT.

Switchable generation resource

ERCOT recommended modifying proposed §25.65(e)(2)(B) to apply to specific hours consistent with the rest of the proposed rule since a switchable generation resource may not be committed to the neighboring ISO or RTO for an entire season or the definition of the relevant season may differ.

Commission Response

The commission adopts ERCOT's recommendation to exempt a switchable generation resource that is committed to a neighboring ISO or RTO for the applicable hour rather than the applicable season. This aligns with the rest of the adopted rule. Moreover, this is consistent with the fact that a switchable generation resource may not be committed to the neighboring ISO or RTO for an entire season, or the definition of the relevant season may differ for the neighboring ISO or RTO.

Energy or ancillary service award

ERCOT, TCPA, and Vistra recommended modifying proposed §25.65(e)(2)(C) to clarify that the exemption applies if the electric generating facility is awarded energy or ancillary services in the DAM.

Commission response

The commission adopts ERCOT, TCPA, and Vistra's recommendation to clarify that the exemption applies if the electric generating facility is awarded energy or ancillary services in the DAM. The commission modifies the adopted rule accordingly.

Strike reference to "rules"

OPUC and Vistra recommended modifying proposed §25.65(e)(2)(C) by striking the reference to "rules" to provide clarity.

Commission Response

The commission adopts OPUC and Vistra's recommendation to remove the reference to "rules" in adopted §25.65(f)(2)(C) to provide clarity.

Strike exemption for award in DAM

HEN recommended striking proposed §25.65(e)(2)(C) because the firming requirements must be implemented December 1, 2026, one year after the implementation of real-time co-optimization. At that time, the DAM will be a purely financial market and only tangentially linked to a future real-time performance obligation.

Commission Response

The commission declines to adopt HEN's recommendation to remove the exemption for an award in the DAM. While only tangentially linked to a future real-time performance obligation, an electric generating facility that clears MW in the DAM but fails to perform in real-time would still bear the financial risk of non-performance.

Clarify exemption is for entire facility or portion of capacity

Southern Power recommended modifying proposed §25.65(e)(2)(C) to clarify whether the intent is to exempt an entire facility if any portion of its capacity is committed in the DAM or only to the extent of the capacity that cleared in the DAM.

Commission Response

The commission adopts Southern Power's recommendation to clarify that only the portion of an electric generating facility that is subject to a performance obligation for capacity that cleared in the DAM is exempt from the performance requirements under the adopted rule. The commission modifies the adopted rule accordingly.

Gaming

Potomac noted that there is an opportunity for gaming based on the structure of the proposed rule. Under certain conditions, an electric generating facility may face a lower cost by settling an imbalance in the real-time market than by paying the penalty imposed under the firming requirement set forth in the proposed rule. The MW a resource commits in the DAM or to ancillary services are exempt from firming obligations. In practice, firming penalties are typically triggered during hours when the ancillary services demand curves already produce high energy prices. In those cases, the firming penalty is usually less burdensome than an imbalance payment. However, the triggers differ. Compliance hours for the firming requirement are based on PRC, while high ASDC prices are driven by reserve levels. This means it is possible to have hours when PRC is low, but reserves remain sufficiently high to keep energy prices low. In such a case, an electric generating facility may be incentivized to commit its SAGC into DAM, avoid the firming penalty, and face only a relatively small imbalance cost.

Commission Response

The commission acknowledges Potomac's concern about the opportunity for gaming but declines to modify the adopted rule. ERCOT's latest biennial report on the operating reserve demand curve (ORDC) notes that when system conditions tighten and reserves become scarcer, the ORDC reserves and PRC tend to converge. The performance requirements will only trigger under tight system conditions, meaning that the risk of an extreme separation that causes a low PRC but a sufficiently high level of reserves that keeps energy prices low is minimal.

Exempt full capacity

APA and ACP recommended modifying proposed §25.65(e)(2)(C) and (D) to clarify that an electric generating facility is exempt from financial penalties if the electric generating facility is awarded any commitment or amount of capacity in the DAM, or for an ancillary service or reliability service that has an associated penalty for failure to perform.

Commission Response

The commission declines to adopt APA and ACP's recommendation to provide a full exemption for an electric generating facility that is awarded any amount of capacity in the DAM or for providing ancillary services or reliability services. Such an approach would enable an electric generating facility to circumvent the per-

formance requirements by offering as little as one MW into the DAM or for an ancillary service or reliability service, which is not reasonable.

Exempt portion of capacity

TPPA recommended reorganizing proposed §25.65(e)(2)(C) and (D) to clarify that an electric generating facility is exempt from the performance requirements if it is awarded energy, an ancillary service, or a reliability service in the DAM. To prevent electric generating facility from bidding nominal amounts solely to qualify for an exemption, LCRA and TPPA recommended specifying that the exemption applies only to the number of MW awarded and only to the hours in which the award is received. Finally, TPPA recommended creating a process to allow an electric generating facility to request an exemption from penalties if ERCOT denies or modifies a planned outage request.

Commission Response

The commission agrees with TPPA and LCRA that the DAM exemption should only apply to the portion of an electric generating facility's capacity that is awarded in the DAM and should be limited to the hours in which the award is received. This approach ensures that the portion of the electric generating facility that is not awarded in the DAM is still subject to the performance requirements under the adopted rule and recognizes that for the portion awarded in the DAM, the electric generating facility is already incentivized to perform because of the risk of a financial penalty for failure to perform under its obligations in the DAM. The commission modifies the adopted rule accordingly.

The commission declines to modify the adopted rule to accommodate the recommendation from TPPA to create a process to allow an electric generating facility to request an exemption from financial penalties if ERCOT denies or modifies a planned outage request. Any changes around the approval of planned outages should be addressed in the ERCOT stakeholder process and incorporated into the ERCOT protocols, which are developed with input from stakeholders and ultimately approved by the commission.

Tighten the exemption

TCPA recommended modifying proposed §25.65(e)(2)(C) and (D) to tighten the exemption afforded DAM awardees to avoid incentivizing an electric generating facility from taking on a performance obligation that it cannot satisfy simply to avoid a financial penalty for failing to perform or firm under the proposed rule.

Commission Response

The commission adopts TCPA's recommendation to tighten the exemption that is afforded DAM awardees to avoid incentivizing gaming behavior. The commission modifies the adopted rule to state that only the MW that are awarded in the DAM are exempt from the performance requirements, limiting the potential for gaming to avoid the financial penalty for failing to satisfy the performance requirements.

Claw back

ERCOT recommended modifying proposed §25.65(e)(2)(D) to exempt an electric generating facility from financial penalties if the electric generating facility is awarded an ancillary service or reliability service that has an associated claw back. This change captures electric generating facilities that are already performing during a low operation reserve hour but are providing energy in an ancillary service, such as firm fuel supply service, which is subject to a claw back.

Commission Response

The commission adopts ERCOT's recommendation to modify adopted §25.65(f)(2)(D) to exempt an electric generating facility from financial penalties if the electric generating facility is awarded an ancillary service or reliability service that has an associated claw back. The commission modifies the adopted rule accordingly.

Contractual arrangement to serve load

LCRA recommended modifying proposed §25.65(e)(2)(D) to include contractual arrangements to serve load, which creates a performance requirement not dissimilar from a DAM award for energy.

Commission Response

The commission declines to adopt LCRA's recommendation to include contractual arrangements to serve load in the list of exemptions from financial penalties. PURA §39.1592 does not provide an exemption for any specific load serving entity who may have an obligation to serve their load. Instead, the statute is focused on all new electric generating facilities that are participating in the ERCOT wholesale market and aims to supplement and improve performance of those electric generating facilities during tight conditions, regardless of the type of load serving entity that they are providing electricity for. Even the entities that have an obligation to serve their load are part of the wholesale market and rely on ERCOT to balance the grid in real-time.

Proposed §25.65(e)(3) - Financial incentive

Proposed §25.65(e)(3) requires ERCOT to provide a financial incentive to an electric generating facility if the electric generating facility operates or is available to operate when called on for dispatch above the SAGC during a low operation hour that occurs within a high-risk hour. Proposed §25.65(e)(3) also states: (A) the total financial incentives awarded must not exceed the total financial penalties imposed; (B) the financial incentives payable to an electric generating facility must be equal to the total financial penalties imposed divided by the total MW that exceeded the SAGC; (C) a financial incentive must be calculated based on the total financial penalties imposed divided by available MWh and allocated to an eligible electric generating facility based on the percentage of MWh that exceed the performance requirements; and (D) an electric generating facility that is not required to operate or be available to operate is not eligible to receive a financial incentive.

Eligibility to participate in incentive pool

Potomac recommended that a firming resource should not be eligible to participate in the financial incentive pool. Potomac noted that a firm resource is expected to have the incentive to operate during truly tight system conditions (high risk to reliability) at a level above their SAGC. In this case, and especially if a trigger for delivery period is set to reflect true risk to reliability, the firming resource will have a market incentive to deliver a high level of availability and will receive higher compensation as a result. During such intervals, a high system locational marginal price (LMP) and shortage price adders are expected, creating a stronger incentive compared to revenue from a firming contract or the incentive pool. Eligibility to participate in both is likely redundant and will result in excessive cost.

Commission Response

The commission agrees with Potomac that a firming resource should not be eligible to receive both compensation from firming

and financial incentives. Financial incentives are solely reserved for new electric generating facilities that are overperforming both their SAGC and any additional firming obligation they take on from another electric generating facility during low operation reserve hours. If the performance of a new electric generating facility exceeds both the facility's SAGC and any additional firming obligation the facility takes on, the owner or operator of that facility will be eligible for an incentive for that additional performance. The commission modifies the adopted rule to provide clarity on this.

Clarification

ERCOT recommended modifying proposed §25.65(e)(3) to clarify that ERCOT is only required to provide a financial incentive if financial penalties were also assessed in the applicable season.

Commission Response

The commission adopts ERCOT's recommendation to clarify that financial incentives will be paid out only if financial penalties are collected and modifies the adopted rule accordingly.

Financial incentive cap

NRG recommended modifying proposed §25.65(e)(3) by capping the financial incentive at $1,000 per MWh for each individual resource that overperforms. TXOGA recommended capping financial incentives so that a net-short resource cannot finish net positive after seasonal netting.

Commission Response

The commission adopts NRG and TXOGA's recommendation to cap the financial incentive at the penalty price for each MWh and modifies the adopted rule accordingly.

Distribution of excess financial incentives

OPUC recommended financial incentives should be distributed on a MWh of exceedance ratio share amongst the electric generating facilities that exceeded the performance requirements in a season, up to a maximum of 10% of the cost of new entry (CONE), spread out evenly across the hours of highest risk. OPUC also recommended that any financial incentives that exceed the incentive cap should be allocated to load, potentially via a reduction in transmission cost of service (TCOS).

TXOGA recommended modifying proposed §25.65(e)(3) to explicitly state that if no electric generating facility qualifies for financial incentives in a season, ERCOT should pay the financial incentives to load for that season on a pro-rata energy basis.

ERCOT and NRG recommended modifying proposed §25.65(e)(3) to account for any excess funds remaining after disbursement of financial incentives by allowing those excess funds to be allocated to load serving entities based on their average load ratio share for the season.

Commission Response

The commission agrees with OPUC that there should be a cap on the financial incentives that an electric generating facility could be paid but declines to base this cap on a percentage of the cost of new entry. Instead, the commission modifies the adopted rule to cap the financial incentive on a dollar per MWh basis consistent with the financial penalties cap, which is on a dollar per MWh basis.

The commission agrees with ERCOT, OPUC, NRG, and TXOGA that if no electric generating facilities qualify for financial incentives in a season, the collected financial penalty funds should be paid out to load. The commission adopts ERCOT and NRG's recommendation that, in the event excess revenues are collected from financial penalties, those excess funds should be allocated to load serving entities based on a seasonal load ratio share basis. The commission modifies the adopted rule accordingly.

Rolling pooled financial penalties into next season

TEC recommended rolling the pooled financial penalties into the next season to provide additional financial incentives. Allowing pooled financial penalties to roll over avoids any need to eventually seek additional support from load for proper financial incentives. TEC also recommended that electric generating facilities that are net short on their performance requirements for a season should not be eligible for a financial incentive payment. Allowing an electric generating facility to take advantage of financial incentives while remaining net short on its obligations defeats the intended purpose of the performance requirements, leaving the grid subject to underperformance from an electric generating facility while still rewarding it for inconsistent overperformance.

Commission Response

The commission disagrees with TEC that pooled financial penalties should roll into the next season. Within the firming program, the value from electric generating facilities overperforming is to firm up electric generating facilities that are not able to satisfy their performance requirements. If a season has more electric generating facilities that are overperforming than underperforming, the value added from that overperformance is diminished, and the compensation from financial incentives should reflect that.

The commission agrees with TEC that electric generating facilities that are net short on their performance requirements for a season should not receive a financial incentive payment. The commission modifies the adopted rule to cap the hourly financial incentive that an overperforming electric generating facility can receive to address this concern.

Financial incentives funded independently of penalty collection

Eolian recommended modifying proposed §25.65(e)(3)(A) by replacing it with language that conforms with its recommended changes to proposed §25.65(e)(1). Specifically, Eolian recommended replacing proposed §25.65(e)(3)(A) with a statement that financial incentives must be funded independently of penalty collection and may not be limited to, or sourced from, collected penalties, consistent with PURA §§39.1592(c) and 15.033, and Texas Government Code 404.094, which require penalties to be deposited to the state treasury and credited to the General Revenue Fund.

Commission Response

The commission declines to adopt Eolian's recommendation to require financial incentives be funded independently of financial penalty collection and may not be limited to, or sourced from, collected financial penalties based on the applicability of PURA §15.033 and Texas Government Code §404.094, which require administrative penalties to be deposited to the state treasury and credited to the General Revenue Fund. The commission disagrees with Eolian's interpretation for the reasons stated above in the commission's response to Eolian's comments on proposed §25.65(e)(1).

Strike duplicative subsection

ERCOT recommended striking proposed §25.65(e)(3)(B) because it appears to be duplicative of proposed §25.65(e)(3)(A).

Commission Response

The commission adopts ERCOT's recommendation to remove §25.65(e)(3)(B) because the proposed clause is unnecessary.

Portfolio calculation of financial incentive

Eolian recommended modifying proposed §25.65(e)(3)(B) by replacing it with a statement that the financial incentive payable to a qualifying covered entity equals an incentive rate (established by the commission by order or rule) multiplied by the covered entity's portfolio over-performance MWh, where portfolio over-performance MWh equals, for each qualifying hour, the positive difference between the covered entity's portfolio output (or availability to operate when called) and its portfolio SAGC, summed across all low operation reserve hours that occur within the baseline period. If the commission establishes a seasonal incentive budget ERCOT shall allocate payments pro rata to qualifying covered entities in proportion to their portfolio over-performance MWh.

Commission Response

The commission declines to modify the adopted rule as proposed by Eolian. The commission will utilize the financial penalties collected to fund the financial incentives for over-performance, and as such, the commission disagrees with the proposed methodology.

Formula

TPPA recommended streamlining proposed §25.65(e)(3)(B) and (C) by using a formula and more clearly describing how the financial incentive will be calculated.

Commission Response

The commission adopts TPPA's recommendation to include formulas in addition to the written description of the financial incentive calculation. The commission modifies the adopted rule accordingly.

Not relieved of other obligations or penalties

Eolian recommended modifying proposed §25.65(e)(3)(C) by replacing it with a statement that receipt of a financial incentive does not relieve any resource "owned or contracted" from obligations or penalties applicable under other ERCOT markets, services, or commission rules. Over-performance MWh used to calculate a portfolio incentive may not be double counted toward any other incentive program for the same MW and hour unless expressly authorized by the commission.

Commission Response

The commission agrees with Eolian that receipt of a financial incentive does not relieve a resource of any other obligation it has, but declines to modify the adopted rule, as doing so is unnecessary. The commission partially agrees with Eolian's recommendation around double-counting of a resource. Only electric generating facilities that the performance requirements apply to are eligible for financial incentives, and capacity from these facilities that is used to satisfy the performance requirements of another electric generating facility should not be eligible to also receive a financial incentive payment, as that capacity is being utilized to firm up an electric generating facility that is not satisfying the performance requirements. The commission declines to apply this cap to any other incentive programs.

No financial incentive for overperformance in hours that a resource is exempt

NRG recommended modifying proposed §25.65(e)(3)(D) to clarify that an electric generating facility with an exemption in certain hours should not also be able to receive financial incentives for overperforming in those same hours.

Commission Response

The commission declines to adopt NRG's recommendation to clarify that an electric generating facility with an exemption in certain hours should not also be able to receive financial incentives for overperforming in those same hours. The performance requirements are designed to encourage electric generating facilities to be available during the hours of highest risk due to low operation reserves. While these electric generating facilities would be partially or fully exempt from a penalty during these hours, these facilities would still provide value if they are capable of overperforming in real-time when conditions are tight.

Allow facilities that provide firming to receive financial incentives

TCPA recommended striking proposed §25.65(e)(3)(D) and providing financial incentives to entities that provide firming.

Commission Response

The commission declines to adopt TCPA's recommendation to remove adopted §25.65(f)(3)(C), stating that an electric generating facility that is required to meet the performance requirements is not eligible to receive a financial incentive. However, the commission makes clarifying changes. An owner or operator of an electric generating facility cannot receive compensation via a contractual arrangement to firm an electric generating facility and receive a financial incentive payment for the same MW, as this would be a double payment.

Proposed §25.65(f) - Settlement

Proposed §25.65(f) requires ERCOT, after each season, to: (1) notify each electric generating facility if it was long or short net of trade arrangements disclosed to ERCOT during the low operation reserve hours that occurred within the high-risk hours in the prior season; (2) impose financial penalties to those electric generating facilities that are net short; and (3) provide financial incentives to those electric generating facilities that are net long.

Potomac recommended that the proposed rule require ERCOT to calculate deficiencies and facilitate transfer and settlement of penalties.

Vistra recommended including a timeline for notification, such as 30 days following the end of the season, and detail the specific data set that ERCOT will rely upon to determine net trade arrangements.

Similarly, TPPA recommended modifying proposed §25.65(f) to require ERCOT to publicly report the number of electric generating facilities that failed to meet or exceeded their firming requirement, including the aggregate MW failed or exceeded and a breakdown of the number of resources by type. TPPA also recommended requiring that the report include the total penalties assessed, the maximum single penalty assessed, and the maximum single incentive warded. Finally, TPPA recommended clarifying what is meant by "long" or "short net trade" and requiring ERCOT to complete its responsibilities within 50 days after the end of the season.

ERCOT recommended modifying proposed §25.65(f) to clarify that financial incentives must be paid only so long as there are penalty funds from that season to apply to incentive payments.

TXOGA recommended requiring ERCOT to include this program in its evaluation of collateral requirements for market participants and inform the commission of any incremental impacts on credit risk.

Commission Response

The commission agrees with Potomac that ERCOT will need to calculate deficiencies and facilitate transfer and settlement of financial penalties. Accordingly, the commission adds a requirement in adopted §25.65(g) for ERCOT to develop a mechanism that allows the owner or operator of an electric generating facility subject to the performance requirements to contract with a firming resource.

The commission declines to make the modifications recommended by Vistra on the timeline for notification or the specific data set ERCOT will rely on to determine net trade arrangements. These items will be left for development in the ERCOT stakeholder process through the ERCOT protocols, which will need to be approved by the commission before these performance requirements become effective.

The commission partially agrees with TPPA's recommendations for additional reporting. Accordingly, the commission modifies the adopted rule to require a post-season reporting requirement for the firming program.

The commission declines to adopt ERCOT's recommendation to modify adopted §25.65(h) to state that no financial incentive may be paid if there are no penalty funds from that season to apply to incentive payments because it is unnecessary. This clarification is made in adopted §25.65(f)(3)(A).

The commission agrees with TXOGA's recommendation that ERCOT should include the firming program in its evaluation of collateral requirements and to identify any incremental impacts on credit risk. However, the commission declines to modify the adopted rule because these impacts should be considered for any new program or requirement, not just for the performance requirements laid out in this rule. In addition, there is already an existing process for the ERCOT Credit Finance Sub Group (CFSG) to evaluate the credit impacts of each new revision request.

Proposed §25.65(g) - Protocols

Proposed §25.65(g) requires ERCOT to develop protocols to implement the proposed rule by December 1, 2026.

ERCOT and TEBA recommended striking proposed §25.65(g) because it is unnecessary. ERCOT must develop protocols to implement the proposed rule even if the commission does not require it by rule.

TXOGA recommended requiring a post-season report that summarizes qualifying hours, total penalties and incentives, and leading reasons for exemptions.

TPPA cautioned against setting a firm deadline that may later require a good cause exemption to allow appropriate implementation.

Commission Response

The commission disagrees with ERCOT and TEBA's recommendation to strike this subsection requiring ERCOT to develop protocols to implement the adopted rule by December 1, 2026. However, the commission acknowledges TPPA's concern around setting a firm deadline and modifies the rule to require ERCOT to complete the necessary protocols to implement this section before the statutory requirement for the performance requirements become effective.

The commission adopts TXOGA's recommendation to require a post-season report on any season where there were low operation reserve hours, and the performance requirements were triggered. The commission modifies the adopted rule accordingly.

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

This section is adopted under the following provisions of Public Utility Regulatory Act (PURA): §14.001, which grants the commission 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; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdictions; §39.151, which authorizes the commission to oversee ERCOT and adopt rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants; and §39.1592, which requires the commission to make certain determinations and require ERCOT to impose financial penalties and provide financial incentives.

Cross Reference to Statutes: PURA §14.001; §14.002; §39.151; and §39.1592.

§25.65. Firming Program Requirements for Electric Generation Facilities in the ERCOT Region.

(a) Applicability. The performance requirements set forth in this section apply to an electric generation facility in the ERCOT region:

(1) for which an original standard generation interconnection agreement is signed on or after January 1, 2027; and

(2) that has been in operation for at least one year prior to the beginning of a season.

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

(1) Baseline period--A daily set of hours encompassing all seasonal morning and evening ramp hours, as determined by ERCOT, and any additional high-risk hours identified in each season as part of ERCOT's annual North American Electric Reliability Corporation (NERC) Probabilistic Assessment.

(2) Electric generation facility--A generation resource, as that term is defined in the ERCOT protocols.

(3) Distribution energy storage resource--A distribution energy storage resource, as that term is defined in the ERCOT protocols.

(4) Distribution generation resource--A distribution generation resource, as that term is defined in the ERCOT protocols.

(5) Energy storage resource--An energy storage resource, as that term is defined in the ERCOT protocols.

(6) In operation--The date when ERCOT approves the electric generation facility for commercial operation.

(7) Interval--Each instance in which security constrained economic dispatch (SCED) runs.

(8) Load resource--A load resource, as that term is defined in the ERCOT protocols.

(9) Low operation reserve hour--An hour within the baseline period when the physical responsive capability (PRC) falls below 3,000 MW for at least 15 minutes.

(10) Owner or operator--A resource entity that owns or operates an electric generation facility represented by a qualified scheduling entity.

(11) Qualified scheduling entity (QSE)--A qualified scheduling entity, as that term is defined in the ERCOT protocols, that represents an electric generation facility on behalf of an owner or operator for operational and settlement purposes.

(12) Season--Winter (December 1 through February 29), Spring (March 1 through May 31), Summer (June 1 through September 30), and Fall (October 1 through November 30).

(13) Seasonal average generation capability--The seasonal rated capacity of the electric generation facility at the beginning of the relevant season multiplied by the lesser of 0.75 and the average of the ratio of real-time telemetered high sustained limit (HSL) to the seasonal rated capacity of the electric generation facility across all intervals of the same season during the prior five years.

(14) Seasonal rated capacity--The maximum generating capability of an electric generation facility, expressed in MW, that an electric generation facility can sustain under expected ambient conditions for a given season, as determined by ERCOT at the start of that season, according to the value that the electric generation facility reported to ERCOT.

(15) Self-generator--An entity registered with the commission as a self-generator.

(16) Settlement-only generator--A settlement-only generator, as that term is defined in the ERCOT protocols.

(c) Pre-season calculation and notices.

(1) Seasonal average generation capability calculation.

(A) ERCOT must calculate the seasonal average generation capability for each electric generation facility subject to the performance requirements under this section using the following formula: Figure: 16 TAC §25.65(c)(1)(A)

(i) Where:

(ii) SAGC = seasonal average generation capability.

(iii) HSL = high sustained limit.

(iv) SRC = seasonal rated capacity.

(v) The first term in the minimum function calculates the ratio of real-time telemetered HSL and SRC across all intervals (i) that occurred during the prior five years of the same season (denotes the total number of such intervals); if less than five years of operating data exists, all available data from the same season must be used. The minimum of this ratio and 0.75 is multiplied by the SRC at the start of the compliance season (SRC_i) to determine SAGC. The second term in the minimum function (0.75) effectively creates an upper bound on the resulting SAGC.

(B) The seasonal average generation capability must be specific to each electric generation facility and not a uniform value applied to all electric generation facilities.

(2) Notice of seasonal average generation capability. Prior to each season, ERCOT must notify the QSE representing an electric generation facility of the facility's seasonal average generation capability for the upcoming season.

(3) Notice of baseline period. Prior to each season, ERCOT must provide public notice of the baseline period for the upcoming season.

(d) Performance requirement. Each season, an electric generation facility must operate or be available to operate at or above the facility's seasonal average generation capability when called on for dispatch during a low operation reserve hour that occurs within a baseline period. The low operation reserve hours are limited to a maximum of 15 hours per season. There is no performance requirement in a season that does not experience a low operation reserve hour. The performance requirements set forth in this subsection do not apply to:

(1) an energy storage resource;

(2) a resource that operates as a must-run alternative unit, as that term is defined in the ERCOT protocols;

(3) a resource that operates as a reliability must-run unit, as that term is defined in the ERCOT protocols;

(4) a resource that is contracted with ERCOT to provide capacity under ERCOT Protocol Section 6.5.1.1;

(5) a settlement-only generator;

(6) a self-generator; or

(7) an electric generation facility that is co-located with a load in a private use network provided that more than 50% of the electric generation facility's nameplate capacity is dedicated to serving the load within the private use network.

(e) Firming.

(1) Firming to meet performance requirement. The owner or operator of an electric generation facility may satisfy the facility's performance requirements under this section by entering into a trade arrangement with a firming resource. A trade arrangement may be for a firming resource represented by the same QSE that represents the electric generation facility that is subject to the performance requirements or for a firming resource represented by a QSE that is different from the QSE that represents the electric generation facility that is subject to the performance requirements. Firming resources may be located on-site at the electric generation facility or off-site. The following resource types are eligible to provide firming service:

(A) another electric generation facility;

(B) an energy storage resource;

(C) a distribution generation resource that is registered with ERCOT;

(D) a distribution energy storage resource that is registered with ERCOT; or

(E) a load resource.

(2) Capacity available to provide firming service.

(A) An electric generation facility, including an existing electric generation facility that is not subject to the performance requirements under this section, may provide firming service equal to the facility's average high sustained limit in a given hour, across all intervals in which the facility was available (i.e., showing any status other than OUT), less the facility's own seasonal average generation capability.

(B) An energy storage resource, a distribution generation resource that is registered with ERCOT, and a distribution energy storage resource that is registered with ERCOT may provide firming service equal to the resource's average high sustained limit in a given hour, across all intervals in which the facility was available (i.e., showing any status other than OUT).

(C) A load resource may provide firming service equal to its average consumption in a low operation reserve hour, adjusted for any ERCOT deployments, less its low power consumption in that hour.

(3) Firming obligation. A QSE representing a firming resource that provides firming service for an electric generation facility that is subject to the performance requirements under this section assumes a firming obligation, including the financial penalties associated with the performance requirements for that obligation.

(4) Disclosure to ERCOT. A QSE that satisfies the performance requirements under this section by providing firming service to an electric generation facility through a trade arrangement must disclose the arrangement to ERCOT and provide ERCOT with any additional information reasonably required for ERCOT to perform its duties under this section, including confirmation by both parties to the arrangement.

(f) Financial penalty and financial incentive.

(1) Financial penalty. ERCOT must impose a financial penalty on a QSE representing an electric generation facility that fails to satisfy its performance requirements under this section. The QSE representing a firming resource that assumes a firming obligation is subject to a financial penalty if the firming resource fails to satisfy the performance requirements subject to the obligation.

(A) A financial penalty imposed by ERCOT must be 20% of the system-wide offer cap that is in effect for each MWh of deficiency.

(B) In seasons in which more than 15 low operation reserve hours occur during the seasonal baseline period, only the 15 low operation reserve hours with the lowest levels of PRC are subject to the financial penalty under this section.

(2) Financial penalty exemption.

(A) An electric generation facility is exempt from assignment of a financial penalty under this section if the facility is unavailable during the applicable hour due to:

(i) a planned maintenance outage, opportunity outage, or derate that was approved by ERCOT;

(ii) a transmission outage;

(iii) a market suspension, as that term is defined in the ERCOT protocols; or

(iv) a derate or outage to satisfy environmental compliance requirements.

(B) A switchable generation resource that is committed to a neighboring independent system operator or regional transmission operator for the applicable hour is exempt from assignment of a financial penalty under this section for that hour.

(C) The portion of capacity of an electric generation facility that is awarded energy or ancillary services in the day ahead market is exempt from assignment of a financial penalty during the applicable hour.

(D) An electric generation facility that is awarded an ancillary service or reliability service that has an associated penalty or claw back for failure to perform during the applicable hour is exempt from assignment of a financial penalty under this section for the portion of capacity that is awarded an ancillary service or reliability service.

(E) A firming obligation assumed by a firming resource through a trade arrangement with the owner or operator of an electric generation facility that is subject to the performance requirements under this section is not eligible for a financial penalty exemption for the hour that the resource has taken on that obligation.

(3) Financial incentive. ERCOT must provide a financial incentive to the QSE representing an electric generation facility that is subject to the performance requirements of this section if the electric generation facility operates or is available to operate above the seasonal average generation capability when called on for dispatch during a low operation reserve hour that occurs within a baseline period, as required under subsection (d) of this section.

(A) The total financial incentives provided under this subsection each season must not exceed the total financial penalties imposed each season for low operation reserve hours occurring within the baseline period. No financial incentives may be awarded in a season in which no financial penalties are imposed by ERCOT.

(B) A financial incentive provided to the QSE representing an eligible electric generation facility must be based on the total financial penalties imposed divided by the sum of all MWh exceeding the performance requirements of eligible electric generation facilities and allocated to the QSE representing an eligible electric generation facility based on the facility's share of the MWh that exceed the performance requirements. The financial incentive that is provided to the QSE representing an eligible electric generation facility must not exceed $1,000 per MWh that exceed the performance requirements. The financial incentive must be calculated using the following formula:
Figure: 16 TAC §25.65(f)(3)(B)

(i) Where:

(ii) FI_j = financial incentive provided to the QSE representing an eligible electric generation facility (j).

(iii) TFP (Total Financial Penalties) = the sum of all financial penalties imposed by ERCOT during a season.

(iv) $\&dgr_j$ = MWh exceeding the performance requirement by an eligible electric generation facility (j).

(v) Δ = the sum of all $\&dgr_j$ for each eligible electric generation facility.

(C) An electric generation facility that is not subject to the performance requirements under this section is not eligible for assignment of a financial incentive for that facility's performance under this subsection.

(D) An electric generation facility that also serves as a firming resource to satisfy the performance requirements of another electric generation facility is not eligible for assignment of a financial incentive for any over-performance used to satisfy its firming obligation as a firming resource.

(E) If the amount of financial penalties collected from QSEs representing electric generation facilities under subsection (f)(1) of this section exceeds the amount paid out in financial incentives, any excess funds must be allocated to load serving entities based on each load serving entity's average load ratio share across the season.

(g) Tracking Mechanism. ERCOT must develop a tracking mechanism that allows a QSE representing an electric generation fa-

cility that is subject to the performance requirements under this section to meet those performance requirements with a firming resource that assumes a firming obligation for that electric generation facility.

(1) ERCOT must develop processes to confirm a trade arrangement by which a firming resource assumes a firming obligation.

(2) If ERCOT is unable to confirm a trade arrangement by which a firming resource assumes a firming obligation, ERCOT must notify the parties to the arrangement.

(3) The obligation to meet the performance requirements and the risk for financial penalty under this section remains with the original electric generation facility required to meet the performance requirements if ERCOT cannot confirm the trade arrangement by which the firming resource assumes a firming obligation for the electric generation facility subject to the performance requirements.

(h) Financial settlement. ERCOT must settle with the QSE that represents the electric generation facility that is subject to the performance requirements under this section or the QSE that represents the firming resource that assumes a firming obligation under this section. After each season, ERCOT must:

(1) notify the QSE representing an electric generating facility under this section if the electric generation facility was long or short, net of trade arrangements disclosed to ERCOT during the low operation reserve hours that occurred within the baseline period in the prior season;

(2) impose financial penalties on the QSEs representing electric generating facilities that are net short; and

(3) provide financial incentives to the QSEs representing electric generating facilities that are net long in a season in which financial penalties are imposed.

(i) Post-season report. Not later than 75 days after each season in which there were low operation reserve hours and the performance requirements were triggered, ERCOT must file a post-season report with the commission summarizing qualifying hours, settled financial penalties and financial incentives, and predominant causes for exemptions. ERCOT may file the post-season report with the quarterly reports that ERCOT is required to file under §25.362(i)(3) (relating to Electric Reliability Council of Texas (ERCOT) Governance).

(j) Protocols. ERCOT must develop protocols in consultation with commission staff to implement this rule before the effective date that the statute requires an electric generation facility to begin complying with the performance requirements set forth in this section. The protocols developed by ERCOT must identify how performance will be validated for a distribution generation resource, an energy storage resource, and a load resource that assumes a firming obligation.

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 J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §§25.235 - 25.237

The Public Utility Commission of Texas (commission) adopts amended 16 Texas Administrative Code (TAC) §25.235 relating to Fuel Costs, §25.236 relating to Recovery of Fuel Costs, and §25.237, relating to Fuel Factors. The commission adopts these rules with changes to the proposed text as published in the July 25, 2025 issue of the *Texas Register* (50 TexReg 4148). The amended rules collectively implement changes to Public Utility Regulatory Act (PURA) enacted pursuant to House Bill (HB) 2073 during the Texas 88th Regular Legislative Session. Specifically, the amended rules establish a new interim fuel adjustment proceeding under §25.236 which accounts for any refunds or surcharges of "material" balances accrued by the utility. The threshold for a "material" balance (i.e. the cumulative amount of over- or under-recovery, including interest of the utility' actual fuel cost figures on a rolling 12-month basis) is retained at 4.0% for both interim fuel adjustments and fuel factor proceedings. The rules will be republished.

Amended §25.235 establishes modified notice requirements for interim fuel adjustments and fuel factor proceedings based on the scope of those proceedings specified by HB 2073 and the written protest for eligible persons to participate in either an interim fuel adjustment or fuel factor proceeding. Amended §25.236 specifies the scope and timelines associated with interim fuel adjustments, including procedures for written protests by eligible persons, specific instances in which a hearing must be held for an interim fuel adjustment, and the scope of discovery. Amended §25.236 also reduces the periodicity of fuel reconciliations from three years to two years, as required by HB 2073, and makes conforming revisions for fuel reconciliation proceedings. Amended §25.237 specifies the scope and timelines associated with fuel factors, including procedures for written protests by eligible persons and the scope of discovery.

The commission received comments on the proposed rule from the Alliance of Xcel Municipalities (AXM) and Cities Advocating Reasonable Deregulation (CARD) (collectively "AXM/CARD"); the City of El Paso (CEP); El Paso Electric Company, Entergy Texas, Inc., Southwestern Electric Power Company, and Southwestern Public Service Company (collectively, "Joint Utilities"); the Office of Public Utility Counsel (OPUC); and Texas Industrial Energy Consumers (TIEC).

Questions for Comment

Question 1

Existing §25.236(a)(9) authorizes a utility to retain 10% of the margins from an off-system energy sales transaction if certain criteria are met. Should this percentage be adjusted? Why or why not?

CEP, Joint Utilities, and AXM and CARD recommended the 10% margin for off-system sales be maintained. CEP and Joint Utilities maintained that changing the 10% margin for off-system sales is not required or implied by HB 2073 and that its removal would introduce unnecessary complexity and increase litigation costs. In contrast OPUC recommended the 10% margin for off-system sales be categorically eliminated by reducing it to zero

and deleting proposed §25.236(a)(9). TIEC recommended the 10% margin for off-system sales should largely be eliminated if those sales "are simply due to economic dispatch in a centralized wholesale market."

CEP indicated that the existing 10% margin for off-system sales has worked well for customers, reduces controversy, and has not presented an issue in El Paso Electric fuel reconciliation cases. CEP remarked that the sharing provisions, established through settlement agreements in its fuel reconciliation cases, provide for 100% of the margins to be provided to customers."

Joint Utilities commented that maintaining the 10% margin for off-system sales is sufficient and consistent with current commission practice. Joint Utilities indicated that the commission had previously declined to change this percentage in 2014 under Project 41905 where §25.236 was revised.

AXM and CARD commented that if the proposed §25.236(a)(9) were to be revised at all, it should preserve the 10% margin but add explicit requirements for utilities to provide verified and audited data regarding purchased-power costs and natural-gas costs. Specifically, AXM and CARD urged the commission to revise §25.236(a)(9) to ensure that "a utility's 10% share of OSS energy margins are to be based on margins from sales of the highest-cost energy (incremental sales) in each hour including the costs associated with the higher-cost energy assigned to [off-system sales]." AXM and CARD also recommended the rule should prohibit utilities from using "proprietary models" when calculating their off-system sales.

AXM and Card explained that the furnishing of data in the form and manner it recommends is necessary for a utility to "merit retention of any margins from [off-system sale] transactions" and is consistent with the original basis for margin sharing before the development of energy markets such as ERCOT, SPP, and MISO. AXM and CARD emphasized that a utility must provide that it assigned the lowest cost energy produced to its native retail customers and, conversely, its higher cost energy when calculating the margins for off-system sales.

AXM and CARD analogized its recommendations to the final commission action taken in past fuel dockets, Project 32766 and Project 53034. AXM and CARD indicated that in Project 32766, the commission "concluded that SPS' s off-system sales to El Paso Electric Company (EPE) should be assigned the higher incremental fuel costs incurred after supplying energy to SPS's native retail customers." Additionally, AXM and CARD commented that in Project 53034, the commission barred the utility from using proprietary models when calculating its off-system sales. According to AXM and CARD, this was because it frustrated efforts to ensure the utility assigned customers lower-cost energy to its customers and higher-cost energy to off-system sales.

OPUC commented that utilities have a statutory obligation to charge customers reasonable rates for electric service. OPUC asserted that this obligation "necessarily includes providing sufficient service at the lowest reasonable cost" by utilizing generating plant in the most economical manner, including the selling of energy off-system when cost-effective. OPUC emphasized that utility customers pay the costs of generating plant through base rates and that the utility has a reasonable opportunity to earn a return on such investments. OPUC concluded that utilities should not be entitled to make a profit from selling power generated by facilities that are fully paid for by their consumers. OPUC stated that any profit from off-system sales should accordingly be fully credited to the utility's consumers. OPUC referenced TIEC's comments in Project 41905 which stated that "allowing utilities to charge ratepayers 100% for their fuel costs while retaining 10% of the profits from re-selling power creates an arbitrage opportunity." OPUC provided draft redlines consistent with its recommendation.

TIEC commented that "[m]argin sharing was developed to incentivize utilities to pursue private, bilateral sales to external third parties" and is now an outdated practice. TIEC contended that most non-ERCOT utilities now bid generation into regions such as SPP or MISO which are centrally administered wholesale markets. TIEC explained that in those markets, off-system sales are "simply instances when the amount of energy economically dispatched from a utility' s generation resources exceeds the energy required to serve the utility's native load in a given hour." TIEC indicated that, in such an event, "[n]o work is done by the utility, and no additional profit incentive is needed to achieve this result." TIEC concluded that off-system sale margin sharing should be reviewed by the commission on an individual basis for utilities that do not participate in integrated marketplaces, or for certain "bilateral transactions that are not purely the result of economic dispatch" such as long term power purchase agreements with a third-party buyer.

Commission response

The commission preserves the 10% margin for off-system sales but eliminates §25.236(a)(9)(A)-(C) and imposes a requirement for commission review of the transaction to ensure the off-system sale is in the interests of the electric utility's retail customers and that margin sharing is in the public interest. Specifically, the commission revises §25.236(a)(9) to state: An electric utility may retain 10% of the margins from an off-system energy sale that is made between the utility and a third-party buyer if the commission finds that the transaction is in the interests of the electric utility's retail customers and that margin sharing is in the public interest." The commission eliminates the requirements of §25.236(a)(9)(A) and §25.236(a)(9)(B) as those criteria are unnecessary. All electric utilities currently participate in a transmission region governed by an independent system operator or equivalent and offer a generally applicable tariff for transmission service. Given the redundancy of these criteria, the only relevant inquiry is into the transaction itself. The commission also finds that a public interest standard is appropriate and consistent with other commission rules (e.g. §25.62, relating to Transmission and Distribution System Resiliency Plans). The commission agrees with TIEC that off-system sales should be reviewed by the commission on an individual basis for utilities that do not participate in integrated marketplaces or for "transactions that are not purely the result of economic dispatch" such as long-term power purchase agreements with a third-party buyer. The commission further agrees with TIEC that margin sharing was developed to incentivize utilities to pursue private, bilateral transactions with external third parties and that off-system sales should largely be eliminated if such sales are simply due to economic dispatch in a centralized wholesale market. Off-system sales are short-term, economic or emergency wholesale sales from a utility's generating resources when such resources are unnecessary to serve the utility's obligation-load customers (native load). However, given the widely varying positions on the issue, the commission will open a future rulemaking project to specifically address off-system sales by non-ERCOT utilities, including the scope, manner, and criteria for commission review of such transactions.

Question 2

Existing §25.236(a)(9) authorizes a utility to retain 10% of the margins from an off-system energy sales transaction if certain criteria are met. Should the provision be revised to distinguish separate margins (expressed as a percentage) that an electric utility may retain from off-system sales that are respectively applicable to electric utilities that are dispatched in a power market operated by an independent system operator (ISO) outside of ERCOT and those that are not? (I.E., An electric utility being dispatched by an outside-ERCOT ISO may retain X% of margins from off-system sales, an electric utility that is not dispatched by an outside-ERCOT ISO may retain Y% of margins from off-system sales.)

OPUC stated that distinguishing separate margins is unnecessary because utilities should not retain any margins from off-system sales. OPUC reiterated that proceeds from off-system sales are "derived from the mere fulfillment of utilities' statutory obligations to serve customers at just and reasonable rates" and that the creation and management of separate margin structures could introduce additional administrative burdens and regulatory complexity which may increase overall costs. However, OPUC hypothesized that if costs associated with off-system sales in a power region outside of ERCOT are lower, separate margins could theoretically result in lower electricity prices due to a greater share of profits being passed back to a utility's customers. OPUC stated that any profits from off-system sales should be fully credited to consumers because the power being sold is generated from facilities fully paid for by consumers. OPUC further stated that ERCOT utilities should not be impacted by any revisions to this provision and that the commission could evaluate the percentage, if any, of margins from off-system sales that ERCOT utilities may potentially retain.

CEP commented that because El Paso Electric (EPE) is not part of an ISO, no provisions that concern an ISO should be applicable to EPE or a similarly situated utility.

TIEC commented that proposed §25.236(a)(9) should be revised to distinguish separate margins a utility may retain from off-system sales inside or outside ERCOT. TIEC stated that "there is no reason to give utilities any portion of the profits from 'off-system' sales that result from economic dispatch in a centrally administered wholesale market" such as SPP or MISO. TIEC indicated that a 10% profit-sharing incentive is unnecessary to facilitate sales to external third parties because the "off-system sale" concept predates the advent of integrated, centrally dispatched markets. TIEC explained that when the 10% profit sharing was introduced "utilities had to actively seek third-party buyers to market any surplus generation through a private, bilateral transaction." Since actual marketing and transactional resources were required, utilities were authorized to margin-share as an incentive to make off-system sales. TIEC indicated that the market landscape has significantly changed since the introduction of off-system sales. Specifically, utilities now submit bids for generation and RTOs/ISOs centrally dispatch resources in the most economically efficient fashion subject to transmission constraints. TIEC indicated that a utility purchases the energy needed to serve its native load using the lowest-cost resources in the market, including self-owned resources, and then each utility is paid "according to the amount of its generation that is needed to serve the market' s collective demand." TIEC explained that off-system sales are "simply instances in which the amount of energy economically dispatched from a utility's generation resources exceeds the energy required to serve the utility's native load in a given hour. No work is done by the utility, and no additional profit incentive is needed to achieve this result."

TIEC concluded that off-system sale margin sharing should be reviewed by the commission on an individual basis for utilities that do not participate in integrated marketplaces, or for certain "bilateral transactions that are not purely the result of economic dispatch" such as long-term power purchase agreements with a third-party buyer. [This is repeated from Q1] TIEC stated that customers could benefit from "incentivizing utilities to take on additional work and risk related to actual off-system sales, but it depends on the circumstances presented and what profits would have resulted from economic dispatch without a [power-purchase agreement] in place." TIEC recommended that utilities be required to both demonstrate the actual need for such an incentive as well as justify the magnitude of any incentive before the utility is authorized to retain any margins from off-system sales. TIEC provided draft language consistent with its recommendation.

Joint Utilities opposed distinguishing separate margins a utility may retain from off-system sales inside or outside ERCOT as it is not addressed or authorized by HB 2073. Joint Utilities stated that separate margin retention percentages for ISO and non-ISO utilities would introduce "unnecessary regulatory complexity and administrative burden without statutory support." Joint Utilities maintained that the existing 10% margin sharing percentage appropriately incentivizes a utility to maximize generation resource availability for dispatch such that it can perform off-system sales that mutually benefit the utility and its customers, either for reliability or economic reasons. Joint Utilities commented that regardless of whether a utility is receiving dispatch instructions from an ISO, the utility has discretion over several factors that can affect generation resource availability.

Commission response

The commission declines to establish separate ISO-based margins for off-system sales. The revision to §25.236(a)(9) that authorizes commission review of each individual off-system sales transaction to ensure the transaction is in the interests of the utility's retail customers and that margin sharing is in the public interest is sufficient to ensure that such transactions are appropriate. Commission review of such transactions will provide additional information as to whether separate margins for off-system sales inside or outside ERCOT are necessary. In response to Joint Utilities comment that HB 2073 does not address or authorize off-system sale margin sharing, the commission is not solely limited to the implementation of HB 2073 in this rulemaking. Texas Government Code § 2001.033(a)(1)(B) (the APA) provides that: "[a] state agency order finally adopting a rule must include… a summary of the factual basis for the rule as adopted which demonstrates a rational connection between the factual basis for the rule and the rule as adopted." The margin-sharing and off-system sales issue was properly noticed in a question for comment and is therefore within the scope of this rulemaking. Moreover, PURA §14.001 states that "[t]he commission has 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." (emphasis added). Therefore, it is appropriate that the commission addresses all issues within the scope of the proposed rulemaking, including those presented by the issued questions for comment that do not involve the implementation of HB 2073. As stated previously, the commission will open a future rulemaking project to specifically address off-system sales.

Question 3

PURA §36.203(b)(3)(A) requires commission rules to ensure any material balance of amounts under-collected or over-collected for eligible electric fuel and purchased power costs is refunded or surcharged to customers through an interim fuel adjustment not later than the 90th day after the date the balance is accrued unless an exception applies. What is the proper threshold for determining a "material balance" for purposes of an interim fuel adjustment? (The proposed rule contains a 4.0% materiality threshold identical to the threshold used in §25.237 for fuel factors.)

OPUC recommended lowering the materiality threshold that would require a utility to apply for an interim fuel adjustment from 4.0% to 2.0%. OPUC stated that lowering the materiality threshold would help reduce financial burdens on residential and small commercial customers by ensuring that utilities file interim adjustment applications more frequently and therefore customers would receive refunds. Moreover, in the event of a surcharge, the total amount of interest paid would also be less if interim adjustment applications occurred more frequently. OPUC indicated that lowering the threshold would be consistent with language in existing §25.235(a) that states "it is in the interests of both electric utilities and their ratepayers to adjust charges in a timely manner to account for changes in certain fuel and purchased-power costs." OPUC further stated that lowering the materiality threshold would "reduce the risk of intergenerational inequity" by decreasing the likelihood a ratepayer may move or stop service before a refund occurs. OPUC provided draft redlines consistent with its recommendation.

TIEC expressed openness to lowering the materiality threshold from 4.0% to 2.0% or 1.0% on the basis that it would benefit utilities and ratepayers.

CEP, AXM and CARD, and Joint Utilities recommended maintaining the materiality threshold at 4.0%. CEP remarked that, given the reduced timeframes for processing interim fuel adjustments, lowering the threshold is likely to result in increased administrative burdens and issues with customer billing due to more interim adjustment filings that may overlap. AXM and CARD indicated that the 4.0% threshold is sufficient and provides certainty as both the utilities and ratepayers are accustomed to the threshold from past experience.

Joint Utilities commented that "there is no clearly appropriate level at which to set the [materiality] threshold that would [enable §25.236(b) to] achieve conformity with HB 2073" and therefore did not provide a different recommendation for the threshold. Joint Utilities remarked that, absent frequent interim fuel adjustments, there is no optimal percentage for when a material balance is deemed to have accrued. Joint Utilities indicated that a low threshold would increase the frequency of fuel proceedings and therefore increase the burdens of compliance in contravention of HB 2073. Similarly, a high threshold would permit "greater deviations between costs and collections despite the legislative direction to achieve contemporaneous collection of costs." Joint Utilities remarked that, given the "impossibility of selecting a materiality threshold that [both reduces regulatory burdens and promotes more timely cost recovery]" its alternative proposal more effectively and accurately implements the plain language and legislative intent of HB 2073.

Joint Utilities stated that the existing threshold appropriately ensures that material balances are promptly addressed while preserving a utilities' discretion for filing for an interim fuel adjustment. Joint Utilities indicated that threshold "functions as a trigger for mandatory action, not a cap on voluntary filings" and that a utility is authorized to make monthly or even more frequent filings to ensure contemporaneous recovery and consistent customer billing even when an under-recovery or over-recovery balance is under 4.0%. Joint Utilities noted that frequent adjustments help reduce the likelihood that large surcharges or refunds are retained, which stabilizes customer rates. Additionally, regular adjustments facilitate HB 2073's directive to ensure utility's collect costs "as contemporaneously as reasonably possible." Joint Utilities stated that if the commission does not adopt such an approach, that any alternative continue to permit utilities "to defer adjustments when balances are projected to self-correct within the threshold" and preserve a utility's ability to make voluntary filings at any time.

Commission response

The commission preserves the materiality threshold of 4.0% in the definitions of "materially or material" in §25.236(b)(1) and §25.237(a)(3)(C). Reducing the materiality threshold would correspondingly increase the number of interim fuel adjustment proceedings and therefore increase the time, cost, and resources necessary to resolve these proceedings. PURA §36.203(b)(1) requires commission rules to ensure that a utility collects eligible fuel costs as contemporaneously as reasonably possible. The commission maintains the reduced timeline of interim fuel adjustment proceedings provided by statute, among other statutory changes, address this statutory requirement.

Question 4

PURA §36.203(b)(3)(A) requires commission rules to ensure any material balance of amounts under-collected or over-collected for eligible electric fuel and purchased power costs is refunded or surcharged to customers through an interim fuel adjustment not later than the 90th day after the date the balance is accrued unless an exception applies. Given the 90-day deadline for recovery under §36.203(b)(3)(A), what time period is appropriate to reasonably expect an electric utility to be capable of filing an interim fuel adjustment application? (I.E., Taking into account the time necessary for a utility to close their books and make a true-up determination regarding whether the deferred fuel balance places the utility in a state of material over- or under-recovery.)

OPUC commented that a 30-day period is a reasonable period to expect a utility to be capable of filing an interim fuel adjustment application. OPUC stated that 30 days is appropriate as §25.72, which requires utilities to maintain a uniform system of business accounting and reporting, and §25.82, which requires utilities to file monthly fuel reports with the commission, already requires utilities to retain information necessary for such adjustments. OPUC indicated that the monthly filing of fuel reports aligns with its recommendation for a 30-day filing of interim fuel adjustments. OPUC stated that a longer period would cause issues with meeting the 90-day statutory deadline for interim fuel adjustments. OPUC noted that if a utility fails to file a complete interim fuel adjustment application, it may therefore be impractical for the utility to either issue or refund a surcharge before the 90-day deadline. OPUC recommended that the proposed rules should explicitly state the requirement of HB 2073 for "any material balance of amounts under- collected or over-collected for eligible electric fuel and purchased power costs [be] collected from or refunded to customers through an interim fuel adjustment not later than the 90th day after the date the balance is accrued." OPUC further recommended that if a utility either fails to file a complete interim fuel adjustment application or the commission is unable to issue an order within the 90-day deadline, then inter-

est should not accrue on any under-collected amount between the date that such balance accrues and the date that a complete application is filed. Inversely, OPUC recommended that utilities be required to pay interest for any over-collected amounts from the date the over-collection accrues until a commission order is issued. OPUC stated these changes would help incentivize prompt and complete filings by utilities and therefore reduce any negative impacts on ratepayers.

CEP commented that the timing for filing an interim fuel adjustment after the close of the month should be as minimal given that such adjustments are interim in nature and the fact that utilities monitor fuel costs on an ongoing basis.

AXM and CARD recommended the commission require utilities to provide a detailed explanation regarding any constraints on their ability to comply with the 90-day deadline prescribed by PURA §36.203(b)(3)(A) "within the procedural safeguards afforded ratepayers under HB 2073."

TIEC commented that the 90-day statutory timeline requires the filing interim fuel adjustment applications as contemporaneously as possible.

Joint Utilities recommended a monthly adjustment framework be adopted and commented that the five working day timeline in proposed §25.236(i)(2)(A) is not feasible. Joint Utilities remarked that the proposed timelines conflict with HB 2073 by retaining the commission's current fuel cost recovery paradigm. Joint Utilities emphasized that a significantly longer period than five days is required for the fuel accounting and reconciliation necessary to "compile, validate, and submit accurate interim fuel refund and surcharge filings" particularly when coupled with notice requirements. Joint Utilities indicated that currently under commission rules, utilities file monthly fuel cost reports 45 days after the end of the reporting month with interim fuel adjustment filings following 30 days or more after that after balances are verified and supporting documentation is prepared. Joint Utilities indicated that, given those internal timelines and workload, the proposed five-day timeline is incompatible with timely and accurate recovery within the 90-day statutory deadline. Joint Utilities advanced an alternative proposal for an end-of-month filing period where filings are generally based off historical data from two months prior. Joint Utilities also recommended an additional requirement that the interim fuel adjustment be filed five calendar days prior to the adjustment becoming effective.

Commission response

This question is comprehensively addressed under the header for Question 5.

Question 5

PURA §36.203(b)(3)(A) requires commission rules to ensure any material balance of amounts under-collected or over-collected for eligible electric fuel and purchased power costs is refunded or surcharged to customers through an interim fuel adjustment not later than the 90th day after the date the balance is accrued unless an exception applies. At what point does a utility determine that it incurs ("accrues") a fuel balance for purposes of an interim fuel adjustment? (I.E., Given the lag time in providing monthly fuel reports to the commission and based on a utility's accounting practices, what is the method for determining when a material under-recovery or over-recovery has accrued?)

OPUC and TIEC commented that the time period for accruing a fuel balance for purposes of an interim fuel adjustment is utility specific. CEP noted that utilities monitor fuel balances on an ongoing basis.

OPUC qualified its statement by saying that utilities should have discretion "as long as the materiality determination is made when the utility knows or should have known that it will incur more or less in fuel expenses based on (1) fuel contracts, (2) market fluctuation of fuel prices, (3) actual amount spent on procurement, and (4) contemporaneous review of its invoices, receipts, and other relevant fuel expenses." OPUC stated that the utility is best positioned to make such a determination due to its stewardship of all necessary information and records. OPUC further stated that this determination can be made by the utility prior to filing its monthly fuel report with the commission.

AXM and CARD stated that a utility accrues its fuel balance that meets the materiality threshold on the date its monthly report is due. AXM and CARD commented that, at the time of filing, a utility is aware of whether it has accrued a fuel balance, the fuel balance amount, and whether the balance meets the materiality threshold.

Joint Utilities recommended that the balance used for interim fuel adjustments should be the final balance available approximately 45 days after the end of the month. Joint Utilities further recommended that, for purposes of the interim fuel adjustment contemplated by statute, the term "accrual" should be defined as "the point at which actual fuel costs are finalized at the close of the monthly accounting period." Joint Utilities also recommended the commission adopt its definition of "current month" the most recent month for which costs and kilowatt-hour sales data are available. Joint Utilities noted that this approach is consistent with standard accounting practices used by all non-ERCOT utilities and ensures that adjustments "are based on verified historical data rather than preliminary estimates or projections."

Joint Utilities stated its definition of "current month" appropriately links accrual with monthly balancing. Joint Utilities explained that, for all non-ERCOT utilities, final fuel balances are typically unavailable until "the middle of the second month after month-end close." Joint Utilities indicated that estimates, while available earlier, are subject to adjustment in the utility's next month fuel report and is reflective of the time required to close accounting books and reconcile fuel costs. Joint Utilities commented that this approximate 45-day period complies with the 90-day deadline from the date of accrual to collect or surcharge a balance, preserves the integrity of the adjustment process, and avoids using incomplete data for filings- therefore mitigating customer billing inaccuracies.

Commission response

The commission determines that a fuel balance accrues 75 days from month end close or when the utility has verified, actual data. The commission accordingly revises the timeline for a utility to file an interim fuel adjustment under §25.236(h)(2) to accommodate the 75-day accrual period.

The commission revises §25.236(h)(2)(B) (formerly proposed §25.236(h)(2)(A)) to state that "[a] utility seeking an interim fuel adjustment to surcharge or refund a fuel under- or over-recovery balance must file its interim fuel adjustment petition and issue notice within five working days from the date the material fuel under- or over-recovery balance accrues, which is either (i) 75 days from the last day of the month for which the utility seeks recovery (month end close) or (ii) when the utility has verified, actual data for that month." The commission also specifies in new §25.236(h)(2)(C) that "[e]ach month for which a utility

seeks recovery must correspond with the utilities monthly fuel cost and use report filed with the commission in accordance §25.82 of this title (relating to Fuel Cost and Use Information)." These changes align with the 45-day period referenced by Joint Utilities for when a final balance for fuel costs becomes available and the utility files its fuel cost report for the relevant reporting month in accordance with §25.82, relating to Fuel Cost and Use Information and the approximate 30-day period needed by utilities to verify the balances and prepare supporting documentation. Given the timing variance of this second-step verification and the comments from OPUC and TIEC indicating that the time period for accrual is utility-specific, the addition of "or when the utility has verified, actual data for that month" is appropriate. The provision is also revised to give flexibility to the presiding officer to set a procedural schedule that will enable the utility to issue a refund or collect a surcharge within the applicable time period. These changes eliminate the compliance issues associated with the proposed five working day period to file from the date a material balance accrues as discussed under the heading for Question 4 and provide the flexibility sought by Joint Utilities.

The provision also revises the exceptions to the final order deadline for interim fuel adjustments under §25.236(h)(2)(E) (previously §25.236(h)(2)(C)) to be the instances in which a hearing is required for an interim fuel adjustment. (i.e., if the presiding officer determines that the interim fuel adjustment sought would either (1) result in a total bill increase of 10 percent or more for an average customer in any rate class or (2) the utility has a material under-collected balance that is the result of extraordinary electric fuel and purchased power costs.)

Question 6

PURA §36.203(b)(3)(A) requires commission rules to ensure any material balance of amounts under-collected or over-collected for eligible electric fuel and purchased power costs is refunded or surcharged to customers through an interim fuel adjustment not later than the 90th day after the date the balance is accrued unless an exception applies. Given the introduction of the interim fuel adjustment by HB 2073 (88R), should §25.237(f), which concerns emergency revisions to a fuel factor, be deleted or revised? (i.e., Does an interim fuel adjustment eliminate the need for emergency revisions to the fuel factor?)

OPUC and TIEC recommended that proposed §25.237(f) be retained because the provision serves a different purpose than the interim fuel adjustments specified by HB 2073. OPUC and TIEC stated that an emergency interim fuel factor revision under proposed §25.237(f) authorizes a utility to adjust its fuel factor on an expedited timeline if it experiences "fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances." Therefore, the utility would significantly and foreseeably under-recover fuel costs unless the utility's fuel factor is quickly revised.

OPUC noted that the 90-day or longer timeframe specified by PURA §36.203(c) if an under-collection is the result of extraordinary costs that are unlikely to continue may not be a sufficient timeframe for the utility to recover fuel costs. In contrast, OPUC commented that proposed §25.237(f) provides that the 30-day deadline for an interim order to be issued. OPUC further recommended the 120-day review period for the commission to ensure the approved emergency amount is not excessive be reduced to 90 days. OPUC also recommended that the penalty for an emergency revision if the commission determines no emergency condition existed be increased from 10% to 20% to ensure there is a sufficient deterrent from abusing this provision.

TIEC indicated that, if the emergency is severe enough, it may be financially difficult for a utility to carry any resulting under-recovery balance until it could recover those costs through an interim fuel adjustment surcharge. TIEC stated it would accordingly be prudent to retain the option to adjust a utility's fuel factor for highly specific and extreme emergency situations.

AXM and CARD and Joint Utilities recommended that proposed §25.237(f) be deleted because HB 2073 renders ad hoc emergency fuel factor revisions unnecessary. Joint Utilities remarked that HB 2073 sufficiently accounts for emergency situations through interim fuel adjustments in a standardized process. Specifically, Joint Utilities stated that PURA §36.203 addresses extraordinarily fuel cost events through the more structured and regular interim fuel adjustment process such that the provision is now unnecessary. Joint Utilities contended that retaining proposed §25.237(f) "would introduce unnecessary complexity and could create confusion about when and how utilities should respond to fuel cost volatility." Joint Utilities also remarked that retaining the provision would only serve to "perpetuate inefficiencies" and would contravene the legislative intent of HB 2073 to make fuel cost recovery more efficient.

CEP indicated that the only purpose of proposed §25.237(f) would be to "extend recovery time in the event of a cost spike such as was experienced during winter storm Uri." CEP remarked that is unlikely that severe weather or other such events would create a substantial reduction in fuel costs that would be considered an emergency. CEP indicated that the only point of comparison are the conditions surrounding Winter Storm Uri in 2021. CEP noted that even during Winter Storm Uri, gas distribution utilities were able to secure short-term financing to pay fuel costs.

Commission response

The commission elects to preserve §25.237(f) for emergency fuel factor revisions. The commission agrees with OPUC and TIEC that it is prudent to retain that provision in the event of an emergency and that the provision serves a separate purpose than interim fuel adjustments. Moreover, retaining the option to revise a fuel factor on an expedited timeline due to an emergency may obviate the need for an interim fuel adjustment if drastic changes to fuel costs are foreseeable. The commission declines to implement OPUC's recommended revisions to §25.237(f) as the existing timelines in the provision are sufficient. The commission disagrees with AXM and CARD and Joint Utilities that preserving §25.237(f) would introduce complexity and confusion into non-ERCOT fuel proceedings. If a utility determines it would prefer to have extreme fuel cost discrepancies resolved through an interim fuel adjustment rather than through an emergency fuel factor revision it may elect to do so at its discretion.

Question 7

Procedurally, how should a "protest" of a fuel factor or interim fuel adjustment be treated at the commission given the foregoing statutory limitations? Under HB 2073, a person that files a "protest" in the context of a fuel factor or interim fuel adjustment could be classified as a more constrained form of "intervenor" in the proceeding under commission rules. Specifically, an "intervenor" as defined in 16 TAC §22.2(25), relating to Definitions is a party to the proceeding and may accordingly, per 16 TAC §22.102(b), relating to Classification of Parties, "have the right to present a direct case, cross-examine all witnesses, conduct

discovery, make oral or written legal arguments, and otherwise fully participate in any proceeding." This contrasts with the far more limited "protestor" defined in 16 TAC §22.2(37) that is not a party to the case and may only submit oral or written comments if allowed by the presiding officer per 16 TAC §22.102(c)). However, given the foregoing statutory boundaries on protests of fuel factors and interim fuel adjustments and the requirement that, for interim fuel adjustments, a material balance be collected from or refunded to customers no later than the 90th day after the date the balance accrues. In the context of these proceedings, consider the following questions.

Question 7a

Is a protest in fuel factor proceeding or of an interim fuel adjustment meant to equate to a motion to intervene? Or should filing a protest mean that the person is automatically a party to the (assuming that person is a customer of the electric utility, a municipality with original jurisdiction over the utility, or OPUC)?

OPUC, AXM and CARD, and TIEC recommended that a term "protest" as used in PURA §36.203 for non-ERCOT fuel proceedings be interpreted as a motion to intervene granting automatic party status. CEP generally recommended the statutory term "protest" not be construed too narrowly and that protestors of fuel proceedings be treated as parties. Conversely, Joint Utilities recommended that protests of fuel proceedings not be treated as a motion to intervene and protestors should not be granted automatic party status.

OPUC stated that it must be afforded the opportunity to substantively participate in fuel proceedings to fulfill its statutory role in representing the interests of residential and small commercial customers. OPUC noted that it generally files motions to intervene in certain electric utility proceedings, including fuel proceedings for non-ERCOT utilities in accordance with its statutory right to do so under PURA §13.003(a)(3). OPUC stated that PURA §36.203(e) does not diminish OPUC's statutory right to intervene. OPUC remarked that party status is accompanied by attendant rights such as conducting discovery, filing testimony, presenting a direct case, cross-examining witnesses, making oral or written legal arguments, and fully participating in the proceeding. OPUC further commented that party status residential and small commercial customers of the non-ERCOT utility should be construed liberally due to the unfamiliarity such customers may have with PURA and commission or State Office of Administrative Hearing rules and procedures.

CEP remarked that municipalities and other parties frequently intervene in fuel proceedings without opposing the outcome. CEP emphasized the importance of the participation of those parties as they provide meaningful contributions to the case and oversight. CEP explained that it does not matter whether party status is "automatic" given that, under the commission's procedural rules, the presiding officer should have an opportunity to rule on intervention by an entity that is not a municipality with original jurisdiction over the utility, OPUC, or a customer of the utility.

AXM and CARD stated that the expedited timeframes of HB 2073 and the definition and hearing requirements for contested cases under §2001.003 and §2001.056 of the Texas Administrative Procedure Act (APA). Specifically, AXM and CARD stated that once a protest is filed in either a fuel factor proceeding or interim fuel adjustment, the proceeding becomes a contested case. AXM and CARD emphasized that a fuel factor or interim fuel adjustment is a "ratemaking proceeding in which the Commission is determining a party's legal rights, duties, or privileges" that becomes a contested case if a protest is submitted by an eligible party. AXM and CARD stated that HB 2073 does not abrogate the APA requirements for contested cases and the procedural rights parties are afforded by the APA in contested cases. AXM and CARD referenced holdings from case law stating that "when the legislature adopts a new law, it is presumed to have been enacted with complete knowledge of existing law and with reference to it, and unless expressly amended, the other laws remain in effect" and that the Legislature is "presumed to be aware of an agency' s relevant rules and prior decisions."

TIEC stated that it would be sensible to automatically admit a protestor as a party to the proceeding assuming the protest is properly filed without a motion to intervene. TIEC indicated that PURA §36.203(e) provides that only a customer of the utility, a municipality with original jurisdiction over the utility, or OPUC may file a protest and would therefore have standing to intervene under §22.103(b)(2). Therefore, submitting a motion to intervene would be unnecessary and merely a formality. TIEC noted that if a protest is improperly filed by a party without standing, the utility or other parties to the fuel proceeding should be authorized to challenge the invalid protestor's party status in the same manner as motions to intervene.

Joint Utilities commented that a protest in a fuel proceeding is not equivalent to full intervention. Joint Utilities maintained that a protest is a procedural mechanism distinct from intervention that is limited only to a utility's customers, municipalities with original jurisdiction over the utility, and OPUC. Joint Utilities stated that treating a protest as an intervention would contravene "the legislative intent of HB 2073 to streamline fuel adjustment proceedings for timely recovery of fuel costs." Joint Utilities remarked that PURA §36.203 specifically limits the scope of a protest to whether the proposed adjustment reasonably reflects the costs a utility has incurred or will incur. Joint Utilities further stated the statute prohibits the prudence of cost from being raised as an issue by a protestor and limits the opportunity for a protestor to request a hearing outside of specific circumstances. Joint Utilities indicated that a protest should be treated as a more limited form of participation as an intervention to ensure the reduced 90-day deadline for implementing an interim fuel adjustment is achievable and other statutory boundaries are maintained. Joint Utilities stated that treating protests in a more limited fashion, as its proposal does, ensures the commission can "consider valid concerns without triggering a fully contested case unless the statutory thresholds are met."

Commission response

The commission determines that an eligible person that files a written protest in response to an interim fuel adjustment or fuel factor proceeding be afforded the rights of a party under the APA. The APA defines a "contested case" as "a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing." (emphasis added) While PURA §36.203(i) states "[a] proceeding under this section is not a rate case under Subchapter C [of Chapter 36]," that provision appears to only exempt non-ERCOT fuel proceedings under PURA §36.203 from the requirements of §§36.101-36.112. Accordingly, a non-ERCOT fuel proceeding would still be a contested case under the APA as it is an interim rate proceeding.

PURA §36.203(g) requires a hearing for interim fuel adjustments if the adjustment would result in a total bill increase of 10 percent or more or if the adjustment results from extraordinary elec-

tric fuel and purchased power cost. There is also no prohibition on the commission holding a hearing for an interim fuel adjustment on its own motion. If a hearing is held or other issues arise in an interim fuel adjustment proceeding that render meeting the 90-day refund or surcharge deadline for material balances infeasible, then a party may file a petition for interim relief or the presiding officer may otherwise order interim relief under §25.236(f)(4).

For fuel factor proceedings, PURA §36.203(d) states that the commission is not required to hold a hearing on the adjustment of a utility's fuel factor, the following sentence states "[i]f the commission holds a hearing, the commission may consider at the hearing any evidence that is appropriate and in the public interest." By implication, this authorizes the commission to hold a hearing in a fuel factor or fuel factor formula revision proceeding if it elects to do so.

Question 7b

What rights should a person that files a "protest" in a fuel factor proceeding or an interim fuel adjustment have? (i.e., right to present a direct case, cross-examine witnesses, conduct discovery, etc.)

OPUC, CEP, AXM and CARD, and TIEC commented that protestors in fuel proceedings should have the same rights a party to a contested case is afforded under the APA such as the ability to conduct discovery, file testimony, present a direct case, cross-examine witnesses, and make oral or written legal arguments. AXM and CARD highlighted that under Texas Government Code § 2001.051 of the APA, a protestor is "is entitled to an opportunity for a hearing after reasonable notice of not less than 10 days and to respond and to present evidence and argument on each issue involved in the case." AXM and CARD also remarked that a protestor is entitled to conduct discovery in non-ERCOT fuel proceedings in accordance with §22.1. Purpose and Scope; §22.141. Forms and Scope of Discovery; §22.143. Depositions; and §22.144. Requests for Information and Requests for Admission of Facts. TIEC stated that, to ensure due process rights are preserved, participants in non-ERCOT fuel proceedings should be afforded the opportunity to present evidence and cross-examine witnesses if a hearing is held.

Joint Utilities stated that the procedural rights of a protestor should be limited to the submission of written comments or objections, the presentation of evidence relevant to whether "the proposed factor 'reasonably reflects' fuel and purchased power costs," request a hearing if the statutory criteria provided by PURA § 36.203(g) are met. Joint Utilities stated that a protestor "should not automatically gain the full rights of an intervenor" under §22.102(b) and instead, intervenor rights should only be granted if the protestor separately files a motion to intervene that is approved in accordance with commission rules. Joint Utilities maintained its interpretation and proposal appropriately preserve due process rights while maintaining the streamlined process enumerated by HB 2073 which limits the scope of review to whether the fuel factor or interim adjustment "reasonably reflects costs the electric utility has incurred or will incur."

Commission response

The commission generally agrees with OPUC, CEP, AXM and CARD, and TIEC that eligible persons that file a written protest in fuel proceedings should have the same rights a party to a contested case is afforded under the APA. However, under PURA §14.052(b), the commission may adopt rules that authorize an administrative law judge to limit certain procedural rights afforded to parties in a contested case. Accordingly, the commission revises §25.236(h)(3) to mirror the procedural steps of §25.237(g) regarding protests of interim fuel adjustments. The revised provision establishes that discovery in an interim fuel adjustment or fuel factor proceeding will be conducted in accordance with the commission's rules, except as modified by the presiding officer.

Question 7c

Given the time constraints surrounding refunds or collections, should the rights afforded to a person that files a "protest" in an interim fuel adjustment be different than those afforded to a person that files a "protest" in a fuel factor proceeding?

OPUC, CEP, and AXM and CARD commented that there is no difference in rights that should be afforded between a protestor in an interim fuel adjustment and a protestor in a fuel factor proceeding. AXM and CARD indicated that the more limited timeframe for an interim fuel adjustment may cause practical issues, there is no functional difference in rights a protestor has in either proceeding.

TIEC and Joint Utilities commented that the rights of a protestor in a fuel factor proceeding should be more expansive than in an interim fuel adjustment. TIEC and Joint Utilities explained that a protestor should have a greater opportunity to participate in a fuel factor proceeding due to its wider scope and lengthier timeframe than an interim fuel adjustment. TIEC maintained that the commission should afford protestors the greatest opportunity to participate as possible while "also respecting the timeframes for litigating those proceedings set by the legislature."

Joint Utilities stated that a protestor in an interim fuel adjustment should have the right to file a protest and request a hearing, as well as the right to a hearing "only if the adjustment exceeds the 10% threshold or involves extraordinary costs" in accordance with PURA § 36.203(g), and limited discovery or procedural rights unless the protestor's request for a hearing is granted. For fuel factor proceedings, Joint Utilities referred to its proposal and stated that protestors may be entitled to slightly more flexibility but still within the limited statutory scope.

Commission response

The commission generally agrees with OPUC, CEP, and AXM and CARD and declines to vary the procedural rights afforded to a person that files a written protest in an interim fuel adjustment proceeding or fuel factor proceeding except as modified by the presiding officer on a case-by-case basis.

Question 7d

Should an interim fuel adjustment be eligible for administrative approval under 16 TAC §22.32, relating to Administrative Review, regardless of whether a protest is filed? (Assuming no hearing is required under PURA §36.203(g) and the commission does not otherwise deem a hearing to be necessary).

OPUC and CEP recommended that interim fuel adjustments not be eligible for administrative approval regardless of whether a protest is filed. AXM and CARD stated the interim fuel adjustments could be eligible for administrative approval provided that the requirements of §22.32 are met- more specifically §22.32(a)(3).

TIEC stated that whether an interim fuel adjustment is eligible for administrative approval is dependent on whether non-utility participants in such proceedings are considered "protestors" or "intervenors" under the commission's rules. If participants are

considered intervenors and therefore parties, then the interim fuel adjustment would not qualify for administrative approval due to §22.32(a)(3) stating that administrative review is not available unless "there are no issues of fact or law disputed by any party." Alternatively, if participants are considered "protestors" then "administrative review would be available notwithstanding those participants disputing issues of fact or law." TIEC reiterated its recommendation that protestors under PURA §36.203 be granted party status if the protest is properly filed.

Joint Utilities stated that an interim fuel adjustment should be eligible for administrative approval provided that a hearing is not required under PURA §36.203(g) and the commission does not otherwise consider a hearing to be necessary. Joint Utilities maintained this interpretation is consistent with HB 2073 and that "[a] protest alone should not automatically trigger a contested case or preclude administrative approval." Joint Utilities expressed that administrative approval ensures the efficient implementation of interim fuel adjustments by avoiding unnecessary delays and therefore preserving both the 90-day recovery timeline and the commission's authority to hold a hearing if necessary. Joint Utilities recommended the commission adopt the language in its proposal and explicitly state in the rule that interim fuel adjustments are eligible for administrative review subject to the limitations previously specified.

Commission response

The commission declines to implement specific language concerning administrative approvals for interim fuel adjustments in §25.236. A proceeding is eligible for administrative approval if the criteria under §22.32, relating to Administrative Review, are met.

Question 8

Please provide any additional feedback regarding the statutory deadlines and commission procedures surrounding fuel factor proceedings and interim fuel adjustments.

Commission response

The commission has organized the additional feedback received by commenters in response to Question 8 under the relevant headers.

TIEC's Transmission-Voltage Customer Proposal

TIEC recommended that provisions be added to the rule to require utilities "to bill individual transmission-voltage customers based on their actual fuel costs, but on a two-month lag." TIEC commented that this change for transmission-voltage customers would ensure fuel costs are properly allocated to the customers that cause them while also ensuring full recovery of fuel cost occurs within the 90-day period required by PURA §36.203. TIEC remarked that billing transmission-voltage customers in this manner would increase customer bill transparency while also rendering surcharge and refund proceedings unnecessary. TIEC provided draft redlines consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is out of scope. TIEC's proposal would create two tiers of interim fuel adjustments and fuel factors, a tier for transmission voltage customers and a tier for all other customers receiving service at distribution voltage. HB 2073 neither requires nor prohibits a specific treatment of transmission voltage customers in fuel proceedings. PURA §36.201(b)(2) only requires commission rules to "ensure that…the total of the utility's eligible electric fuel and purchased power costs, including any under-collected or over-collected amounts to be recovered through an interim fuel adjustment, is allocated among customer classes based on actual

historical calendar month usage." The commission acknowledges the potential benefit of diminishing the magnitude of under-recoveries for distribution voltage customers if transmission customers are billed more directly, provided that the prohibition on automatic adjustment and pass-through of fuel costs under PURA §36.201 is observed. Accordingly, the commission defers this issue for a later rulemaking.

TIEC recommended an alternative proposal for implementation of the statutory requirement for significant bill increases of 10 percent or more to be deferred over a period greater than 90 days. Specifically, TIEC recommended that utilities be required, for transmission-voltage customers,

to monitor whether changes in fuel costs resulted in fuel factor increases that "would increase [the customer's] total bill by 10% or more compared to the increase that would have occurred under the prior month' s fuel factor." In that event, the utility would be required to "limit the increase to 10% of the total bill, with the overage to be deferred and recovered over a period that is greater than 90 days."

Commission response

The commission declines to implement the recommended change because it is out of scope. TIEC's recommendation would impose an additional obligation on utilities to monitor fuel costs of transmission voltage customers that were not noticed and to which other commenters have not had an opportunity to reply to. The proposed rule language implementing deferred recovery for a period greater than 90 days in the event of a bill increase of 10% or more is sufficient to address the requirement of HB 2073.

Joint Utilities Alternative Proposal for Implementation of HB 2073

Joint Utilities commented that its alternative proposal correctly implements and meets the requirements of HB 2073. Joint Utilities noted that PURA §36.203(b), as amended by HB 2073, imposes four criteria for commission rules: (1) that fuel recovery occurs as contemporaneously as reasonably possible; (2) that eligible costs are allocated among customer classes based on actual historical calendar month usage; (3) that material balances are recovered or refunded through an interim fuel adjustment; and (4) notice is provided to affected parties.

(1) Contemporaneity and "automatic" adjustments

Joint Utilities contended that monthly adjustments are what is meant by the text of PURA §36.203(b)(1) which requires commission rules to ensure that a non-ERCOT utility collects eligible fuel costs "as contemporaneously as reasonably possible." Joint Utilities asserted that a process that precludes monthly adjustments and instead requires a less frequent adjustment period does not comply with this statutory requirement.

Joint Utilities further commented that monthly adjustments are not precluded by PURA §36.201 which prohibits the commission from approving a rate or tariff that authorizes a utility to "automatically adjust and pass through to the utility's customers a change in the utility's fuel or other costs" except as permitted by PURA §36.204. Joint Utilities stated that interpreting PURA §36.201 as applying to PURA §36.203 improperly conflates an automatic ad-

justment with a monthly interim adjustment and does not properly effectuate PURA §36.203(a). Moreover, Joint Utilities stated that PURA §36.201 neither explicitly prohibits monthly adjustments nor does the term "monthly" appear in PURA §36.201. Joint Utilities remarked that the mere fact an adjustment is "monthly" does not inherently render it "automatic" or vice versa. Accordingly, Joint Utilities concluded that PURA §36.201 does not prohibit monthly interim adjustments.

Joint Utilities also noted that PURA §36.203(a) states "36.201 does not prohibit the commission from reviewing and providing for adjustments of an electric utility's fuel factor." Joint Utilities pointed out that PURA §36.203(a) does not require the commission to issue an order for each interim fuel adjustment, only that the provision allows for the commission to "provide for adjustments."

Joint Utilities explained that its proposal for monthly interim adjustments is not "automatic" and therefore not prohibited by PURA §36.201 for four reasons. First, the monthly adjustment in its proposal is only an "interim" adjustment that is a temporary rate that is subject to review and correction in a later fuel reconciliation proceeding. Joint Utilities emphasized the significance of HB 2073 increasing the frequency of fuel reconciliations from at least every three years to at least every two years. Joint Utilities commented that the two-year timeframe will ensure that monthly interim fuel adjustments will be more thoroughly reviewed and approved than under the existing rules. Second, Joint Utilities pointed out that interim fuel adjustments under its framework would be subject to protest and a potential hearing under PURA §36.203(e) and therefore a monthly adjustment would not be automatic. Third, Joint Utilities contended that because its proposal requires staff compliance reviews of monthly interim adjustments, therefore a monthly adjustment could not be "automatically" implemented by the utility. Fourth, Joint Utilities commented that the consumer protections imposed by PURA §36.203(c) which permit the commission to defer recovery of extraordinary costs that are unlikely to continue prevent the monthly interim adjustment from being automatic. Specifically, Joint Utilities stated that PURA §36.203(c) is an assurance that there will not be an "automatic" adjustment that could cause rate shock.

(2) Cost allocation based on actual historical calendar month usage

Joint Utilities commented that its proposed version of §25.237(c)(1) implements the statutory requirement that "the total of the utility's eligible electric fuel and purchased power costs, including any under-collected or over-collected amounts to be recovered through an interim fuel adjustment, is allocated among customer classes based on actual historical calendar month usage."

(3) Material balances must be recovered or refunded through an interim fuel adjustment

Joint Utilities commented that its proposed rules implement the criteria for material balance recovery or refunds specified by PURA §36.203(b). Joint Utilities remarked that the implementation of monthly interim adjustments ensure that "balances are not accrued and then carried for more than 90 days" while still accounting for adjustment protests and their outcomes as well as extraordinary fuel costs by deferring recovery for a period of longer than 90 days.

(4) Notice to affected parties

Joint Utilities commented that is proposal requires notice to all parties that participated in the non-ERCOT utility's most recent fuel reconciliation proceeding. Joint Utilities indicated that this is consistent with rider proceeding such as the District Cost Recovery Factor (DCRF) rider for ERCOT utilities under §25.243(e)(2) which requires notice to "all parties in the electric utility's last comprehensive base-rate proceeding and, if applicable, last DCRF proceeding."

Joint Utilities further commented that its proposal also accurately implements the other requirements of HB 2073, such as the explicit authorization for the commission to defer recovery of extraordinary fuel costs that are unlikely to continue, the protest of interim fuel adjustments and fuel factors, and the more frequent two-year fuel reconciliation period.

Commission response

This question is comprehensively addressed under the header for Implementation of HB 2073.

Implementation of HB 2073

Joint Utilities stated that the commission's proposed rules do "not undertake the substantial revision of the Fuel Rules that HB 2073 requires." Joint Utilities categorically opposed the proposed rule changes on the basis that implementation is infeasible and contrary to the directives of PURA §36.203, as amended by HB 2073. Joint Utilities emphasized changing the existing fuel cost recovery rule framework is necessary to correctly implement HB 2073. Accordingly, Joint Utilities recommended the commission adopt its alternative proposal for §§25.235-25.237.

Joint Utilities commented that the existing fuel recovery rules "inevitably misalign costs and payments, are inherently burdensome on all stakeholders, and do not achieve accurate, contemporaneous collection of fuel costs." Joint Utilities noted that the existing fuel cost recovery process for non-ERCOT utilities involves "fuel formula change cases, fuel factor adjustment cases, fuel refund cases, and fuel surcharge cases" and would continue to exist under the proposed rules. Joint Utilities indicated there have been more than 25 such fuel cost recovery proceedings since 2022, including ten fuel refund proceedings and six surcharge proceedings. Joint Utilities stated that each refund proceeding represents an instance where customers have paid for fuel costs that exceed the fuel expenses for that period which is solely attributable to the "to the inevitable misalignment of formulas, factors, and actual costs." Similarly, each surcharge proceeding represents the inverse where customer bills have been insufficient to cover fuel costs. Joint Utilities remarked that the subsequent proceeding to issue the refund or surcharge only serves to perpetuate the misalignment between customer bills and fuel costs.

Joint Utilities commented that the proposed rules would only continue the current paradigm of fuel cost recovery for non-ERCOT utilities and in many instances, increase the associated regulatory burden of compliance. Joint Utilities emphasized that the intent of HB 2073 was to "reform the fuel recovery process to make it more efficient and timely by moving away from the existing suite of fuel recovery processes" and referred to the Bill Analysis issued by the Texas House of Representatives State Affairs Committee.

Joint Utilities explained that non-ERCOT utilities must purchase fuels such as natural gas and coal, to operate their generators and that the cost recovery process for such fuel purchases is unnecessarily complex and litigious. As a result, utilities have ac-

cumulated and carried significant uncollected balances that must be addressed through surcharges on customer bills. Joint Utilities indicated that these large balances accumulate due to the impossibility associated with predicting future fuel prices when establishing a fuel charge on customer bills. Joint Utilities noted that the surcharge approval process does not actually correct the underlying fuel charge on a customer bill, which is instead undertaken in a separate contested case proceeding. Joint Utilities emphasized that HB 2073 was intended to create a "more efficient fuel cost validation process that will allow for more timely, incremental corrections to fuel charges while avoiding the need for surcharges or refunds except in extreme circumstances"

Joint Utilities asserted that HB 2073 was intended to reform the currently burdensome fuel recovery framework by requiring the recovery of fuel costs "as frequently as possible" and prohibiting fuel balances to be carried for more than 90 days to ensure costs are tracked on an ongoing basis. Joint Utilities also stated HB 2073 promotes customer protection by authorizing protests of fuel adjustments and requiring interim fuel adjustments to be reviewed and reconciled every two years, instead of three years under the status quo.

Commission response

The commission rejects Joint Utility's proposal as inconsistent with HB 2073 and as violative of PURA §36.201. HB 2073 revised PURA §36.203 to require that commission rules ensure that a utility collects, as contemporaneously as reasonably possible, certain fuel costs the commission determines are eligible and that such eligible costs be allocated among customer classes based on actual historical calendar month usage. HB 2073 also requires that "material" balances be collected from or refunded to customers through an interim fuel adjustment no later than 90 days from the date the balance accrues unless certain criteria are met. The statutory changes require a hearing in two very specific circumstances for interim fuel adjustments and generally authorize a hearing for fuel factor proceedings, if the commission determines a hearing is necessary. HB 2073 also establishes a limited right for certain eligible persons to file a "protest" in response to an interim fuel adjustment petition or a fuel factor proceeding, with the narrow scope of a single issue identified for both. HB 2073 categorically prohibits the consideration of prudence of costs during an interim fuel adjustment and fuel factor proceeding. Lastly, HB 2073 establishes the time period for fuel reconciliations to be biannual and authorizes the incorporation of under-collected or over-collected balances resulting from a fuel reconciliation to be incorporated into an interim fuel adjustment, as directed by the commission.

When compared to existing §§25.235-237, HB 2073 is essentially consistent with current commission practice in non-ERCOT fuel proceedings. Existing rule concepts, such "material" balances under existing §25.237 for refunds and surcharges, are contemplated by HB 2073. Moreover, the changes to PURA §36.203 made by HB 2073 amount to primarily procedural changes, such as the establishment of specific timelines and the identification of the specific scope of certain proceedings. The only other substantive change is the creation of the interim fuel adjustment proceeding, which under existing commission rules is a procedural action either independently triggered (for refunds) or sought (for surcharges) by meeting or exceeding the materiality threshold under existing §25.237(a)(3)(B) or is an attendant procedural action subsequent to a fuel factor proceeding or fuel reconciliation. The statutory revisions only necessitated the clear establishment of refunds and surcharges, now collectively called an "interim fuel adjustment" by HB 2073, as a standalone commission proceeding with specific timelines under §25.236.

Joint Utilities proposal, in contrast, contemplates a complete overhaul of non-ERCOT fuel proceedings with the commission. The commission rejects this proposal as inconsistent with HB 2073. For example, Joint Utilities' proposal contemplates the use of a "fuel factor adjustment balancing account" which is identified as "difference between the fuel and purchased power expenses and the fuel factor billed revenue" and may include "additional amounts or interim fuel adjustments granted by the commission." Elsewhere, the purpose of the balancing account is established as a mechanism to ensure "that only the appropriate revenue is recovered through the application of the [fuel] factor rate and interim fuel adjustments and that the utility does not accumulate a material balance of over-or under-recovery." (emphasis added) The Joint Utilities proposed definition of "material balance" is much the same as the commission-proposed definition of "materially" or "material."

A balancing account is forward-looking accounting mechanism employed by a utility to ensure that differences between actual and estimated costs and revenues are appropriately reflected in future rates. Balancing accounts are not utilized in commission non-ERCOT fuel proceedings. Instead, the commission requires the usage of "deferred fuel accounts" which are treated as a regulatory asset. The usage of a balancing account would be a departure from current practice and is not contemplated by HB 2073.

Moreover, Joint Utilities' language concerning the purpose of the balancing account to prevent a material balance from ever occurring appears to contemplate the total elimination of refunds or surcharges from being issued or collected. Joint Utilities proposal appears to interpret an interim fuel adjustment not as a standalone commission proceeding, but as an adjustment to the balancing account to which eligible persons may protest and the commission would hold a hearing on if the statutory criteria are met. It is unclear how eligible persons or the commission would be notified of the occurrence of a "balancing account adjustment" or how the statutory criteria for a hearing on such an adjustment would ever be triggered. Joint Utilities proposal also appears to reduce a fuel factor proceeding into a perfunctory administrative action where all a utility must demonstrate is that "updated fuel factor rates are reasonably anticipated to collect from or refund to customers any accrued material balance in the fuel factor balancing account within 90 days of the accrual of that material balance." (emphasis added)

Additionally, Joint Utilities defines the term "fuel factor rate" as "the monthly per kWh charge to be applied to customers' bills that is estimated to reflect the electric utility's fuel and purchased power costs [with any appropriate adjustments]" and later provides that a utility's fuel costs "will be recovered from the utility's customers by the use of a fuel factor rate and interim fuel adjustments, which the utility may combine as a single charge on customers' bills." Read together with the stated purpose of the balancing account to eliminate the potentially material balances from occurring, the Joint Utilities proposal appears to contemplate the establishment of a rate that authorizes the automatic adjustment and pass-through of a utility's fuel costs to customers, which is expressly prohibited by PURA §36.201. The commission interprets "automatic" adjustments and pass-throughs under PURA §36.201 to be the direct imposition of fuel or other costs upon customers

as they occur, without the opportunity for commission review. The usage of a balancing account in the manner Joint Utilities contemplates, in conjunction with the proposed application and definition of a "fuel factor rate," would effectively authorize a utility to charge customers for any fuel costs that exceed the utility's revenues as they occur (I.E. monthly), with little to no commission review of such charges other than a routine monthly filing of a customer-class rate schedule by the utility.

Feasibility of the Proposed Rule Changes

Joint Utilities commented that incorporation of HB 2073 into the existing fuel recovery framework in the commission's proposal is "ultimately not possible." Specifically, Joint Utilities remarked that the commission's proposal does not ensure contemporaneous fuel cost recovery or even move in that direction. Instead, the commission proposal would maintain the existing cycle of fuel formula and fuel factor cases that "inevitably fail to achieve consistent, contemporaneous recovery" and subsequently necessitate fuel refund and fuel surcharges and the associated proceedings. Joint Utilities asserted that HB 2073 intended to eliminate fuel refunds and fuel surcharges "absent extraordinary circumstances."

Joint Utilities emphasized that the historical amount of fuel refund and fuel surcharge dockets is an indication that the current fuel recovery framework fails to provide for contemporaneous recovery. Joint Utilities noted that, under the current system, fuel cost recovery is not appropriately balanced with the incurring of fuel costs and the fact a refund or surcharge is not triggered does not mean contemporaneous recovery is occurring.

Joint Utilities concluded that preserving the existing fuel formula and fuel factor framework while also implementing HB 2073 is impracticable. Joint Utilities noted that, even if fuel formula and fuel factor proceedings were retained, those proceedings would need to be more frequent to more towards contemporaneous cost recovery. Joint Utilities commented that such an approach is incompatible with the commission proposal, which limits the frequency for which utilities can file for adjustments and the timing of their filings within the calendar year. Joint Utilities remarked such a timing restriction directly conflicts with a more timely alignment between the time fuel costs are incurred and the time those fuel costs are recovered. Moreover, Joint Utilities contended that more frequent fuel formula and fuel factor proceedings would be undesirable and impractical due to the volume and associated administrative burden of litigating those proceedings. Joint Utilities emphasized that changing the current fuel recovery framework is necessary to implement HB 2073.

Joint Utilities commented that, even if the timelines in the commission's proposal were revised to be feasible, implementation would be extraordinarily burdensome for utilities, the commission, and all stakeholders. Joint Utilities emphasized that there would be a substantial risk that deadlines will be missed or that "issues arise within the process that lead to violations of the statutory requirements." Joint Utilities noted that it is unreasonable to think that the Legislature "intended to increase the Commission's workload and the regulatory burden and regulatory risk on all stakeholders" and concluded that the fuel recovery framework must be "fundamentally reformed."

Joint Utilities indicated that its comments on individual rule provisions "should not be construed as an endorsement" of the commission's proposal. Joint Utilities maintained that the commission's proposal is inconsistent with the requirements of PURA §36.203, as amended by HB 2073.

Commission response

The commission acknowledges the increased administrative burdens associated with complying with the 90-day statutory deadline specified under PURA §36.203(b)(3)(A) for interim fuel adjustments. The revisions made to the procedural timelines in §25.236 for interim fuel adjustments referenced under the commission response to Question 5 presents a feasible solution to the concerns raised by Joint Utilities and other commenters regarding the practicability of meeting the statutory deadlines and complying with any associated rule deadlines. Under the revised timeline, the accrual of a material balance coincides with the date a utility must file its interim fuel adjustment petition and issue notice, with discretion afforded to the utility on when to file once it determines when the utility has verified, actual data for that month. Moreover, the presiding officer will set a procedural schedule that will enable the utility to issue a refund or collect a surcharge within the applicable time period specified in §25.236(f)(2)(A) or (B) (i.e., within 90 days from the date the balance accrues unless one of the statutory exceptions apply). . This sequencing of the proceeding and subsequent action by the utility satisfies the requirement of PURA §36.203(b)(3)(A) for material balances to be refunded or surcharged 90 days from the date of accrual. In the event a hearing is held, an interim fuel adjustment is eligible for interim relief that would enable the 90-day deadline to be met. The revised proposal also complies with the requirements of the APA in that it treats eligible persons that file a written protest in both interim fuel adjustments and fuel factor proceedings as parties and affords them certain statutory procedural rights, with appropriate limitations given the narrow scope of such proceedings.

Proposed §25.235 - Fuel Costs

Proposed §§25.235(b), 25.235(b)(1), and 25.235(b)(1)(A)(i) and (ii)- Notice of Fuel Proceedings

Proposed §25.235(b) requires an electric utility to give notice of a fuel proceeding at the time the petition is filed. Proposed §25.235(b)(1) requires notice in fuel proceedings to be posted to the utility's website and provided to OPUC by electronic mail. Proposed §25.235(b)(1)(A) requires notice in interim fuel adjustments or a proposal to change the fuel factor under §25.237 must be by either by one-time publication in a newspaper having general circulation in each county of the service area of the electric utility under §25.235(b)(1)(A)(i) or by individual notice to each customer or by individual notice to all parties in the electric utility's prior fuel reconciliation proceeding under §25.235(b)(1)(A)(ii).

OPUC recommended proposed §§25.235(b)(1), 25.235(b)(1)(A), and 25.235(b)(1)(A)(i) be revised to require both notice by newspaper publication and notice by individual issuance to each customer and all parties in the electric utility's prior fuel reconciliation proceeding. In contrast, Joint Utilities opposed the inclusion of newspaper notice or individual notice in §25.235(b)(1)(A)(i) and (ii) for interim fuel adjustments and recommended it be replaced with a uniform requirement for notice by electronic mail to all parties in the utility's most recent fuel reconciliation proceeding. OPUC commented that, by presenting an option between the two forms of notice, the proposed language diminishes the effectiveness of notice. OPUC remarked that newspaper notice, by itself, is insufficient as most customers rely primarily on the internet and social media. Therefore, newspaper notice is unlikely to actually reach a utility's customers. In contrast, OPUC stated that individual notice is preferable due to its reliability. Joint Utilities

indicated that requiring newspaper notice or individual notice would, at a minimum, take approximately 30 to 45 days. Joint Utilities commented that this delay is incompatible with HB 2073's 90-day deadline to complete bill adjustments and the 75-day application processing timeline under proposed §25.235(i)(2)(B).

Commission response

The commission generally agrees with Joint Utilities that newspaper notice is incompatible with the reduced timeline imposed by HB 2073. The commission accordingly eliminates newspaper notice as a requirement, deletes §25.235(b)(1)(A)(i), and merges §25.235(b)(1)(A)(ii) into §25.235(b)(1)(A). While PURA §36.103 under Chapter 36, Subchapter C. requires notice of proposed rate changes to be issued by newspaper, PURA §36.203(i) states "[a] proceeding under this section is not a rate case under Subchapter C." Therefore, non-ERCOT fuel proceedings are exempt from the newspaper notice requirement under PURA §36.103. The commission declines to replace the individual notice requirement with a uniform requirement for notice by electronic mail, as certain customers may not have an e-mail address or may have not provided an e-mail address to the utility. In this event, the option to provide notice by other means, such as first-class mail, should be available to the utility.

The commission also adds new §25.235(b)(2)(C)(ii), (iii) and (iv) which require notices to explain the notice recipient's right to file a protest in a fuel factor or interim fuel adjustment proceeding, including a requirement for the protest to identify whether the person that submits the protest is a customer of the utility; specify the appropriate scope of a protest in an interim fuel adjustment or fuel factor proceeding, as applicable; include an admonition that a request for a hearing should be included in the protest if one is sought; and the specific grounds for which a hearing may be held in each type of proceeding.

Proposed §25.236 - Recovery of Fuel Costs

Proposed §25.236(a) - Eligible fuel expenses

Proposed §25.236(a) establishes that eligible fuel expenses include expenses properly recorded in Federal Energy Regulatory Commission (FERC) Uniform Systems of Accounts 501, 502, 503, 509, 518, 536, 547, and 555, as modified by the provision, as of April 1, 2025. The provision expressly excludes any later amendments to the System of Accounts from being incorporated into the subsection.

Joint Utilities recommended FERC Account 559.3 be added to the list of FERC Uniform System of Accounts that describe fuel expenses eligible for recovery in proposed §25.236(a). Joint Utilities noted that this account includes "the cost delivered at the station" of renewable fuel costs such as hydrogen or renewable natural gas. Joint Utilities commented that the addition of this account to the list of eligible fuel costs would be consistent with FERC Order 898.

Commission response

The commission agrees with Joint Utilities and implements the recommended change.

Proposed §25.236(a)(8) - Revenue offsets for eligible fuel expenses

Proposed §25.236(a)(8) prohibits eligible fuel expenses from being offset by revenues by affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operation costs associated with transmission assets. The provision also authorizes eligible fuel expenses to be offset by revenues specified under §25.237(A)-(C).

CEP commented that mandatory language should be preserved in proposed §25.236(a)(8) for eligible fuel offsets. Specifically, CEP commented that existing §25.236(a)(8) states that "eligible fuel expenses shall be offset by [the revenues subparagraphs (A) through (C)]." However, in proposed §25.236(a)(8), the "shall" is replaced with "may": "eligible fuel expenses may be offset by [the revenues subparagraphs (A) through (C)]. Accordingly, CEP recommended that "may" be replaced with "must" to ensure that eligible fuel expenses are appropriately "offset by corresponding revenues that are directly related to those expenses" and therefore promote "contemporaneous matching of fuel revenues and expenses" which in turn would mitigate unnecessary surcharge or refunds by a utility in future fuel reconciliation proceedings.

Commission response

The commission agrees with CEP and implements the recommended change. The provision is revised to state that eligible fuel expenses must be offset by the revenues specified under §25.236(8)(A)-(C).

Proposed §25.236(e) - Fuel reconciliation proceedings

Proposed §25.236(e) establishes the burden or proof and scope of a fuel reconciliation proceeding.

Proposed §25.237(e)(2) - Scope of fuel reconciliation proceeding

Proposed §25.237(e)(2) specifies that the scope of a fuel reconciliation proceeding and establishes that a utility has the burden of proof in a fuel reconciliation proceeding to establish the reasonableness of its fuel expenses and the materiality of any over- or under-recovery.

OPUC recommended proposed §25.236(e)(2) be revised to state that "[A]n electric utility has the burden of proof in a fuel reconciliation proceeding to establish the reasonableness and necessity of its fuel expenses and the materiality of any over- or under-recovery." OPUC remarked that, because a utility bears both the burden of showing that its eligible fuel expenses are both "reasonable" and "necessary" when providing electric service, the rule should be revised accordingly.

Commission response

The commission agrees with OPUC and implements the recommended change with revisions. A cost that is reasonable does not always necessarily mean the cost is necessary (i.e. fuel volume, fuel type, etc.). The commission revises the first sentence of §25.236(e)(2) to state: "The scope of a fuel reconciliation proceeding includes any issue related to determining the reasonableness and necessity of the electric utility's fuel expenses…." The commission also deletes the second sentence regarding the electric utility's burden of proof under §25.236(e)(2) as it is redundant of §25.236(e)(1)(A). The commission merges the portion of §25.236(e)(2) regarding the electric utility's burden of proof regarding the materiality of any over- or under-recovery into §25.236(e)(1)(A).

Proposed §25.236(f) - Interim fuel adjustments

Proposed §25.236(f) requires a utility to apply for an interim fuel adjustment in the time frame specified by §25.236(h)(2)(A) if the utility is in a state of material under-collection or over-collection of the utility's reasonably stated eligible fuel and purchased power costs.

Proposed §25.236(f)(1) - Adjustment factor

Proposed §25.237(f)(1) states that if it is determined in the interim fuel adjustment that the utility is in a state of material under-collection or over-collection, except as provided for under §25.237(g)(3), each rate class must be credited or assessed a refund or surcharge, as applicable, using an adjustment factor. The provision further states that the adjustment factor will be applied to the kilowatt-hour usage of each rate class for the duration of the refund or surcharge period.

Proposed §25.236(f)(1)(B) - Adjustment factor for transmission voltage customers

Proposed §25.236(f)(1)(B) provides that, notwithstanding the requirements of §25.236(f)(1)(A), each retail customer who receives service at transmission voltage levels, each wholesale customer, and any groups of seasonal agricultural customers as identified by the electric utility must be given a one-time credit or assessed a surcharge made on a monthly basis over a period not to exceed 12 months through a bill charge, based on the actual refund or surcharge balance for the individual customers.

Joint Utilities recommended proposed §25.236(f)(1)(B) be revised to replace the phrase "based on the actual refund or surcharge balance for the individual customers" with language from existing §25.236(e)(4) "based on their individual actual historical usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses if necessary." Joint Utilities recommended generally that proposed §25.236(f) not be adopted, but in the event it is adopted, that proposed §25.236(f)(1)(B) be reverted to existing language as "there is no reason for it to deviate from current practice."

Commission response

The commission agrees with Joint Utilities that changing current practice is unnecessary in this instance and implements the recommended change. The commission also makes conforming revisions to §25.236(f)(1).

Joint Utilities commented that calculation of customer-specific refunds under §25.236(f)(1)(B) for customers taking service at transmission voltage is infeasible given the 5-day period for utilities to prepare interim fuel adjustments under proposed §25.236(i)(2)(A). Joint Utilities also generally remarked the 5-day period under proposed §25.236(i)(2)(A) is unworkable for utilities.

Commission response

The commission declines to revise the provision based on Joint Utilities comments because the issue is moot. The revisions to the procedural timeline for interim fuel adjustments under §25.236(h)(2), as detailed under the heading for Question 5, substantively address Joint Utilities concerns.

Proposed §§25.236(f)(2), 25.236(f)(2)(B), 25.236(f)(2)(B)(i), and §25.236(h)(2)(C)- Refunds and surcharges

Proposed §25.236(f)(2) requires refunds and surcharges to be issued and recovered by the electric utility, as applicable, no later than 90 days from the date the balance is accrued in the form and manner specified by §25.236(f)(2)(A) and (B) for each rate class. Proposed §25.236(f)(2)(B) requires all surcharges to be assessed on a monthly basis and paid by customers no later than 90 days from the date the surcharge balance is accrued except in the circumstances prescribed by §25.236(f)(2)(B)(i) and (ii). Proposed §25.236(f)(2)(B)(i) states that a surcharge must be collected over a time period greater than 90 days, as ordered by the commission, if an interim fuel adjustment would or is anticipated to result in a total bill increase of 10 percent or more for an average customer in any rate class compared to the total bill in the month before implementation. Proposed §25.236(h)(2)(C) authorizes the issuance of a final order later than 75 days from the date a surcharge balance is accrued if the presiding officer determines that the interim fuel adjustment sought would result in a total bill increase of 10 percent or more for an average customer in any rate class

Joint Utilities recommended that the 10% customer bill change that triggers a longer recovery period under proposed §25.236(f)(2)(B)(i) and a hearing under §25.236(h)(2)(C)(i) should be revised to "be benchmarked to total retail billed revenue on a jurisdictional basis rather than individual rate class changes." Joint Utilities explained that categorical application of the 10% bill change to individual customer classes could result in "frequent and unnecessary hearings," particularly for small customer classes that have volatile energy usage such as seasonal businesses. Joint Utilities emphasized that, if customer class agnostic methodology is not implemented, even minor adjustments could trigger a hearing which would be contrary to the intent of HB 2073 and lead to an inconsistent application of the rule. Joint Utilities remarked that the proposed customer-class based threshold would be administratively burdensome for the commission as it would require a hearing "every time a single rate class experiences a 10% change" and therefore result in "a near constant state of hearings."

Commission response

The commission declines to implement the recommended change and maintains a rate class distinction for surcharges and refunds. HB 2073 refers to "a total bill increase" and is clearly focused on mitigating the potential for significant bill increases for customers as a result of interim fuel adjustments by allowing a longer recovery period to avoid excessive total bill increases. The Texas retail jurisdiction does not receive an electric bill, and thus the concept of applying a total bill increase analysis to the entire Texas jurisdiction as a whole is not appropriate. A rate class is a group of customers that pay the same set of rates, and the rates and total bill amounts faced by customers in different rate classes can and do vary significantly, with the typical proportion of a customer's total bill that reflects fuel costs varying widely between rate classes. Interim fuel adjustments could also lead to situations in which the jurisdictional-level impact may be small, but some rate classes may face significantly large surcharges, even while other rate classes face fuel refunds. Ignoring the typical total bill impact for individual rate classes could lead to situations where a minor overall interim fuel adjustment results in a total bill impact for typical customers in certain rate classes far in excess of 10% without triggering the associated requirement of the statute. It therefore logically follows that a total customer bill impact analysis would necessarily be by rate class. While the current language would result in more hearings, PURA §36.203(b)(2) requires that "the total of the utility's eligible electric fuel and purchased power costs, including any under-collected or over-collected amounts to be recovered through an interim fuel adjustment [be] allocated among customer classes based on actual historical calendar month usage." (emphasis added) Interim relief is available for interim fuel adjustments in the event there are issues meeting the 90-day statutory accrual deadline for refunds and surcharges due to a hearing being required under §25.236(h)(2) for a specific customer class. In that event, the customer classes

that received an increase that did not trigger a hearing would proceed as normal.

Proposed §25.236(g) and §25.236(g)(1)- Interest calculations for fuel proceedings

Proposed §25.236(g) and §25.236(g)(1) require that interest for fuel reconciliation proceedings and interim fuel adjustments be calculated for each rate class on the cumulative monthly ending under- or over-recovery balance for that rate class using the commission-prescribed annual rate established in accordance with §25.28, relating to Bill Payment and Adjustments. The provision also requires interest to be calculated for each rate class based on the principles established under §25.236(g)(1)(A)-(E).

Joint Utilities recommended that proposed §25.236(g) should be revised to state that interest on balances resulting from deferrals under §36.203(c) should be calculated at the non-ERCOT utility's Weighted Average Cost of Capital (WACC). Joint Utilities commented that in such instances, the non-ERCOT utility is ordered by the commission to "undertake financing of costs to defer them over an extended recovery period." Joint Utilities further commented that WACC is reflective of the utility's commission-determined cost of capital and is therefore the "appropriate interest rate to apply."

Commission response

The commission declines to implement the recommended change. WACC should only be applied to long-term balances. Any interim fuel adjustment balances should be addressed within one year. Moreover, per PURA §36.203(h), fuel reconciliations now occur on a two-year cadence rather than three and may result in an interim fuel adjustment. Therefore, usage of the commission-prescribed interest rate under Project 45319 is appropriate.

Proposed §25.236(g)(2) and §25.236(g)(3)- Interest calculations for fuel proceedings

Proposed §25.236(g)(2) governs the calculation of rate class fuel balances for purposes of refunds and surcharges. Proposed §25.236(g)(3) establishes that intraclass allocations of refunds and surcharges depend on the voltage level at which the customer receives service and indicates the specific methodology of such allocations for retail customers and all other customers.

The commission moves §25.236(g)(2) and (3) to §25.236(f)(2) relating to refunds and surcharges as the provisions are not interest related. Specifically, §25.236(g)(2) is transitioned as new §25.236(f)(2)(C) and §25.236(f)(2)(D). The commission also renumbers §25.236(g) and its sub-provisions accordingly.

Proposed §§25.236(h), 25.236(h)(1), and 25.236(h)(2)- Procedural schedule for interim fuel adjustment

Proposed §25.236(h) establishes the procedural schedule for fuel proceedings. Proposed §25.236(h)(1) establishes the procedural schedule for fuel reconciliation proceedings. Proposed §25.236(h)(2) establishes the procedural schedule for interim fuel adjustments.

Joint Utilities commented that proposed §25.236(h) should be revised to reflect existing §25.237(a)(3)(B) which connects the projection of whether a utility is anticipated to remain in a state of material over-recovery or under-recovery to the determination of whether a refund or surcharge is required. Joint Utilities remarked that the state of a utility's material under-recovery or over-recovery should be retained and applied to interim fuel adjustment proceedings. Joint Utilities explained that it is reasonable for a utility to not propose a refund or surcharge if it projects that future fuel revenue and costs will bring the utility's recovery amount below the materiality threshold without additional action. Joint Utilities alternatively recommended that, if existing §25.237(a)(3)(B) is not retained in proposed §25.236(h), then the materiality threshold of 4.0% should be significantly increased to account for the reduced flexibility in calculating material fuel balances and to minimize unnecessary commission proceedings.

Commission response

The commission agrees with Joint Utilities and implements the recommended change. The commission revises §25.236(h)(2) and adds new §25.236(h)(2)(A) to incorporate the existing language in §25.237(a)(3)(B) with minor changes. The commission also revises §25.236(h)(1) for clarity. Specifically, the commission revises the provision to replace the phase "materially complete petition" with "administratively complete" petition as determined by the presiding officer as the term "materially" is a specific definition unrelated to fuel reconciliations. The commission also makes minor and conforming changes to §25.236(h)(1).

Joint Utilities recommended that the procedural schedule requirements for interim fuel adjustments under proposed §25.236(h)(2) be deleted as they do not conform with the directives of HB 2073. Joint Utilities commented that interim fuel adjustments should be a streamlined process that facilitates the frequent updating of a utility's fuel factor using recent historical costs that should become effective promptly unless protested.

Commission response

The commission declines to revise the provision based on Joint Utilities comments because the issue is moot. The revisions to the procedural timeline for interim fuel adjustments under §25.236(h)(2), as detailed under the heading for Question 5, substantively address Joint Utilities concerns.

Proposed §25.236(h)(2)(B) - Procedural schedule for interim fuel adjustments established by presiding officer

Proposed §25.236(h)(2)(B) requires, upon the filing of a petition for an interim fuel adjustment to surcharge or refund a material fuel under- or over-recovery balance, the presiding officer to set a procedural schedule that will enable the commission to issue a final order in the proceeding no later than 75 days from the date the surcharge or refund balance is accrued.

Joint Utilities recommended proposed §25.236(h)(2)(B) be revised to require a final order for an interim fuel adjustment be issued by the commission within 30 days from the date a material balance has accrued. Joint Utilities stated that the proposed 75-day timeline does not provide a sufficient period for a utility to execute the refund or surcharge within 90 days of the balance being accrued. Joint Utilities explained that a utility needs time between the date the final order is issued to account for the refund or surcharge into its billing systems and an additional full month billing cycle to implement the refund or surcharge.

Commission response

The commission declines to revise the provision based on Joint Utilities comments because the issue is moot. The revisions to the procedural timeline for interim fuel adjustments under §25.236(h)(2), as detailed under the heading for Question 5, substantively address Joint Utilities concerns.

Proposed §25.236(h)(2)(C) and §25.236(h)(2)(C)(i)- Deferral of final order for 10 percent or more bill increase

Proposed §25.236(h)(2)(C) authorizes a final order for an interim fuel adjustment to be issued later than 75 days from the date a surcharge balance is accrued if the criteria under either §25.236(h)(2)(C)(i) or (ii) are met. Proposed §25.236(h)(2)(C)(i) states that if the presiding officer determines that the interim fuel adjustment sought by the utility would result in a total bill increase of 10 percent or more for an average customer in any rate class as described under §25.236(f)(2)(B)(i), or if the utility has a material under-collected balance that is the result of extraordinary electric fuel and purchased power costs as described under §25.236 (f)(2)(B)(ii) of

this section, then the presiding officer may issue the final order later from the date a surcharge balance accrues.

Joint Utilities commented that the procedural schedule timeline in proposed §25.236(h)(2)(C)(ii) directly conflicts with the requirement of PURA §36.203 which requires refunds to be completed within 90 days unless the adjustment would result in a total bill increase greater than or equal to 10%. Similarly, Joint Utilities remarked that a protest of an interim fuel adjustment should not qualify as an exception to the 90-day deadline for a final order to be issued as it is not provided for by PURA §36.203(b). Joint Utilities emphasized that any commission proceedings concerning an interim fuel adjustment protest must be completed in a time period sufficient to permit a surcharge to be collected within 90 days of accrual.

Commission response

The commission disagrees with Joint Utilities. The argument presented does not account for PURA §36.203(b)(3)(B) which states that if an interim fuel adjustment "would result in a total bill increase of 10 percent or more compared to the total bill in the month before implementation, not later than a date ordered by the commission which must be after the 90th day after the date the balance is accrued." This criteria for deferred recovery is identical to the requirement for the commission to hold a hearing under PURA §36.203(g) which states "[t]he commission shall hold a hearing on a protest of an interim fuel adjustment under Subsection (e) if the adjustment would result in a total bill increase of 10 percent or more as described by Subsection (b)(3) or if the adjustment results from extraordinary electric fuel and purchased power costs as described by Subsection (c)." (emphasis added) Moreover, PURA §36.203(c) authorizes deferred recovery (I.E. greater than 90 days from the date a balance accrues) for extraordinary electric fuel and purchased power costs: "Notwithstanding Subsection (b)(3), on a finding that an electric utility has an under-collected balance that is the result of extraordinary electric fuel and purchased power costs that are unlikely to continue, the commission may approve an interim fuel adjustment that would defer recovery to take place over a period longer than 90 days." (emphasis added) Therefore, there is nothing in the cited rule provisions that are inconsistent with HB 2073. In the event of a protest or a hearing occurring where the statutory requirements for deferred recovery are not triggered, the utility may petition for, or the commission may order, interim relief.

AXM and CARD recommended that proposed §25.236(h)(3) be revised to explicitly require interim fuel adjustment proceedings conform to the contested case requirements prescribed by the Texas Administrative Procedure Act.

Commission response

The commission declines to implement the recommended change because it is unnecessary. The Texas APA applies uniformly to all state agency contested cases, rulemakings, and other applicable proceedings unless exempted, in whole or in part, by the relevant statute authorizing or requiring the agency action. Per §2001.001(1) of the Texas APA: "[i]t is the public policy of the state through this chapter to provide minimum standards of uniform practice and procedure for state agencies."

Proposed §25.236(h)(3) - Procedural schedule for protest of interim fuel adjustment

Proposed §25.236(h)(3) establishes that a protest of an interim fuel adjustment may be processed and reviewed in a manner deemed administratively efficient by the presiding officer to ensure that any refunds or surcharges are refunded or collected in accordance with the deadline established under §25.236(f), as applicable.

Joint Utilities recommended that proposed §25.236(h)(3) be omitted and replaced with a general statement that the commission will determine whether a utility accurately calculated the under-collected or over-collected balance and associated interest. Joint Utilities remarked that the provision as proposed is contrary to HB 2073. Joint Utilities provided draft language consistent with its recommendation.

Commission response

The commission partially agrees with Joint Utilities and implements the recommended change as new §25.236(h)(3)(C). The commission further notes that the revisions to the procedural timeline for protests of interim fuel adjustments under §25.236(h)(3), as detailed under the headings for Questions 7a and 7b, are made to reflect the similar provisions for protests of a fuel factor under §25.237(g).

Proposed §25.237 - Fuel Factors

Proposed §25.237(a) - Use and calculation of fuel factors

Proposed §25.237(a) establishes that an electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.

Proposed §25.237(a)(1) - General requirements for fuel factors

Proposed §25.237(a)(1) provides that an electric utility may determine its fuel factor in dollars per kilowatt-hour and requires that fuel factors account for system losses and for the difference in line losses corresponding to the voltage at which the electric service is provided. The provision further authorizes an electric utility to have different fuel factors for different times of the year to account for seasonal variations and for a different method of calculation to be used upon a showing of good cause by the electric utility.

CEP recommended proposed §25.237(a)(1) be revised to require fuel factors be established for no less than four-month periods, unless an emergency arises, in the same manner as existing §25.237(a). CEP explained that fuel factors adjusted on a more frequent basis than four months make customer bills more unpredictable and therefore should not be allowed by the rule. Moreover, requiring more frequent fuel factor adjustment proceedings would impose unnecessary costs and litigation burdens. CEP provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is unnecessary. Under §25.237(a)(2)(A) and (B), a utility is limited to a four-month cadence for adjusting its

fuel factor regardless of whether it elects to elect to use the standard methodology under §25.237(a)(1)(A) or a commission-approved, utility specific formula under §25.237(a)(1)(B).

Proposed §25.237(a)(2) and §25.237(a)(2)(A) and (B) - Scheduling for initiation of change to fuel factor

Proposed §25.237(a)(2) establishes the timing requirements a utility must comply with when initiating a change to its fuel factor. Proposed §25.237(a)(2)(A) limits an electric utility that uses the standard methodology under §25.237(a)(1)(A) to petition to adjust its fuel factor as often as once every four months in accordance with the schedule established by §25.237(d). Proposed §25.237(a)(2)(B) limits an electric utility that uses a commission-approved, utility specific formula under §25.237(a)(1)(B) to adjust its fuel factor in accordance with its formula no sooner than four months after the filing of its most recent fuel factor adjustment petition.

Joint Utilities commented that the four-month timeline for fuel factor rate adjustments under proposed §25.237(a)(2)(A) and (B) is too lengthy and should be reduced. Joint Utilities stated the proposed timeline is contrary to the legislative intent of HB 2073 for the commission fuel recovery rules to ensure that a utility collects eligible costs "as contemporaneously as reasonably possible." Joint Utilities commented that fuel factor rate adjustments should be authorized on a more frequent basis than four months to ensure that fuel costs are synchronized with customer billing in a timely fashion. Joint Utilities further commented than any restriction in the proposed rules that retains over-recovery or under-recovery balances rather than eliminating them is contrary to PURA §36.203(b)(1). Joint Utilities provided draft language consistent with its recommendation.

Commission response

The commission disagrees with Joint Utilities and declines to implement the recommended change. HB 2073 neither provides for nor requires the commission to establish specific timelines for fuel factor proceedings, it only requires commission rules to "ensure that…a utility collects as contemporaneously as reasonably possible the electric fuel and purchased power costs that the utility incurs and that the commission determines are eligible" under §36.203(b)(1)." Accordingly, HB 2073 does not necessitate the elimination of the possibility for a utility to retain over-recovery or under-recovery balances. If a utility is not carrying a balance month to month, conceptually that would mean a utility's revenues appropriately match a utility's costs. If such an outcome is achieved by the contrivance of removing the timing restrictions on applying fuel factor rate adjustments, rather than a utility filing timely and accurate information in its fuel factor petition on a routine schedule, that is tantamount to the establishment of a rate authorizing the automatic adjustment and pass-through of changes in fuel costs to customers. Automatic adjustments are expressly prohibited by PURA §36.201 except for the recovery of "reasonable costs of conservation, load management, and purchased power" under §36.204.

Proposed §25.237(a)(3) - Fuel factor adjustments

Proposed §25.237(a)(3) establishes that fuel factors are temporary rates and that a utility's collection of revenues by fuel factors is subject to the adjustments specified under §25.237(a)(3)(A)-(B).

Joint Utilities commented that separate refunds and surcharges, as contemplated under proposed §25.237(a)(3), would be unnecessary if Joint Utilities proposal to "to instead account for refund or surcharge balances in the calculation of the utility's fixed fuel factor" were implemented. Joint Utilities remarked that PURA §36.203 was adopted to both ensure that a utility's fuel factor was timely adjusted and that eligible costs are recovered by the utility as contemporaneously as possible. Joint Utilities accordingly recommended that, to properly implement HB 2073, the balance of a utility's under-recovery or over-recovery should be rolled into the calculation of the fixed fuel factor and be adjusted on a monthly basis.

Commission response

The commission declines to implement the recommended change. HB 2073 does not require the elimination of refund or surcharge proceedings. Instead, HB 2073 establishes interim fuel adjustments as a standalone proceeding with specific requirements and a timeline for the issuance of a refund or collection of a surcharge under §25.236. Accounting for "for refund or surcharge balances in the calculation of the utility's fixed fuel factor" and adjusting the fuel factor on a monthly basis rather than through an interim fuel adjustment is effectively an automatic adjustment and pass through of fuel costs to customers that is prohibited under PURA §36.201.

Proposed §25.237(b) and proposed §25.237(b)(1) and (2) - Petitions to revise fuel factors

Proposed §25.237(b) establishes the specific timing and requirements for filing petitions to revise fuel factors. Proposed §25.237(b)(1) requires a utility that uses the standard methodology under §25.237(a)(1)(A) in accordance with the cadence specified by §25.237(a)(2)(A) to file a petition during the first five working days of the months specified under §25.237(d). The provision further requires the complete fuel factor filing package to include the fuel factor application, a tariff sheet reflecting the proposed fuel factors, and supporting testimony. The provision requires that supporting testimony include, for each month of the period in which the fuel-factor has been in effect and has not been reconciled up to the most recent month for which information is available, specific information concerning costs and revenues by customer class and the differences between such costs and revenues. Proposed §25.237(b)(2) requires a utility that uses a commission-approved, utility specific formula in accordance with the cadence specified by §25.237(a)(1)(B) in accordance with the cadence specified by §25.237(a)(2)(B) to file a petition at least 15 days prior to the first billing cycle in the billing month in which the proposed fuel factors are requested to become effective. The provision further requires the complete fuel factor filing package to include a tariff sheet reflecting the proposed fuel factors, workpapers in Excel format with intact formulas with appropriate proof and verification of natural gas prices that support the calculation of the revised fuel factors, as well as other information such as calculations accounting for differences in line losses corresponding with the voltage of the provided electric service.

Joint Utilities recommended proposed §25.237(b) be revised to require less information to be provided by the utility when filing a fuel factor petition and have less restrictive timelines to better align with the intent of HB 2073. Joint Utilities commented that interim rates (I.E. the fuel factor) are "intended to timely match fuel costs with customer billing to avoid large over- and under-recoveries." Joint Utilities noted that, in contrast, proposed §25.237(b) would continue to require substantial proceedings to adjust fuel factor rates which are burdensome and time-consuming for both stakeholders and the commission to undertake. Joint Utilities stated that proposed §25.237(b) contravenes the legislative in-

tent to align costs with customer bills "as contemporaneously as reasonably possible." Joint Utilities also highlighted that a more comprehensive proceeding for fuel factors is unnecessary because a fuel factor is an interim rate that will ultimately be reconciled and reviewed for prudence by the commission in a later proceeding.

Commission response

The commission declines to implement the recommended change. As stated previously, HB 2073 neither provides for nor requires the commission to establish specific timelines for fuel factor proceedings. The limitations on fuel factor petition timing under §25.237(b)(1) for utilities that use the standard methodology under §25.237(a)(1)(A) and the fuel factor petition timing under §25.237(b)(2) for utilities that use a commission-approved, utility-specific methodology under §25.237(a)(1)(B) are appropriate.

Proposed §§25.237(c), 25.237(c)(1), and 25.237(c)(2)- Fuel factor revision proceeding

Proposed §25.237(c) establishes the burden of proof and the scope of a fuel factor revision proceeding. Proposed §25.237(c)(1) establishes a utility's burden of proof for a utility that uses either the standard methodology for fuel factor calculation under §25.237(a)(1)(A) or uses a commission-approved, utility-specific formula under §25.237(a)(1)(B). Proposed §25.237(c)(2) establishes the scope of a fuel factor revision proceeding for a utility that uses the standard methodology for fuel factor calculation under §25.237(a)(1)(A) and a utility that uses a commission-approved, utility-specific formula under §25.237(a)(1)(B), respectively.

Joint Utilities commented that proposed §25.237(c)(1) and (2) are contrary to PURA §36.203 and do not fulfill the legislative intent of HB 2073. Specifically, Joint Utilities noted that the rule provisions do not sufficiently reflect the limitations of PURA §36.203(f) which explicitly restrict the scope of a fuel factor protest and also prohibit prudence from being reviewed in a fuel factor proceeding or interim fuel adjustment. Joint Utilities remarked that proposed §25.237(c)(1) and (2) inadequately distinguish between the more limited "protest" articulated under HB 2073 and the "broader procedural rights associated with contested cases."

Commission response

The commission disagrees with Joint Utilities and declines to implement the recommended change. The scope of a fuel factor protest established by PURA §36.203(f) is implemented under §25.237(g)(1)(B). PURA §36.203(f) states "The sole issue that may be considered on a protest of a fuel factor… is whether the factor reasonably reflects costs the electric utility will incur so that the utility will not substantially under-collect or over-collect the utility's reasonably stated fuel and purchased power costs on an ongoing basis. Subparagraph 25.237(g)(1)(B) implements the statute almost verbatim: "[t]he commission will review a protest of a fuel factor solely to determine whether the utility's fuel factor reasonably reflects costs the utility will incur such that that the utility will not substantially under-collect or over-collect the utility's reasonably stated fuel and purchased power costs on an ongoing basis." Moreover, §25.237(g)(1)(C) codifies the prohibition on review of prudence of costs in a protest of a fuel factor established by PURA §36.203(e).

Proposed §§25.237(d), 25.237(d)(1), and 25.237(d)(2)- Schedule for filing petitions to revise fuel factors

Proposed §25.237(d) authorizes a petition to revise fuel factors or to initiate or revise a fuel factor formula to be filed with any general rate proceeding. Proposed §25.237(d)(1) establishes a four-month schedule for each specific non-ERCOT utility that utilizes the standard methodology for fuel factor calculations under §25.237(a)(1)(A) to file a fuel factor revision petition. The provision also authorizes alternative timing for emergency fuel factor petitions under §25.237(f). Proposed §25.237(d)(2) authorizes a utility that uses a commission-approved, utility-specific formula under §25.237(a)(1)(B) to file a fuel factor petition in any month except December.

Joint Utilities recommended proposed §25.237(d) be deleted as it is contrary to the legislative intent of HB 2073. Specifically, Joint Utilities noted that the provision "constitutes a restriction on efforts to collect costs contemporaneously" and therefore is contrary to the revised statute.

Commission response

The commission disagrees with Joint Utilities and declines to implement the recommended change. Deleting the schedule under §25.237(d)(1) for utilities that elect to use the standard methodology for fuel factor calculations under §25.237(a)(1)(A) could risk several utilities filing a fuel factor revision petition or fuel factor formula revision petition close together which would be extremely burdensome for commission staff. The general authorization under §25.237(d)(2) for a utility that uses a utility-specific formula under §25.237(a)(1)(B) is already sufficiently flexible as it only prohibits the filing of petitions in December. This scheduling difference is due to the significantly lengthier amount of time associated with reviewing fuel factor revision or fuel factor formula revision petitions for utilities that elect to use the standard methodology under §25.237(a)(1)(A) rather than a commission-approved, utility specific formula under §25.237(a)(1)(B). Moreover, HB 2073 does not impose a requirement for costs to be collected contemporaneously. PURA §36.203(b)(1) requires commission rules to "ensure that…a utility collects as contemporaneously as reasonably possible the electric fuel and purchased power costs that the utility incurs and that the commission determines are eligible." This general requirement is primarily effectuated by the separation of refunds and surcharges from fuel factor proceedings into a separate interim fuel adjustment proceeding under §25.236 where material over-collections or under-collections will be refunded or recovered, respectively. This paradigm is reflected in §25.237(a)(3)(B) which establishes that "[t]o the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary to refund material over-collections or surcharge material under-collections through an interim fuel adjustment under §25.236 of this title in the time and manner required by that section." Importantly, the following sentence states "[r]efunds or surcharges may be made without changing an electric utility's fuel factor." More contemporaneous recovery can be achieved by a utility filing timely and accurate information with the commission regarding its fuel factor or fuel factor formula revision and electing to use a commission-approved, utility specific methodology under §25.237(a)(1)(B).

Proposed §25.237(e) - Procedural schedules

Proposed §25.237(e) provides for the procedural schedules for revising fuel factors if a utility selects the standard fuel factor methodology under §25.237(a)(1)(A) or otherwise employs a utility-specific fuel factor methodology under §25.237(a)(1)(B).

Joint Utilities generally recommended the deadlines in proposed §25.237(e) be reduced to the furthest extent possible to ensure the fuel factor is adjusted faster. Joint Utilities emphasized that "more routine and frequent fuel factor updates would better align customer bills with actual costs" and therefore be reflective of the legislative intent for fuel cost recovery to be contemporaneous. Joint Utilities also recommended preserving language, such as under existing §25.237(e)(2)(B), which allows fuel factors to be approved if no hearing is requested within 30 days of the date the petition is filed. Joint Utilities explained that such language is a current example under existing rules of where an "interim rate change may take effect without undue procedural burden." Joint Utilities maintained that fuel factors occurring on a more routine and frequent basis would help better align customer bills with actual costs and "fulfill HB 2073's contemporaneity requirement."

Commission response

The commission declines to reduce the deadlines specified under §25.237(e). More contemporaneous recovery is better effectuated through explicitly authorizing interim relief for interim fuel adjustments in a manner appropriate for those proceedings as opposed to reducing the deadlines for fuel factor proceedings. As stated previously, the commission adds new §25.236(f)(4) which authorizes the presiding officer to order interim relief for interim fuel adjustments without a hearing for good cause, either on the presiding officer's own motion, in response to a petition filed by a party, or in response to a written protest filed by an eligible person. New §25.236(f)(4) also provides additional flexibility for the presiding officer to determine whether good cause exists to grant interim relief. As noted previously, HB 2073 does not impose a requirement for costs to be collected contemporaneously; it only requires commission rules to "ensure that…a utility collects as contemporaneously as reasonably possible the electric fuel and purchased power costs that the utility incurs and that the commission determines are eligible" under PURA §36.203(b)(1). Interim relief ensures that, for interim fuel adjustments, material balances are collected or refunded no later than the 90th day from the date the balance accrues in the event of a hearing. In the event interim relief is necessary for a fuel factor proceeding, §22.125, relating to Interim Relief will govern.

Proposed §25.237(g) and §25.237(g)(5) - Protest of fuel factor

Proposed §25.237(g) specifies the form, manner, and scope of a protest of a utility's fuel factor. Proposed §25.237(g)(5) authorizes the presiding officer to hold a hearing on a protest of a fuel factor at his or her discretion and to consider any evidence that is appropriate and in the public interest.

OPUC recommended proposed §25.237(g)(5) be revised to omit language that would enable the presiding officer to use discretion when holding a hearing on a fuel factor protest. OPUC noted that holding a hearing in these instances "should not be left solely to the discretion of the presiding officer."

Commission response

The commission declines to implement the recommended change because it is contrary to statute. PURA §36.203(d) authorizes total commission discretion in requiring a hearing for fuel factors, including fuel factor protests. Specifically, PURA §36.203(d) states "[t]he commission is not required to hold a hearing on the adjustment of an electric utility's fuel factor under this section. If the commission holds a hearing, the commission may consider at the hearing any evidence that is appropriate and in the public interest." (emphasis added). There is no equivalent provision requiring a hearing to be held for a protest on a fuel factor in PURA §36.203 as there is for an interim fuel adjustment under PURA §36.203(g). The commission also merges the prohibition on prudence of costs into the protest requirements under §25.237(g)(1) and eliminates proposed §25.237(g)(2) and (3) as redundant. The commission renumbers §25.237(g)(1)-(5) accordingly.

Fuel Reconciliation Filing Package

The proposed edits to the fuel reconciliation filing package require copies of each monthly fuel cost report that the utility filed in the past 24-month period covered by the fuel reconciliation, including any corrected fuel cost reports.

Joint Utilities recommended that the Fuel Reconciliation Filing Package (FRFP) not require the inclusion of copies of the previous 24-months of a utility's fuel reports because it is duplicative and unnecessary. Joint Utilities explained that these reports have already been filed with the commission and are available on the commission Interchange in projects specifically designated for this purpose and therefore should not be required to be submitted again with the FRFP.

Commission Response

The commission declines to implement the recommended changes. Requiring the prior 24-months of fuel costs reports to be included with the FRFP facilities efficient work by the commission. In some instances, utilities may have corrected fuel cost reports that they have not re-filed since the original fuel report was filed. Moreover, requiring the utility to file all of the fuel cost reports at once for purposes of a fuel reconciliation places the burden on the utility, rather than staff to compile and organize the reports. This requirement is no different than what is required in interim rate proceedings where a utility must provide their baseline rate schedules and the associated commission orders approving those rate schedules. The commission adds language to §25.236(d)(7) to reflect the requirement in the FRFP to file monthly fuel cost reports, including the requirement to file corrected reports.

The amended rules are adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §36.203 which requires the commission to, by rule, implement procedures that provide for the timely adjustment of an electric utility's fuel factor and ensure that a utility collects as contemporaneously as reasonably possible the utility's eligible electric fuel and purchased power costs, that those costs are allocated among customer classes based on actual historical calendar month usage, and any material balances are collected from or refunded to customers.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 36.203.

§25.235. Fuel Costs.

(a) Purpose. The commission will set an electric utility's rates at a level that will permit the electric utility a reasonable opportunity to earn a reasonable return on its invested capital and to recover its reasonable and necessary expenses, including the cost of fuel and purchased power. The commission recognizes that it is in the interests of both

electric utilities and their ratepayers to adjust charges in a timely manner to account for changes in certain fuel and purchased-power costs. In accordance with Public Utility Regulatory Act (PURA) §36.203 this section establishes a procedure for setting and revising fuel factors and a procedure for regularly reviewing the reasonableness of the fuel expenses recovered through fuel factors.

(b) Notice of fuel proceedings. In addition to the notice required by the Administrative Procedure Act (APA) to be given by the commission, the electric utility is required to give notice of a fuel proceeding at the time the petition is filed. The term "rate class" as used in this subsection means all customers taking service under the same tariffed rate or schedule, or a group of seasonal agricultural customers as identified by the electric utility.

(1) Method of notice. Notice of fuel proceedings must be posted to the utility's website and provided to OPUC by electronic mail. Notice must also be provided by the electric utility as follows, as applicable:

(A) Notice in all proceedings involving refunds or surcharges (an interim fuel adjustment) under §25.236 of this title (relating to Recovery of Fuel Costs), or a proposal to change the fuel factor under §25.237 of this title (relating to Fuel Factor), must be by individual notice to each customer and by individual notice to all parties in the electric utility's most recent fuel reconciliation proceeding.

(B) Notice in all fuel reconciliation proceedings must be by:

(i) publication once each week for two consecutive weeks in a newspaper having general circulation in each county of the service area of the electric utility; and

(ii) by individual notice to each customer and to all parties in the electric utility's most recent fuel reconciliation proceeding.

(2) Contents of notice.

(A) All notices required by this section must provide the following information:

(i) the date the petition was filed;

(ii) a general description of the customers, customer classes (for fuel factors) or rate classes (for interim fuel adjustments), and territories affected by the petition;

(iii) the relief requested;

(iv) a statement substantially similar to the following: "Persons with questions or who want more information on this petition may contact (utility name) at (utility address) or call (utility toll-free telephone number) during normal business hours. A complete copy of this petition is available for inspection at the address listed above or at the following website [direct link to notice on the utility's website]"; and

(v) a statement substantially similar to the following: "Persons who wish to formally participate in this proceeding, or who wish to express their comments concerning this petition should contact the Public Utility Commission of Texas, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, or call (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals may contact the commission through Relay Texas (toll-free) at 1-800-735-2989."

(B) Notices to revise fuel factors must also state the proposed fuel factors by type of voltage and the period for which the proposed fuel factors are expected to be in effect.

(C) Notices for an interim fuel adjustment for a refund or surcharge, or to revise fuel factors, must contain:

(i) a statement substantially similar to the following: "these changes will be subject to final review by the commission in the electric utility's next fuel reconciliation proceeding," unless the change is a result of a reconciliation proceeding;

(ii) an explanation of the notice recipient's right to file a protest in a fuel factor or interim fuel adjustment proceeding; and

(iii) for interim fuel adjustments under §25.236 of this title:

(I) a statement substantially similar to the following detailing the appropriate scope of the protest: "A protest must identify whether the person submitting the protest is a customer of the utility. Except for prudence of costs, a protest may address any aspects of the interim fuel adjustment petition, including the adequacy of notice or whether the refund or surcharge is appropriate. As required by Public Utility Regulatory Act §36.203, in response to a protest of an interim fuel adjustment, if the commission finds that the electric utility is in a state of material under-collection or over-collection of the utility's reasonably stated eligible fuel and purchased power costs and is projected to remain in that state on an ongoing basis, the commission will order the utility to establish or modify an interim fuel adjustment to address the under-collection or over-collection."

(II) a statement substantially similar to the following detailing the recipient's right to request a hearing: "If a hearing is sought, a protest of an interim fuel adjustment must include a request for a hearing. If a hearing is not requested in the protest, it will be presumed that a hearing is not sought. Requesting a hearing does not guarantee that a hearing will be held. A hearing is only required to be held if the commission determines that an interim fuel adjustment (1) would or is anticipated to result in a total bill increase of 10 percent or more for an average customer in any rate class compared to the total bill in the month before implementation; or (2) a utility has a material under-collected balance that is the result of extraordinary electric fuel and purchased power costs that are unlikely to continue."

(iv) for fuel factor revisions under §25.237 of this title

(I) a statement substantially similar to the following detailing the appropriate scope of the protest: "A protest must identify whether the person submitting the protest is a customer of the utility. As required by Public Utility Regulatory Act §36.203, the scope of a protest on a fuel factor is whether the factor reasonably reflects costs the electric utility will incur so that the utility will not substantially under-collect or over-collect the utility's reasonably stated fuel and purchased power costs on an ongoing basis. The commission may adjust the utility's fuel factor based on its determination on that issue. A protest of a fuel factor is prohibited from raising the prudence of costs as an issue."

(II) a statement substantially similar to the following detailing the recipient's right to request a hearing: "If a hearing is sought, a protest of a fuel factor must include a request for a hearing. If a hearing is not requested in the protest, it will be presumed that a hearing is not sought. Requesting a hearing does not guarantee that a hearing will be held. The commission has total discretion to hold or not hold a hearing in a fuel factor proceeding."

(D) Notices for fuel reconciliation proceedings must also state the period for which final reconciliation is sought.

(E) Notices for an interim fuel adjustment must indicate, for each rate class:

(i) whether the adjustment is for a refund or surcharge;

(ii) the amount of the proposed refund or surcharge;

(iii) the period for which the proposed refund or surcharge is applicable (i.e., January to March);

(iv) if the adjustment is for a surcharge, whether the surcharge would or is anticipated to result in a total bill increase of 10 percent or more for an average customer in any rate class compared to the total bill in the month before implementation; and

(v) the time period and manner in which the surcharge or refund will be implemented.

(c) Reports; confidentiality of information. Matters related to submitting reports and confidential information will be handled as follows:

(1) The commission will monitor each electric utility's actual and projected fuel-related costs and revenues on a monthly basis. Each electric utility must maintain and provide to the commission, in a format specified by the commission, monthly reports containing all information required to monitor monthly fuel-related costs and revenues, including generation mix, fuel consumption, fuel costs, purchased power quantities and costs, and system and off-system sales revenues.

(2) Contracts for the purchase of fuel, fuel storage, fuel transportation, fuel processing, or power are discoverable in fuel proceedings, subject to appropriate confidentiality agreements or protective orders.

(3) The electric utility must prepare a confidentiality disclosure agreement to be included as part of the fuel reconciliation petition. The format for the agreement must be the same as that contained in the commission-approved rate filing package. In addition to the agreement itself, Attachment 1 of the agreement must present a complete listing of the information required to be filed which the electric utility alleges is confidential. Upon request and execution of the confidentiality agreement, the electric utility must provide any information which it alleges is confidential. If the electric utility fails to file a confidentiality agreement, the deadline for a commission final order in the case is tolled until a protective order is entered or a confidentiality agreement is filed. Use of the confidentiality disclosure agreement does not constitute a finding that any information is proprietary or confidential under law, or alter the burden of proof on that issue. The form of agreement contained in the commission approved rate filing package does not bind the examiner or the commission to accept the language of the agreement in the consideration of any subsequent protective order that may be entered.

(4) A party that cannot view a confidential document without receiving advantage as a competitor or bidder may hire outside counsel and consultants to view the document subject to a protective order.

§25.236. Recovery of Fuel Costs.

(a) Eligible fuel expenses. Eligible fuel expenses include expenses properly recorded in the Federal Energy Regulatory Commission Uniform System of Accounts, numbers 501, 502, 503, 509, 518, 536, 547, 555, and 559.3 as modified in this subsection, as of April 1, 2025, and the items specified in paragraph (8) of this subsection. Any later amendments to the System of Accounts are not incorporated into this subsection. Subject to the commission finding special circumstances under paragraph (7) of this subsection, eligible fuel expenses are limited to:

(1) For any account, the electric utility may not recover, as part of eligible fuel expense, costs incurred after fuel is delivered to the generating plant site, for example, but not limited to, operation and maintenance expenses at generating plants, costs of maintaining and storing inventories of fuel at the generating plant site, unloading and fuel handling costs at the generating plant, and expenses associated with the disposal of fuel combustion residuals. Further, the electric utility may not recover maintenance expenses and taxes on rail cars owned or leased by the electric utility, regardless of whether the expenses and taxes are incurred or charged before or after the fuel is delivered to the generating plant site. The electric utility may not recover an equity return or profit for an affiliate of the electric utility, regardless of whether the affiliate incurs or charges the equity return or profit before or after the fuel is delivered to the generating plant site. In addition, all affiliate payments must satisfy the Public Utility Regulatory Act (PURA) §36.058.

(2) For Accounts 501 and 547, the only eligible fuel expenses are the delivered cost of fuel to the generating plant site excluding fuel brokerage fees. For Account 501, revenues associated with the disposal of fuel combustion residuals will also be excluded.

(3) For Account 502, the only eligible fuel expenses are environmental consumables that are: properly recorded in the Account as chemicals; required to comply with applicable state or federal emission reduction statutes, orders, and regulations; and whose use is directly proportional to the fuel consumed to generate electricity.

(4) For Account 509, the only eligible fuel expenses are allowances expensed concurrent with the monthly emissions of sulfur dioxide and nitrogen oxides.

(5) For Accounts 518 and 536, the only eligible fuel expenses are the expenses properly recorded in the Account excluding brokerage fees. For Account 503, the only eligible fuel expenses are the expenses properly recorded in the Account, excluding brokerage fees, return, non-fuel operation and maintenance expenses, depreciation costs and taxes.

(6) For Account 555, the electric utility may not recover demand or capacity costs.

(7) Upon demonstration that such treatment is justified by special circumstances, an electric utility may recover as eligible fuel expenses fuel or fuel related expenses otherwise excluded in paragraphs (1) - (6) of this subsection. In determining whether special circumstances exist, the commission will consider, in addition to other factors developed in the record of the reconciliation proceeding, whether the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay.

(8) Eligible fuel expenses are prohibited from being offset by revenues by affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operation costs associated with transmission assets. In addition to the expenses designated in paragraphs (1) - (7) of this subsection, unless otherwise specified by the commission, eligible fuel expenses must be offset by:

(A) revenues from steam sales included in Accounts 504 and 456 to the extent expenses incurred to produce that steam are included in Account 503;

(B) revenues from off-system sales in their entirety, except as permitted in paragraph (9) of this subsection; and

(C) revenues from disposition of allowances properly recorded in Account 411.8.

(9) Shared margins from off-system sales. An electric utility may retain 10 percent of the margins from an off-system energy sale that is made between the utility and a third-party buyer if the commission finds that the transaction is in the interests of the electric utility's retail customers and that margin sharing is in the public interest.

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

(1) Materially or material -- the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0 percent of the annual actual fuel cost figures on a rolling 12-month basis, as reflected in the utility's monthly fuel cost reports as filed by the utility with the commission.

(2) Rate class -- all customers taking service under the same tariffed rate or schedule, or a group of seasonal agricultural customers as identified by the electric utility.

(c) Reconciliation of fuel expenses.

(1) Each electric utility must file a petition for reconciliations on a periodic basis such that the petition:

(A) contains at least one year and no more than two years of reconcilable data; and

(B) is filed no later than 180 days after the end of the period to be reconciled.

(2) To the extent a reconciliation results in a material change to the electric utility's under-collected or over-collected fuel balance, that change may be incorporated into an interim fuel adjustment under subsection (f) of this section as directed by the commission through the issuance of a written order.

(d) Fuel reconciliation petitions. In addition to the commission-prescribed reconciliation application, a fuel reconciliation petition filed by an electric utility must be accompanied by a summary and supporting evidence that includes the following information:

(1) a summary of significant, atypical events that occurred during the reconciliation period that affected the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;

(2) a general description of typical constraints that limit the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;

(3) the reasonableness and necessity of the electric utility's eligible fuel expenses and its mix of fuel used during the reconciliation period;

(4) a summary table that lists all the fuel cost elements which are covered in the electric utility's fuel cost recovery request, the dollars associated with each item, and where to find the item in the prefiled testimony;

(5) tables and graphs which show generation (MWh), capacity factor, fuel cost (cents per kWh and cents per MMBtu), variable cost and heat rate by plant and fuel type, on a monthly basis; and

(6) a summary and narrative of the next-day and intra-day surveys of the electricity markets and a comparison of those surveys to the electric utility's marginal generating costs.

(7) copies of each monthly fuel cost report required under §25.235(c)(1) of this title (relating to Fuel Costs) that the utility filed in the past 24-month period covered by the fuel reconciliation organized in chronological order.

(A) A utility is required to file corrected reports with its fuel reconciliation petition if information in previously filed reports becomes erroneous based on actual verified data.

(B) If the utility submits corrected fuel cost reports as part of its fuel reconciliation, the utility must also file the same corrected fuel cost reports in the relevant commission project assigned for such reports.

(e) Fuel reconciliation proceedings. The burden of proof and scope of a fuel reconciliation proceeding are as follows:

(1) In a proceeding to reconcile fuel factor revenues and expenses, an electric utility has the burden of proving that:

(A) its eligible fuel expenses during the reconciliation period were reasonable and necessary expenses incurred to provide reliable electric service to retail customers and the materiality of any over- or under-recovery;

(B) if its eligible fuel expenses for the reconciliation period included an item or class of items supplied by an affiliate of the electric utility, the prices charged by the supplying affiliate to the electric utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items; and

(C) it has properly accounted for the amount of fuel-related revenues collected in accordance with the fuel factor during the reconciliation period.

(2) The scope of a fuel reconciliation proceeding includes any issue related to determining the reasonableness and necessity of the electric utility's fuel expenses during the reconciliation period and reviewing whether the electric utility has materially over- or under-recovered its reasonable fuel expenses through interim fuel adjustments under subsection (f) of this section.

(f) Interim fuel adjustments. An electric utility must apply for an interim fuel adjustment in the time frame specified by subsection (h)(2)(B) of this section if the utility is in a state of material under-collection or over-collection of the utility's reasonably stated eligible fuel and purchased power costs.

(1) Adjustment factor. If the commission determines in the interim fuel adjustment proceeding that the utility is in a state of material under-collection or over-collection, except as provided for under subsection (g)(3) of this section, each rate class must be credited or assessed a refund or surcharge, as applicable, using an adjustment factor. The adjustment factor will be applied to the kilowatt-hour usage of each rate class until the total amount has been collected or refunded.

(A) The adjustment factor will be determined by dividing the amount of refund or surcharge properly allocated to each rate class by projected kilowatt-hour usage for the applicable rate class during the period in which the refund or surcharge will be made.

(B) Notwithstanding subparagraph (A) of this paragraph, each retail customer who receives service at transmission voltage levels, each wholesale customer, and any groups of seasonal agricultural customers as identified by the electric utility must be given

a one-time credit or assessed a surcharge made on a monthly basis over a period not to exceed 12 months through a bill charge, based on their individual actual historical usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses if necessary.

(2) Refunds and surcharges. Refunds and surcharges must be issued and recovered by the electric utility, as applicable, in the following manner for each rate class:

(A) All refunds must be made through a bill credit and be issued no later than 90 days after the refund balance is accrued. A refund may be made by check to a municipally-owned utility if requested by that utility.

(B) All surcharges must be assessed on a monthly basis and paid by customers no later than 90 days from the date the surcharge balance is accrued except in the following circumstances:

(i) If the commission determines that an interim fuel adjustment would or is anticipated to result in a total bill increase of 10 percent or more for an average customer in any rate class compared to the total bill in the month before implementation, the surcharge must be collected over a time period ending not later than a date ordered by the commission. Such a time period must be at least 90 days after the date the balance is accrued.

(ii) If the commission determines that a utility has a material under-collected balance that is the result of extraordinary electric fuel and purchased power costs that are unlikely to continue, the commission may approve a surcharge in an interim fuel adjustment proceeding that would defer recovery to occur over a period exceeding 90 days from the date the surcharge balance is accrued.

(C) Unless otherwise ordered by the commission in an electric utility's fuel reconciliation proceeding, in calculating rate class fuel balances for purposes of a refund or surcharge, the total of the utility's eligible electric fuel and purchased power costs for a calendar month must be allocated among jurisdictions based on the actual historical calendar month kilowatt-hour usage, adjusted for line losses using the same commission-approved loss factors that were used in the electric utility's applicable fixed or interim fuel factor. The resulting monthly Texas retail jurisdiction costs must be allocated among rate classes based on the actual historical calendar month kilowatt-hour usage, adjusted for line losses using the same commission-approved loss factors that were used in the electric utility's applicable fixed or interim fuel factor.

(D) Intraclass allocations of refunds and surcharges depend on the voltage level at which the customer receives service from the electric utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the electric utility must be given refunds or assessed surcharges based on their individual actual historical kilowatt-hour usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses where necessary. All other customers must be given refunds or assessed surcharges based on the historical kilowatt-hour usage of their rate class.

(3) Prudence review prohibited. The prudence of costs will not be considered in an interim fuel adjustment. The prudence of costs may only be reviewed in a fuel reconciliation proceeding under subsection (e) of this section or another appropriate proceeding.

(4) Interim relief.

(A) An interim fuel adjustment is eligible for interim relief under §22.125 of this title (relating to Interim Relief) to ensure refunds and surcharges are issued or recovered in accordance with the timelines specified under paragraphs (2)(A) and (B) of this section.

(B) A party to an interim fuel adjustment proceeding may file a motion for interim relief in accordance with the procedural schedule established by the presiding officer.

(C) Notwithstanding the requirements of §22.125 of this title, the presiding officer may order interim relief without a hearing on a finding of good cause:

(i) on their own motion;

(ii) in response to a motion filed under subparagraph (B) of this paragraph; or

(iii) in response to a written protest filed by an eligible person in accordance with subsection (h)(3)(B) of this section.

(D) In determining whether good cause exists for interim relief under this subparagraph, the presiding officer may consider one or more of the factors prescribed by §22.125 of this title, but the primary consideration is whether the interim relief is consistent with the substantive requirements of this section and will ensure compliance with applicable deadlines. A showing of good cause may be supported by affidavit and without testimony or hearing.

(g) Interest calculations for fuel proceedings. For a fuel proceeding under subsection (e) or (f) of this section, interest must be calculated for each rate class on the cumulative monthly ending under- or over-recovery balance for that rate class at the rate established annually by the commission for overbilling and underbilling in §25.28 of this title (relating to Bill Payment and Adjustments). Interest must be calculated for each rate class based on principles set out in paragraphs (1) - (5) of this subsection:

(1) Interest must be compounded by using an effective monthly interest factor.

(2) The effective monthly interest factor must be determined by using the algebraic calculation $x = (1 + i)^{(1/12)} - 1$; where i = commission-approved annual interest rate, and x = effective monthly interest factor.

(3) Interest accrues on a monthly basis. The monthly interest amount is calculated by applying the effective monthly interest factor to the previous month's ending cumulative under- or over-recovery balance.

(4) The monthly interest amount must be added to the cumulative principal and interest under- or over-recovery balance.

(5) In calculating the amounts to be refunded or surcharged, interest must be calculated through the end of the month of the refund or surcharge.

(h) Procedural schedule.

(1) Procedural schedule for fuel reconciliation proceedings. Upon the filing of a petition to reconcile fuel expenses, the presiding officer will set a procedural schedule that will enable the commission to issue a final order in the proceeding within one year after the presiding officer determines that the petition is administratively complete. However, if two or more electric utilities file petitions to reconcile fuel expenses within 45 days of each other, the presiding officers will schedule the cases in a manner to allow the commission to accommodate the workload of the cases irrespective of whether the procedural schedule enables the commission to issue a final order in each of the cases within one year after the presiding officer determines that the petition is administratively complete

(2) Procedural schedule for interim fuel adjustments. To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary to refund over-collections or surcharge under-collections.

(A) Refunds or surcharges may be made without changing an electric utility's fuel factor.

(i) an electric utility may file a petition for an interim fuel adjustment to issue a surcharge any time it has materially under-collected its fuel costs and projects that it will continue to be in a state of material under-collection.

(ii) an electric utility must file a petition for an interim fuel adjustment to make a refund any time it has materially over-collected its fuel costs and projects that it will continue to be in a state of material over-collection.

(B) A utility seeking an interim fuel adjustment to surcharge or refund a fuel under- or over-recovery balance must file its interim fuel adjustment petition and issue notice within five working days from the date the material fuel under- or over-recovery balance accrues, which is either:

(i) 75 days from the last day of the month for which the utility seeks recovery (month end close); or

(ii) when the utility has verified, actual data for that month.

(C) Each month for which a utility seeks recovery must correspond with the utility's monthly fuel cost and use report filed with the commission in accordance §25.82 of this title (relating to Fuel Cost and Use Information)..

(D) Upon a utility filing its petition, the presiding officer will set a procedural schedule that will enable the utility to issue a refund or collect a surcharge within the applicable time period specified in subsection (f)(2)(A) or (B) of this section;

(E) A hearing is required for an interim fuel adjustment if the presiding officer determines that :

(i) the interim fuel adjustment sought would result in a total bill increase of 10 percent or more for an average customer in any rate class as described under subsection (f)(2)(B)(i) of this section; or

(ii) the utility has a materially under-collected balance that is the result of extraordinary electric fuel and purchased power costs as described under subsection (f)(2)(B)(ii) of this section.

(3) Protest of interim fuel adjustment.

(A) Only a customer of the utility, a municipality with original jurisdiction over the utility, or OPUC is eligible to protest an interim fuel adjustment under this paragraph.

(i) A protest of an interim fuel adjustment must identify the eligibility of the person to submit the protest.

(ii) The commission will review a protest of an interim fuel adjustment to determine whether the utility is in a state of material under-collection or over-collection of the utility's reasonably stated eligible fuel and purchased power costs and is projected to remain in that state on an ongoing basis.

(iii) The commission will not consider issues related to the prudence of costs raised in a protest.

(iv) If a hearing is sought, a protest must include a request for a hearing and the basis for the request.

(B) In response to a protest filed under this paragraph, the presiding officer may order interim relief, as deemed appropriate.

(C) If it is determined that the utility is in a state of material under-collection or over-collection and is projected to remain as such on an ongoing basis, the utility will be ordered to establish or modify an interim fuel adjustment to address the under-collection or over-collection.

(D) Unless a hearing is otherwise required under this section, the determination to hold a hearing on a protest is at the presiding officer's discretion. In a hearing on a protest, any evidence found by the presiding officer to be appropriate and in the public interest may be considered.

(E) A protest of an interim fuel adjustment may be processed and reviewed in a manner deemed administratively efficient by the presiding officer.

(F) Discovery in an interim fuel adjustment proceeding will be conducted in accordance with the commission's rules, except as modified by the presiding officer.

§25.237. Fuel Factors.

(a) Use and calculation of fuel factors. An electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.

(1) An electric utility may determine its fuel factor in dollars per kilowatt-hour in accordance with either subparagraph (A) or (B) of this paragraph. Fuel factors must account for system losses and for the difference in line losses corresponding to the voltage at which the electric service is provided. An electric utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the electric utility.

(A) Fuel factors may be determined by dividing the electric utility's projected net eligible fuel expenses, as defined in §25.236(a) of this title (relating to Recovery of Fuel Costs), by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect.

(B) Fuel factors may be determined using a commission-approved, utility-specific fuel factor formula. Fuel factor formulas may be approved or revised only in a general rate change proceeding or a proceeding to consider an application to establish a fuel factor formula with notice and an opportunity for a hearing.

(2) An electric utility may initiate a change to its fuel factor as follows:

(A) In accordance with subsection (a)(1)(A) of this section, an electric utility may petition to adjust its fuel factor as often as once every four months according to the schedule set out in subsection (d) of this section.

(B) In accordance with subsection (a)(1)(B) of this section, an electric utility may petition to adjust its fuel factor in accordance with its approved fuel factor formula no sooner than four months after the filing of its most recent fuel factor adjustment petition.

(C) Notwithstanding subsection (a)(2)(A) of this section, an electric utility may petition to change its fuel factor at times other than provided in the schedule if an emergency exists as described in subsection (f) of this section.

(D) An electric utility's fuel factor may be changed in any general rate proceeding.

(3) Fuel factors are temporary rates, and the electric utility's collection of revenues by fuel factors is subject to the following adjustments:

(A) The reasonableness of the fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title, and any disallowed costs resulting from a reconciliation proceeding will be reflected in the calculation of the utility's recoverable fuel and over- or under- collections.

(B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary to refund material over-collections or surcharge material under-collections through an interim fuel adjustment under §25.236 of this title in the time and manner required by that section. Refunds or surcharges may be made without changing an electric utility's fuel factor.

(C) The terms "materially" or "material," as used in this section, mean that the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0 percent of the annual actual fuel cost figures on a rolling 12-month basis, as reflected in the utility's monthly fuel cost reports as filed by the utility with the commission.

(b) Petitions to revise fuel factors.

(1) An electric utility using the fuel factor methodology established in accordance with subsection (a)(1)(A) of this section may file a petition requesting revised fuel factors in accordance with subsection (a)(2)(A) of this section during the first five working days of the months specified in subsection (d) of this section. A copy of the complete petition package must be served on each party in the utility's most recent fuel reconciliation and on OPUC. Service must be accomplished in accordance with §22.74 of this title (relating to Service of Pleadings and Documents). Each complete fuel factor filing package must include the petition, a tariff sheet reflecting the proposed fuel factors, and supporting testimony that includes the following information:

(A) For each month of the period in which the fuel-factor has been in effect and has not been reconciled up to the most recent month for which information is available,

(i) the revenues collected in accordance with fuel factors by customer class;

(ii) any other items that to the knowledge of the electric utility have affected fuel factor revenues and eligible fuel expenses; and

(iii) the difference, by customer class, between the revenues collected in accordance with fuel factors and the eligible fuel expenses incurred.

(B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge undercollections. Refunds or surcharges may be made without changing an electric utility's fuel factor. Nothwithstanding §25.236(e)(6) of this title, an electric utility may petition for a surcharge any time it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. Notwithstanding §25.236(e)(6) of this title, an electric utility shall petition to make a refund any time it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. "Materially" or "material," as used in this section, shall mean that the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0% of the annual actual fuel cost figures on a rolling 12-month basis, as reflected in the utility's monthly fuel cost reports as filed by the utility with the commission.

(2) An electric utility using the fuel factor formula methodology established in accordance with subsection (a)(1)(B) of this section may file a petition requesting revised fuel factors in accordance with subsection (a)(2)(B) of this section at least 15 days prior to the first billing cycle in the billing month in which the proposed fuel factors are requested to become effective. A copy of the complete petition package must be served on each party in the utility's most recent fuel reconciliation and on OPUC. Service must be accomplished in accordance with §22.74 of this title (relating to Service of Pleadings and Documents). Each complete fuel factor filing package must include:

(A) a tariff sheet reflecting the proposed fuel factors;

(B) workpapers (in native Excel format with formulas intact; and proof and verification of natural gas prices, including copies of data used to calculate the natural gas prices) supporting the calculation of the revised fuel factors;

(C) calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the voltage at which the electric service is provided; and

(D) any computer generated documents must be provided in their native electronic format with all cells and internal formulas disclosed.

(c) Fuel factor revision proceeding. The burden of proof and the scope of a fuel factor revision proceeding are as follows:

(1) In a proceeding to revise fuel factors in accordance with subsection (a)(1)(A) of this section, an electric utility has the burden of proving that:

(A) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the electric utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;

(B) the electric utility's estimated monthly kilowatt-hour system sales and off-system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and

(C) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the voltage at which the electric service is provided.

(2) The scope of a fuel factor revision proceeding under subsection (a)(1)(B) of this section is limited to the issue of whether the petitioning electric utility has appropriately calculated its proposed fuel factors. In a proceeding to revise fuel factors in accordance with subsection (a)(1)(B) of this section, an electric utility has the burden of proving that:

(A) the electric utility has calculated its proposed fuel factors in compliance with the commission-approved fuel factor formula; and

(B) the proposed fuel factors utilize a commission-approved adjustment to account for line losses corresponding to the voltage at which the electric service is provided.

(3) The prudence of costs will not be considered in a fuel factor proceeding. The prudence of costs may only be reviewed in a fuel reconciliation proceeding under §25.236 of this title or another appropriate proceeding.

(d) Schedule for filing petitions to revise fuel factors. A petition to revise fuel factors or to initiate or revise a fuel factor formula

may be filed with any general rate proceeding or in accordance with paragraph (1) of this subsection.

(1) Except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors in accordance with subsection (a)(1)(A) of this section may only be filed in accordance with the following schedule:

(A) February, June, and October: El Paso Electric Company;

(B) March, July, and November: Entergy Texas, Inc.;

(C) April, August, and December: Southwestern Public Service Company;

(D) May, September, and January: Southwestern Electric Power Company; and

(E) March, July, and November: any other electric utility not named in this subsection that uses one or more fuel factors.

(2) Petitions by an electric utility to revise fuel factors in accordance with subsection (a)(1)(B) of this section may be filed in any month except December.

(e) Procedural schedules.

(1) Upon the filing of a petition to revise fuel factors in accordance with subsection (a)(1)(A) of this section, the presiding officer will set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:

(A) within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and

(B) within 90 days after the filing of an administratively complete petition, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first working day after the 45th day after the petition was filed.

(2) Upon the filing of a petition to revise fuel factors in accordance with subsection (a)(1)(B) of this section, the presiding officer will set a procedural schedule as follows:

(A) the presiding officer will issue an order approving the proposed fuel factors on an interim basis no later than 12 days after the date the petition was filed, if no objection to interim approval is filed within 10 days after the date the petition was filed;

(B) if no hearing is requested within 30 days after the petition was filed, the presiding officer will, after submission of proof of notice by the electric utility, issue an order approving the fuel factors without hearing or action by the commission; and

(C) if a hearing is requested within 30 days after the petition was filed, the hearing will be held no earlier than the first working day after the 45th day after the petition was filed and a final order will be issued within 90 days after the petition was filed, subject to submission of proof of notice by the electric utility.

(f) Emergency revisions to the fuel factor. If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have caused a material under-recovery of eligible fuel costs, the electric utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests must state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission will issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the electric utility must refund all excessive collections with interest calculated on the cumulative monthly ending material under- or over-recovery balance in the manner and at the rate established by the commission for over-billing and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10 percent of such over-collections may also be imposed on investor-owned electric utilities.

(g) Protest of fuel factor.

(1) Only a customer of the utility, a municipality with original jurisdiction over the utility, or OPUC is eligible to protest a fuel factor under this subsection.

(A) A protest of a fuel factor must identify the eligibility of the person to submit the protest.

(B) The commission will review a protest of a fuel factor to determine whether the utility's fuel factor reasonably reflects costs the utility will incur such that the utility will not substantially under-collect or over-collect the utility's reasonably stated fuel and purchased power costs on an ongoing basis.

(C) The commission will not consider issues related to the prudence of costs raised in a protest.

(D) If a hearing is sought, a protest must include a request for a hearing and the basis for the request.

(2) If it is determined that a fuel factor is anticipated to result in a substantial under- or over-collection of costs by the utility, the utility's fuel factor will be adjusted to address the under-collection or over-collection in a manner consistent with this section.

(3) The presiding officer may hold a hearing on a protest of a fuel factor and may consider any evidence that is appropriate and in the public interest.

(4) A protest of a fuel factor may be processed and reviewed in a manner deemed administratively efficient by the presiding officer.

(5) Discovery in a fuel factor or fuel factor formula revision proceeding will be conducted in accordance with the commission's rules, except as modified by the presiding officer.

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 December 19, 2025.

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.22, and a new rule at Subchapter C, §60.38, regarding the Procedural Rules of the Commission and the Department, §60.22 and §60.38 are adopted without changes to the proposed text as published in the October 10, 2025, issue of the *Texas Register* (50 TexReg 6589). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 60, Subchapter C, §60.34, regarding the Procedural Rules of the Commission and the Department, with changes to the proposed text as published in the October 10, 2025, issue of the *Texas Register* (50 TexReg 6589). This rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 60, Procedural Rules of the Commission and the Department, implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation, and other laws applicable to state agencies.

The adopted rules implement House Bill (HB) 11, 89th Legislature, Regular Session (2025). The bill amends the Department's enabling act, Chapter 51, Occupations Code, to require the Department to maximize the creation of occupational license reciprocity agreements with licensing authorities in other states. Rulemaking is required to establish procedures to both compare the licensing requirements of other states to those of Texas, and to enter in to and implement reciprocity agreements with those states with substantially equivalent license requirements. The Department must consider the scope of practice for each license; required training, testing, and work experience; and the jurisdiction's procedures to resolve complaints and determine if a license holder is in good standing. HB 11 builds on existing authority in Ch. 51 to enter into reciprocity agreements and to waive prerequisites for licensure for applicants who hold a similar license issued by another jurisdiction that has a reciprocity agreement with Texas.

The adopted rules add the power to enter into reciprocity agreements to the basic powers of the Department and the Executive Director. The adopted rules provide a list of the specific criteria the Department will use to evaluate the licensing requirements of another jurisdiction to determine if they are substantially equivalent to those of Texas. Further, the adopted rules include a concise list of the minimum requirements a license applicant must satisfy to obtain a Texas license when a reciprocity agreement is in place. In addition to establishing that the reciprocity and license requirements in Chapter 60 are subject to any different or more stringent requirements in Ch. 60, TAC; Ch. 51, Occupations Code; or the program statutes and rules governing the particular license, the Department reserves sole discretion to determine if the licensing requirements of the other jurisdiction are substantially equivalent to those of Texas. These rules are necessary to aid the Department to affirmatively seek to create more reciprocity agreements by providing clear notice to other jurisdictions of the criteria and conditions the Department will examine and consider going forward.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §60.22, General Powers and Duties of the Department and the Executive Director, to include the responsibility to enter into reciprocity agreements with licensing authorities in other jurisdictions.

The adopted rules amend §60.34, Substantially Equivalent License Requirements, to update and clarify the applicability of the section to persons holding a license in another jurisdiction, and to specify the requirements for that license that the Department will examine. These include requirements related to: scope of practice, experience, training, education, examination, accreditation by other entities, financial security or insurance, standards of conduct, criminal history, and procedures to resolve complaints and to determine good standing of license holders. The section includes several edits for conciseness and clarity. Two nonsubstantive corrections to the punctuation in (d)(5) and (8) of this section are made in the adopted text.

The adopted rules add new §60.38, Reciprocity Agreements, to lay out the Department's authority to enter into reciprocity agreements and to list the minimum requirements a license holder must satisfy to obtain a Texas license under a reciprocity agreement with another jurisdiction. The requirements relate to how the license was obtained, how long it has been held, if it is in good standing, whether the applicant has a disqualifying criminal history or has had a license revoked, whether any complaints or allegations are pending in the other jurisdiction, and whether the license holder satisfactorily met examination or other substantially equivalent requirements to obtain the other jurisdiction's license.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 10, 2025 issue of the *Texas Register* (50 TexReg 6589). The Department requested public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. The public comment period closed on November 10, 2025.

The Department received comments from four interested individuals in response to the required summary of the proposed rules, which was posted on the Department's website and distributed on September 29, 2025, the same day that the proposed rules were filed with the *Texas Register*, but before the official publication of the proposed rules and the official start of the public comment period. Subsequently, the Department received comments from one interested party on the published proposed rules during the official public comment period. This commenter is the Texas Association for Behavior Analysis Public Policy Group (TxABA PPG). The public comments are summarized below. In this response, the term "state" is interchangeable with "jurisdiction."

Comments in Response to the Posted Summary

Of the four individuals who submitted comments in support of the rules, three made remarks in addition to expressing general support, as follows.

Comment: One individual commented in support of the proposed rules, citing a desire to hold licenses in other states to practice an online job.

Department Response: The Department thanks the commenter for the expression of support for the rules and agrees that license reciprocity will reduce or remove barriers to multi-state practice. No changes were made to the proposed rules in response to this comment.

Comment: An individual commented supporting the rules and to propose a strategy to ease re-licensing for former Texas license holders and those with inactive Texas licenses. The commenter suggests that licensing revenue would return to Texas and could likewise be increased by adding the equivalent of two years of renewal fees for these applicants as well.

Department Response: The Department appreciates the support for the rules and the recommendations offered. The proposed rules implement HB 11 to increase reciprocal licensing for current license holders in Texas and other jurisdictions. The Department rules are regularly scrutinized to modify or remove barriers to licensing for all applicants. Changes such as those the commenter recommends must be considered in another rulemaking. These comments have been directed to staff for consideration for re-licensing for those with expired or inactive licenses. No changes have been made to the proposed rules in response to this comment.

Comment: An individual commented to support reciprocity and to point out that, because Texas has the hardest electrician exams and the National Electrical Code applies in all states, that all states should reciprocate and Texas licensed electricians should automatically qualify for other states' licenses.

Department Response: The Department appreciates the support for reciprocity but disagrees that the electrician examinations should be the only or even main factor to consider in making reciprocity decisions for electrician licenses. Not all states adopt or enforce the NEC equally. Several other licensing standards and applicant qualifications in addition to the examination must be evaluated to determine if two states' licenses are substantially equivalent. Requirements for qualifications such as training, education, or experience may be more or less stringent in other states, and it is important for both states considering reciprocity to have confidence that people who can become licensed substantially meet or exceed the state's standards before that state agrees to reciprocal licensing. Other factors such as the length of time the person has held a license, compliance history, and so on may affect whether a person can qualify for another state's license.

Texas license holders may avail themselves of regular or alternative licensing procedures in another state regardless of whether a reciprocity agreement is in place. Passing the Texas examination may well open the door to another state's license, but most states use additional criteria to make licensing decisions. The Department has made no changes to the proposed rules as a result of this comment.

Comments in Response to the Published Proposed Rules

Comment: The TxABA PPG expressed opposition to the proposed rules providing TDLR or the Texas Commission of Licensing and Regulation (TCLR) sole discretion to determine whether another state's licensing requirements are substantially equivalent to those of TDLR. Specifically, the TxABA PPG expressed concern that input from subject-matter experts including the relevant Department advisory boards would be excluded from the decision-making process for out-of-state license equivalence, undermining the integrity of the licensing system.

Department Response: The Department thanks the TxABA PPG for its thoughtful and detailed comments. The Department reserves sole discretion to decide whether the licensing requirements of another state are substantially equivalent to those of Texas to ensure that those states clearly understand that the Department's determinations on substantial equivalence are final and may not be challenged. All of the expertise residing in the Department is employed as needed to evaluate substantial equivalence, including that of staff, leadership, and advisory board members. Not all decisions require extensive or burdensome efforts to evaluate substantial equivalence, so the advisory boards are consulted as the need for obtaining their members' expertise arises.

The boards by law serve in an advisory role to the Department, the Executive Director, and to the Commission primarily through the rulemaking function, but for other purposes as well. Their input is highly valued and never disregarded. The Department's determinations on substantial equivalence are well-informed because they are the result of thorough and serious consideration, and advisory board expertise is a needed and welcome part of the evaluation process. If the requirements of a state desiring to establish reciprocity are not substantially equivalent to those of Texas, then either state may modify or waive its requirements, add new requirements, or simply not engage in reciprocity. The Department will not sacrifice the integrity of its licensing system to engage in reciprocity that is not supported by a careful analysis as provided in the proposed rules.

Comment: The TxABA PPG recommends that the Department define substantial equivalence for all the professions for which it issues licenses, include input from the advisory boards' review of other states' licensing requirements, and include the Department advisory boards in the process of rule development.

Department Response: The proposed rules in TAC Chapter 60 are the basic guidelines and criteria the Department will use to make decisions about reciprocity agreements and individual applicants when reciprocity agreements in any program are sought. The Department regulates over 160 license types and nearly one million license holders in over 40 programs, so the Department expects to conduct rulemaking only as necessary to expand on program- or license-specific requirements related to license reciprocity for which targeted rules would eliminate confusion or unnecessary additional evaluation. The Department expects to occasionally identify tailored program- or license-specific rules to add to the program rules for the relevant license types. Such rules might address commonly encountered differences in continuing education requirements, examination scoring, or other criteria for which a specific alternative, exemption, or clarification will address ongoing impediments to licensing or reciprocity in a particular program. The main and most important role of each advisory board is to advise the Department in developing rules for that program, so the advisory boards will be an indispensable part of program rulemaking to address substantial equivalence and reciprocity issues where such rules are needed.

If new or amended rules with wide applicability across programs are necessary, then those are usually added to Chapter 60. Because of the universal nature and application of Chapter 60 rules, they normally do not follow the same process as program rules in one main way: the rules are not presented to each Department advisory board for its recommendations to propose or adopt. Not only would this be very cumbersome and time-consuming, but the nature of Chapter 60 rules is that they are procedural rules for the operation of the Department and they often implement statutory requirements that are not subject to modification in the rules. Each division of the Department provides input to develop Chapter 60 rules, including reaching out to subject matter experts, including advisory board members, where needed. The Chapter 60 rules are either adjusted to accommodate conflicts

with program rules, or staff slates program rules for amendment to resolve such conflicts. Of course, advisory board members may also participate in the rulemaking process for Chapter 60 rules by submitting comments and recommendations to raise any concerns relative to the effect of Chapter 60 rules on the relevant program.

The Department does not believe that adopting rules to define exactly what substantial equivalence means for every license type is reasonable, efficient, or necessary. The main reasons for this position include:

Identifying and defining every possible disparity among the requirements of multiple states for each of over 160 license types to define exactly what is or is not substantially equivalent to Texas requirements would demand an enormous commitment of time and resources to accomplish, with little discernable benefit. Further, license requirements in all states are fluid and change over time, so frequent redefinition and consequent rulemaking would be necessary.

Evaluating substantially equivalent licensing encompasses more than an item-by-item checklist of applicant qualifications. Instead, it is a comparison of the way licensing is administered by a state, for example, its procedures for resolving complaints against license holders. This makes the scope of the evaluation even more difficult and formidable to capture in great detail and specificity in rule (see §60.34(d)).

The "substantially equivalent" analysis does not by its nature demand identical qualifications and processes in a reciprocating state, and this underlines the need for discretion and flexibility in the comparison. For example, comparing licensing standards for which education or training requirements are very exacting and lengthy, such as years of academic courses with specific content for a particular curriculum, would impose a significant obstacle to defining substantial equivalence.

Less demanding requirements in one component of licensing may be balanced out by more stringent requirements in another, but retaining flexibility for that weighing process benefits both parties - who are equally competent to make those calculations. Differences in requirements may be minor and neither state may feel that those differences should prevent reciprocity. Even if substantial equivalence were defined in rule, flexibility and discretion would still be necessary to accomplish reciprocity in many cases because it is impossible to identify by rule every permutation of the way requirements and procedures could vary.

Establishing license reciprocity agreements that accept another state's licensing requirements as substantially equivalent to those of Texas does not alone open the door to every applicant. Reciprocity does not replace or waive any applicable Texas license requirements or an individualized evaluation of each applicant - for criminal history, compliance history, and so on, both at issuance and renewal, as spelled out in the proposed rules (see §60.38(c)). The reciprocity agreement establishes that each state will perform its usual evaluation of license applicants so that the other state can rely on the determination that the person did qualify for that license. The obligation for each license holder to comply with each state's law and rules is unaffected by the existence of a reciprocity agreement except for any requirements specifically waived by the agreement. Typically, only the examination requirement is waived in the reciprocating state, and all other license requirements remain applicable and enforceable.

Comment: The TxABA PPG comments that the dangers of leaving substantial equivalence undefined in the rules could include the failure of behavior analyst license holders to maintain certification as a Board Certified Behavior Analyst or Qualified Behavior Analyst, to complete continuing education requirements, to have the minimum comparable education or experience to meet Texas standards, or to undergo relevant background checks.

Department Response: As explained in this response, all license applicants must satisfy the license requirements of each state participating in the reciprocity agreement except for any that are specifically waived. Applicants will undergo a verification process to confirm qualifications that may have lapsed or changed, as is routinely done for all applicants for new or renewed licenses. The terms of reciprocity agreements contain safeguards that include an obligation for each state to update the other if its requirements change or if a license holder fails to meet that state's requirements to hold or renew a license.

Comment: The TxABA PPG requests revising the proposed rules to require consultation with each professions' advisory board when evaluating other states' licensing requirements for substantial equivalence.

Department Response: The Department agrees that each program's advisory board may need to assist the Department to evaluate another state's license requirements to determine if they are substantially equivalent to those of Texas. However, Department staffs' review and comparison usually results in a clear determination. The Department has relied on the advisory boards in the past to make recommendations about equivalence when disparities were uncovered so that the Department has appropriate guidance to make supportable decisions. That will not change. But a requirement to consult the program advisory board for each substantial equivalence decision would be burdensome to all involved and is simply not necessary in most cases. The Department has no reluctance to consult with the program advisory boards when their expertise is needed to make correct decisions and will continue to do so, both for state reciprocity decisions and for developing rules to ease, expand, or modify reciprocity requirements or processes.

The Department does not exclude the possibility that the proposed rules will need modification as the efforts to increase reciprocity expand. The need for license-specific reciprocity provisions in some programs' rules is also a likely possibility. The advice and input from the Department advisory boards will be an integral part of such rulemaking. The Department has made no changes to the proposed rules in response to the TxABA PPG's comments.

COMMISSION ACTION

At its meeting on December 16, 2025, the Commission adopted the proposed rules with changes to §60.34 as published in the *Texas Register*. These changes are explained in the Section-by-Section Summary.

SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.22

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt

rules as necessary to implement the chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all of the Department programs in which a licensing reciprocity agreement could be created: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavior Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1806 (Residential Solar Retailers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network and Delivery Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 11, 89th Legislature, Regular Session (2025).

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 December 19, 2025.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: October 10, 2025
For further information, please call: (512) 475-4879

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SUBCHAPTER C. LICENSE APPLICATIONS AND RENEWALS

16 TAC §60.34, §60.38

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement the chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51, and the program statutes for all of the Department programs in which a licensing reciprocity agreement could be created: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapters 171 (Court-Ordered Programs); and 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 401, Subchapter M (Laser Hair Removal); 754 (Elevators, Escalators, and Related Equipment); and 755 (Boilers); Labor Code, Chapter 91 (Professional Employer Organizations); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavior Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1202 (Industrialized Housing and Buildings); 1302 (Air Conditioning and Refrigeration Contractors); 1304 (Service Contract Providers and Administrators); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1806 (Residential Solar Retailers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); 2310 (Motor Fuel Metering and Quality); 2311 (Electric Vehicle Charging Stations); and 2402 (Transportation Network and Delivery Network Companies); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety).

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 11, 89th Legislature, Regular Session (2025).

§60.34. Substantially Equivalent License Requirements.

(a) This section is applicable to an applicant who holds a current license issued by another jurisdiction that is similar to a license issued by the department.

(b) For purposes of this section, "another jurisdiction" or "other jurisdiction" means a U.S. state, the District of Columbia, a municipality or local jurisdiction, or a U.S. territory.

(c) A person holding a license issued by another jurisdiction may be eligible for a Texas license if the other jurisdiction's licensing requirements are substantially equivalent to those of Texas.

(d) Unless provided otherwise in the statutes and rules governing a program or license type, the department will review and evaluate the following criteria to determine if another jurisdiction's licensing requirements are substantially equivalent to those of Texas:

(1) Scope of practice--the scope of work authorized to be performed under the license;

(2) Experience and training requirements--including the length of time or number of hours of on-the-job experience or training that the other jurisdiction requires applicants to possess to qualify for the particular license;

(3) Education requirements--including the amount of time (hours, months or years) or credits needed to complete any course, program, or curriculum that is a prerequisite for licensure;

(4) Examination requirements--including whether the other jurisdiction requires an applicant to pass any examinations to obtain the license; the type and content of any such examination(s); and the minimum score needed for an applicant to pass the examination(s);

(5) Accreditation requirements--including credentials or accreditation by federal agencies or national or other professional organizations or entities that a person must have to practice a profession;

(6) Financial security or insurance requirements--whether and to what extent the other jurisdiction requires license holders to hold certain insurance policies, secure a bond, or provide other forms of financial security;

(7) Standards of conduct--including requirements for honesty and fair dealing with the public when providing services or goods, in advertising, and in business dealings;

(8) Criminal history--including whether the jurisdiction takes an applicant's or license holder's criminal history into account when determining license eligibility or disqualification; and

(9) Procedures used in the other jurisdiction to receive and resolve complaints and to determine whether a license holder is in good standing.

(e) The department may require an applicant under this section to provide additional supporting documentation or information in order for the department to evaluate the criteria under subsection (d) as it relates to a specific license.

(1) Any foreign transcripts or foreign degrees must be translated and evaluated as prescribed under §60.30. Any other documents in a language other than English must be translated in accordance with the provisions under §60.30.

(2) The applicant shall bear all expenses incurred under this section during the evaluation process.

(f) The department has sole discretion in determining whether the licensing requirements for a license issued by another jurisdiction are substantially equivalent to those of Texas.

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 December 19, 2025.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER JJ. COMMISSIONER'S RULES CONCERNING INNOVATION DISTRICT

19 TAC §§102.1307, 102.1309, 102.1315

The Texas Education Agency (TEA) adopts amendments to §§102.1307, 102.1309, and 102.1315, concerning innovation districts. The amendment to §102.1307 is adopted with changes to the proposed text as published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6973) and will be republished. The amendments to §102.1309 and §103.1315 are adopted without changes to the proposed text as published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6973) and will not be republished. The adopted amendments update the list of prohibited exemptions to reflect changes made by House Bill (HB) 2, HB 6, Senate Bill (SB) 12, and SB 569, 89th Texas Legislature, 2025; update references to statute redesignated by SB 571, 89th Texas Legislature, Regular Session, 2025; and update the title of Texas Education Code (TEC), §22.001, as renamed by HB 2.

REASONED JUSTIFICATION: Chapter 102, Subchapter JJ, establishes provisions relating to the applicable processes and procedures for innovation districts.

The adopted amendment to Figure: 19 TAC §102.1307(d) clarifies the instructions for the form and adds specific fields for the type of board action being reported to TEA, the date of board action, the name of title of the individual submitting the figure, and the date of submission. The adopted amendment to Figure: 19 TAC §102.1307(d) also removes TEC, §21.057, which is now prohibited from exemption per HB 2 and SB 12, and removes TEC, §37.0012 and §37.002, which are now prohibited from exemption per HB 6. Finally, the adopted amendment to the figure updates the name of TEC, §22.001, as changed by HB 2.

At adoption, Figure: 19 TAC §102.1307(d) was modified to relocate the new fields for the type of board action being reported.

New §102.1309(a)(1)(A) adds TEC, §21.0032 (Employment of Uncertified Classroom Teachers) and §21.057 (Parental Notification), to clarify that these sections are prohibited from exemption per HB 2. The subsequent subparagraphs were relettered accordingly to reflect this addition. The adopted amendment to §102.1309(a)(1)(C), relettered as subparagraph (D), adds TEC, §28.004, as a prohibited exemption to reflect the prohibition in TEC, §12A.004(a)(4), as added by SB 12. The adopted amendment to §102.1309(a)(1)(H), relettered as subparagraph (I), clarifies that TEC, Chapter 37, in its entirety is prohibited from exemption per HB 6.

The adopted amendment to §102.1315(a)(3) updates the reference to TEC, §22.085, to §22A.157 and the reference to TEC, §22.092, to §22A.151. Both sections were redesignated by SB 571.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 24, 2025, and ended November 24, 2025. Following is a summary of the public comment received and the agency response.

Comment: The Texas Classroom Teachers Association (TCTA) recommended that TEC, §21.003, be eliminated from the checklist of allowable exemptions on the form in Figure: 19 TAC §102.1307(d) to help promote the ability of districts to accurately comply with requirements in TEC, §21.0032, as added by HB 2. TCTA commented that TEC, §21.0032, modifies TEC, §21.003, essentially providing that school districts with district of inno-

vation plans exempting the district from the applicable teacher certification requirements under TEC, §21.003, cannot continue to do so for teachers of record of foundation curriculum courses, with certain narrow, time-limited exceptions, and, therefore, it is not accurate to characterize TEC, §21.003, as an allowable exemption without important limitations. TCTA commented that, alternatively, if TEC, §21.003, remains on the checklist, qualifying language should be added to inform districts that TEC, §21.0032, modifies TEC, §21.003.

Response: The agency disagrees with TCTA's recommendation to remove TEC, §21.003, from Figure: 19 TAC §102.1307(d). HB 2 amended TEC, §12A.004, to include the prohibition of exemption from new TEC, §21.0032, as TCTA pointed out, rather than existing TEC, §21.003. As such, TEC, §21.003, remains an allowable exemption. The agency agrees that new TEC, §21.0032, limits districts' ability to exempt from certain certification requirements that were previously allowable under exemption from TEC, §21.003; however, the agency asserts that removing TEC, §21.003, from Figure: 19 TAC §102.1307(d) would create more confusion than continuing to include it and disagrees with TCTA's recommendation to include qualifying language. Figure: 19 TAC §102.1307(d) is a reporting document for districts of innovation; it is not a guidance document of caveats related to each exemption. It is the responsibility of the district to maintain compliance with all rules and regulations related to districts of innovation in TEC, Chapter 12A, and 19 TAC Chapter 102, Subchapter JJ, as well as all legal requirements for which an exemption cannot be claimed.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code, §12A.009, which authorizes the commissioner to adopt rules to implement districts of innovation.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §12A.009.

§102.1307. Adoption of Local Innovation Plan.

(a) The board of trustees may not vote on adoption of a proposed local innovation plan unless:

(1) the final version of the proposed plan has been available on the district's website for at least 30 days;

(2) the board of trustees has notified the commissioner of education of the board's intention to vote on adoption of the proposed plan; and

(3) the district-level committee established under Texas Education Code (TEC), §11.251, has held a public meeting to consider the final version of the proposed plan and has approved the plan by a majority vote of the committee members. This public meeting may occur at any time, including up to or on the same date at which the board intends to vote on final adoption of the proposed plan.

(b) A board of trustees may adopt a proposed local innovation plan by an affirmative vote of two-thirds of the membership of the board.

(c) On adoption of a local innovation plan, the district:

(1) is designated as a district of innovation under this subchapter for the term specified in the plan but no longer than five calendar years, subject to TEC, §12A.006;

(2) shall begin operation in accordance with the plan; and

(3) is exempt from state requirements identified under TEC, §12A.003(b)(2).

(d) The district shall notify the commissioner of approval of the plan along with a list of approved TEC exemptions by completing the agency form provided in the figure in this subsection.
Figure: 19 TAC §102.1307(d)

(e) A district's exemption described by subsection (c)(3) of this section includes any subsequent amendment or redesignation of an identified state requirement, unless the subsequent amendment or redesignation specifically applies to an innovation district.

(f) The district shall ensure that a copy of the local innovation plan is posted on the district's website in accordance with TEC, §12A.0071, for the term of the designation as an innovation district.

(g) Not later than the 15th day after the date on which the board of trustees finalizes a local innovation plan either through adoption, amendment, or renewal, the district shall provide a link to the local innovation plan as posted on the district's website to the Texas Education Agency for posting on the agency website.

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 December 19, 2025.

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

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§229.1, 229.2, 229.4, 229.5, and 229.9, concerning the performance standards and procedures for educator preparation program (EPP) accountability. The amendments are adopted without changes to the proposed text as published in the August 15, 2025 issue of the *Texas Register* (50 TexReg 5291) and will not be republished. The adopted amendments provide for adjustments to the Accountability System for Educator Preparation (ASEP) Manual; clarify and streamline language and definitions; provide an updated approach for the implementation of the student growth indicator; provide additional flexibility for small programs; clarify closure procedures; and include technical updates. A correction of error was published in the December 26, 2025 issue of the *Texas Register*. The words "Yes" and "No" were inadvertently omitted from Illustration 2, Alternative Evaluation of Three-year Cumulative Group Procedure, on page 4 of the Texas Accountability System for Educator Preparation (ASEP) Manual (Figure: 19 TAC §229.1(c)).

REASONED JUSTIFICATION: Educator preparation programs (EPPs) are entrusted to prepare educators for success in the classroom. The Texas Education Code (TEC), §21.0443, re-

quires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. The TEC, §21.045, also requires SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs to comply with these provisions of the TEC and to ensure the highest level of educator preparation, which is codified in the SBEC Mission Statement.

The following is a description of the adopted amendments to 19 TAC Chapter 229 and the ASEP Manual (Figure: 19 TAC §229.1(c)).

Subchapter A. Accountability System for Educator Preparation Program Procedures.

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

Update of ASEP Manual:

The adopted amendment to Figure: 19 TAC §229.1(c) updates the ASEP manual to do the following.

Updates to the title page reflect the updated table of contents.

Updates to the table of contents provide consistent descriptive language for the Principal Survey and Teacher Survey throughout the manual.

Updates to Chapter 2 add process language and a diagram explaining the modified small group aggregation procedure described in adopted new 19 TAC §229.4(c)(6) and simplify references to demographic categories to refer to the definitions in the rule chapter.

Updates to Chapter 3 clarify the contents of the chapter, remove expired language, and add language to specify the inclusion of Texas Assessment of Sign Communication (TASC 072) and the Texas Assessment of Sign Communication - American Sign Language (TASC-ASL 073) in the calculations for certification category evaluation, along with clarifying the evaluation procedure. Updates also remove repetitive language and streamline the methodological language. The worked examples will be updated to remove repetitive language, point to the methods described elsewhere in the chapter, include broader examples of included tests, and match the description with the example.

Updates to Chapter 4 streamline and remove repetitive information, add the enhanced standard certificate to the certificate list, more clearly align with practice and provide additional transparency for what individuals are included in the population, clarify the use of the certificate effective date when identifying individuals, and clarify the practice for when teachers are at multiple campuses. Updates to the worked example add a step to further describe current practice, remove repetitive language, and correct a number to match the description with the example.

Updates to Chapter 5 modify the individuals included section to align with practice and provide additional transparency to the field about the time span of data used, add a reference to existing definitions, and add the enhanced standard certificate to the list of certificates. Updates to the scoring approach section provide additional clarity on the process when there are multiple subject areas for one teacher, better describe the individual standard aligned with the measurement definition of STAAR annual growth points, and correct for grammar and usage. Updates to the worked example remove repetitive language.

Updates to Chapter 6 add the residency experience as an evaluated field experience, clarify that, beginning in the 2025-2026 academic year, individuals completing clinical teaching will be identified using the clinical experience record, and add the enhanced standard certificate to the list of certificates. Updates also point to existing definitions, add specificity to the observation frequency requirements used as the standard for the 2024-2025 academic year, generalize the reference to 19 TAC Chapter 228, Requirements for Educator Preparation Programs, Subchapter F, Support for Candidates During Required Clinical Experiences, to simplify future rulemaking, and use the language of reporting year. Updates also move the description of the scoring approach from the worked example to the main section of the chapter without modifying the process and align language about the small group aggregation throughout the manual. Updates to the worked example remove repetitive language.

Updates to Chapter 7 align the approach of providing the alternative name of the survey with the approach in Chapter 4, add the enhanced standard certificate to the certificate list, provide more aligned descriptions of practice and provide additional transparency for what individuals are included in the sample, clarify the use of the certificate effective date when identifying individuals, and clarify the practice for when teachers are at multiple campuses. Updates to the worked example add a step to further describe current practice and remove repetitive language.

Updates to Chapter 8 remove the EPP commendations. Commendations will be introduced in 19 TAC Chapter 228 related to the Continuing Approval Review. This provides clarity by removing potentially conflicting language.

Updates to Chapter 9 modify the examples to data for Indicator 3, since it will no longer be report only. This provides clarity to the field. The updates also align language with the definitions section of 19 TAC Chapter 229.

Subchapter A. Accountability System for Educator Preparation Program Procedures.

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

Update to Commendations

The adopted amendment to §229.1(d) removes the language related to commendations. Commendations will be introduced in 19 TAC Chapter 228 related to the Continuing Approval Review. This update provides clarity by removing potentially conflicting language.

§229.2. Definitions.

The adopted amendment to §229.2(2), (3), (20)-(23), and (28) removes definitions of terms not included in the chapter. The remaining definitions are renumbered accordingly.

The adopted amendment to §229.2(7) "Clinical experience" provides a new definition that aligns with the definition in 19 TAC Chapter 228.

The adopted amendment to §229.2(23) "Reporting Year" includes a definition for the term of September 1-August 31.

The adopted amendment to §229.2(24) "Residency" provides a new definition to align with the definition in 19 TAC Chapter 228.

Subchapter B. Accountability System for Educator Preparation Accreditation Statuses.

§229.4. Determination of Accreditation Status.

The adopted amendment to §229.4(a)(3) provides a timeline for the introduction of the performance standard. The amendment allows for the 2024-2025 and 2025-2026 academic years to have a standard of 60%, the 2026-2027 academic year to have a standard of 65%, and the 2027-2028 academic year to have a standard of 70%. This rolled-in standard was recommended by EPP stakeholders to allow programs the opportunity to adjust to the implementation of the new standard and make programmatic improvements.

The adopted amendment to §229.4(a)(4) adds residencies to the list of evaluated field experiences in the observation indicator. This includes these similar experiences and ensures that they are included in the accountability system.

The adopted amendment to §229.4(a)(4)(i) removes the specific reference to 19 TAC Chapter 228, Subchapter F, because the organization of 19 TAC Chapter 228 by subchapter was not in effect August 31, 2024. This provides clarity to the field about which observation requirements are actionable for which evaluation year.

Adopted new §229.4(b)(2)(B) provides an accreditation status of Accredited - Not Rated in any years when an EPP does not generate enough data for the recommendation of a status by the ASEP Index system. In cases where this status is assigned immediately following a year where the EPP had a status of Accredited - Probation, any associated sanctions continue and the count of years on Accredited - Probation are not reset. This ensures alignment with statutory requirements.

The adopted amendment to §229.4(b)(5)(F) provides clarification of the two-year revocation period. This is responsive to questions from the field.

The adopted amendment to §229.4(b)(5)(G) requires EPPs subject to closure due to revocation to submit a letter to TEA within 14 days after the revocation, identifying a closure date aligned with 19 TAC §228.21(a)(1). If the EPP fails to provide the letter, the closure date is the last day of the current academic year. This provides clarity to candidates about closure procedures and time frames.

Adopted new §229.4(b)(5)(H) further provides specific alignment with closure procedures in 19 TAC Chapter 228. This amendment provides a definitive closure date and fully ceases preparation activities at the revoked EPP. EPPs closed as such are able to reapply as specified, providing additional clarity for candidates and EPPs about revocation under ASEP.

The adopted amendment to §229.4(c)(5) removes language about the process when there is no data for measurement. This case will be handled under adopted new §229.4(b)(2)(B). The updated language allows for an alternative evaluation under the small group aggregation procedure. If the aggregated group fails to meet the standard, the current year group will also be evaluated against the standard. If the current year group met the standard, then the count of consecutive years does not advance, for the purposes of the ASEP index or the count of years of failing to meet the standard for a certification class or category. This provides flexibility for small programs or certificate categories. This was recommended by stakeholders to provide additional time for small improving programs to continue their improvement without additional negative impacts on their index scores or certification category offerings.

Subchapter C. Accreditation Sanctions.

§229.5. Accreditation Sanctions and Procedures.

The adopted amendment to §229.5(c) removes the alternative closure procedure. This allows for the language in adopted new subsection (c)(3) and (4) to be salient. Without removal this would be conflicting language in the rule.

Adopted new §229.5(c)(3) aligns the closure procedures for an individual certification class or category with the closure procedures for the entire program and the closure procedures offered in 19 TAC Chapter 228. This amendment allows EPPs subject to closure of a certification class or category to submit a letter identifying a closure date within a specific timeframe, aligned with the procedure in §228.21(a)(1). If the EPP fails to provide such a letter, the default closure date would be the last day of the current academic year. This provides clarity to candidates about closure procedures and time frames.

Adopted new §229.5(c)(4) further provides specific alignment with closure procedures in 19 TAC Chapter 228 with the closure of a certification class or category. Current rule allows for EPPs revoked under §229.5(c) to continue to teach out candidates indefinitely, misaligned with voluntary closure procedures in 19 TAC Chapter 228 that contain a specific end date. This amendment provides a definitive closure date for the certification class or category and fully ceases preparation activities for that certificate. Certificates closed as such can be re-added as specified in 19 TAC Chapter 228. This aligns the closure procedures and provides clarity for candidates and EPPs about certificate class or category revocation.

Subchapter F. Required Fees.

§229.9. Fees for Educator Preparation Program Approval and Accountability.

The adopted amendment to §229.9(6) adds applications for the residency route to the existing fee schedule.

SUMMARY OF PUBLIC COMMENTS: The public comment period on the proposal began August 15, 2025, and ended September 15, 2025. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the September 18, 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education took no action on the review of the amendments to §§229.1, 229.2, 229.4, 229.5, and 229.9 at the November 21, 2025 meeting.

SUBCHAPTER A. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAM PROCEDURES

19 TAC §229.1, §229.2

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC

may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through PEIMS that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

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 December 16, 2025.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: January 5, 2026
Proposal publication date: August 15, 2025
For further information, please call: (512) 475-1497

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SUBCHAPTER B. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION ACCREDITATION STATUSES

19 TAC §229.4

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through PEIMS that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

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

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Cristina De La Fuente-Valadez
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State Board for Educator Certification
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Proposal publication date: August 15, 2025
For further information, please call: (512) 475-1497

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SUBCHAPTER C. ACCREDITATION SANCTIONS

19 TAC §229.5

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through PEIMS that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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Proposal publication date: August 15, 2025
For further information, please call: (512) 475-1497

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SUBCHAPTER F. REQUIRED FEES

19 TAC §229.9

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through PEIMS that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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Proposal publication date: August 15, 2025
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 131, regarding the organization and administration of the board, specifically §131.15, relating to Committees, and §§131.101, 131.103, 131.107, 131.109 and 131.111, relating to Engineering Advisory Opinions. As part of this rulemaking, the Board also reorganizes the subchapters within Chapter 131 and corrects an error that resulted in there not being a Subchapter F within Chapter 131. Amendments to §§131.15, 131.101, 131.107, 131.109, and 131.111 are adopted without changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6819). The amendments to §131.103 are adopted with changes to correct a non-substantive grammatical error.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted amendments to §131.15 clarify that committees of the board meet as needed rather than as required and clarify that the Policy Advisory Opinion Committee may consider matters relating to both the Texas Engineering Practice Act and the Professional Land Surveying Practices Act. In addition, the adopted amendments clarify that the Surveying Advisory Committee may prepare a written report or recommendation to the board on an surveying-related subject regulated by the board and that a written record of each topic discussed at a Surveying Advisory Committee meeting shall be kept and made available to the public.

The adopted amendments to §§131.101, 131.103, 131.107, 131.109, and 131.111 incorporate changes to be implement provisions of Senate Bill 1259, 89th Regular Session.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments from the public.

SUBCHAPTER B. ADMINISTRATION AND THE BOARD

22 TAC §131.15

STATUTORY AUTHORITY

The amendments are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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 December 18, 2025.

TRD-202504701
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: January 7, 2026
Proposal publication date: October 17, 2025
For further information, please call: (512) 440-7723

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SUBCHAPTER H. ENGINEERING ADVISORY OPINIONS

22 TAC §§131.101, 131.103, 131.107, 131.109, 131.111

STATUTORY AUTHORITY

The proposed rules are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

§131.103. Request for an Advisory Opinion.

(a) A request for an advisory opinion shall include, at a minimum, sufficient information in order for the board to provide a complete response to the request. The requestor must provide the following, as applicable:

(1) requestor contact information including the name of the requestor;

(2) affected section(s) of the Engineering Act, Surveying Act, and/or board rules;

(3) description of the situation;

(4) reason the advisory opinion is requested;

(5) parties or stakeholders that will be affected by the opinion, if known; and

(6) any known, pending litigation involving the situation.

(b) A request for an advisory opinion shall be in writing. A written request may be mailed, sent via electronic mail, or hand-delivered to the board at the agency office.

(c) A request for an advisory opinion may not be submitted anonymously. A request that does not include the information required

in subsection (a)(1) of this section will be rejected and a response will not be prepared.

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 December 18, 2025.

TRD-202504702
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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Proposal publication date: October 17, 2025
For further information, please call: (512) 440-7723

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CHAPTER 133. LICENSING FOR ENGINEERS
SUBCHAPTER A. ENGINEER-IN-TRAINING

22 TAC §133.3

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 133, Subchapter A, regarding engineer-in-training, specifically §133.3 Engineer-in-Training Application and Certification. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6820). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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 December 18, 2025.

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Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: January 7, 2026
Proposal publication date: October 17, 2025
For further information, please call: (512) 440-7723

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SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 133, Subchapter B, regarding engineer licensing, specifically §133.11 Types of Licenses. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6822). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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 December 18, 2025.

TRD-202504719
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: January 7, 2026
Proposal publication date: October 17, 2025
For further information, please call: (512) 440-7723

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SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.29

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 133, Subchapter C, regarding professional engineer license application requirements, specifically §133.29 Application for Licensure for Military Service Members, Military Veterans, and Military Spouses. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6823). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17,

2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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 December 18, 2025.

TRD-202504727
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: January 7, 2026
Proposal publication date: October 17, 2025
For further information, please call: (512) 440-7723

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SUBCHAPTER G. EXAMINATIONS

22 TAC §133.65

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 133, Subchapter G, regarding examinations, specifically §133.65 Examination on the Fundamentals of Engineering. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6825). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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 December 18, 2025.

TRD-202504717
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: January 7, 2026
Proposal publication date: October 17, 2025
For further information, please call: (512) 440-7723

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CHAPTER 134. LICENSING, REGISTRATION, AND CERTIFICATION FOR SURVEYORS

SUBCHAPTER A. SURVEYOR-IN-TRAINING

22 TAC §134.3

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 134, Subchapter A, regarding surveyors-in-training, specifically §134.3 Surveyor-In-Training Application and Certification. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6827). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Effective date: January 7, 2026
Proposal publication date: October 17, 2025
For further information, please call: (512) 440-7723

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SUBCHAPTER B. PROFESSIONAL SURVEYOR REGISTRATION

22 TAC §134.11

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 134, Subchapter B, regarding professional surveyor registration, specifically §134.11 Types of Surveyor License

and Registration. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6828). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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Proposal publication date: October 17, 2025
For further information, please call: (512) 440-7723

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SUBCHAPTER C. LAND SURVEYOR APPLICATION REQUIREMENTS

22 TAC §134.29

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 134, Subchapter C, regarding land surveyor application requirements, specifically §134.29 Application for Licensure for Military Service Members, Military Veterans, and Military Spouses. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6829). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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Proposal publication date: October 17, 2025
For further information, please call: (512) 440-7723

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SUBCHAPTER G. EXAMINATIONS

22 TAC §§134.61, 134.65, 134.67

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 134, Subchapter G, regarding examinations, specifically §§134.61 Surveying Examinations Required for a Registration to Practice as a Professional Surveyor, 134.65 Examination on the Fundamentals of Surveying, and 134.67 Texas Specific Surveying Examination. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6831). The rules will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

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

The 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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Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

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22 TAC §134.66

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 134, Subchapter G, regarding examinations, specifically creating new rule §134.66 Examination on the Principles and Practice of Surveying.

The Board received one comment from an individual about the rule as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6847) and adopts the rule with the non-substantive change outlined below. The rule will be republished.

The commenter noted that the rule language as published for comment contained two subsections labeled "(b)". This was an editorial oversight and the language will be re-numbered. This change is considered to be non-substantive and will not be re-published.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

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

(a) The board shall utilize the Principles and Practice of Surveying Exam (PS Exam) developed and administered by NCEES to meet this requirement.

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

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

(d) An applicant approved to take the PS exam:

(1) shall be advised of the date he or she is eligible; and

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

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

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

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

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND REGISTRATION ISSUANCE

22 TAC §134.87

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 134, Subchapter H, regarding review process of applications and registration issuance, specifically §134.87 Final Action on Applications. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6836). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Lance Kinney
Executive Director
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For further information, please call: (512) 440-7723

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CHAPTER 135. ENGINEERING FIRM REGISTRATION

22 TAC §135.1

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 135, specifically §135.1 Authority. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6837). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no

comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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For further information, please call: (512) 440-7723

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CHAPTER 136. SURVEYING FIRM REGISTRATION

22 TAC §136.1

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 136, specifically §136.1 Authority. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6839). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Executive Director
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For further information, please call: (512) 440-7723

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CHAPTER 137. COMPLIANCE AND PROFESSIONALISM FOR ENGINEERS SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §§137.7, 137.9, 137.13, 137.17

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 137, Subchapter A, regarding individual and engineer compliance, specifically §137.7 License Expiration and Renewal, §137.9 Renewal for Expired License, §137.13 Inactive Status, and §137.17 Continuing Education. The Board adopts the amendments with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6840). The rules will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

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

The 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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Lance Kinney
Executive Director
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For further information, please call: (512) 440-7723

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22 TAC §137.11

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts the repeal of 22 Texas Administrative Code, Chapter 137, Subchapter A, regarding individual and engineer compliance, specifically §137.11 Expiration and Licensed in Another Jurisdiction. The Board adopts the repeal as published in

the October 17, 2025, issue of the *Texas Register* (50 TexReg 6844). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION

During a recent rule review it was determined that this rule is no longer implemented in practice and there is no statutory directive or practical support to continue this rule. The provisions in this rule have not been used and applicants in the situation described by the rule have a pathway to licensure covered by §133.26.

Accordingly, the following rules is repealed:

Chapter 137: Compliance and Professionalism for Engineers

§137.11 Expiration and Licensed in Another Jurisdiction

PUBLIC COMMENTS

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the proposed repeal of the rule. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and repeals the rule as proposed.

STATUTORY AUTHORITY

The rule is repealed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

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CHAPTER 138. COMPLIANCE AND PROFESSIONALISM FOR SURVEYORS SUBCHAPTER A. INDIVIDUAL AND SURVEYOR COMPLIANCE

22 TAC §§138.7, 138.9, 138.13, 138.17

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 138, Subchapter A, regarding individual and surveyor compliance, specifically §138.7 License or Registration Expiration and Renewal, §138.9 Renewal for Expired License or Registration, §138.13 Inactive Status, and §138.17 Continuing Education. The Board adopts the amendments with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6847). The rules will not be republished.

The Board received one comment from an individual about rule §138.17.

The commenter expressed their opposition to the removal of the provision allowing continuing education hours to be carried over to the next renewal period. They also oppose the change of required minimum continuing education hours related to ethics. The current number of annual hours related to ethics is 3 per year; therefore, a standard doubling of the requirement for a two-year renewal should be 6 hours per two-year renewal period. The proposed rule only requires 4 hours per two-year renewal period and the commenter believes this is insufficient.

Board Response:

Both topic areas were discussed extensively by the Surveying Advisory Committee (SAC) as required by Texas Occupations Code § 1001.216 during the development of the rule proposal and determined to be appropriate for the new two-year renewal system. If hours are allowed to be carried over in the two-year renewal format, then a person would be able to obtain the full number of hours in the first year and then potentially not have to do any continuing education hours for the next three years which is determined to be inadequate to maintain professional practice readiness. The SAC re-reviewed this provision in light of the public comment and recommends no change to the originally proposed language.

The SAC also determined that the proposed requirement of 4 hours of ethics training over two years to be sufficient to maintain professional competency and awareness related to ethical requirements while not being an undue burden to professional registrants. The SAC re-reviewed this provision in light of the public comment and recommends no change to the originally proposed language.

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

The 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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Lance Kinney
Executive Director
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For further information, please call: (512) 440-7723

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22 TAC §138.11

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts the repeal of 22 Texas Administrative Code,

Chapter 138, Subchapter A, regarding individual and surveyor compliance, specifically §138.11 Expiration and Licensed or Registered in Another Jurisdiction. The Board adopts the repeal as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6852). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION

During a recent rule review it was determined that this rule is no longer implemented in practice and there is no statutory directive or practical support to continue this rule. The provisions in this rule have not been used and applicants in the situation described by the rule have a pathway to licensure covered by §134.25.

Accordingly, the following rules is repealed:

Chapter 138: Compliance and Professionalism for Surveyors

§138.11 Expiration and Licensed or Registered in Another Jurisdiction

PUBLIC COMMENTS

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the proposed repeal of the rule. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and repeals the rule as proposed.

STATUTORY AUTHORITY

The rule is repealed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Lance Kinney
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For further information, please call: (512) 440-7723

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SUBCHAPTER D. FIRM AND GOVERNMENT ENTITY COMPLIANCE

22 TAC §138.75

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts an amendment to 22 Texas Administrative Code, Chapter 138, Subchapter D, regarding firm and governmental entity compliance, specifically §138.75 Registration Renewal and Expiration. The Board adopts the amendment with no changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6853). The rule will not be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments about this rule and adopts the rule with no changes to the proposal.

The rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

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CHAPTER 139. ENFORCEMENT

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 139, regarding Enforcement, specifically §139.35, relating to Sanctions and Penalties- Engineering, §139.37, relating to Sanctions and Penalties- Surveying, and §139.43 relating to License or Registration Holder with Criminal Conviction. The Board adopts a new rule: §139.22, a rule relating to reporting complaints made against licenses issue to military service members, military veterans, or military spouses. The amendments and new rule are adopted without changes to the proposed text as published in the October 17, 2025 issues of the *Texas Register* (50 TexReg 6854). The rules will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The proposed rules are necessary to implement the provisions of two bills passed during the 89th Regular Legislative Session. Specifically, Senate Bill 1080 required the Board to amend its rules to address the method in which the Board considers criminal convictions of applicants and licensees and House Bill 5629 required the Board to track and report complaints against any military service member, military veteran, or military spouse that was licensed under the provisions of Texas Occupations Code, Chapter 55 or whose out of state license was recognized under the provision of Texas Occupations Code, Chapter 55. The adopted rules also clarify existing Board rules and delete an outdated citation.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments from the public.

SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

22 TAC §139.22

STATUTORY AUTHORITY

The new rule is adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

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SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35, §139.37

STATUTORY AUTHORITY

The proposed rules are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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. SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

22 TAC §139.43

STATUTORY AUTHORITY

The proposed rules are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Executive Director
Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

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CHAPTER 140. CRIMINAL HISTORY AND CONVICTIONS

SUBCHAPTER A. CRIMINAL HISTORY AND CONVICTIONS

22 TAC §140.1, §140.3

The Texas Board of Professional Engineers and Land Surveyors (Board) adopts amendments to 22 Texas Administrative Code, Chapter 140, regarding criminal history and convictions, specifically §140.1, relating to Criminal History and Convictions - Engineers, and §140.3, relating to Criminal History and Convictions - Surveyors. Amendments to 22 Texas Administrative Code §140.1 and §140.3 are adopted without changes to the proposed text as published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6857). The rules will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The adopted amendments are necessary to implement changes to Texas Occupations Code, Chapter 53 that were implemented by Senate Bill 1080, 89th Regular Session. Specifically, the amendments update the method in which the Boards considers criminal convictions against applicants and licensees. The

amendments allow the Board to evaluate applications for licensure from incarcerated individuals on a case-by-case basis rather than the previous complete prohibition.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rules. The public comment period began on October 17, 2025, and ended November 16, 2025. The Board received no comments from the public.

STATUTORY AUTHORITY

The amendments are adopted pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

The 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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Lance Kinney
Executive Director
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For further information, please call: (512) 440-7723

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. PHYSICIAN LICENSURE

The Texas Medical Board (Board) adopts new rule §161.48, concerning Physician Graduates, and new rule §161.53, concerning Provisional License to Foreign Medical License Holders with Offers of Employment. New rule §161.48 is being adopted without changes and new rule §161.53 is being adopted with non-substantive changes to the proposed text as published in the November 7, 2025, issue of the *Texas Register* (50 TexReg 7219). Rule §161.48 will not be republished. Rule §161.53 will be republished with non-substantive changes.

These rules are mandated by the passage of HB 2038 (89th Regular Legislative Session) which amended the Texas Occupations Code Chapter 155. HB 2038, known as the "DOCTOR Act," provides new pathways to licensing foreign trained physicians and medical school graduates who do not match into a resident training program.

The adopted new sections are as follows:

New §161.48, Physician Graduates, provides a pathway for certain individuals to be issued a limited license under to practice medicine under a supervising practice agreement with a sponsoring physician. The Bill provides that the Board shall issue a license to an individual who has graduated from a board-recognized accredited medical school in the United States or Canada or a medical school located outside of the United States and Canada that the board recognizes as acceptable; be licensed and in good standing to practice medicine in another country; has passed the first and second components of the USMLE; and is not enrolled in a board-approved postgraduate residency program. The bill requires the Medical Board to adopt rules as necessary to implement the new provisions of the Texas Occupations Code.

New §161.53, Provisional License to Foreign Medical License Holders with Offers of Employment, provides that the Board shall issue an initial provisional license to practice medicine to an applicant who: has been granted a degree of doctor of medicine by a program of medical education that meets eligibility requirements for the applicant to apply for certification by the Educational Commission for Foreign Medial Graduates; has been licensed in good standing to practice medicine in another country and is not the subject of any pending disciplinary action before the licensing body; has completed a residency or a substantially similar postgraduate medical training required by the applicant's country of licensure; passes the Texas medical jurisprudence examination; has proficiency in the English language; is authorized under federal law to work in the United States; has been offered employment in this state as a physician by a person who provides health care services in the normal course of business in a facility-based or group practice setting, including a health system, hospital, hospital-based facility, freestanding emergency facility, or urgent care clinic; has passed the first and second steps of the USMLE examination.

The Board received approximately 60 written comments regarding the proposed new rule §161.48 from TMA, THA, large majority were from individuals appearing to be potential applicants. No one appeared to testify regarding the new rule at the public hearing on December 12, 2025. A summary of comments relating to the new rule and the Board responses, follows.

§161.48 PHYSICIAN GRADUATES

Individual Commentors suggested that on-site supervision requirement was too burdensome. The overarching concern was if a sponsoring physician or alternate physician was not present, the clinic would have to close. The commentors suggested more flexible supervision. Other comments from individuals suggested that there should not be a limit as to practice area limitation to a single worksite.

RESPONSE: TMB understands the commentors concerns about worksite limitations and supervision. However, the TMB declines to make any change and maintains that such supervision and practice parameters are necessary to ensure patient safety and appropriate medical care

TMA had concerns about "work history" not necessarily being required.

RESPONSE: TMB's process for all applicants, including these individuals, is to obtain a work history. Additionally, TMB anticipates that many of these applicants will be recently graduated from medical school and, as such, will have no, or a limited, professional work history. Also, if an applicant had been in a residency, but failed to complete it, TMB's current process for applicants requires obtaining a work history from the applicant.

TMA argues that an applicant who has completed a residency should not be eligible for the Limited Physician Graduate license.

RESPONSE: TMB disagrees and maintains that in order to increase access to care, the Board will issue a limited Physician Graduate license to an individual who applies for and qualifies for such, so long as they are not currently enrolled in a residency program.

TMA suggests that the Board define "resident of Texas."

RESPONSE: TMB declines, as this is commonly understood to require the furnishing of recognized documents to prove residency status and, therefore, a definition is unnecessary.

TMA suggests that the rules allow more supervision, including and up to 7 physician graduates. Additionally, they request clarification as to the supervising physician location relative to physician graduate. TMA and several other commentors also request the rule provide that the supervising physician only be "immediately available" as opposed to "on-site at all times when the physician graduate is practicing."

RESPONSE: The Board determined that limiting the number of physician graduates supervised to two ensures adequate supervision and training by the supervising physician, as physician graduates have extremely limited clinical experience. Patient safety is a primary objective of the Board. Close supervision by the supervising physician is necessary given that these individuals have limited verifiable training, limited demonstrated clinical competency, minimal clinical experience and exposure to clinical work, with the exception of medical school. Therefore, the Board determined that these limits on the number of physician graduates supervised and the required on-site supervision is necessary to ensure patient safety, adequate training and that proper care is being provided.

TMA expressed concerns over language conflict of Chap 157 and HB2038.

RESPONSE: TMB's General Counsel has determined there is no conflict and the text of HB 2038 makes it clear that supervision is required.

TMA recommend prescriptive authority for Physician graduates be treated the same as PA and APRN prescriptive authority.

RESPONSE: The Board maintains that the new rule, as written, is analogous to the current prescribing authority and limitations of a PA and APRN.

Comment - One commentor was concerned about the requirement for board certification of the Supervisor Physician.

RESPONSE - Board certification of the supervising physician is necessary in order to ensure a high level of skill for supervising these individuals as they learn the specific practice area of the supervising physician.

Comment - Two individual commentors states that USLME is too rigid of a test. They requested that the board change the rule to allow SPEX and supervised practice in lieu of USLME. Another commentor suggested that getting Board Certified in a specialty area should replace the requirement for passage of USMLE. Also, two commentors misunderstood, this is not pathway to full licensure.

RESPONSE: The statute requires completing the first steps of USLME. The rule cannot lessen that requirement.

Comment - One individual was concerned about the language "has graduated in the two years preceding the date that the applicant initially applies for a physician graduate license" limitation.

RESPONSE - This is statutory and cannot be changed in rule.

Comment - One commentor inquired as to the necessity of physician graduate license holders completing the requisite CME each year.

RESPONSE: Physician licensees are required to complete a requisite number of continuing education hours in order to maintain licensure. These limited licenses holders are subject to the same requirements as it relates to CME.

Commentor - One individual requested that the rule allow physician graduates to practice telemedicine if on-site supervision is not available.

TMA suggests limiting telemedicine by physician graduates to only counties with a population of 100,000 or less.

RESPONSE: Because these individuals do not have actual, or have extremely limited, clinical experience as medical graduates, Board determined that requiring on-site supervision even for telemedicine ensures patient safety and that proper care is being provided.

As to limitation to the counties with a population of 100,000, TMB declines such change in rule as the ability to regulate and enforce such a provision is not practical for the TMB. However, the actual presence of physician graduates in these underserved areas will insure improved access to healthcare, with or without the allowance of telemedicine in the rule.

TMA requests clarification as to how the disclosure of "no residency training" be made and verified.

RESPONSE: The Board declines to specify any particular method but will investigate all claims of failure to disclose. This is similar to shadowing medical students in clinic settings where that is routinely disclosed by the treating or supervising physician. If there are issues with failures to disclose, TMB will consider future amendments to the rule in order to be more prescriptive for such disclosure.

§161.53 PROVISIONAL LICENSE TO FOREIGN MEDICAL LICENSE HOLDER WITH OFFERS OF EMPLOYMENT

The Board received 59 written comments regarding the proposed new rule §161.53 from ABMS, PBI, World Ed Services (WES), TMA, and individuals. A significant number of commentors did not make comments but only indicated if favored, opposed or neutral to the new rule. No one appeared to testify regarding the new rule at the public hearing on December 12, 2025. A summary of comments relating to the new rule the Board responses and non-substantive changes, follows.

THA - requested that we add "proof of U.S. citizenship" to the beginning of rule in order to clarify that U.S. citizens holding a foreign medical license are eligible for the provisional Texas license created under HB 2028.

RESPONSE: The statute provides "is authorized under federal law to work in the United States" and part (b) of the statute says "Unless the applicant is a citizen of the United States or has been issued a visa to legally work in the United States, the board may not issue a provisional license under Subsection (a) to an applicant who is a citizen of a country..." Therefore, it is understood that a US citizen with a foreign medical license may qualify for the provisional license. TMB believes the statute and rule, read in conjunction, clarify this concern.

THA - Requests that we eliminate the prohibition against delegation and supervision by a provisional license holder.

RESPONSE: This alternate progressively structured pathway towards full licensure gradually increases responsibilities of the license holder in order to allow the foreign trained physician ample opportunities to become familiar with the requirements, expectations and practices in the US healthcare system and in Texas. The rule allows for delegation and supervision under the Second Provisional term.

THA - Requests that TMB extend the time period by which a license holder or employer must report termination of employment of a provisional license holder.

RESPONSE: The Board agrees that such short time period for reporting termination may be impractical and adopts the non-substantive changes in sections (d)(5), (d)(6), (d)8, (f)(6) and (f)(8) extending the reporting time to five (5) business days. The Board also adopted the non-substantive change to section (f)(5)(C), relating to second provisional license holders' duty to notify the board within five (5) business days of termination. This language is consistent with the requirements in (d)(5) for the first provisional license.

THA - Expressed concern over the 5-year limitation to complete both the initial and second provisional license period. They argue that this leaves little margin for error for an applicant that experiences any delay or setback in the process. Furthermore, they request that the Board extend the 5-year completion to at least 6 years, to account for at least one failed attempt and other delays such as application processing.

Representative Perez - commented in support of THA's request.

RESPONSE: The Board agrees with the suggestion and adopts the non-substantive change in section (g)(2) to allow six years for completion of both provisional terms.

TMA - Suggest that the Board require the same level of criminal, disciplinary background checks as domestic applicants.

RESPONSE: This is required by the statute and changing this rule is unnecessary. As a matter of practice this information is required for applicants and has been for a period of time.

TMA recommends inserting "a minimum two years" of postgraduate training to apply for the Provisional license, as this would at least mirror the current requirements for applicants with foreign medical training. The rule, as written, requires an applicant for Provisional licensure to provide proof of completion of a residency or a substantially similar postgraduate medical training required by applicant's country of licensure.

RESPONSE: The Board declines to make this change as the rule and statute provides "completed a residency or a substantially similar postgraduate medical training required by the applicant's country of licensure" and "substantially similar" addresses this issue.

Representative Perez expressed concerns that "substantially similar" is not defined.

RESPONSE: The Board's intent with using the statutory language of "substantially similar" is to allow flexibility to demonstrate training that is acceptable and comparable to those training programs already approved in the US. "Substantially similar" ensures adequate pre-existing training and competency to provide quality patient care under the provisional license. Because of the many unknowns with foreign medical training, the term is undefined at present and provides more flexibility for determining "substantially similar." The Board has identified a number of sources, including ACGM-I, that will be utilized in evaluating foreign medical training as it compares to US medical training. Given the newness of this license type and the challenges of obtaining training information from foreign programs, the Board has determined that the rule as currently written, which can be revised as needed, is the best option.

TMA has concerns that, in the event that an applicant does not submit proof of completing a substantially similar residency program and is required to obtain proof of competency and proficiency from a board-approved assessment program, it is not clear how an applicant will know what programs are approved by TMB and where to find this information. TMA recommends that proposed subsection (b)(5)(B)--as well as the similar provision in proposed subsection (b)(17)--be amended to reflect that TMB will list approved programs on the TMB website.

RESPONSE: The Board declines such change and maintains that applicants requiring such assessments, will be informed of the board approved competency programs that are acceptable.

TMA expressed concern that the new rule only requires evaluation of the applicant's work history for the preceding two years from the date of the application, whereas other applicants are required to submit relevant evaluations for the preceding five years and TMB then examines the last three years. TMA argues that this decrease would result in a lower standard for foreign educated and trained applicants.

RESPONSE: The TMB disagrees and maintains that the staff still collects five years of work history forms, but there is a two year minimum look back.

TMA suggested that if the applicant had practiced under a first and second Initial Provisional license, the proposed language in section (e)(5) and (g)(4) would not require this information from the second employer. TMA recommends that the rule be revised to require this information from both employers,

RESPONSE: The Board agrees and adopts the non-substantive change to sections (e)(5) and (g)(4) changing the word "employer" to "employers".

TMA states that the Initial and Second Provisional license periods must be completed within five years, "calculated from the first day of an Initial Provisional license to the last day of a Second Provisional license." However, TMA they argue that it is not clear whether the starting date would be the first day of the first or second Initial Provisional License. To avoid potential uncertainty in the regulated community, TMA recommends that TMB clarify whether the "first" Initial Provisional License begins the five-year period.

RESPONSE: The Board disagrees and maintains that the current language is clear, and the period commences upon initial issuance of the first provisional license.

TMA has concerns that the 60-day period to secure another qualifying employer may be challenging for a Provisional licensee and recommends the period be increased to 90 days.

RESPONSE: Board declines to make this change as it has determined the 60 days correlates to laws concerning same type of grace period for a visa, thereby making this match and avoiding conflicting time frames.

TMA has concerns that the proposed rules are unclear regarding whether a Provisional licensee must be supervised by another licensed physician. Under proposed §161.53(d)(8) and (f)(8), if the Provisional licensee's employment is terminated, the Provisional licensee's "medical director, chief medical officer, lead

physician, or supervising physician" are required to notify TMB. These subsections imply that the Provisional licensee must practice under the supervision of one or more of these individuals. To make this clearer--and promote the licensee's adaptation to the U.S. medical system and patient safety--TMA recommends that TMB include a specific requirement for the Provisional licensee's practice under the supervision of one or more of the listed individuals

RESPONSE: The Board declines the suggested change and determined the rule as written is sufficient and provides flexibility depending on the practice location and structure.

TMA recommends that TMB adopt a rule clarifying that the requirement for the practice location to be rural community, MUA, or HPSA with a shortage of physicians apply when the second Provisional license application is submitted. Specifically, they are concerned that, while under a second provisional, an area might be de-designated as MUA, etc. and recommends saying that it must be designated as an MUA only at time of the issuance of the second provisional.

RESPONSE - The Board understands the concern, however, operationally, the practice location is only required to be verified at time of issuance. The Board declines to make the requested change as it is unnecessary.

TMA recommends that TMB's rules only allow a Provisional licensee to use telemedicine to treat patients in an MUA or HPSA with a shortage of physicians.

RESPONSE: The statute limits practice sites for provisional license holders. As to telemedicine, this is part of our healthcare delivery system, and these individuals should learn this practice aspect as well. The ability to enforce such a limitation described by TMA, if written and adopted, is not practical.

TMA suggests that the Board require identification that communicates the distinction between the Provisional licensee and a physician with a full, unrestricted medical license, which may help avoid misunderstandings in professional interactions during the initial provisional licensure period.

RESPONSE: The Board declines the suggested change and determined that this is unnecessary, as current identification requirements are sufficient.

Comment - One commentor had concerns relating to the timing of taking USMLE for the full license.

Representative Perez and one other commentor had concerns over applicants who have passed Step 1 and/or Step 2 more than seven years ago, yet have continued practicing clinically at a high level, and would be required to complete step 3 under a provisional would be permanently ineligible for full licensure in Texas, due to the 7 year limitation. despite meeting every other requirement and having already demonstrated competency through ECFMG and years of practice. Rep Perez suggests expanding the USMLE completion window of all 3 steps to 10 years.

RESPONSE: The rule surrounding limitations for USMLE passage mirrors the statute and cannot be increased or changed. Also, HB2038 specifies the 7-year limit.

Comment - One individual requested that the Board create an exemption for applicants whose foreign licenses have merely lapsed for administrative reasons, provided there is no history of disciplinary action or revocation of that license.

RESPONSE: This is a statutory requirement, and the Board cannot change the requirement that an applicant be licensed in good standing to practice medicine in another country and is not the subject of any pending disciplinary action before the licensing body.

PBI commented that the provisional license holder be required to take additional CME related to healthcare system structure and culture in the US.

RESPONSE: The Board believes that the provisional license practice setting during the two provisional terms will ensure this assimilation via real world experience and learning and requiring separate CME in these topic areas is unnecessary.

World Education Services (WES) requests that the Board clarify that provisional license holders do not need board certification in their declared specialty practice area.

RESPONSE: The Board declines this change as it is unnecessary. Board certification is not required in order to be licensed. However, the rule requires a focused area of practice to ensure competency during the terms of the provisional license.

Comment - One commentor supports a comprehensive pre-issuance competency evaluation but wanted the Board to clarify in rule that TMB is not using a single program for such assessments.

RESPONSE: The Board declined the requested change because the rule, as written, states that the assessment programs that will be utilized by the Board are not limited to single evaluation program, but only one that is recognized and approved by the Board.

Comment - World Education Services (WES) requests that the rule specifically state whether rural or underserved settings, with such affiliations, qualify as facility-based or group practice settings if they are affiliated with ACGME or AOA programs.

RESPONSE: The Board declines making such clarification as it is unnecessary because affiliation is the determinative factor and the setting, such as MUA, HSPA, is not relevant.

Comment - Representative Perez and another commentor suggested that the Board change the rule relating to "no-credit" for not completing a full term under a provisional. They suggest a pro-rata credit for time successfully completed under a provisional license, even if a given term is not completed in one continuous block and to use suspension with a reactivation pathway--rather than automatic cancellation--as the default response to employment interruptions that are not related to physician performance or misconduct. Suspension with a clear reactivation pathway, rather than automatic cancellation and loss of credit, would protect patients and program integrity without undermining recruitment and retention.

RESPONSE: The Board declines to make such change. The tolling allowed under the rule is limited to 60 days, but it is purposeful, in order to allow no break, per se, in the one-year time period. As long as they meet the timeframe, the time is treated as continuous for purpose of the one-year credit.

SUBCHAPTER J. LIMITED LICENSES

22 TAC §161.48

The new rules are adopted pursuant to the passage of HB 2038 (DOCTOR Act) (89th Regular Legislative Session) which added Texas Occupations Code Sections 155.1015 and 155.201-155.212 and requires the Board to adopt rules to

implement such sections. Specifically, 155.1015 and 155.202, respectively, provide authority for the Board to recommend and adopt rules to implement and regulate these new licenses and licensees. No other statutes, articles or codes are affected by this adoption.

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

Filed with the Office of the Secretary of State on December 19, 2025.

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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7059

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SUBCHAPTER K. TEMPORARY LICENSES

22 TAC §161.53

The new rules are adopted pursuant to the passage of HB 2038 (DOCTOR Act) (89th Regular Legislative Session) which added Texas Occupations Code Sections 155.1015 and 155.201-155.212 and requires the Board to adopt rules to implement such sections. Specifically, 155.1015 and 155.202, respectively, provide authority for the Board to recommend and adopt rules to implement and regulate these new licenses and licensees. No other statutes, articles or codes are affected by this adoption.

§161.53. Provisional License to Foreign Medical License Holders with Offers of Employment.

(a) All applicants for an Initial Provisional License must:

(1) meet the general eligibility requirements set forth in §155.1015(a) - (d) of the Act;

(2) declare the area of medical specialty in which they will practice; and

(3) meet the criteria under subsection (b)(5) of this section.

(b) All applicants must submit a completed application for licensure and all documents and information necessary to complete an applicant's request for licensure including, but not limited to:

(1) the required application fee;

(2) additional fees and surcharges, as applicable;

(3) proof of ECFMG certification;

(4) licensure verification form from the licensing body of the other country as required by §155.1015(a)(2) of the Act;

(5) proof of completion of a residency or a substantially similar postgraduate medical training required by applicant's country of licensure that is in the same specialty as the area of medicine the applicant will practice in while under the Provisional License; and:

(A) is recognized as substantially similar by the board; or

(B) completion of a comprehensive competency evaluation administered by a board-approved assessment program, with a favorable recommendation regarding competency and proficiency in the area of specialty practice in which they will practice;

(6) passage of the Texas Jurisprudence examination with at least a score of 75;

(7) copy of federal work authorization;

(8) copy of offer of employment to practice only in:

(A) a facility-based or group practice setting as set forth in §155.1015(d) of the Act; and:

(B) the specialty that applicant declared in the application;

(9) certified transcript of Examination Scores documenting passage of USMLE Step 1 within three attempts and USMLE Step 2 within three attempts;

(10) FBI/DPS Fingerprint Report;

(11) documentation of alternate name or name change, if applicable; and

(12) medical school transcript, if requested;

(13) specialty board certification, if applicable;

(14) arrest records, if applicable;

(15) malpractice records, if applicable;

(16) all disciplinary history related to any professional license, if applicable;

(17) copies of all comprehensive competency evaluations administered by a board-approved assessment program demonstrating competency and proficiency in the area of specialty practice in which they will practice, if applicable;

(18) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(19) Professional or Work History Evaluation forms demonstrating or relating to the practice of medicine in the area of the declared specialty for the preceding two years from the date of the application as a physician; and

(20) any other documentation deemed necessary to process an application.

(c) Any document received from a direct third-party or primary source that is in a language other than the English language must:

(1) have a certified translation prepared;

(2) be translated by a translation agency that is a member of the American Translations Association or a United States college or university official;

(3) be verified by the translator as a "true word for word" translation; and

(4) be included with the copy of the translation.

(d) Initial Provisional License Standards:

(1) The initial provisional license is valid for two years.

(2) Practice is limited as set forth in §155.1015(d) of the Act.

(3) The initial provisional license holder is not authorized to delegate or supervise.

(4) Mandatory updates shall be reported to the Board by the initial provisional license holder and employer within 10 days in accordance with §162.2(b) of this title (relating to Profile Updates), including, but not limited to, any change in status of the provisional holder's license in another country on which the provisional license was granted.

(5) If employment is terminated for any reason the license is placed in a suspended status and, the provisional license holder must;

(A) cease practice immediately;

(B) notify the Board in writing within five (5) business days of termination;

(C) obtain a new position by a qualified employer within 60 days; and

(D) submit to and obtain approval from the Board of the qualified employer.

(6) Failure to report, to the Board, within five (5) business days termination eliminates the 60-day period to find new employment and the provisional license is automatically canceled effective on the date of termination.

(7) The two-year duration of the initial provisional license will be tolled while the provisional license holder attempts to obtain qualified employment. The two-year duration will be extended for the number of days equal to the number of days between ending and beginning qualified employment. Any extension of the initial provisional license's two-year duration is not to exceed a maximum of 60 days. If the provisional license holder is unable to obtain qualified employment within 60 days, or the total extensions during the initial provisional license period exceeds 60 days, then the initial provisional license is terminated.

(8) In the event of termination of the provisional license holder's employment, the employer's medical director, chief medical officer, lead physician, or supervising physician shall ensure written notice to the Board within five (5) business days of the termination.

(9) If a provisional license holder does not fully complete their initial provisional license period, for any reason, they will receive no credit for prior initial provisional practice time and:

(A) may reapply for a second initial provisional license; and

(B) may be required to appear before the licensure committee of the Board;

(10) An applicant is limited to a maximum of two initial provisional licenses;

(11) A Provisional License Holder is limited to practicing in the area of medical specialty declared in the Provisional License Holder's approved application.

(12) The provisional license holder must comply with the Continuing Medical Education (CME) requirements set out in Subchapter H, §161.35 of this title (relating to Continuing Medical Education (CME) Requirements for License Renewal). The applicant must create and utilize an account with the Board approved CME tracker for tracking and meeting the CME requirements.

(e) All applicants for a Second Provisional License must meet the general eligibility requirements set forth in §155.1015(e) and (f) of the Act and must submit a completed application for licensure and all documents and information necessary to complete an applicant's request for licensure including, but not limited to:

(1) completion of a two-year period during an initial provisional license;

(2) the required application fee;

(3) additional fees and surcharges as applicable;

(4) all disciplinary history related to any professional license, if applicable;

(5) Professional or Work History Evaluation form from first provisional employers;

(6) copy of employment offer that meets the criteria set forth in §155.1015(f) of the Act;

(7) successful remediation of deficiencies identified in the comprehensive competency assessment evaluation completed for issuance of the initial provisional license, if applicable;

(8) any other documentation deemed necessary to process an application; and

(9) If a pathway to board specialization exists for a Provisional License Holder from an organization recognized by the Board through §164.4 of this title (relating to Advertising Board Certification), the certification granting organization must submit a letter, on behalf of the provisional license holder, of satisfactory progress towards board specialization eligibility.

(f) Second Provisional License Standards:

(1) The second provisional license is valid for two years.

(2) Practice is limited as set forth in §155.1015(f) of the Act.

(3) The second provisional license holder may delegate or supervise.

(4) Mandatory updates shall be reported to the Board by the second provisional license holder and employer within 10 days in accordance with §162.2 of this title, including, but not limited to, any change in status of the provisional holder's license in another country on which the provisional license was granted.

(5) If employment is terminated for any reason, the provisional license holder must;

(A) cease practice immediately;

(B) the license is suspended automatically;

(C) notify the Board in writing within five (5) business days of termination;

(D) obtain a new position by a qualified employer within 60 days; and

(E) submit to and obtain the approval of the Board proof of qualified employer.

(6) Failure to make the report within five (5) business days of termination eliminates the 60-day period to find new employment and the provisional license is automatically canceled effective on the date of termination.

(7) The two-year duration of the second provisional license will be tolled while the provisional license holder attempts to obtain qualified employment. The two-year duration will be extended for the number of days equal to the number of days between ending and beginning qualified employment. Any extension of the second provisional license's two-year duration is not to exceed a maximum of 60 days. If the provisional license holder is unable to obtain qualified employment within 60 days, or the total extensions during the second provisional li-

cense period exceeds 60 days, then the second provisional license is terminated.

(8) In the event of termination of the provisional license holder's employment, the employer's medical director, chief medical officer, lead physician, or supervising physician shall ensure written notice to the Board within five (5) business days of the termination.

(9) If a provisional license holder does not fully complete their second provisional license period, for any reason, they will receive no credit for prior second provisional practice time and;

(A) may reapply for a second initial provisional license; and

(B) may be required to appear before the licensure committee of the board;

(10) An applicant is limited to a maximum of two second provisional licenses.

(11) A Provisional License Holder is limited to practicing in the area of medical specialty declared in the Provisional License Holder's approved application.

(12) the provisional license holder must comply with the Continuing Medical Education (CME) requirements set out in Subchapter H, §161.35 of this title. The applicant must create and utilize an account with the Board approved CME tracker for tracking and meeting the CME requirements.

(g) All applicants for a Full License must meet the general eligibility requirements set forth in §155.1015(g) and (h) of the Act and must submit a completed application for licensure and all documents and information necessary to complete an applicant's request for licensure including, but not limited to:

(1) certified transcript of Examination Scores documenting passage of each part of USMLE within three attempts and within seven years;

(2) proof of completion of an Initial Provisional and Second Provisional for the requisite time periods as set forth in subsections (d) and (f) within a period of six years, in total, calculated from the first day of an Initial Provisional license to the last day of a Second Provisional license;

(3) If a pathway to board specialization exists for a Provisional License Holder from an organization recognized by the Board through §164.4 of this title, the certification granting organization must submit a letter, on behalf of the provisional license holder, of satisfactory progress towards board specialization eligibility;

(4) Professional or Work History Evaluation form from second provisional employers; and

(5) any other documentation deemed necessary to process an application.

(h) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

(1) delay in processing application;

(2) referral of the applicant to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(i) The board may allow substitute documents where exhaustive efforts on the applicant's part to secure the required documents are presented.

(j) A Provisional License holder is subject to board rules, including rules regarding complaints, investigations, and disciplinary procedures and sanctions of the board.

(k) The Executive Director may approve reasonable deviations from the required provisional licensee timelines due to extenuating circumstances. The provisional licensee may appeal the Executive Director's decision to the Licensure Committee.

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 December 19, 2025.

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Scott Freshour
General Counsel
Texas Medical Board
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG
SUBCHAPTER X. LICENSING OF DEVICE DISTRIBUTORS AND MANUFACTURERS

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §§229.432 - 229.437, and 229.439 - 229.443, concerning Licensing of Device Distributors and Manufacturers, and the repeal of §229.444 concerning Device Distributors and Manufacturers Advisory Committee.

Sections 229.433, 229.440, and 229.443 are adopted with changes to the proposed text as published in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6451). These rules will be republished.

Sections 229.432, 229.434 - 229.439, 229.441, 229.442, and the repeal of 229.444 are adopted without changes to the proposed text as published in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6451). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments and repeal are necessary to continue adherence with applicable federal laws pertaining to medical devices. The adopted amendments align the minimum standards in the Texas Administrative Code with new device Good Manufacturing Practice requirements under 21 Code of Federal Regulations Part 820, which take effect on February 2, 2026. The adopted amendments update the licensure fees based on a licensee's gross sales, update definitions to clarify intent, and improve compliance by harmonizing state and federal regulations. The repeal of §229.444 is required because the advisory committee no

longer exists. Lastly, the adopted amendments update the rules with plain language requirements to improve readability.

COMMENTS

The 31-day comment period ended November 3, 2025.

During this period, DSHS did not receive any comments regarding the proposed rules.

Minor editorial changes were made to §229.433(8)(c), §229.433(26), §229.443(d)(3)(E)(ii), §229.443(f)(1) to correct statutory references.

Minor editorial changes were made to §229.440(a)(1), §229.440(a)(2), and §229.443(a)(7) to add clarification.

A minor editorial change was made to §229.443(g).

25 TAC §§229.432 - 229.437, 229.439 - 229.443

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which authorize 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 §431.241.

§229.433. Definitions.

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

(1) Act--The Texas Food, Drug, and Cosmetic Act, Texas Health and Safety Code (HSC) Chapter 431.

(2) Adulterated Device--Has the meaning specified in the Texas Food, Drug, and Cosmetic Act, HSC §431.111.

(3) Advertising--All representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(4) Authorized agent--An employee of the department who is designated by the commissioner to enforce the provisions of this chapter.

(5) Commissioner--The commissioner of the Department of State Health Services, or the commissioner's successor or designee.

(6) Counterfeit device--A device which, or the container, packaging or labeling of which, without authorization, bears a trademark, trade name, or other identifying mark or imprint, or any likeness thereof, or is manufactured using a design, of a device manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed such device and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other device manufacturer, processor, packer, or distributor.

(7) Department--The Department of State Health Services.

(8) Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolization for the achievement of any of its principal intended purposes. The term "device" does not include software functions excluded by the Federal Food, Drug, and Cosmetic Act, 21 United States Code §360j.

(9) Distributor--A person who furthers the marketing of a finished domestic or imported device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user. The term includes an importer or an own-label distributor. The term does not include a person who repackages a finished device or who otherwise changes the container, wrapper, or labeling of the finished device or the finished device package.

(10) Electronic product radiation--Any ionizing or nonionizing electromagnetic or particulate radiation, or any sonic, infrasonic, or ultrasonic wave, that is emitted from an electronic product as the result of the operation of an electronic circuit in such product.

(11) Finished device--A device, or any accessory to a device, that is suitable for use, whether or not packaged or labeled for commercial distribution.

(12) Health authority--A physician designated to administer state and local laws relating to public health.

(13) Importer--Any person who initially distributes a device imported into the United States.

(14) Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

(15) Labeling--All labels and other written, printed, or graphic matter:

(A) upon any article or any of its containers or wrappers; or

(B) accompanying such article.

(16) Manufacture--The making by chemical, physical, biological, or other procedures of any article that meets the definition of device. The term includes the following activities:

(A) repackaging or otherwise changing the container, wrapper, or labeling of any device package in furtherance of the distribution of the device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer;

(B) initiation of specifications for devices that are manufactured by a second party for subsequent commercial distribution by the person initiating specifications; or

(C) sterilization, including contract sterilization services of a device for another establishment's devices.

(17) Manufacturer--A person who manufactures, fabricates, assembles, or processes a finished device. The term includes a person who repackages or relabels a finished device. The term does not include a person who only distributes a finished device.

(18) Misbranded Device--Has the meaning specified in the Texas Food, Drug, and Cosmetic Act, HSC §431.112.

(19) Person--Includes individual, partnership, corporation, and association.

(20) Place of business--Each location at which a device is manufactured or held for distribution.

(21) Practitioner--As defined in HSC §483.001(12).

(22) Prescription device--A restricted device that, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such device, and hence for which adequate directions for use cannot be prepared.

(23) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(24) Radioactive material--Any material (solid, liquid, or gas) that emits radiation spontaneously.

(25) Reconditioning--Any appropriate process or procedure by which distressed merchandise can be brought into compliance with departmental standards as specified in the Texas Food, Drug, Device, and Cosmetic Salvage Act, HSC §432.003, as defined in the rules in §229.603 of this chapter (relating to Definitions).

(26) Restricted device--A device subject to certain controls related to sale, distribution, or use as specified in the Federal Food, Drug, and Cosmetic Act, 21 United States Code §360j.

§229.440. Refusal, Cancellation, Suspension, or Revocation of License.

(a) The commissioner may refuse an application or may suspend or revoke a license if the applicant or licensee:

(1) has a conviction of a misdemeanor that involves moral turpitude or a felony;

(2) is an association, partnership, or corporation and the managing officer has a conviction of a misdemeanor that involves moral turpitude or a felony;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has violated any of the provisions of the Texas Food, Drug, and Cosmetic Act, HSC Chapter 431 (Act) or these sections;

(6) has failed to pay any fees for licensing or renewal;

(7) has failed to pay administrative penalties in full more than 30 days after the decision or order assessing the penalty is final, and has not filed a petition for judicial review of the order assessing the penalty; or

(8) has obtained or attempted to obtain a license by fraud or deception.

(b) The commissioner may refuse an application for a license or may suspend or revoke a license if the commissioner determines from evidence presented during a hearing that the applicant or licensee:

(1) has violated HSC §431.021(l)(3), concerning the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(2) has violated HSC Chapter 481 (Texas Controlled Substances Act), or HSC Chapter 483 (Texas Dangerous Drug Act); or

(3) has violated rules established by the director of the Department of Public Safety, including being responsible for a significant discrepancy in records the applicant or licensee is required to maintain under state law.

(c) After providing an opportunity for a hearing, the department may refuse, suspend, or revoke a license for a device distributor or manufacturer if the applicant violates any requirements in these sections or for any reasons described in the Act.

(d) Any hearings for the refusal, revocation, or suspension of a license are governed by §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(e) A license issued under these sections must be returned to the department if the device distributor's or manufacturer's place of business:

(1) ceases business or otherwise ceases operation on a permanent basis;

(2) relocates; or

(3) changes name or ownership. A corporation transferring 5.0% or more of the share of stock from one person to another is considered to have had an ownership change and must return the license to the department.

§229.443. Enforcement and Penalties.

(a) General enforcement actions. The department may take enforcement action for the following:

(1) failing to comply with Texas Food, Drug, and Cosmetic Act, HSC Chapter 431 (Act) or these sections;

(2) falsifying information provided in an application for a license, or making a false or misleading statement in connection with the initial or renewal application, either in the formal application itself or in any other instrument relating to the application submitted to the department;

(3) refusing to allow the department to conduct an inspection or collect samples;

(4) interfering with the department in the performance of its duties;

(5) removing or disposing a detained device;

(6) misrepresenting any regulated product sold to the public; or

(7) receiving a conviction of a misdemeanor that involves moral turpitude or a felony.

(b) Administrative penalty. If a person, whether licensed or unlicensed by the department, violates these sections or an order adopted or license issued under the Act, the commissioner may assess an administrative penalty against the person.

(1) The penalty may not exceed $25,000 for each violation. Each day a violation continues is a separate violation.

(2) Violations subject to this subsection must be categorized into severity levels as determined in §229.261 of this chapter (relating to Assessment of Administrative Penalties).

(3) An administrative penalty may be assessed only after the person charged with a violation is given an opportunity for a hearing.

(4) If the person charged with the violation does not request a hearing, or defaults, the commissioner may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(5) After making a determination under this subsection that a penalty is to be assessed, the commissioner must issue an order requiring that the person pay the penalty.

(6) Not later than the 30th calendar day after the date of issuance of an order finding that a violation has occurred, the commissioner must inform the person against whom the order is issued of the amount of the penalty.

(c) Emergency orders.

(1) The commissioner or a person designated by the commissioner may issue a mandatory or prohibitory emergency order, without notice, in relation to the manufacture or distribution of a food, drug, device, or cosmetic upon determination that: the manufacture or distribution creates or poses an immediate and serious threat to human life or health, and other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.

(2) If an emergency order is issued without a hearing, the department, not later than the 30th day after the date on which the emergency order was issued, must propose a time and place for a hearing at which the emergency order will be affirmed, modified, or set aside. The hearing must be held under departmental formal hearing rules governed by §§1.21, 1.23, 1.25, and 1.27 of this title.

(3) The department must transmit the order in person or by electronic mail or by registered or certified mail to the license or registration holder. If the license or registration holder cannot be located for a notice required under this section, the department must provide notice by posting a copy of the order on the front door of the premises of the license or registration holder.

(d) Inspection.

(1) To enforce these sections or the Act, the department or authorized agent may, on presenting appropriate credentials to the owner, operator, or agent in charge of a place of business:

(A) enter, at reasonable times, a place of business, including a factory or warehouse, where a device is manufactured, assembled, packed, or held for introduction into commerce or held after the introduction;

(B) enter a vehicle being used to transport or hold a device in commerce; or

(C) inspect, at reasonable times, within reasonable limits, and in a reasonable manner, the place of business or vehicle, including all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of these sections or the Act.

(2) The inspection of a place of business, including a factory, warehouse, or consulting laboratory, where a restricted device is manufactured, assembled, packed, or held for introduction into commerce may include any place or item, such as a record, file, paper, process, control, or facility, needed to determine whether the device:

(A) is adulterated or misbranded;

(B) is prohibited from being manufactured, introduced into commerce, sold, or offered for sale under the Act; or

(C) is in violation of these sections or the Act.

(3) An inspection under paragraph (2) of this subsection may not extend to:

(A) financial data;

(B) sales data, except for shipment data;

(C) pricing data;

(D) personnel data, except for data relating to the qualifications of technical and professional personnel performing functions under the Act; or

(E) research data, except data that:

(i) relates to devices; and

(ii) is subject to reporting and inspection under regulations issued under the Federal Food, Drug, and Cosmetic Act, 21 United States Code §360i or §360j, as amended.

(4) An inspection under paragraph (2) of this subsection must be started and completed with reasonable promptness.

(e) Receipt for samples. An authorized agent or health authority who inspects a place of business, including a factory or warehouse, and obtains a sample during the inspection must give to the owner, operator, or the owner's or operator's agent a receipt describing the sample before leaving the place of business.

(f) Access to records.

(1) A person who is required to maintain records referenced in these sections, the Act, or the Federal Food, Drug, and Cosmetic Act, 21 United States Code §360i, or a person who is in charge or custody of those records must, upon request by an authorized agent or health authority, provide access to the records, at all reasonable times, for copying and verification of the records.

(2) A person who is subject to licensure under these sections of this subchapter must, at the request of an authorized agent or health authority, provide access to the records, at all reasonable times, for copying and verification of all records showing:

(A) the movement in commerce of any device;

(B) the holding of any device after movement in commerce; and

(C) the quantity, shipper, and consignee of any device.

(g) Retention of records. Records required by this subchapter must be maintained at the place of business or another reasonably accessible location for a period of at least two years following disposition of the device, unless a longer retention period is required by laws and regulations adopted in §229.432 of this subchapter (relating to Applicable Laws and Regulations).

(h) Adulterated and misbranded device. If the department identifies an adulterated or misbranded device, the department may impose the applicable provisions of Subchapter C of the Act, including detention, emergency order, recall, condemnation, destruction, injunction, civil penalties, criminal penalties, and administrative and civil penalties. Administrative penalties will be assessed using the severity levels contained in §229.261 of this chapter (relating to Assessment of Administrative Penalties).

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 December 16, 2025.

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Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: January 5, 2026
Proposal publication date: October 3, 2025
For further information, please call: (512) 834-6755

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25 TAC §229.444

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which authorize 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 §431.241.

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

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 63. PROMPTNESS OF FIRST PAYMENT

28 TAC §63.5

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts the repeal of 28 TAC §63.5, concerning a required Industrial Accident Board quarterly report. The Industrial Accident Board no longer exists, and the authority for the required report was repealed in 1989. DWC adopts §63.5 without changes to the proposal published in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6859). The rule will not be republished.

REASONED JUSTIFICATION. Repealing §63.5 is necessary because it was adopted under Vernon's Texas Civil Statutes, Article 8307, §4, which was repealed in 1989 under Acts 1989, 71st Legislature, 2nd Called Session, Chapter 1, §16.01(10), effective January 1, 1991. Article 8307, §4 was not later recodified into the Texas Labor Code.

SUMMARY OF COMMENTS AND INFORMATION SUBMITTED, AND AGENCY RESPONSE.

Commenters: DWC received one written comment, and no oral comments. No commenters included information, data, research, or analysis about the cost, benefit, or effect of the proposal. The Office of Injured Employee Counsel (OIEC) commented in support of the proposal. DWC did not receive comments that were against the proposal.

Comment on §63.5. OIEC commented that they support the repeal of §63.5.

Agency Response to Comment on §63.5. DWC appreciates the comment.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeal of 28 TAC §63.5 under Labor Code §§402.00111, 402.00116, and 402.061.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on December 16, 2025.

TRD-202504674
Kara Mace
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Texas Department of Insurance, Division of Workers' Compensation
Effective date: January 5, 2026
Proposal publication date: October 17, 2025
For further information, please call: (512) 804-4703

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CHAPTER 133. GENERAL MEDICAL PROVISIONS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts the repeal of 28 TAC §133.4 and §133.5, concerning informal and voluntary networks, and §133.309, concerning medical disputes for workers' compensation claims. DWC adopts §§133.4, 133.5, and 133.309 without changes to the proposal published in the October 10, 2025, issue of the *Texas Register* (50 TexReg 6655). The rules will not be republished.

REASONED JUSTIFICATION. Repealing §133.4 and §133.5 is necessary because they expired on January 1, 2011, when Texas Labor Code §413.011(d-1) - (d-3) and (d-6) expired. Repealing §133.309 is necessary because the Third Court of Appeals, Austin, Texas, declared it invalid in 2008. *Texas Dept. of Ins. v. Insurance Council of Texas*, No. 03-05-00189-CV, 2008 WL 744681(Tex. App.- Austin March 21, 2008, no pet.).

Repealing these rules is necessary to ensure that the rules in the subchapters are relevant, which reduces clutter and confusion.

SUMMARY OF COMMENTS AND INFORMATION SUBMITTED, AND AGENCY RESPONSE.

Commenters: DWC received one written comment, and no oral comments. No commenters included information, data, research, or analysis about the cost, benefit, or effect of the proposal. The Office of Injured Employee Counsel (OIEC) commented in support of the proposal. DWC did not receive comments that were against the proposal.

Comment on §133.4 and §133.5. OIEC supports the repeal of §133.4 and §133.5 as they expired on January 1, 2011.

Agency Response to Comment on §133.4 and §133.5. DWC appreciates the comment.

Comment on §133.309. OIEC supports the repeal of §133.309 because it was declared invalid in *Texas Dept. of Ins. v. Insurance Council of Texas*, No. 03-05-00189-CV, 2008 WL 744681(Tex. App.- Austin March 21, 2008, no pet.).

Agency Response to Comment on §133.309. DWC appreciates the comment.

SUBCHAPTER A. GENERAL RULES FOR MEDICAL BILLING AND PROCESSING

28 TAC §133.4, §133.5

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeals of 28 TAC §133.4 and §133.5 under Labor Code §§402.00111, 402.00116, 402.061, 413.011, and 413.0115.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §413.011 provides health care reimbursement policies and guidelines.

Labor Code §413.0115 provides requirements for certain voluntary or informal networks.

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 December 18, 2025.

TRD-202504711
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: January 7, 2026
Proposal publication date: October 10, 2025
For further information, please call: (512) 804-4703

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SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.309

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeal of §133.309 under Labor Code §§402.00111, 402.00116, 402.061, and 413.031.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §413.031 outlines medical dispute resolution.

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 December 18, 2025.

TRD-202504712
Kara Mace
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Texas Department of Insurance, Division of Workers' Compensation
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Proposal publication date: October 10, 2025
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.344

The Comptroller of Public Accounts adopts amendments to §3.344, concerning telecommunications services, with changes to the proposed text as published in the June 27, 2025, issue of the *Texas Register* (50 TexReg 3724). The rule will be republished.

The comptroller received comments regarding adoption of the amendment from Helen Brantley of Texas Taxpayers and Research Association (TTARA) who requested the comptroller define "designated database provider" as referenced in Tax Code, §151.061 (Sourcing of Charges for Mobile Telecommunications Services). The comptroller agrees. In addition, Helen Brantley of TTARA requested the comptroller provide additional guidance

and examples of what are reasonable controls as required under Tax Code, §151.061(j). The comptroller declines to provide additional guidance and examples in the rule because the current guidance is sufficient.

The comptroller amends subsection (a)(2) to define the term "designated database provider" in response to the comments received. The definition refers to 4 U.S.C. §124(3) (Definitions) under the federal Mobile Telecommunications Sourcing Act as provided in Tax Code, §151.061(c). The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends subsection (a)(4), previously paragraph (3), by removing the reference to §3.366 of this title (relating to Internet Access Services) which the comptroller is repealing. The repeal is based on Senate Bill 1405, 89th Legislature, 2025, effective July 1, 2025, which removed internet access service as a taxable service under Tax Code, §151.0101(a)(17) (Taxable Services).

The comptroller amends subsection (h)(4) related to how service providers determine local tax for mobile telecommunication services by adding language to conform to Tax Code, §151.061. The comptroller further amends subsection (h)(4) to memorialize policy outlined in STAR Accession No. 202410001M (October 2, 2024).

These amendments are adopted under Tax Code, §§111.002 (Comptroller's Rules; Compliance; Forfeiture), 321.306 (Comptroller's Rules), 322.203 (Comptroller's Rules), and 323.306 (Comptroller's Rules) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), as well as taxes, fees, and other charges that the comptroller administers under other law.

The adoption implements Tax Code, §151.061 (Sourcing of Charges for Mobile Telecommunication Services).

§3.344. Telecommunications Services.

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

(1) Basic local exchange telephone service--The provision by a telephone company of each access line and each dial tone to a fixed location for sending and receiving telecommunications in the telephone company's local exchange network. Services are considered basic irrespective of whether the customer has access to a private or party line, or whether the customer has limited or unlimited access. The term does not include international, interstate, or intrastate long-distance telecommunications services or mobile telecommunications services.

(2) Designated database provider--An entity defined under 4 U.S.C. §124(3) (Definitions).

(3) Internet--Collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to the protocol, to communicate information of all kinds by wire or radio.

(4) Internet access service--A service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term does not include telecommunications services.

(5) Interstate long-distance telecommunication service--A telecommunication service that originates in one state, crosses state lines, and terminates in another state.

(6) Intrastate long-distance telecommunications service--A telecommunication service that originates and terminates within one state, but crosses the boundaries on subdivisions or jurisdictions within the state.

(7) Mobile telecommunications service--The provision of a commercial mobile radio service, as defined in 47 C.F.R. 20.3 of the Federal Communications Commission's (FCC) regulations in effect on June 1, 1999 under the Mobile Telecommunications Sourcing Act (4 U.S.C. §§116-126). The term includes cellular telecommunications services, personal communications services (PCS), specialized mobile radio services, wireless voice over Internet protocol services, and paging services. The term does not include telephone prepaid calling cards or air-ground radio telephone services as defined in 47 C.F.R. 22.99 of FCC regulations in effect on June 1, 1999.

(8) Pay telephone coin sent--Telecommunications service paid for by the insertion of coins into a coin-operated telephone.

(9) Place of primary use--The physical street address that is representative of where a customer primarily uses a mobile telecommunications service. That location must be either the customer's residential street address or the customer's primary business street address that is within the licensed service area of the service provider. The individual or entity that contracts with the service provider is the customer. If the individual or entity that contracts with the service provider is not the end user, then the physical street address where the end user primarily uses the service determines the customer's place of primary use. For example, a business owner who is located in Austin, Texas establishes mobile telecommunication service accounts for employees who are located in other cities. One employee does business from his home in Dallas, Texas. Two other employees work at an office that is located in Houston, Texas. Another employee works at an office that is located in New Orleans, Louisiana. The home street address of the employee in Dallas is the place of primary use for that cellular phone account. The place of primary use for the two Houston employees is the street address of the Houston office. The place of primary use for the employee in Louisiana is the street address of the New Orleans office.

(10) Prepaid telecommunications service--A wireless or wire telecommunications service for which the provider requires a customer to prepay the full amount prior to provision of the service. The term does not include the sale or use of a telephone prepaid calling card as defined in paragraph (15) of this subsection. A card, pin number, access code or similar device that allows a user to access only a specific network, or that is intended for use with a specific user account or device (e.g., to add more minutes to an existing account) is a prepaid telecommunications service and is taxed as the sale of a telecommunications service. Local sales tax is collected as explained in subsection (h) of this section.

(11) Private communication service--A telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(A) As it relates to private communication service, the term "communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(B) As it relates to private communication service, the term "customer channel termination point" means the location where the customer either inputs or receives the communications.

(12) Seller--Any person who sells telecommunications services including a hotel, motel, owner or lessor of an office, residential building or development that contracts and pays for telecommunications services for resale to guests or tenants.

(13) Taxable service--A telecommunications service or other taxable service listed in Tax Code, §151.0101.

(14) Telecommunications services--The electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, Voice over Internet Protocol (VoIP), or any other method now in existence or that may be devised, including but not limited to long-distance telephone service. The term includes mobile telecommunications services and prepaid telecommunications services. The term does not include:

(A) the storage of data or other information for subsequent retrieval or the processing, or reception and processing, of data or information intended to change its form or content;

(B) the sale or use of a telephone prepaid calling card;

(C) Internet access service; or

(D) pay telephone coin sent.

(15) Telephone company--A person who owns or operates a telephone line or telephone in this state and charges for its use.

(16) Telephone prepaid calling card--A card or other item, including an access code, that represents the right to access telecommunications services, other than prepaid telecommunications services as defined in paragraph (9) of this subsection, through multiple devices, regardless of the network providing direct service to the device used, for which payment is made in incremental amounts and before the call or transmission is initiated. For example, a calling card that allows a user to access a long distance telecommunications network for the purpose of making international calls through a pay phone is a telephone prepaid calling card. The sale of a telephone prepaid calling card is taxed as the sale of tangible personal property.

(17) Voice over Internet Protocol (VoIP)--A telecommunication service where a phone call is transmitted over a data network. The term "Internet Protocol" is a catchall phrase for the protocols and technologies of encoding a voice call that allow the voice call to be slotted in between data on a data network, including the Internet, a company's Intranet, or any other type of data network.

(b) Taxable telecommunications services. The total amount charged for a taxable telecommunications service is subject to sales tax. Sales tax is due on a charge for the following:

(1) basic local exchange telephone services;

(2) enhanced services such as metro service, extended area service, multiline hunting, and PBX trunk;

(3) auxiliary services such as call waiting and call forwarding;

(4) intrastate long-distance telecommunications services;

(5) interstate long-distance telecommunications services that are both originated from, and billed to, a telephone number or billing or service address within Texas such that if a call originates in Texas and is billed to a Texas service address, the charge is taxable even if the invoice, statement, or other demand for payment is sent to an address in another state;

(6) mobile telecommunications services for which the place of primary use is located in Texas;

(7) telegraph services that are both originated from, and billed to, a person within Texas;

(8) a telecommunications service paid for by the insertion of tokens, credit or debit card into a coin-operated telephone located in Texas;

(9) subject to subsection (e) of this section, the lease, rental, or other charges for telecommunication equipment including separately stated installation charges. Separately stated charges for labor to install wiring will not be taxable if the wiring is installed in new structures or residences in such manner as to become a part of the realty. Separately stated charges for labor to install wiring in existing nonresidential real property are taxable. See §3.291 and §3.357 of this title (relating to Contractors; Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance) for additional information. If charges for the installation of wiring and charges for the equipment are not separated, the total charge will be treated as a sale and installation of tangible personal property. Equipment sold by a telecommunications service provider is subject to sales or use tax and is not taxed as part of the telecommunications service if the service provider separately invoices the sale of the equipment. The sale of equipment is not separately invoiced if it is identified on the same bill, receipt or invoice as the sale of the telecommunications service, even if it is identified as a separate line item on the same bill, receipt, or invoice;

(10) installation of telecommunications services, including service connection fees;

(11) private communication services. Taxable receipts include the channel termination charge imposed at each channel termination point within this state, the total channel mileage charges imposed between channel termination points or relay points within this state, and an apportionment of the interoffice channel mileage charge that crosses the state border. An apportionment on the basis of the ratio of the miles between the last channel termination point in Texas and the state border to the total miles between that channel termination point and the next channel termination point in the route will be accepted. If there is a single charge for a private communication service in which the customer has channel termination points both inside and outside of Texas, the apportionment can also be determined by dividing the number of customer channel termination points in Texas by the total number of customer channel termination points to establish the percentage of the charge subject to state sales tax for Texas. Other apportionment methods may be used by the seller if first approved in writing by the comptroller;

(12) charges that are passed through to a purchaser for federal, state, or local taxes or fees that are imposed on the seller of the telecommunications service rather than on the purchaser. Such charges are a cost or expense of the seller and are included in the total price subject to sales tax; and

(13) prepaid wireless telecommunications services as defined by subsection (a)(9) of this section when the purchase is made in person at a Texas business or is made by telephone or the Internet and the purchaser's primary business address or residential address is in Texas.

(c) Nontaxable or exempt charges. Sales tax is not due on charges for:

(1) interstate long-distance telecommunications services that are not both originated from, and billed to, a telephone number or billing or service address within Texas. Records must clearly distinguish between taxable and exempt long-distance services;

(2) broadcasts by commercial radio or television stations licensed or regulated by the FCC. See §3.313 of this title (relating to Cable Television Service and Bundle Cable Service) for the tax status of cable television services;

(3) telecommunications services purchased for resale;

(4) telegraph services that are not both originated from and billed to a person within Texas;

(5) mobile telecommunications services for which the place of primary use is located outside of Texas;

(6) charges for federal, state, or local taxes or fees that are imposed on the purchaser rather than on the seller of the telecommunications service. For example, no sales tax is due on a separately stated charge for federal excise tax or for 9-1-1 Emergency Service Fee and 9-1-1 Equalization Surcharge because these taxes or fees are imposed on the purchaser and are not a cost of doing business of the seller; and

(7) telecommunications services exclusively provided or used for the navigation of machinery and equipment exclusively used or employed on a farm or ranch in the building or maintaining of roads or water facilities or in the production of:

(A) food for human consumption;

(B) grass;

(C) feed for animal life; or

(D) other agricultural products to be sold in the regular course of business.

(E) The purchaser must be an agricultural registrant and provide the seller with an agricultural exemption certificate.

(F) This paragraph is effective September 1, 2015, and applies to telecommunication services provided after this date.

(d) Billing and records requirements. If any nontaxable charges are combined with and not separately stated from taxable telecommunications service charges on the purchaser's bill or invoice from a provider of telecommunications services, the combined charge is subject to tax unless the service provider can identify the portion of the charges that are nontaxable through the provider's books and records kept in the regular course of business. If the nontaxable charges cannot reasonably be identified, the charges from the sale of both nontaxable services and taxable telecommunications services are attributable to taxable telecommunications services. The provider of telecommunications services has the burden of proving nontaxable charges.

(e) Resale of tangible personal property. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(1) Transfer of tangible personal property to the care, custody and control of the purchaser. A telecommunications service provider may claim a resale exemption on the purchase of tangible personal property that is transferred by the telecommunications service provider to the care, custody, and control of the purchaser. A telecommunications service provider must collect sales tax on charges for such items.

(2) Wireless voice communication devices. A person may claim a resale exemption on the purchase of a cell phone or other wireless voice communication device as an integral part of a taxable service, regardless of whether there is a separate charge for the wireless voice communication device or whether the purchaser is the provider of the taxable telecommunications service, if payment for the service is a condition for receiving the wireless voice communication device. For example, if a person signs a contract for the purchase of telecommunications services at the location of a retailer and the retailer sells the person a cell phone as a condition of entering the contract for the telecommunications services that will be provided by someone other than the retailer, the retailer can purchase the cell phone tax free with a properly completed resale certificate.

(f) Resale of a telecommunications service. See §3.285 of this title.

(1) Sales tax is not due on the charge by one telephone company to another for providing access to a local exchange network. The telecommunications service provider must collect sales tax from the final purchaser on the total charge for the taxable service including the charge for access.

(2) A telecommunications service may be purchased tax free for resale if resold by the purchaser as an integral part of a taxable service. The purchaser must give the service provider a properly completed resale certificate to purchase the telecommunications service tax free for resale. A telecommunications service is an integral part of a taxable service if the telecommunications service is essential to the performance of the taxable service and without which the taxable service could not be rendered. For example, an Internet access service provider (ISP) may give a resale certificate when purchasing the dedicated dial-up line services to be used by the ISP's customers. However, the ISP must pay sales tax when purchasing its own personal or business use of telecommunications services such as charges for its office phone lines, mobile telecommunications services for its traveling salespersons, or for a customer service call-center.

(3) A mobile telecommunications service provider may purchase roaming services from another mobile telecommunications service provider tax free for resale to its customers that are using the roaming services. For example, an out-of-state mobile telecommunications service provider purchases roaming services in Texas for resale to its out-of-state customers (i.e., persons who have a place of primary use outside Texas). To be exempt from sales tax, the out-of-state mobile telecommunications service provider must give the seller of the roaming services a resale certificate showing either a Texas sales tax permit number or the sales tax permit number or registration number issued by its home state. Effective for billing periods that begin on or after August 1, 2002, these out-of-state customers do not owe Texas sales tax on roaming charges incurred while visiting or traveling through Texas.

(g) Taxable purchases. Subject to the provisions of subsections (e) and (f) of this section, a telecommunications service provider owes sales or use tax on all tangible personal property and services that are used to provide the service. See §3.346 of this title (relating to Use Tax), §3.281 of this title (relating to Records Required; Information Required), and §3.282 of this title (relating to Auditing Taxpayer Records).

(h) Local tax.

(1) Subject to the provisions of paragraph (2) of this subsection, jurisdictions that impose local sales and use taxes may repeal the local sales tax exemption on telecommunications services. See Publication 96-339 (Jurisdictions That Impose Local Sales Tax on Telecommunications Services) for a list of jurisdictions that impose local taxes on telecommunications services.

(2) Taxable interstate long-distance telecommunications are only subject to state sales tax. Local taxing jurisdictions may not repeal the local sales tax exemption on interstate long-distance telecommunications services.

(3) A seller of taxable telecommunications services, with the exception of mobile telecommunications services as explained in paragraph (4) of this subsection and prepaid wireless telecommunications services as explained in paragraph (6) of this subsection, must collect local sales taxes based on the location from which the telecommunications service originates. If the point of origin cannot be determined, the telecommunications service provider must collect local taxes based on the address to which the telecommunications service is billed.

(4) A seller of mobile telecommunications services must collect local sales taxes based on the place of primary use as defined in subsection (a)(8) of this section and per Tax Code, §151.061. The location from which a mobile telecommunications service originates does not determine whether the service is exempt or is subject to state or local sales tax.

(A) Local sales and use tax may be determined by using an electronic database as described in Tax Code, §151.061(a)(3). If neither the state nor a designated database provider provides an electronic database as described in Tax Code, §151.061(a)(3), then the seller of a mobile telecommunications service shall be held harmless from any tax, charge, or fee liability that is due only as a result of an assignment of a street address to an incorrect taxing jurisdiction.

(B) To be held harmless, the seller of a mobile telecommunications service must have exercised due diligence which includes demonstrating it has:

(i) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

(ii) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

(iii) used all reasonable obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries, including the comptroller's online Sales Tax Rate Locator and Publication 96-339, Jurisdictions that Impose Local Sales Tax on Telecommunications Services, or any subsequent or revised versions of the Locator or Publication.

(5) A seller of telephone prepaid calling cards is not selling a telecommunications service and must collect state and local sales or use tax on the sale of the cards in the same manner as sales of other tangible personal property.

(6) A seller of prepaid wireless telecommunications services as defined in subsection (a)(9) of this section must collect local tax based on the business address of the seller when the sale occurs in Texas in person. However, if the sale occurs over the telephone or Internet, tax is due if the primary business address of the purchaser or residential address of the purchaser is in Texas.

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 December 16, 2025.

TRD-202504655
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Effective date: January 5, 2026
Proposal publication date: June 27, 2025
For further information, please call: (512) 475-2220

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SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.586

The Comptroller of Public Accounts adopts an amendment to §3.586, concerning margin: nexus, without changes to the proposed text as published in the November 14, 2025, issue of the *Texas Register* (50 TexReg 7408). The rule will not be republished. The amendment provides guidance on determining economic nexus for certain entities.

The comptroller adds paragraph (3) to the economic nexus provision in subsection (f) to provide that a foreign taxable entity that apportions its margin using a method other than gross receipts must use gross receipts as sourced to Texas under §3.591(e) and (f) of this title (relating to Margin: Apportionment) to determine economic nexus.

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

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.001 (Tax Imposed).

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 December 18, 2025.

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Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Effective date: January 7, 2026
Proposal publication date: November 14, 2025
For further information, please call: (512) 475-2220

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PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

The Board of Trustees ("Board") of the Texas County and District Retirement System ("TCDRS" or the "System") adopts the repeal of current 34 TAC Chapter 101 ("Chapter 101"), relating to general rules and procedure regarding claims before TCDRS, and adopts new Chapter 101, also relating to general rules and

procedures regarding claims before TCDRS in conjunction with the administrative rule review conducted by TCDRS in compliance with Government Code §2001.039. The rules are adopted without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5636). The rules will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

Repeal of Current Chapter 101

TCDRS adopts the repeal of current 34 TAC Chapter 101, which includes the following sections: 34 TAC §101.1, Definitions; 34 TAC §101.2. Scope and Application; 34 TAC §101.3. Filing of Documents; 34 TAC §101.4. Computation of Time; 34 TAC §101.5. Applications for Benefits or Asserting Other Claims; 34 TAC §101.6. Time for Filing of Retirement Applications and First Annuity Payments; 34 TAC §101.7. Supporting Documents To Be Submitted; 34 TAC §101.8. Service Retirement Benefits Approved by Director; 34 TAC §101.9. Disability Retirement Applications Referred to Medical Board; 34 TAC §101.10. Disability Retirement Benefits Approved by Director; 34 TAC §101.11. Summary Disposition of Other Approved Applications; 34 TAC §101.12. Contest of Application: Form and Content; 34 TAC §101.13. Notice of Prehearing Disposition; 34 TAC §101.14. Procedure for Obtaining Hearing of Claim Denied in Whole or in Part by Director as Contested Case; 34 TAC §101.15. Hearing of Conflicting and Contested Claims; 34 TAC §101.16. Conduct of Contested Case Hearings; 34 TAC §101.17. Proposals for Decision; 34 TAC §101.18. Filing of Exceptions, Briefs, and Replies; 34 TAC §101.19. Board Consideration and Action; 34 TAC §101.20. Final Decisions and Orders; 34 TAC §101.21. When Decisions Become Final; 34 TAC §101.22. Motions for Rehearing; 34 TAC §101.23. Rendering of Final Decision or Order; 34 TAC §101.24. The Record; 34 TAC §101.25. Proceedings for Review, Suspension, or Revocation of Disability Benefits; 34 TAC §101.26. Applicability to Pending Proceedings.

Adoption of New Chapter 101

TCDRS adopts rules §§101.1 - 101.14 (34 TAC §101.1. Definitions; 34 TAC §101.2. Scope and Application; 34 TAC §101.3. Filing of Documents; 34 TAC §101.4. Computation of Time; 34 TAC §101.5. Time for Filing of Retirement Applications and First Annuity Payments; 34 TAC §101.6. Supporting Documents To Be Submitted; 34 TAC §101.7. Service Retirement Benefits Approved by Director; 34 TAC §101.8. Disability Retirement Applications Referred to Medical Board; 34 TAC §101.9. Disability Retirement Benefits Approved by Director; 34 TAC §101.10. Summary Disposition by the Director; 34 TAC §101.11. Appeal of Administrative Decision 34 TAC §101.12. Board Consideration and Action; 34 TAC §101.13. Proceedings for Review, Suspension, or Revocation of Disability Benefits, and 34 TAC §101.14. Exclusive Purpose).

As a result of its rule review, TCDRS repeals current Chapter 101 and adopts new Chapter 101 to update definitions, which will be used consistently throughout all TCDRS administrative rules, and to update procedures for benefit claims and contests.

COMMENTS

TCDRS received no comments related to the repeal of Chapter 101, and received no comments related to the adoption of a new Chapter 101.

34 TAC §§101.1 - 101.26

STATUTORY AUTHORITY

The repeal of existing Chapter 101 is adopted and implements the authority granted under the following provisions of the TCDRS Act: (i) Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration TCDRS; (ii) Government Code §844.403, which allows the Board to adopt rules necessary or desirable to implement Chapter 844, Subchapter D, which relates to disability retirement benefits; (iii) Government Code §845.116, which allows the Board to adopt rules and procedures relating to the electronic filings and transfers. In addition, the rule changes are adopted as a result of TCDRS' rule review, which was conducted pursuant to Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted repeal of Chapter 101 implements §§844.403, 845.116 and 845.102 of the Government Code. No other statute, code or article is affected by the adopted rules.

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

Filed with the Office of the Secretary of State on December 19, 2025.

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Ann McGeehan
General Counsel
Texas County and District Retirement System
Effective date: January 8, 2026
Proposal publication date: August 29, 2025
For further information, please call: (512) 328-8889

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34 TAC §§101.1 - 101.14

STATUTORY AUTHORITY

The adoption of new Chapter 101 implements the authority granted under the following provisions of the TCDRS Act: (i) Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; (ii) Government Code §844.403, which allows the Board to adopt rules necessary or desirable to implement Chapter 844, Subchapter D, which relates to disability retirement benefits; (iii) Government Code §845.116, which allows the Board to adopt rules and procedures relating to the electronic filings and transfers. In addition, the rule changes are adopted as a result of TCDRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted new rules implement §§844.403, 845.116 and 845.102 of the Government Code. No other statute, code or article is affected by the adopted rules.

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

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Ann McGeehan
General Counsel
Texas County and District Retirement System
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For further information, please call: (512) 328-8889

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CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §§103.1 - 103.11

The Board of Trustees ("Board") of the Texas County and District Retirement System ("TCDRS" or the "System") adopts amendments to Chapter 103 concerning Calculations or Types of Benefits in conjunction with the administrative rule review conducted by TCDRS in compliance with the Government Code §2001.039. These amendments are adopted without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5641). The rules will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

As a result of its rule review, TCDRS adopts amendments to §§103.1 - 103.11 (34 TAC §103.1. Actuarial Tables; 34 TAC §103.2. Additional Optional Retirement Annuities; 34 TAC §103.3. Beneficiary Designations and Payment Elections Requiring Spousal Consent; 34 TAC §103.4. Certification of Prior Service and Average Prior Service Compensation; 34 TAC §103.5. Required Distribution; 34 TAC §103.6. Recalculation of Retirement Annuities to Include Post Retirement Deposits; 34 TAC §103.7. Determination of Reestablished Credit; 34 TAC §103.8. Limit on Payments During the Limitation Year; 34 TAC §103.9. Partial Lump-Sum Distribution on Service Retirement; 34 TAC §103.10. Survivor Annuity; 34 TAC §103.11. Group Term Life Benefit Based on Extended Coverage). The amendments are mostly non-substantive and include changes to terminology consistent with changes being simultaneously adopted in §101.1 concerning definitions, and updates to reflect federal law and current processes.

COMMENTS

TCDRS received no comments related to the amendments to §§103.1 - 103.11.

STATUTORY AUTHORITY

The amendments are adopted and implement the authority granted under Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System. In addition, the rule changes are adopted because of TCDRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted rules implement §845.102 of the Government Code. No other statute, code, or articles are affected by the adopted rules.

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

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Ann McGeehan
General Counsel
Texas County and District Retirement System
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For further information, please call: (512) 328-8889

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CHAPTER 105. CREDITABLE SERVICE

34 TAC §§105.1 - 105.9, 105.41

The Board of Trustees ("Board") of the Texas County and District Retirement System ("TCDRS" or the "System") adopts amendments to Chapter 105 concerning Creditable Service in conjunction with the administrative rule review by TCDRS in compliance with the Government Code §2001.039. These amendments are adopted without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5648). The rules will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

As a result of the review, TCDRS adopts amendments to §§105.1 - 105.9 (34 TAC §105.1. Person Employed by Multiple Employers; 34 TAC §105.2. Combining Credited Service with Multiple Employers; 34 TAC §105.3. Credited Service for Active Duty Qualified Military Service; 34 TAC §105.4. Credited Service Under the Uniformed Services Employment and Reemployment Rights Act; 34 TAC §105.5. Correction of Errors by Employers: Record Adjustments; 34 TAC §105.6. Calculation of Current Service Credit; 34 TAC §105.7. Service Credit for Certain Public Employment; 34 TAC §105.8. Employee Termination Date; 34 TAC 105.9. Notice By Employer of Certain Felony Convictions of Elected or Appointed Officers). 34 TAC §105.41. Credited Service and Survivor Benefits Under the Heroes Earning Assistance and Relief Tax Act of 2008. The amendments are non-substantive changes to clarify language and to update terminology consistent with changes simultaneously adopted to §101.1 concerning definitions.

COMMENTS

TCDRS received no comments related to the amendments to §§105.1 - 105.9.

STATUTORY AUTHORITY

The amendments are adopted and implement the authority granted under Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System. In addition, the rule changes are adopted because of TCDRS' rule review, which was conducted pursuant to Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted rules implement §845.102 of the Government Code. No other statute, code or article is affected by the adopted rules.

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

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Ann McGeehan
General Counsel
Texas County and District Retirement System
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For further information, please call: (512) 328-8889

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CHAPTER 107. MISCELLANEOUS RULES

The Board of Trustees ("Board") of the Texas County and District Retirement System ("TCDRS" or the "System") adopts the repeal of current 34 TAC Chapter 107 ("Chapter 107"), relating to miscellaneous rules, and adopts new Chapter 107, also relating to miscellaneous rules in conjunction with the administrative rule review conducted by TCDRS in compliance with the Government Code §2001.039. The rules are adopted without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5652). The rules will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

Repeal of Current Chapter 107

TCDRS adopts the repeal of current 34 TAC Chapter 107, which includes the following sections: 34 TAC §107.1. Confidentiality of Board Records; 34 TAC §107.2. Payments by Members to Purchase Forfeited Benefits; 34 TAC §107.3. Direct Rollovers and Trustee-to-Trustee Transfers; 34 TAC §107.4. Bona Fide Termination of Employment; 34 TAC §107.5. Termination of Membership on Withdrawal; Cancellation of Valid Withdrawal Application; 34 TAC §107.6. Penalty for Late Reporting; Waiver of Penalty; 34 TAC §107.7. Extension of Due Date; 34 TAC §107.8. Electronic Transfer of Funds; 34 TAC §107.9. Electronic Filing of Documents; 34 TAC §107.10. Treatment of Ineligible Benefit Payments; 34 TAC §107.12. Payments Due or Suspended on Death of Annuitant; 34 TAC §107.13. Membership of Leased Employees; 34 TAC §107.14. Acceptance of Rollovers and Transfers; 34 TAC §107.15. Resumption of Enrollment; 34 TAC §107.16. Exclusive Purpose; 34 TAC §107.17. Annual Allocation of Net Investment Income or Loss; and 34 TAC §107.18. Special Prior Service Contribution Rates.

Adoption of New Chapter 107

TCDRS adopts rules §§107.1- 101.9 (34 TAC §107.1. Payments by Members to Purchase Forfeited Benefits; 34 TAC §107.2. Direct Rollovers from TCDRS and Trustee-to-Trustee Transfers; 34 TAC §107.3. Bona Fide Termination of Employment; 34 TAC §107.4. No Cancellation of Valid Withdrawal Application; 34 TAC §107.5. Electronic Transfer of Funds Relating to Employers; 34 TAC §107.6. Treatment of Ineligible Benefit Payments; 34 TAC §107.7. Payments Due or Suspended on Death of Person Entitled to Benefit; 34 TAC §107.8. Acceptance of Rollovers and Transfers; and 34 §107.9. Annual Allocation of Net Investment Income or Loss).

As a result of its rule review, TCDRS repeals current Chapter 107 and adopts new Chapter 107 to eliminate unnecessary rules, and update rules to reflect current procedures.

COMMENTS

TCDRS received no comments related to the repeal of Chapter 107, and received no comments related to the adoption of a new Chapter 107.

34 TAC §§107.1 - 107.10, 107.12 - 107.18

STATUTORY AUTHORITY

The repeal of existing Chapter 107 is adopted and implements the authority granted under the following provisions of the TCDRS Act: Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TCDRS. In addition, the rule changes are adopted as a result of TCDRS' rule review, which was conducted pursuant to Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted repeal of Chapter 107 implements § 845.102 of the Government Code. No other statute, code or article is affected by the adopted rules.

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

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Ann McGeehan
General Counsel
Texas County and District Retirement System
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For further information, please call: (512) 328-8889

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34 TAC §§107.1 - 107.9

STATUTORY AUTHORITY

The adoption of new Chapter 107 implements the authority granted under the following provisions of the TCDRS Act: Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TCDRS. In addition, the rule changes are adopted as a result of TCDRS' rule review, which was conducted pursuant to Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted rules implement § 845.102 of the Government Code. No other statute, code or article is affected by the adopted rules.

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

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Ann McGeehan
General Counsel
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For further information, please call: (512) 328-8889

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CHAPTER 109. DOMESTIC RELATIONS ORDERS

The Board of Trustees ("Board") of the Texas County and District Retirement System ("TCDRS" or the "System") adopts the repeal of current 34 TAC Chapter 109 ("Chapter 109"), relating to domestic relations orders, and adopts new Chapter 109, also relating to domestic relations orders in conjunction with the administrative rule review conducted by TCDRS in compliance with the Government Code §2001.039. The rules are adopted without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5657). The rules will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

Repeal of Current Chapter 109

TCDRS adopts the repeal of current 34 TAC Chapter 109, which includes the following sections: 34 TAC §109.1. Purpose; 34 TAC §109.2. Definitions; 34 TAC §109.3. Notice Regarding Receipt of Order; 34 TAC §109.4. Requirements for Qualified Domestic Relations Orders; 34 TAC §109.5. Contents of Domestic Relations Order; 34 TAC §109.7. Approval of Order; 34 TAC §109.9. Order Appearing Not To Qualify; 34 TAC §109.12. Payments to Alternate Payees; 34 TAC §109.13. Form of Qualified Domestic Relations Order; and 34 TAC §109.14. Provisions Incorporated by Reference.

Adoption of New Chapter 109

TCDRS adopts, rules §§109.1 - 109.9 (34 TAC §109.1. Definitions; 34 TAC §109.2. Notice Regarding Receipt of Order; 34 TAC §109.3. Requirements for Qualified Domestic Relations Orders; 34 TAC §109.4. Contents of Domestic Relations Orders; 34 TAC §109.5. Approval of Order; 34 TAC §109.6. Order Appearing Not To Qualify; 34 TAC §109.7. Payments to Alternate Payees; 34 TAC §109.8. Form of Qualified Domestic Relations Order; and 34 TAC §109.9. Provisions Incorporated by Reference).

As a result of its rule review, TCDRS repeals current Chapter 109 and adopts new Chapter 109 to update definitions consistent with the definitions in the new Chapter 101, eliminate unnecessary rules, and update rules to reflect current procedures.

COMMENTS

TCDRS received no comments related to the repeal of Chapter 109, and received no comments related to the adoption of a new Chapter 109.

34 TAC §§109.1 - 109.5, 109.7, 109.9, 109.12 - 109.14

STATUTORY AUTHORITY

The repeal of existing Chapter 109 is adopted and implements the authority granted under the following provisions of the TCDRS Act: (i) Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TCDRS. In addition, the rule changes are adopted as a result of TCDRS' rule review, which was conducted pursuant to Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted repeal of Chapter 109 implements §845.102 of the Government Code. No other statute, code or article is affected by the adopted rules.

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

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Ann McGeehan
General Counsel
Texas County and District Retirement System
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For further information, please call: (512) 328-8889

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34 TAC §§109.1 - 109.9

STATUTORY AUTHORITY

The adoption of new Chapter 109 implements the authority granted under the following provisions of the TCDRS Act: (i) Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TCDRS. In addition, the rule changes are adopted as a result of TCDRS' rule review, which was conducted pursuant to Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted new rules implement §845.102 of the Government Code. No other statute, code or article is affected by the adopted rules.

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

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Ann McGeehan
General Counsel
Texas County and District Retirement System
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Proposal publication date: August 29, 2025
For further information, please call: (512) 328-8889

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CHAPTER 111. TERMINATION OF PARTICIPATION: SUBDIVISIONS

The Board of Trustees ("Board") of the Texas County and District Retirement System ("TCDRS" or the "System") adopts the repeal of current 34 TAC Chapter 111 ("Chapter 111"), relating to termination of participating subdivisions (employers), and adopts

new Chapter 111, also relating to termination of participating subdivisions (employers) in conjunction with the administrative rule review conducted by TCDRS in compliance with the Government Code §2001.039. These amendments and repeals are adopted without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5648). The rules will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

Repeal of Current Chapter 111

TCDRS adopts the repeal of current 34 TAC Chapter 111, which includes the following sections: 34 TAC §111.1. Purpose; 34 TAC §111.2. Definitions; 34 TAC §111.3. Notices Voluntary Termination; and 34 TAC §111.4. Notices Involuntary Termination.

Adoption of New Chapter 111

TCDRS adopts rules §111.1 and §111.2 (34 TAC §111.1. Notice of an Employer's Intent to Terminate Participation and 34 TAC §111.2. Notice by TCDRS to Members of Terminated Plans).

As a result of its rule review, TCDRS repeals current Chapter 111 and adopts new Chapter 111 to update definitions consistent with the definitions in the new Chapter 101, eliminate unnecessary rules, and update rules to reflect current procedures.

COMMENTS

TCDRS received no comments related to the repeal of Chapter 111, and received no comments related to the adoption of a new Chapter 111.

34 TAC §§111.1 - 111.4

STATUTORY AUTHORITY

The repeal of existing Chapter 111 is adopted and implements the authority granted under the following provisions of the TCDRS Act: Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TCDRS. In addition, the rule changes are adopted as a result of TCDRS' rule review, which was conducted pursuant to Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted repeal of Chapter implements §845.102 of the Government Code. No other statute, code or article is affected by the adopted rules.

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

Filed with the Office of the Secretary of State on December 19, 2025.

TRD-202504753
Ann McGeehan
General Counsel
Texas County and District Retirement System
Effective date: January 8, 2026
Proposal publication date: August 29, 2025
For further information, please call: (512) 328-8889

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34 TAC §111.1, §111.2

STATUTORY AUTHORITY

The adoption of new Chapter 111 implements the authority granted under the following provisions of the TCDRS Act: Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TCDRS. In addition, the rule changes are adopted as a result of TCDRS' rule review, which was conducted pursuant to Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted new rules implement §845.102 of the Government Code. No other statute, code or article is affected by the adopted rules.

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

Filed with the Office of the Secretary of State on December 19, 2025.

TRD-202504754
Ann McGeehan
General Counsel
Texas County and District Retirement System
Effective date: January 8, 2026
Proposal publication date: August 29, 2025
For further information, please call: (512) 328-8889

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CHAPTER 113. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM QUALIFIED REPLACEMENT BENEFIT ARRANGEMENT

34 TAC §§113.1 - 113.6

The Board of Trustees ("Board") of the Texas County and District Retirement System ("TCDRS") adopts amendments to Chapter 113 concerning the Texas County and District Retirement System Qualified Replacement Benefit Arrangement. This proposal is part of the administrative rule review conducted by TCDRS in compliance with the Government Code §2001.039. The amendments are non-substantive and include changes to terminology consistent with changes simultaneously adopted to §101.1 concerning definitions. The amendments are adopted without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5663). The rules will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

As a result of the review, TCDRS adopts amendments to §§113.1 - 113.6 (34 TAC §113.1. Purpose; 34 TAC §113.2. Definitions; 34 TAC §113.3. Eligibility and Payments; 34 TAC §113.4. Administration; 34 TAC §113.5. Amendment and Termination; 34 TAC §113.6. General Provisions).

COMMENTS

TCDRS received no comments related to the amendments to §§113.1 - 113.6.

STATUTORY AUTHORITY

The amendments are adopted and implement the authority granted under (i) Government Code §845.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TCDRS, and (ii) Government Code

§845.504, which allows the Board to adopt rules to administer the excess benefit program in a manner consistent with federal law. In addition, the rule changes are adopted because of TCDRS' rule review, which was conducted pursuant to Government Code §2001.039.

CROSS REFERENCE TO STATUTE

The adopted rules implement §§ 845.102 and 845.504 of the Government Code. No other statute, code or article are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on December 19, 2025.

TRD-202504755
Ann McGeehan
General Counsel
Texas County and District Retirement System
Effective date: January 8, 2026
Proposal publication date: August 29, 2025
For further information, please call: (512) 328-8889

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 105, Foundation School Program, Subchapter AA, Commissioner's Rules Concerning Optional Extended Year Program; Subchapter BB, Commissioner's Rules Concerning Charter School Funding; Subchapter CC, Commissioner's Rules Concerning Severance Payments Subchapter; and Subchapter DD, Commissioner's Rules Concerning University Interscholastic League Allotment, pursuant to Texas Government Code, §2001.039.

As required by Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting Chapter 105, Subchapters AA-DD, continue to exist. The public comment period on the review begins January 2, 2026, and ends February 2, 2026. A form for submitting public comments on the proposed rule review is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review.

TRD-202504767
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 19, 2025

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State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of 19 Texas Administrative Code (TAC) Chapter 229, Accountability System for Educator Preparation Programs, Subchapter A, Accountability System for Educator Preparation Program Procedures, Subchapter B, Accountability System for Educator Preparation Accreditation Statuses, Subchapter C, Accreditation Sanctions, Subchapter D, Continuing Approval Procedures, Subchapter E, Review Procedures, and Subchapter F, Required Fees, pursuant to Texas Government Code (TGC), §2001.039.

As required by TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 229, Subchapters A, B, C, D, E, and F, continue to exist.

The comment period on the review of 19 TAC Chapter 229, Subchapters A, B, C, D, E, and F, begins January 2, 2026, and ends February 2, 2026. A form for submitting public comments on the proposed rule review is available on the Texas Education Agency (TEA) website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 229, Subchapters A, B, C, D, E, and F, during the February 13, 2026 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

TRD-202504757
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: December 19, 2025

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The State Board for Educator Certification (SBEC) proposes the review of 19 Texas Administrative Code (TAC) Chapter 247, Educators' Code of Ethics, pursuant to Texas Government Code (TGC), §2001.039.

As required by TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 247 continue to exist.

The comment period on the review of 19 TAC Chapter 247 begins January 2, 2026, and ends February 2, 2026. A form for submitting public comments on the proposed rule review is available on the Texas Education Agency (TEA) website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 247 during the February 13, 2026 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

TRD-202504759
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: December 19, 2025

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The State Board for Educator Certification (SBEC) proposes the review of 19 Texas Administrative Code (TAC) Chapter 250, Administration, Subchapter A, Purchasing, and Subchapter B, Rulemaking Procedures, pursuant to Texas Government Code (TGC), §2001.039.

As required by TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 250, Subchapters A and B, continue to exist.

The comment period on the review of 19 TAC Chapter 250, Subchapters A and B, begins January 2, 2026, and ends February 2, 2026. A form for submitting public comments on the proposed rule

review is available on the Texas Education Agency (TEA) website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 250, Subchapters A and B, during the February 13, 2026 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

TRD-202504761
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: December 19, 2025

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.65(c)(1)(A)

$$\mathrm{SAGC} = \min\left\{\left(\frac{1}{\mathrm{n}}\sum_{\mathrm{i}=1}^{\mathrm{n}}\frac{\mathrm{HSL_i}}{\mathrm{SRC_i}}\right), 0.75\right\} \times \mathrm{SRC_t}$$

Figure: 16 TAC §25.65(f)(3)(B)

$$FI_j = min\left\{\frac{TFP}{\Delta}, \$1{,}000/\mathrm{MWh}\right\} \times \delta_j$$

Figure: 19 TAC §102.1307(d)

Innovation District

A local innovation plan must be developed for a school district before the district may be designated as an Innovation District. A local plan must provide for a comprehensive educational program for the district as set out in Texas Education Code (TEC) §12A.003.

A local innovation plan must identify requirements imposed by the TEC that inhibit the goals of the plan from which the district should be exempted on adoption of the plan. The local innovation plan should specify the manner in which a particular statute inhibits one or more goals of the plan.

INSTRUCTIONS:

Please use the form below to check the statutes specifically identified in your district'slocal innovation plan as inhibiting a goal of the plan.

- Ensure all sections of the checklist are completed.
- Indicate specific (mm/dd/yy) beginning and ending dates that do not exceed five calendar years.
    - When filling out a checklist for an amendment to the plan: Indicate the term of the plan as originally adopted or renewed (whichever is most recent).
- Check/include only the numerical sections of code specifically cited in the adopted plan
- Check/include only sections of TEC on the checklist.
- When filling out a checklist for an amendment to or renewal of the plan: Include all previously and newly adopted exemptions. Exclude all exemptions that were removed from the plan.
- If there is a specific section of code in the adopted plan but no checkbox for it on the checklist, manually add it to the "Other" section located on the bottom of the final page of the checklist.

Checking a specific statute does not necessarily indicate eligibility for an exemption from all subsections of the statute. The form below provides a reporting mechanism to fulfill the reporting requirements of the statute. Entire sections of code may not be eligible for exemption and each district should consult its legal counsel in developing its innovation plan.

Exemptions claimed for an Innovation District apply only to the specific provision of the Texas Education Code (TEC) cited, which may or may not be governed by a separate legal requirement. The exemption does not relieve the district of any requirement imposed by other state or federal law or a duty imposed under federal regulation, grant compliance, agency rule applicable to a charter school or a local legal requirement. Each district should consult its legal counsel to ensure adoption of necessary local policies to ensure compliance with all applicable legal requirements.

Please note that this is not an exhaustive list of exemptions.

Board action: ◯ New Plan ◯ Amendment ◯ Renewal **Board action adoption date:**_____

District Name:_____ **CDN:**_____

Term of Plan: _____ _____ _____ to _____ _____ _____
month day year month day year

Plan applies to ◯ Entire District
◯ Campus (list) _____
◯ Other (please describe) _____

Submitted by (name):_____ **Title:** _____ **Date of Submission:**_____

Chapter 11 – School Districts

Subchapter D. Powers and Duties of Board of Trustees of Independent School Districts

- ☐ §11.1511 (b)(5), (14) Specific Powers and Duties of Board
- ☐ §11.162 School Uniforms

Subchapter F. District-Level and Site Based Decision-Making

- ☐ §11.251 Planning and Decision-Making Process
- ☐ §11.252 District-Level Planning and Decision-Making
- ☐ §11.253 Campus Planning and Site-Based Decision-Making
- ☐ §11.255 Dropout Prevention Review

Chapter 21 – Educators

Subchapter A – General Provisions

- ☐ §21.002 Teacher Employment Contracts
- ☐ §21.003 Certification Required
- ☐ §21.0031 Failure to Obtain Certification; Contract Void

Subchapter B – Certification of Educators

- ☐ §21.051 Rules Regarding Field-Based Experience and Options for Field Experience and Internships.
- ☐ §21.053 Presentation and Recording of Certificates

Subchapter C – Probationary Contracts

- ☐ §21.102 (Probationary Contract)

Subchapter H – Appraisals and Incentives

- ☐ §21.352 Local Role
- ☐ §21.353 Appraisal on Basis of Classroom Teaching Performance
- ☐ §21.354 Appraisal of Certain Administrators
- ☐ §21.3541 Appraisal and Professional Development System for Principals

Subchapter I – Duties and Benefits

- ☐ §21.401 Minimum Service Required
- ☐ §21.402 Minimum Salary Schedule for Certain Professional Staff
- ☐ §21.4021 Furloughs
- ☐ §21.4022 Required Process for Development of Furlough Program or Other Salary Reduction Proposal

- ☐ §21.403 Placement on Minimum Salary Schedule
- ☐ §21.4031 Professional Staff Service Records
- ☐ §21.4032 Reductions in Salaries of Classroom Teachers and Administrators
- ☐ §21.404 Planning and Preparation Time
- ☐ §21.405 Duty-Free Lunch
- ☐ §21.406 Denial of Compensation Based On Absence for Religious Observance Prohibited
- ☐ §21.407 Requiring or Coercing Teachers to Join Groups, Clubs, Committees, or Organizations: Political Affairs
- ☐ §21.408 Right To Join or Not To Join Professional Association
- ☐ §21.409 Leave Of Absence for Temporary Disability
- ☐ §21.415 Employment Contracts

Subchapter J – Staff Development

- ☐ §21.451 Staff Development Requirements
- ☐ §21.452 Developmental Leaves of Absence
- ☐ §21.458 Mentors

Chapter 22 – School District Employees and Volunteers

Subchapter A – Rights, Duties, and Benefits

- ☐ §22.001 Salary Deductions for Professional or Other Dues
- ☐ §22.002 Assignment, Transfer, or Pledge of Compensation
- ☐ §22.003 Minimum Personal Leave Program
- ☐ §22.006 Discrimination Based on Jury Service Prohibited
- ☐ §22.007 Incentives for Early Retirement
- ☐ §22.011 Requiring or Coercing Employees to Make Charitable Contributions

Chapter 25 – Admission, Transfer, and Attendance

Subchapter C – Operation of Schools and School Attendance

- ☐ §25.0811 First Day of Instruction
- ☐ §25.0812 Last Day of School
- ☐ §25.083 School Day Interruptions
- ☐ §25.092 Minimum Attendance for Class Credit or Final Grade

Subchapter D – Student/Teacher Ratios; Class Size

- ☐ §25.111 Student/Teacher Ratios
- ☐ §25.112 Class Size
- ☐ §25.113 Notice of Class Size
- ☐ §25.114 Student/Teacher Ratios in Physical Education Classes; Class Size

Chapter 44 –Fiscal Management

Subchapter B – Purchases; Contracts

- ☐ §44.031 Purchasing Contracts
- ☐ §44.0331 Management Fees Under Certain Cooperative Purchasing Contracts
- ☐ §44.0352 Competitive Sealed Proposals
- ☐ §44.042 Preference to Texas and United States Products
- ☐ §44.043 Right To Work
- ☐ §44.047 Purchase or Lease of Automated External Defibrillator

Subchapter Z – Miscellaneous Provisions

- ☐ §44.901 Energy Savings Performance Contracts
- ☐ §44.902 Long-Range Energy Plan to Reduce Consumption of Electric Energy
- ☐ §44.908 Expenditure of Local Funds

Chapter 45 – School District Funds

Subchapter G – School District Depositories

- ☐ §45.205 Term of Contract
- ☐ §45.206 Bid Or Request for Proposal Notices; Bid and Proposal Forms
- ☐ §45.207 Award of Contract
- ☐ §45.208 Depository Contract; Bond
- ☐ §45.209 Investment of District Funds

Other

An adopted exemption from Texas Education Code for which there is no corresponding checkbox above must be added to this section.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Alamo Area Metropolitan Planning Organization

RFP - Multimodal Regional Thoroughfare Study Update

The Alamo Area Metropolitan Planning Organization (AAMPO) is seeking proposals from qualified firms to conduct and deliver the Multimodal Regional Thoroughfare Study Update.

The Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from AAMPO's website at www.alamoareampo.org or calling Sonia Jiménez, Interim Executive Director, at (210) 668-3614. Anyone wishing to submit a proposal must email it by 12:00 p.m. (CST), Friday, February 6, 2026 to the AAMPO at aampo@alamoareampo.org.

Reimbursable funding for this study, in the amount of $550,000, is contingent upon the availability of federal transportation planning funds.

TRD-202504729
Sonia Jimenez
Interim Executive Director
Alamo Area Metropolitan Planning Organization
Filed: December 18, 2025

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 3, 2026**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A physical copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Additionally, copies of the proposed AO can be found online by using either the Chief Clerk's eFiling System at https://www.tceq.texas.gov/goto/efilings or the TCEQ Commissioners' Integrated Database at https://www.tceq.texas.gov/goto/cid, and searching either of those databases with the proposed AO's identifying information, such as its docket number. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at Enforcement Division, MC 128, P.O. Box 13087, Austin, Texas 78711-3087 and must be postmarked by 5:00 p.m. on **February 3, 2026**. Written comments may also be sent to the enforcement coordinator by email to ENFCOMNT@tceq.texas.gov or by facsimile machine at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed contact information; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: A&E Xpress Mart, LLC; DOCKET NUMBER: 2023-1758-PST-E; IDENTIFIER: RN103029104; LOCATION: Aransas Pass, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; PENALTY: $4,725; ENFORCEMENT COORDINATOR: Elizabeth Vanderwerken, (512) 239-5900; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(2) COMPANY: Albemarle Corporation; DOCKET NUMBER: 2025-0996-AIR-E; IDENTIFIER: RN100218247; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; PENALTY: $6,850; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $2,740; ENFORCEMENT COORDINATOR: John Burkett, (512) 239-4169; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(3) COMPANY: Bobcat Services, Inc.; DOCKET NUMBER: 2024-0583-MSW-E; IDENTIFIER: RN109261263; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: aggregate production operation; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Celicia Garza, (210) 657-8422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(4) COMPANY: Braskem America, Inc.; DOCKET NUMBER: 2024-1241-AIR-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; PENALTY: $23,263; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $11,631; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(5) COMPANY: City of Comanche; DOCKET NUMBER: 2023-0236-MWD-E; IDENTIFIER: RN101917680; LOCATION: Comanche, Comanche County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: $14,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $11,600; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(6) COMPANY: City of Liberty Hill; DOCKET NUMBER: 2024-1964-MWD-E; IDENTIFIER: RN104102132; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: $125,475; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $100,380; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL

OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(7) COMPANY: City of Splendora; DOCKET NUMBER: 2024-0478-MWD-E; IDENTIFIER: RN102181922; LOCATION: Splendora, Montgomery County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: $22,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $18,000; ENFORCEMENT COORDINATOR: Penny Wimberly, (512) 239-0538; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(8) COMPANY: EnLink North Texas Gathering, LP; DOCKET NUMBER: 2025-0870-AIR-E; IDENTIFIER: RN111186128; LOCATION: Lenorah, Martin County; TYPE OF FACILITY: natural gas compressor station; PENALTY: $25,000; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(9) COMPANY: INEOS OLIGOMERS USA LLC; DOCKET NUMBER: 2025-0925-AIR-E; IDENTIFIER: RN108783614; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical manufacturing plant; PENALTY: $12,150; ENFORCEMENT COORDINATOR: Christina Ferrara, (512) 239-5081; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(10) COMPANY: INEOS OLIGOMERS USA LLC; DOCKET NUMBER: 2025-1379-AIR-E; IDENTIFIER: RN108783614; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical manufacturing plant; PENALTY: $10,275; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(11) COMPANY: Indorama Ventures Oxides LLC; DOCKET NUMBER: 2025-1087-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; PENALTY: $21,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $8,450; ENFORCEMENT COORDINATOR: Christina Ferrara, (512) 239-5081; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(12) COMPANY: Noroz Enterprises, Inc.; DOCKET NUMBER: 2025-0629-PST-E; IDENTIFIER: RN102367109; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; PENALTY: $25,956; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(13) COMPANY: PTCAA Texas, L.P.; DOCKET NUMBER: 2025-1033-PST-E; IDENTIFIER: RN100814458; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: common carrier; PENALTY: $8,114; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(14) COMPANY: RTM Construction Company, Ltd.; DOCKET NUMBER: 2025-1124-AIR-E; IDENTIFIER: RN112245758; LOCATION: Adkins, Bexar County; TYPE OF FACILITY: rock crusher; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Michael Wilkins, (325) 698-6134; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, REGION 03 - ABILENE.

(15) COMPANY: Shree Akala Devi Holdings LLC; DOCKET NUMBER: 2024-1828-PST-E; IDENTIFIER: RN101564383; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(16) COMPANY: Shujat Holding Company; DOCKET NUMBER: 2023-1214-PST-E; IDENTIFIER: RN102246535; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; PENALTY: $9,367; ENFORCEMENT COORDINATOR: Elizabeth Vanderwerken, (512) 239-5900; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(17) COMPANY: Southland Independent School District; DOCKET NUMBER: 2024-0736-PWS-E; IDENTIFIER: RN101197168; LOCATION: Southland, Garza County; TYPE OF FACILITY: public water supply; PENALTY: $42,950; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $42,950; ENFORCEMENT COORDINATOR: Bethany Batchelor, (713) 767-3586; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(18) COMPANY: Veolia ES Technical Solutions, L.L.C.; DOCKET NUMBER: 2023-0798-AIR-E; IDENTIFIER: RN102599719; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: hazardous waste treatment and disposal site; PENALTY: $10,800; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

TRD-202504739
Gitanjali Yadav
Deputy Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 19, 2025

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Notice of Hearing: 3405 Investments LLC; SOAH Docket No. 582-26-07253; TCEQ Docket No. 2025-1322-MWD; Proposed Permit No. WQ0016521001

APPLICATION.

3405 Investments LLC, 11917 Oak Knoll Dr, Suite D, Austin, Texas 78759, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, TCEQ Permit No. WQ0016521001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via public access subsurface area drip dispersal system on a minimum area of 13.77 acres. This permit will not authorize a discharge of pollutants into waters in the State.

The wastewater treatment facility and disposal site will be located approximately 1,100 feet east of the intersection of Farm-to-Market Road 3405 and Ronald Reagan Boulevard, near the City of Liberty Hill, Williamson County, Texas 78642. The wastewater treatment facility and disposal site will be located in the drainage basin of unnamed tributary of North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.847777,30.704444&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that

this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Liberty Hill Public Library, 355 Loop 332, Liberty Hill, in Williamson County, Texas.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m.- February 2, 2026

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 567 0499

Password: TCE253

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 567 0499

Password: 948327

For questions regarding the preliminary hearing, visit the SOAH website at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on November 19, 2025. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code Chapter 80 and 1 Texas Administrative Code Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code § 155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from 3405 Investments LLC at the address stated above or by calling Mr. Ashraya Upadhyaya, JA Wastewater, LLC, at (903) 414-0307.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: December 19, 2025

TRD-202504765
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 19, 2025

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Notice of Hearing: BL 374 LLC; SOAH Docket No. 582-26-07259; TCEQ Docket No. 2025-09069MWD; TPDES Permit No. WQ0016411001

APPLICATION.

BL 374 LLC, 6116 North Central Expressway, Suite 510, Dallas, Texas 75206, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016411001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 490,000 gallons per day.

The facility will be located approximately 0.6 miles northeast of the intersection of Bennett Lawson Road and Gibson Cemetery Road, in Tarrant County, Texas 76063. The treated effluent will be discharged to an unnamed tributary, thence to Willow Branch, thence to Walnut Creek, thence to Joe Pool Lake in Segment No. 0838 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary and minimal aquatic life use for Willow Branch. The designated uses for Segment No. 0838 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.198888,32.595&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Mansfield Public Library, 104 South Wisteria Street, Mansfield, Texas.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - January 27, 2026

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 433 0484

Password: TCE259

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 433 0484

Password: 815634

For questions regarding the preliminary hearing, visit the SOAH website at: http://www.soah.texas.gov/ or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on October 15, 2025. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code Chapter 80 and 1 Texas Administrative Code Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from BL 374 LLC at the address stated above or by calling Mr. Jorge Gonzalez-Rodiles, P.E., Southland Consulting Engineers, at (214) 578-0088.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: December 12, 2025

TRD-202504762
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 19, 2025

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Notice of Hearing: Nueces Green Ammonia LLC; SOAH Docket No. 582-26-07257; TCEQ Docket No. 2025-0829-AIR; Air Quality Permit No. 174951

APPLICATION.

Nueces Green Ammonia LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 174951, which would authorize construction of the Nueces Green Ammonia Plant located near southwest corner of Farm-to-Market Road 1889 and Farm-to-Market Road 46, north of Robstown, Nueces County, Texas 78380.

The proposed facility will emit the following contaminants: anhydrous ammonia, carbon monoxide, hazardous air pollutants, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations. The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, and at the Keach Family Library, 1000 Terry Shamsie Boulevard, Robstown, Nueces County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m.- February 4, 2026

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 263 6569

Password: TCQ257

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 263 6569

Password: 869923

For questions regarding the preliminary hearing, visit the SOAH website at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on September 17, 2025. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code Chapter 80 and 1 Texas Administrative Code Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code § 155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from Nueces Green Ammonia LLC, 8 The Green, Suite A, Dover, Delaware 19901 or by calling Ms. Elizabeth Stanko, Director of ESG Advisory Services at (713) 244-1039.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: December 19, 2025

TRD-202504763
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 19, 2025

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Notice of Hearing: Uranium Energy Corp.; SOAH Docket No. 582-26-02866; TCEQ Docket No. 2025-0700-UIC; Permit No. UR03075

APPLICATION.

Uranium Energy Corp., 500 North Shoreline Boulevard, Suite 800N, Corpus Christi, Texas 78401, an in-situ uranium mining business, has applied to the Texas Commission on Environmental Quality (TCEQ) for permit renewal to authorize recovery of uranium and restoration of the aquifer bearing the uranium and permit amendment to revise the permit range table values and to revise the excursion monitoring parameters to add total alkalinity, sulfate, and uranium and remove total dissolved solids. The facility is located at 14689 North United States Highway 183, Yorktown, Texas 78164 in Goliad County, Texas. TCEQ received the application on December 22, 2020. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.356944%2C28.865555&level=12. For exact location, refer to application.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Goliad Public Library, 320 South Commercial, Goliad, Texas 77963.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - February 5, 2026

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 812 8024

Password: TCEQ2866

or

To join the Zoom meeting via telephone:

(669) 254-5252

Meeting ID: 161 812 8024

Password: 71602335

For questions regarding the preliminary hearing, visit the SOAH website at: http://www.soah.texas.gov/ or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on September 3, 2025. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 27, Texas Water Code; TCEQ rules, including 30 Texas Administrative Code (TAC) Chapters 305 and 331; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code Chapter 80 and 1 Texas Administrative Code Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from Uranium Energy Corp. at the address stated above or by calling Craig Wall at (361) 888-8235.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: December 19, 2025

TRD-202504764
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 19, 2025

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 328

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 328, Waste Minimization and Recycling, §§328.301, 328.302, and 328.304 under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 4413 from the 89th Legislature, 2025, Regular Session, relating to mass balance attribution of renewable chemicals. The rule would be proposed under the authority of Texas Health and Safety Code §361.4215, which requires the commission to conduct rulemaking to identify third-party mass balance attribution certifications systems for renewable chemicals.

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on January 27, 2026, at 10:00 a.m. in Building E, Conference Room E201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by January 23, 2026. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 26, 2026, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTA1YTllYjEtYmIxMi00M2MzLThiYmMtY2NmNDg3NDQ3MzQ4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%223aa8b0dc-fc48-48e4-98da-84f3b2eb020c%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

If you need translation services, please contact TCEQ at (800) 687-4040. Si desea información general en español, puede llamar al (800) 687-4040.

Written comments may be submitted to Vanessa Onyskow-Lang, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/*. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2025-026-328-WS. The comment period closes February 3, 2026. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

TRD-202504699
Amy L. Browning
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 18, 2025

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Notice of Request for Public Comment and Notice of a Public Meeting on Draft Implementation Plan for Nine Total Maximum Daily Loads for Indicator Bacteria in the Chocolate Bay Watershed

Aviso De Solicitud De Comentarios Públicos Y Aviso De Reunión Pública Sobre El Proyecto De Plan De Implementación Para Nueve Cargas Diarias Máximas Totales De Microorganismos Indicadores En La Cuenca Hidrográfica De Chocolate Bay

The Texas Commission on Environmental Quality (TCEQ) has made available for public comment the draft Implementation Plan (I-Plan) for Nine Total Maximum Daily Loads (TMDLs) for Indicator Bacteria in the Chocolate Bay Watershed, of the San Jacinto- Brazos Coastal Basin and Bays and Estuaries Basin, in Brazoria, Fort Bend, and Galveston counties.

The purpose of the meeting is to provide the public an opportunity to comment on the draft I-Plan for nine assessment units: Chocolate Bayou Tidal (1107_01), Chocolate Bayou Above Tidal (1108_01), Mustang Bayou (2432A_01, 2432A_02 and 2432A_03), Willow Bayou (2432B_01), Halls Bayou Tidal (2432C_01), Persimmon Bayou Tidal (2432D_01), and New Bayou Tidal (2432E_01).

The I-Plan, developed by regional stakeholders, is a flexible tool that the governmental and non-governmental participants involved in TMDL implementation will use to guide their actions and practices. The commission requests comment on each of the major components of the I-Plan: management measures, implementation strategy and tracking, review strategy, and communication strategy.

After the public comment period, TCEQ may revise the draft I-Plan if appropriate. The final I-Plan will then be considered by the commission for approval. Upon approval of the I-Plan by the commission, the final

I-Plan and a response to all comments received will be made available on TCEQ's website.

Public Meeting and Testimony. The public meeting for the draft I-Plan will be held at the **Alvin Public Library, 105 S Gordon St, Alvin, Texas 77511, on January 22, 2026, at 6:00 p.m.**

Please periodically check the project website before the meeting date for meeting related updates: *https://www.tceq.texas.gov/waterquality/tmdl/nav/114-chocolate-bay/.*

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft I-Plan may be submitted to Jazmyn Milford, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or eFaxed to (512) 239-1414. Electronic comments may be submitted at: *https://tceq.commentinput.com*. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All written comments must be received at TCEQ by February 3, 2026, and should reference Implementation Plan for Nine Total Maximum Daily Loads for Indicator Bacteria in the Chocolate Bay Watershed.

For further information regarding the draft I-Plan, please contact Jazmyn Milford at *Jazmyn.Milford@tceq.texas.gov*. The draft I-Plan can be obtained via TCEQ's website at *https://www.tceq.texas.gov/waterquality/tmdl/nav/114-chocolate-bay/.*

Persons who have special communication or other accommodation needs who are planning to participate in the meeting should contact Jazmyn Milford at *Jazmyn.Milford@tceq.texas.gov*. Requests should be made as far in advance as possible.

Para la versión en español de este documento, favor de visitar

https://www.tceq.texas.gov/waterquality/tmdl/nav/114-chocolate-bay/.

TRD-202504742
Amy L. Browning
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality

Filed: December 19, 2025

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Texas Department of Licensing and Regulation

Scratch Ticket Game Number 2751 "AZULEJOS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2751 is "AZULEJOS". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2751 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2751.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1 SYMBOL, 2 SYMBOL, 3 SYMBOL, 4 SYMBOL, 5 SYMBOL, 6 SYMBOL, 7 SYMBOL, 8 SYMBOL, 9 SYMBOL, 10 SYMBOL, 11 SYMBOL, 12 SYMBOL, 13 SYMBOL, 14 SYMBOL, 15 SYMBOL, 16 SYMBOL, 17 SYMBOL, 18 SYMBOL, 19 SYMBOL, 20 SYMBOL, 21 SYMBOL, 22 SYMBOL, 23 SYMBOL, 24 SYMBOL, 25 SYMBOL, 26 SYMBOL, 27 SYMBOL, 28 SYMBOL, 29 SYMBOL, 30 SYMBOL, 31 SYMBOL, 32 SYMBOL, 33 SYMBOL, 34 SYMBOL, 35 SYMBOL, 36 SYMBOL, 37 SYMBOL, 38 SYMBOL, 39 SYMBOL and 40 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2751 - 1.2D

PLAY SYMBOL	CAPTION
1 SYMBOL	ONE
2 SYMBOL	TWO
3 SYMBOL	THR
4 SYMBOL	FOR
5 SYMBOL	FIV
6 SYMBOL	SIX
7 SYMBOL	SVN
8 SYMBOL	EGT
9 SYMBOL	NIN
10 SYMBOL	TEN
11 SYMBOL	ELV
12 SYMBOL	TLV
13 SYMBOL	TRN
14 SYMBOL	FTN
15 SYMBOL	FFN
16 SYMBOL	SXN
17 SYMBOL	SVT
18 SYMBOL	ETN
19 SYMBOL	NTN
20 SYMBOL	TWY
21 SYMBOL	TWON
22 SYMBOL	TWTO
23 SYMBOL	TWTH
24 SYMBOL	TWFR
25 SYMBOL	TWFV
26 SYMBOL	TWSX
27 SYMBOL	TWSV

28 SYMBOL	TWET
29 SYMBOL	TWNI
30 SYMBOL	TRTY
31 SYMBOL	TRON
32 SYMBOL	TRTO
33 SYMBOL	TRTH
34 SYMBOL	TRFR
35 SYMBOL	TRFV
36 SYMBOL	TRSX
37 SYMBOL	TRSV
38 SYMBOL	TRET
39 SYMBOL	TRNI
40 SYMBOL	FRTY

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2751), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2751-0000001-001.

H. Pack - A Pack of the "AZULEJOS" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. Fold A will show the front of Ticket 001 and back of Ticket 075. Fold B will show the back of Ticket 001 and front of Ticket 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery and Charitable Bingo Division of the Texas Department of Licensing and Regulation (Texas Lottery) pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "AZULEJOS" Scratch Ticket Game No. 2751.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 140.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "AZULEJOS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-two (42) Play Symbols. A prize winner in the "AZULEJOS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-two (42) Play Symbols. 1) The player completely scratches the YOUR TILES Play Symbols to reveal 18 tiles. 2) The player scratches ONLY the tiles on GAMES 1 - 3 that exactly match the YOUR TILES Play Symbols. 3) If the player reveals a complete row, column or diagonal line in GAME 1, the player wins the prize for that line. 4) If the player reveals a complete row or column line in GAME 2 or GAME 3, the player wins the prize for that line. 1) El jugador raspa completamente los Símbolos de Juego de TUS AZULEJOS para revelar 18 azulejos. 2) El jugador SOLAMENTE raspa los azulejos en los JUEGOS 1 - 3 que son exactamente iguales a los Símbolos de Juego de TUS AZULEJOS. 3) Si el jugador revela una línea completa horizontal, vertical o diagonal en los JUEGO 1, el jugador gana el premio paraesa línea. 4) Si el jugador revela una fila o columna completa, en linea en el JUEGO 2 o en el JUEGO 3, gana el premio corresondiente a esa línea. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-two (42) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-two (42) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-two (42) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-two (42) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director of the Texas Lottery (Executive Director) may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to eleven (11) times in accordance with the prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

C. There will be no duplicate Play Symbols in the YOUR TILES/TUS AZULEJOS play area.

D. There will be at least twelve (12) YOUR TILES/TUS AZULEJOS Play Symbols that match Play Symbols in GAME 1/JUEGO 1, GAME 2/JUEGO 2 or GAME 3/JUEGO 3.

E. A Play Symbol will not be repeated across the GAME 1/JUEGO 1, GAME 2/JUEGO 2 and GAME 3/JUEGO 3 play areas.

F. On all Tickets, GAME 2/JUEGO 2 will match at least one (1) of its Play Symbols with the YOUR TILES/TUS AZULEJOS Play Symbols, unless affected by other parameters, play action or prize structure.

G. On all Tickets, GAME 3/JUEGO 3 will match at least one (1) of its Play Symbols with the YOUR TILES/TUS AZULEJOS Play Symbols, unless affected by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "AZULEJOS" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $75.00, $100, $200, $300 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $75.00, $100, $200, $300 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "AZULEJOS" Scratch Ticket Game prize of $1,000, $10,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "AZULEJOS" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery, P.O.

Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "AZULEJOS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "AZULEJOS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2751. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2751 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	840,000	8.57
$10.00	432,000	16.67
$15.00	120,000	60.00
$20.00	120,000	60.00
$25.00	96,000	75.00
$50.00	96,000	75.00
$75.00	7,500	960.00
$100	18,000	400.00
$200	2,520	2,857.14
$300	1,620	4,444.44
$500	780	9,230.77
$1,000	240	30,000.00
$10,000	20	360,000.00
$100,000	4	1,800,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.15. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2751 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §140.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2751, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140, and all final decisions of the Executive Director.

TRD-202504733
Deanne Rienstra
Interim General Counsel Lottery and Charitable Bingo
Texas Department of Licensing and Regulation
Filed: December 18, 2025

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for a Certificate of Operating Authority and to Rescind a Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on December 4, 2025 for a certificate of operating authority and to rescind certificates of convenience and necessity.

Docket Style and Number: Application of Brightspeed of Coastal Texas, Inc. dba Brightspeed; Brightspeed of Northern Texas, Inc. dba Brightspeed; and Brightspeed of Southern Texas, Inc. dba Brightspeed for a Certificate of Operating Authority and to Rescind Certificates of Convenience and Necessity, Docket Number 59061.

The Application: Brightspeed of Coastal Texas, Inc. dba Brightspeed; Brightspeed of Northern Texas, Inc. dba Brightspeed; and Brightspeed of Southern Texas, Inc. dba Brightspeed filed an application to (1) acquire a Certificates of Operating Authority consistent with Public Utility Regulatory Act § 65.101(a) and (b); and (2) rescind its Certificates of Convenience and Necessity numbers 40061, 40047, and 40074.

Persons who wish to comment on this application should notify the Public Utility Commission by January 13, 2026. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989. All comments should reference Docket Number 59061.

TRD-202504698
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 2025

♦ ♦ ♦


TEXAS

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 51 (2026) is cited as follows: 51 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "51 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 51 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: https://www.sos.texas.gov. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §91.1: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §91.1 is the section number of the rule (91 indicates that the section is under Chapter 91 of Title 1; 1 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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