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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

10 TAC §§90.1 - 90.9

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 90, §§90.1 - 90.7, and 90.9, Migrant Labor Housing Facilities without changes to the proposed text as published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7489). The rules will not be republished. Section 90.8 is being adopted with changes to the proposed text. There was an error at proposal. The heading for §90.8 should have read Administrative Penalties and Sanctions as listed in TAC. The rule will be republished. The purpose of the repeal is to implement new statutory changes that eliminates an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking, and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Wilkinson has determined that for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program but relates to the repeal, and simultaneous readoption making changes to an existing rule to implement updates as a result of SB 243, 89th Texas Legislature (Reg. Session).

2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, to implement updates as a result of SB 243.

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

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be a rule in compliance with statute. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

§90.8. Administrative Penalties and Sanctions.

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

Filed with the Office of the Secretary of State on February 5, 2026.

TRD-202600547

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 25, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 475-3959

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10 TAC §§90.1 - 90.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 90, Migrant Labor Housing Facilities Rule, §§90.1 - 90.9 with changes to the proposed text as published in the November 21, 2025, issue of the *Texas Register* (50 TexReg 7490). The rules will be republished. The purpose of the new rules is to comply with SB 243 (89th Regular Legislature) which added revisions to the Department's oversight and administration of Migrant Labor Housing Facilities. Original changes based on SB 243 included the addition of a new complaint process; notice; dismissal requirements; remediation of complaints in general and regarding certain violations; and prohibition on retaliation for facility-related complaints. Additionally, the rules outline a penalty structure for noncompliance and provides for interagency cooperation and outreach/education requirements.

Tex. Gov't Code §2001.0045(b) does apply to the rule because costs may be associated with this action, however these changes are required to implement new statutory changes.

The Department has analyzed this rulemaking, and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Wilkinson has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program. The new rule provides for an assurance that required licensing requirements tasked to the Department are clearly relayed to employers who house and license migrant labor housing facilities. Changes include a new complaint procedure, a penalty structure, and outreach/education requirements.

2. The new rule will require a change in the number of employees of the Department; the enactment of SB 243 included appropriations for three full-time employees to perform the work associated with implementation of SB 243 and this rule.

3. The new rule will require additional future legislative appropriations. The new rule is being adopted because the Texas Legislature in its 89th Regular Session passed SB 243. The Department was appropriated an additional $535,000 per year of the biennium from General Revenue funds to implement the provisions of the legislation and received three new FTEs. It is expected that the appropriation would continue in subsequent biennia to continue implementing the provisions of SB 243.

4. The rule may result in some additional penalty fees paid to the Department in the case of noncompliant providers.

5. The new rule is creating a new regulation, which is being created to implement the requirements of SB 243.

6. The rule action does repeal an existing regulation but only so that the regulation can be replaced with a new rule that may be considered to "expand" the existing regulation on this activity because the change to the rule is necessary to ensure compliance with SB 243.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outline in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that this rule provides specific details on how complaints are processed, provides a revised penalty schedule for noncompliance event(s), and addresses interagency cooperation and outreach/education. Other than in a case of small or micro-business subject to the proposed rule, economic impact of the rule is projected to be none. If rural communities are subject to the new rule, the economic impact of the rule is projected to be none.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule would be that providers have a more compliant workplace.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" There are no anticipated "probable" effects of the new rule on employment in particular geographic regions. If anything, the positive effects will be that providers have a more compliant workplace.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule be a rule compliant with SB 243. The only economic cost to an individual required to comply with the rule would be for those individuals or entities that choose to be noncompliant, in which case there may be fees for noncompliance event(s).

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues other than already noted herein.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between November 21, 2025, and December 21, 2025. Comments

regarding the proposed repeal were accepted in writing with comments received from: Dave Mauch, Texas Rio Grande Legal Aid, Inc.

Rule Section §90.1

COMMENT SUMMARY: The commenter noted a formatting correction to the H-2A program reference.

STAFF RESPONSE: Staff accepted the correction and updated the proposed rule for adoption.

Rule Section §90.4

COMMENT SUMMARY: Commentor 1 supported the addition of language clarifying acceptable fire extinguishers.

STAFF RESPONSE: Staff appreciates the support of Commenter 1.

Rule Section §90.5

COMMENT SUMMARY: Commenter 1 supports the Department's addition of language stating that Providers utilizing hotels and apartments who fail to provide the number of beds or meals as reported at time of application will be deemed noncompliant with regulations. However, they found the phrase "if occupied at the time of inspection" to be limiting in terms of verification methods and felt the Department could be limiting its ability to assess violations.

STAFF RESPONSE: Staff agreed with the suggested revision removing the limitation so that verification methods are not limited to only when units are occupied. Revisions have been made responsive to this comment.

Rule Section §90.6

COMMENT SUMMARY: Commentor number 1 expressed concern that requiring only that the text of the mandatory housing poster be in English and Spanish, makes no provisions for Workers who predominantly speak other languages. They suggest that the poster be made in a language understood by the worker.

STAFF RESPONSE: Staff agrees with the concern, however does not feel it is reasonable to have the posters generated in any variety of languages that are undetermined as necessary. Alternatively, staff has added a provision for translation of the poster at the request of either a Worker or the Provider.

Rule Section §90.7

COMMENT SUMMARY: Commentor number 1 expressed concern that notice of the dismissal of a complaint was only going to be provided to the Provider and not the worker/Designated Representative.

Commenter number 1 expressed support for the anonymity procedure established by allowing a Designated Representative to file a complaint on behalf of a complainant and allowing the Designated Representative of a complainant to redact the complainant's name and signature from the form or other document appointing them.

Commenter number 1 expressed serious concern that the addition of a required video conference between the Department, complainant, and their Designated Representative for verification purposes, negates the anonymity provided, exceeds Departmental authority, exposes the complainant to retaliation, and puts additional burdens on the complainant. Commenter 1 also noted the logistical challenges of the complainant being able to find a private place to pursue such a video conference, and further notes that access to technology to do a video call may be limited.

In section (h)(3) relating to remediation of a complaint, Commentor 1 felt the use of the term "and/or" would allow a sworn affidavit alone to be acceptable proof of remediation and expressed concern of this being insufficient in the past.

STAFF RESPONSE: Staff added language that the notice of dismissal of a complaint will be sent to both the Provider and the complainant/Designated Representative.

While staff is also seeking to preserve a complainant's anonymity in these situations, §2306.934(g) includes the language "if the department reviews the written authorization establishing the representation and verifies that the representative is authorized to submit the complaint". The purpose of the video conference was to achieve this verification without creating a document that could be subject to an open records request. Staff still believes this could be an effective way to achieve this goal but acknowledges that it may not be viable in all situations, so the provision was amended to include verification through an "in person meeting during the complaint investigation including a follow up inspection" to allow for other options of verification.

It was not the intention of staff to imply that a sworn affidavit alone would be sufficient proof of remediation. Staff intended to use this wording to allow for the discretion to determine if a follow up inspection would also be required as proof of remediation. The wording "and/or" has been replaced to remove the ambiguity.

The Board adopted the final order adopting the new rule on February 5, 2026.

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rules affect no other code, article, or statute.

§90.1. Purpose.

The purpose of Chapter 90 is to establish rules governing Migrant Labor Housing Facilities that are subject to being licensed under Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921 - 2306.9340). It is recognized that aligning state requirements with the federal standards for migrant farmworker housing that must be inspected in order to participate in other state and federal programs, such as with the U.S. Department of Labor's H-2A visa program, allows for cooperative efforts between the Department and other state and federal entities to share information. This will reduce redundancies and improve the effectiveness of the required licensing.

§90.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in Tex. Gov't Code Chapter §§2306.921 - 2306.940, are capitalized. Other terms in 29 CFR §§500.130 - 500.135, 20 CFR §§654.404 et seq., and 29 CFR §1910.142 or used in those sections and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(1) Act--The state law that governs the operation and licensure of Migrant Labor Housing Facilities in the state of Texas, found at Tex. Gov't Code, §§2306.921 - 2306.940.

(2) Board--The governing board of the Texas Department of Housing and Community Affairs.

(3) Business Day--Any day that is not a Saturday, Sunday, or a holiday observed by the State of Texas.

(4) Business hours--8:00 a.m. to 5:00 p.m., local time.

(5) Couple--A pair of individuals, whether legally related or not, that act as and hold themselves out to be a couple; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement.

(6) Department--The Texas Department of Housing and Community Affairs.

(7) Designated Representative--Means an individual or organization to whom a Migrant Agricultural Worker has given written authorization to exercise the worker's right to file a complaint under Tex. Gov't Code §2306.934.

(8) Director--The Executive Director of the Department or designated staff.

(9) Family--A group of people, whether legally related or not, that act as and hold themselves out to be a Family; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement such as the custody of an unemancipated minor by a person other than their legal guardian.

(10) License--The document issued to a Licensee in accordance with the Act.

(11) Licensee--Any Person that holds a valid License issued in accordance with the Act.

(12) Occupant--Any Person, including a Worker, who uses a Migrant Labor Housing Facility for housing purposes.

(13) Provider--Any Person who provides for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, whether the Facility is owned by the Provider, or is contractually obtained (or otherwise established) by the Provider. An agricultural industry employer or a contracted or affiliated entity may be a Provider if it owns, contracts, or pays for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, regardless of whether any rent or fee is required to be paid by a Worker. A common short-term property rental owner or operator that does not exclusively rent to Migrant Agricultural Workers is not a Provider solely because they have rented to Migrant Agricultural Workers. The Provider is the operator under Tex. Gov't Code §2306.928.

(14) The State Office of Administrative Hearings (SOAH)--Is an independent and neutral agency for hearing and mediating administrative disputes and appeals in Texas in accordance with Tex. Gov't Code §2001, Tex. Gov't Code §2003, and 1 TAC §155.

(15) Worker--Also known as Migrant Agricultural Worker, being an individual who is:

(A) working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry, and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

§90.3. Applicability.

(a) All Migrant Labor Housing Facilities in the state of Texas, which may include hotels and other public accommodations if owned by or contracted for by Providers must be inspected and comply with the requirements in this chapter and 29 CFR §§500.130, 500.132 - 500.135, without the exception provided in 29 CFR §500.131.

(b) Where agricultural employers own, lease, rent, otherwise contract for, or obtain under other working arrangements, Facilities "used" by individuals or Families that meet the criteria described in the Act, the employer as Provider of said housing, "establishes" and becomes the "operator" of a Migrant Labor Housing Facility, and is the responsible entity for obtaining and "maintaining" the License on such Facility, as those terms are used in Tex. Gov't Code §2306.921 - 2306.922.

(c) An applicant for a License must facilitate an inspection by the Department with the owner of the property(ies) at which the Migrant Labor Housing Facility is located, or the inspection will be considered failed.

(d) Owners or operators of homeless shelters, public camp grounds, youth hostels, hotels and other public or private accommodations that do not contract for services with Providers to house Workers are not required to be licensed.

(e) No License would be required where a Worker is housed exclusively with his/her Family using their own structure, trailer, or vehicle, but temporarily residing on the land of another.

(f) A Facility may include multiple buildings on scattered or noncontiguous sites, as long as the scattered sites are in a reasonable distance from each other, and the work location and the buildings are operated as one Facility by the Provider.

§90.4. Standards and Inspections.

(a) Facilities must follow the appropriate housing standard as defined in 29 CFR §500.132, (the Employment and Training Administration (ETA) and Occupational Safety and Health Administrations (OSHA) housing standards also referred to as the "ETA and OSHA Housing Standards"), or if applicable the Range Housing standard as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304. The inspection checklists setting forth those standards are available on the Department's website at https://www.td-hca.texas.gov/migrant-labor-housing-facilities.

(b) Inspections of the Facilities of applicants for a License and Licensees may be conducted by the Department under the authority of Tex. Gov't Code §2306.928 upon reasonable notice and using the appropriate inspection forms noted in subsection (a) of this section. Inspections may be conducted by other State or Federal agencies, on behalf of the Department, on forms promulgated by those agencies.

(c) In addition to the standards noted in subsection (a) of this section, all Facilities must comply with the following additional state standards:

(1) Facilities shall be constructed in a manner to insure the protection of Occupants against the elements. Facilities shall be maintained in good repair and in a sanitary condition. All doors to the exterior shall have working locks and all windows shall have working interior latches. Each unit shall have a working smoke detector. Fire extinguishing equipment shall be provided in an accessible place located within 100 feet from each Facility. Such equipment shall provide protection equal to a 2 1/2 gallon stored pressure of five gallon pump type water extinguisher. Such equipment shall also have a service tag that indicates no more than a year has passed since last servicing if rechargeable, and that the extinguisher is no more than 12 years old and properly charged if non-rechargeable or disposable. A working

carbon monoxide detector must be present in all units that use gas or other combustible fuel.

(2) Combined cooking, eating, and sleeping arrangements must have at least 100 SF per person (aged 18 months and older); the portion of the Facility for sleeping areas must include at least a designated 50 square feet per person.

(3) Facilities for Families with children must have a separate room or partitioned area for adult Family members.

(4) In dormitory-type facilities, separate sleeping accommodations shall be provided for each sex. In Family housing units, separate sleeping accommodations shall be provided for each Family unit.

(5) Facilities previously used to mix, load, or store pesticides and toxic chemicals may not be used for cooking, dishwashing, eating, sleeping, housing purposes, or other similar purposes.

(6) In a central mess or multifamily feeding operation, the kitchen and mess hall shall be constructed in accordance with any applicable local or state rules on food services sanitation.

(7) Beds, bunks, or cots shall have a clear space of at least 12 inches from the floor. Triple-deck bunks shall be prohibited. Single beds shall be spaced not closer than 36 inches laterally or end to end. Bunk beds shall be spaced not less than 48 inches laterally or 36 inches end to end. There shall be a clear ceiling height above a mattress of not less than 36 inches. The clear space above the lower mattress of the bunk beds and the bottom of the upper bunk shall not be less than 27 inches.

(8) Bathrooms, in aggregate shall have a minimum of one showerhead per 10 persons and one lavatory sink per six persons. Showerheads shall be spaced at least three feet apart to insure a minimum of nine square feet of showering space per showerhead.

(9) In all communal bathrooms separate shower stalls shall be provided.

(10) Mechanical clothes washers with dryers or clothes lines shall be provided in a ratio of one per 50 persons. In lieu of mechanical clothes washers, one laundry tray (which is a fixed tub (made of slate, earthenware, soapstone, enameled iron, stainless steel, heavy duty plastic, or porcelain) with running water and drainpipe for washing clothes and other household linens) or tub per 25 persons may be provided.

(11) All Facility sites shall be provided with electricity. The electrical systems shall conform to all applicable codes and shall be sufficient to provide the electricity with sufficient amperage to operate all required and available features, including but not limited to lighting, stoves, hot water heaters, heating systems, portable heaters, refrigeration, and such other devices as may be connected to wall type convenience outlets.

(12) A separate bed and clean mattress must be provided for each individual Worker or Couple. If a single bed is provided to a Couple, it may not be smaller than a full size.

§90.5. Licensing.

(a) Tex. Gov't Code §2306.922 requires the licensing of Migrant Labor Housing Facilities.

(b) Any Person who wants to apply for a License to operate a Facility may obtain the application form from the Department. The required form is available on the Department's website at https://www.tdhca.texas.gov/migrant-labor-housing-facilities.

(c) An application must be submitted to the Department prior to the intended operation of the Facility, but no more than 60 days prior to said operation. Applications submitted to the Department that are not complete, due to missing items and/or information, expire 90 days from Department receipt. In this circumstance, the fees paid are ineligible for a refund.

(d) The fee for a License is $250 per year, except in such cases where the Facility was previously inspected and approved to be utilized for housing under a State or Federal migrant labor housing program, and that such inspection conducted by a State or Federal agency is provided to the Department. Where a copy of such inspection conducted by a State or Federal agency is less than 90 days old, has no material deficiencies or exceptions, and is provided to the Department prior to the Department's scheduled inspection, the application fee shall be reduced to $75. However, if an inspection or re-inspection by the Department is required at the sole determination by the Department, the full application fee may apply.

(e) The License is valid for one year from the date of issuance unless sooner revoked or suspended. Receipt of a renewal application that is fully processed resulting in the issuance of a renewed license shall be considered as revoking the previous license, with the effective and expiration dates reflecting the renewal. All licenses have the same effective date as their issuance.

(f) Fees shall be tendered by check, money order, or via an online payment system (if provided by the Department), payable to the Texas Department of Housing and Community Affairs. If any check or other instrument given in payment of a licensing fee is returned for any reason, any License that has been issued in reliance upon such payment being made is null and void.

(g) A fee, when received in connection with an application is earned and is not subject to refund. At the sole discretion of the Department, refunds may be requested provided the fee payment or portion of a payment was not used toward the issuance of a License or conducting of an inspection.

(h) Upon receipt of a complete application and fee, the Department shall review the existing inspection conducted by a State or Federal agency, if applicable and/or schedule an inspection of the Facility by an authorized representative of the Department. Inspections shall be conducted during Business Hours on weekdays that the Department is open, and shall cover all units that are subject to being occupied. Inspections by other State or Federal agencies in accordance with the requirements in 29 CFR §§500.130 - 500.135 may be accepted by the Department for purposes of this License, only if notice is given to the Department prior to the inspection in order for the Department to consider the inspection as being conducted by an authorized representative of the Department in accordance with Tex. Gov't Code §2306.928. In addition, a certification of the additional state standards described in 10 TAC §90.4(c), relating to Standards and Inspections, must be provided by the applicant, along with any supplemental documentation requested by the Department, such as photographs.

(i) The Person performing the inspection on behalf of the Department shall prepare a written report of findings of that inspection. The Department, when it determines it is necessary based on risk, complaint, or information needed at time of application, may conduct follow-up inspections.

(1) If the Person performing the inspection finds that the Facility, based on the inspection, is in compliance with 10 TAC §90.4, relating to Standards and Inspections, and the Director finds that there is no other impediment to licensure, the License will be issued.

(2) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action which may be confirmed by the Provider without need for re-inspection, and the Director finds that there is no other impediment to licensure, the License will be issued subject to such conditions as the Director may specify. The applicant may, in writing, agree to these conditions, request a re-inspection within 60 days from the date of the Director's letter advising of the conditions, provide satisfactory documentation to support the completion of the corrective action as may be required by the Department, or treat the Director's imposing of conditions as a denial of the application.

(3) If the Person performing the inspection finds that one or more deficiencies were noted that will require timely corrective action and the deficiencies are of such a nature that a re-inspection is required, the applicant shall address these findings and advise the Department, within 60 days from the date of written notice of the findings, of a time when the Facility may be re-inspected. If a re-inspection is required, the License may not be eligible for the reduced fee described in subsection (d) of this section and the balance of the $250 fee must be remitted to the Department prior to the re-inspection. If Occupants are allowed to use the Facility prior to the re-inspection the applicant must acknowledge the operation of the Facility in violation of these rules, and pay a fee to the Department as laid out in §90.8 of this chapter (relating to Civil Penalties and Sanctions) through the date the Facility is approved by the inspector, and eligible for licensing. If the results of the re-inspection are satisfactory and the Director finds that there is no other impediment to licensure, the License will be issued. If it is the determination of the Director that the applicant made all reasonable efforts to complete any repairs and have the property re-inspected in a timely manner, the penalty for operating a Facility without a License may be reduced to an amount determined by the Director, but not less than $50 per person per day.

(4) If the person performing the inspection finds that the Facility is in material noncompliance with §90.4 of this chapter (relating to Standards and Inspections), or that one or more imminent threats to health or safety are present, the Director may deny the application. In addition, the Department may also take action in accordance with §90.8, relating to Civil Penalties and Sanctions.

(5) If access to all units subject to inspection is not provided or available at time of inspection, the inspection will automatically fail.

(j) If the Director determines that an application for a License ought to be granted subject to one or more conditions, the Director shall issue an order accompanying the License, and such order shall:

(1) Be clearly incorporated by reference on the face of the License;

(2) Specify the conditions and the basis in law or rule for each of them; and

(3) Such conditions may include limitations whereby parts of a Facility may be operated without restriction and other parts may not be operated until remedial action is completed and documented in accordance with the requirements set forth in the order.

(k) Correspondence regarding an application should be addressed to: Texas Department of Housing and Community Affairs, Attention: Migrant Labor Housing Facilities, P.O. Box 12489, Austin, Texas 78711-2489 or migrantlaborhousing@tdhca.texas.gov.

(l) The Department shall inform the applicant in writing, (which may be electronically) addressed to a contact provided on the most recent application, of what is needed to complete the application and/or if a deviation found during the inspection requires a correction in order to qualify for issuance of a License.

(m) For Providers that are housing Workers in hotels or apartments, failing to provide beds or meals as reported during the application process will, upon the Department's confirmation, result in the finding of noncompliance of not meeting state or federal housing standards as defined in the subchapter.

(n) Any changes to an issued License (such as increasing occupancy and/or adding a building or unit) may be made at the sole determination of the Department, based on current rules and policy, within 30 days of the License issuance. Any changes requested more than 30 days after License issuance will require the submission of an application for renewal, new inspection, and new fee payment, per the applicable rate.

(o) An applicant or Licensee that wishes to appeal any order of the Director, including the appeal of a denial of an application for a License or an election to appeal the imposing of conditions upon a License, may appeal such order by sending a signed letter to the Director within thirty (30) days from the date specified on such order, indicating the matter that they wish to appeal.

§90.6. Records.

(a) Each Licensee shall maintain and upon request make available for inspection by the Department, the following records:

(1) Copies of all correspondence to and from the Department. This shall include the current designation of each Provider;

(2) A current list of the Occupants of the Facility and the date that the occupancy of each commenced;

(3) Documentation establishing that all bedding facilities were sanitized prior to their being assigned to the current occupant; and

(4) Copies of any and all required federal, state, or local approvals and permits, including but not limited to any permits to operate a waste disposal system or a well or other water supply, and any correspondence to or from such approving or permitting authorities.

(b) All such records shall be maintained for a period of at least three years.

(c) A Licensee shall post in at least one conspicuous location in a Facility or in at least one building per site for a scattered site Facility:

(1) A copy of the License;

(2) A decal provided by the Department with the licensing program logo and the year for which the License was granted; and

(3) A complaint procedure poster or notice in at least 20 point bold face type using the form provided on the Department's website at https://www.tdhca.texas.gov/migrant-labor-housing-facilities, which is written in English and Spanish. However, at the request of a Provider or Worker, the Department, at its expense, will translate the poster to additional requested languages.

(4) For hotels, the License and poster described in paragraph (3) of this subsection may be posted in the lobby or front desk area only if this area is clearly visible, allows for easy reading of the aforementioned documents, and is readily accessible to the hotel guests and general public. If the hotel refuses to allow this posting, the License and poster described in this paragraph then must be posted in each room used to house the Workers.

§90.7. Complaints.

(a) If the Department receives any complaint, it shall investigate it by appropriate means, including the conducting of a complaint inspection. Any complaint inspection will be conducted after giving the Provider notice of the inspection and an opportunity to be present.

The complainant will be contacted by the Department as soon as possible but no later than 10 days after making a complaint and such a call may be relayed to local authority(s) if a possible life threatening safety or health issue is involved. Complaints received by the Department:

(1) will be accepted through the Department 's Internet website, in person at any Department office, or by telephone to 1-833-522-7028, or written notice to the Department (either through mail or electronic mail); and

(2) May be made in English, Spanish, or other language, as needed.

(3) May only be submitted by:

(A) An occupant of the Facility that is the subject of the complaint;

(B) A prospective occupant of the Facility that is the subject of the complaint;

(C) The Designated Representative of a person described by subparagraph (A) or (B) of this paragraph; or

(D) An individual, including the owner or tenant of an adjacent property, that has observed a clear violation of this chapter.

(b) On receipt of a complaint, the Department will not later than the fifth day after the date on which the Department receives a complaint, the Department shall notify the Provider by electronic mail that is the subject of the complaint. Notice under this subsection must include:

(1) the date that the complaint was received;

(2) the subject matter of the complaint;

(3) the name of each person contacted in relation to the complaint, if any; and

(4) the timeline for remedying a complaint that is not otherwise dismissed by the Department.

(c) If the Department is unable to make contact with a Provider of a Facility for the purpose of serving a notification of a complaint, the Department shall serve the notification of the complaint via registered or certified mail, return receipt requested.

(d) If the Department determines that a complaint is unfounded or does not violate the standards adopted by rule, the Department may dismiss the complaint and shall include a statement of the reason for the dismissal in the record of the complaint. The Department shall provide timely notice of any dismissal of the complaint, including the explanation for the dismissal, to the Provider of the Facility that is the subject of the complaint, and the complainant or their Designated Representative.

(e) A Designated Representative may not be required to reveal the name of any Worker on whose behalf the representative submitted a complaint under this section if the Department reviews the written authorization establishing the representation and verifies that the representative is authorized to submit the complaint. The Department will verify the Designated Representative is authorized through the following process:

(1) A written authorization must be submitted to the Department, using a Department-provided form or another document containing the following:

(A) The name of the Designated Representative, their contact information, and the name of any applicable organization they are representing.

(B) The complainant's name and contact information, if authorized to disclose.

(C) Whether the complainant wishes and authorizes the Designated Representative to disclose their name.

(D) The complainant's employer, contact information, and housing address.

(E) The length of time the authorization is valid for, not to exceed one year, as well as the effective date of the authorization.

(F) A list of the communications the Designated Representative is authorized to conduct on the complainant's behalf.

(G) The signature of both the complainant and the Designated Representative. The complainant's signature may be redacted by the Designated Representative if confidentiality is requested.

(2) If the written authorization indicates that a complainant wishes to maintain confidentiality, the Department will conduct a virtual conference (or, upon the request of the complainant, an in-person meeting that can occur during the complaint investigation including during a follow up inspection) with the Designated Representative and the complainant, to confirm the validity of the written representation authorization, and to discuss any other details of the authorization, as needed.

(f) The Department may seek to protect the identity of any complainant from disclosure, but cannot guarantee a complainant's identity would not be subject to disclosure under the law. However, as stated and conditioned in subsection (e) of this subsection, a Designated Representative may not be required to reveal the name of any Worker on whose behalf the representative submitted a complaint.

(g) A person who owns, establishes, maintains, operates, or otherwise provides a Facility, and a Person who employs a Worker who occupies a Facility may not retaliate against a person for filing a complaint or providing information in good faith relating to a possible violation of this chapter.

(h) Remediation of a complaint:

(1) Not later than the seventh day after the date that notice is received under Tex. Gov't Code §2306.934, the Provider of a Facility shall remedy the complaint.

(2) Proof of remediation, at the Department's sole discretion and determination will be submitted in the form of visual evidence (such as photos/videos, invoices/receipts, etc.) and a sworn affidavit. A follow up inspection by the Department's designated inspectors, prior to the end of the prescribed corrective action period may also be proof of remediation.

(3) For a Provider of a Facility who receives notice under Tex. Gov't Code §2306.934(e) or who does not submit proof of remediation in the manner provided by subsection (b) of this section, the Department shall have the Facility inspected as soon as possible following the seventh day after the date notice is received under Tex. Gov't Code §2306.934 to ensure remediation of the complaint.

(i) Remediation of a Complaint Regarding Certain Violations: This section applies only to a complaint that alleges a violation that the Department determines poses an imminent hazard or threat to the health and safety of the occupants of the Facility, including violations of rules adopted by the Department concerning sanitation. Examples include but are not limited to: failure to provide minimum square footage per person, insufficient or substandard bedding, bed sharing, insufficient kitchen facilities or meals not provided and insufficient waste disposal and interruption in or access to water.

(1) Subject to paragraph (3) of this subsection, not later than the 30th day after the date notice is received under Tex. Gov't Code §2306.934, the Provider of a Facility that is the subject of a complaint described by subsection (h) of this section shall remedy the complaint.

(2) The Department may refer a complaint described herein to a local authority for immediate inspection of the Facility.

(3) The Provider must relocate or provide for the relocation to another Facility of the occupants of a Facility that is the subject of a complaint under subsection (h) of this section if the remediation of that complaint is projected to take longer than a period of 30 days. The relocation must be completed within seven days. A Facility to which a Person is relocated under this subsection:

(A) must meet the standards described in §90.4 of this chapter (relating to Standards and Inspections);

(B) must be located in the same vicinity as the vacated Facility;

(C) any moving expenses shall be paid by the Provider; and

(D) Provider shall hand-deliver or send via certified mail, return receipt requested, a written notice in both English and Spanish (or any other language that may be the primary language of the workers involved). This notice shall be in plain language and detail timeframes, procedure for payments/reimbursements, likely time frames for moving, and all relevant phone numbers and other contact information, including the Department's complaint line. Providers must arrange a reader to communicate with illiterate Workers.

(E) These relocation procedures and requirements shall not apply when the Workers housed are temporarily in the United States under an H-2A visa authorized by 8 U.S.C. Section 1101(a)(15)(H)(ii)(a).

(j) The Department may conduct interviews, including interviews of Providers and Occupants, and review such records as it deems necessary to investigate a complaint.

(k) Any violations not resolved in the time frame above will be subject to the enforcement procedure described in §90.8 of this chapter (relating to Civil Penalties and Sanctions).

(l) Complaints regarding Migrant Labor Housing Facilities will be addressed under this section, and not §1.2 of this title (relating to Department Complaint System to the Department).

§90.8. Civil Penalties and Sanctions.

(a) When the Director finds that the requirements of the Act or these rules are not being met, he or she may assess civil penalties or impose other sanctions as set forth herein. Nothing herein limits the right, as set forth in the Act, to seek injunctive and monetary relief through a court of competent jurisdiction.

(b) A civil penalty collected by the Department, the county attorney for the county in which the violation occurred, or the attorney general, at the request of the Department, shall be deposited to the credit of the general revenue fund and may be appropriated only to the Department for the enforcement of this chapter.

(c) For violations that present an imminent threat to health or safety or if licensee has a history of violations, if not promptly addressed, the Director may suspend or revoke the affected License.

(d) For violations that the Department determines poses an imminent hazard or threat to the health and safety of the occupants of the facility, including violations of rules adopted by the Department concerning sanitation, the Provider will need to follow the relocation procedure described in 10 TAC §90.7(i)(3) relating to situations and procedures needed when Workers have to be relocated to alternate housing.

(e) For each violation of the Act or rules a civil penalty according to the attached penalty schedule but not less than $50 for each Person occupying the Facility in violation of this chapter for each day that the violation occurs will be assessed at the Department's sole determination.

(f) An action to collect a civil penalty under this section may be brought by:

(1) the Department through the contested case hearing process described by Tex. Gov't Code § 2306.930(b);

(2) the county attorney for the county in which the violation occurred, or the attorney general, at the request of the Department; or

(3) a Migrant Agricultural Worker if:

(A) a complaint regarding the violation for which the civil penalty is sought has been submitted under Tex. Gov't Code §2306.934; and

(B) at the time the complaint is submitted, the worker:

(i) lives in the Facility that is the subject of the complaint; and

(ii) is not temporarily in the United States under an H-2A visa authorized by 8 U.S.C. Section 1101(a)(15)(H)(ii)(a).

(g) An action to collect a civil penalty under this section may not be brought while:

(1) a contested case hearing brought by the Department under Tex. Gov't Code §2306.930(b) and relating to the same Facility is pending;

(2) an action for injunctive relief relating to the same violation is pending under Tex. Gov't Code §2306.932;

(3) an action brought by a county attorney or the attorney general and relating to the same migrant labor housing facility is pending; or

(4) the Provider of the Facility that is the subject of the action is:

(A) Awaiting for the Facility to be inspected under Tex. Gov't Code §2306.935(c) to confirm remediation of the violation that is the subject of the action; or

(B) providing housing at a Facility under Tex. Gov't Code §2306.936(d) to which the Migrant Agricultural Workers who occupied the Facility that is the subject of the action have been relocated under the procedures described in 10 TAC §90.7(i)(3).

(h) A civil penalty under this section begins accruing on the earlier of:

(1) for a violation with a remediation period described by Tex. Gov't Code §2306.935, the day that:

(A) the Department determines based on information submitted under Tex. Gov't Code §2306.935(b) that the Provider has failed to remedy the violation; or

(B) an inspection described by Tex. Gov't Code §2306.935(c) establishes that the Provider has failed to remedy the violation; or

(2) for a violation with a remediation period described by Tex. Gov't Code §2306.936, the 31st day following the date that notification of the complaint is received from the Department, unless the Provider has relocated under Tex. Gov't Code §2306.936(d) the Migrant Agricultural Workers who occupied the Facility that is the subject of the complaint.

(i) The Department shall issue a civil penalty invoice in accordance with the attached schedule for any findings of noncompliance that remain uncorrected as of the accrual dates noted above, provided that the TDHCA Compliance Division has not approved a corrective plan or extension. These invoices will be sent by electronic mail and USPS to the addresses provided on the most recent TDHCA license application. A civil penalty invoice must be paid within 30 days of issuance by the Department.

(j) In the event that there are multiple findings of noncompliance subject to civil penalties that fall under multiple groups in the attached schedule, the civil penalty shall be for the higher penalty amount.

(k) Failure to timely pay a civil penalty invoice shall cause the TDHCA Compliance Division to refer the unpaid invoice to the TDHCA Legal Division. The Legal Division will first attempt to resolve the matter informally. If the Legal Division is unable to resolve the matter informally, the Director, with the approval of the Board, shall cause a contested case hearing to be docketed before a SOAH administrative law judge in accordance with §1.13 of this title (relating to Contested Case Hearing Procedures), which outlines the remainder of the process. Alternatively, the Department may request that an action to collect the civil penalty be brought by the county attorney for the county in which the violation occurred, or the attorney general.

(l) The court in a suit brought under this chapter may award reasonable attorney's fees to the prevailing party.

(m) Civil penalties assessed regarding Migrant Labor Housing Facilities will be addressed under this section. Nothing herein limits the right, as set forth in the Act, to seek injunctive and monetary relief through a court of competent jurisdiction.

§90.9. Dispute Resolution, Appeals, and Hearings.

(a) A Licensee is entitled to appeal any order issued by the Director, including any order as a result of an inspection or a complaint and any order denying a License or issuing a License subject to specified conditions.

(b) In lieu of or during the pendency of any appeal, a Licensee may request to meet with the Director or, at his or her option, his or her designee to resolve disputes. Any such meeting may be by telephone or in person. Meetings in person shall be in the county where the Facility affected is located, unless the Licensee agrees otherwise.

(c) A Licensee may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (relating to Alternative Dispute Resolution).

(d) All administrative appeals are contested cases subject to, and to be handled in accordance with, Chapters 2306 and 2001, Tex. Gov't Code.

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

Filed with the Office of the Secretary of State on February 5, 2026.

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Bobby Wilkinson
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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas adopts amendments to §8.201, relating to Pipeline Safety and Regulatory Program Fees, without changes to the proposed text as published in the November 14, 2025, issue of the *Texas Register* (50 TexReg 7397); the rule text will not be republished. The Commission received no comments on the proposal. The Commission adopts the amendments to implement House Bill 4042, 89th Texas Legislature (Regular Session, 2025). The bill removes the specification that gas must be natural gas with respect to gas distribution pipelines, gas master-metered pipelines, gas distribution systems, and gas master-metered systems whose operators may be subject to annual pipeline safety and regulatory fees.

The Commission adopts amendments throughout the rule to remove the word "natural" from the rule text.

The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; and Texas Utilities Code, §121.201, §121.211, §121.213, and §121.214, which authorize the Commission to adopt and collect pipeline safety and regulatory program fees.

Statutory authority: Texas Natural Resources Code, §81.051, §81.052; and Texas Utilities Code, §121.201, §121.211; §121.213, §121.214.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81; and Texas Utilities Code, Chapter 121.

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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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

The Public Utility Commission of Texas (commission) adopts amendments to 19 procedural rules in 16 Texas Administrative Code (TAC) Chapter 22. The commission adopts the following rules with changes to the proposed text as published in the August 15, 2025 issue of the *Texas Register* (50 TexReg 5269): §22.2, relating to Definitions; §22.3, relating to Standards of Conduct; §22.4, relating to Computation of Time; §22.31, relating to Classification in General; §22.52, relating to Notice in Licensing Proceedings; §22.53, relating to Notice of Regional Hearings; §22.74, relating to Service of Pleadings and Documents; §22.75, relating to Examination and Correction of Pleadings and Documents; §22.77, relating to Motions; §22.78, relating to Responsive Pleadings; §22.79, relating to Continuances; §22.80, relating to Commission Prescribed Forms; §22.101, relating to Representative Appearances; §22.103, relating to Standing to Intervene and §22.104, relating to Motions to Intervene. These rules will be republished.

The commission adopts the following rules with no changes to the proposed text as published in the August 15, 2025 issue of the *Texas Register* (50 TexReg 5269): §22.21, relating to Meetings; §22.23, relating to Delegation of Authority to Request Representation by the Attorney General; §22.56, relating to Notice of Unclaimed Funds and §22.76, relating to Amended Pleadings. These rules will not be republished.

The commission received comments on the proposed rule from the Lower Colorado River Authority (LCRA); Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company LLC (Oncor); Southwestern Public Service Company (SPS); Texas Association of Water Companies, Inc. (TAWC); and Vistra Corporation (Vistra).

General Changes

The adopted rules include various clerical and grammatical changes, as well as changes to outdated rules, statutes, or certain terms.

Definitions

Adopted §22.2 is revised to state "[a] written document submitted by a party, a person seeking to intervene, or an amicus curiae in a proceeding." The term "intervene" replaces the previous term "participate." Adopted §22.2 replaces the definitions of "contested case" and "retail public utility" with statutory cross references. Adopted §22.2 omits the definitions of "docket," "hearing day," "PWS" (Public Water System), and "WQ" (Water Quality discharge permit) as those terms are either outdated or unused in the commission's procedural rules.

Standards of Conduct

Adopted §22.3 separates the requirements and prohibitions associated with ex parte communications under §2001.061 of the APA from the records retention of communications by public utilities and their affiliates with the commission and commission employees under PURA §14.153. Adopted §22.3 also separates the standards for recusal or disqualification of an administrative law judge from the standards for recusal of a commissioner. Adopted §22.3 refines the procedures for motions for disqualification or recusal of an administrative law judge.

Computation of Time

Adopted §22.4 is revised for consistency with the defined term "working day" (i.e., replacing the phrase " a day the commission is not open for business)." Adopted §22.4 also adds reference to "5:00 P.M. Central Prevailing Time" for consistency with the commission's filing rules §22.71, relating to Commission Filing Requirements and Procedures and §22.72, relating to Form Requirements for Documents Filed with the Commission, which were updated to include a 5:00 P.M. filing deadline in Project 52059.

Notice in Licensing Proceedings and Regional Hearings

Adopted §22.52 and §22.53 retain newspaper notice for electric and telephone licensing proceedings as well as for regional hearings. Adopted §22.52 also exempts service area exceptions from the notice requirements for electric licensing proceedings; corrects references to the "Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse" or similar entity as designated by the Department of Defense; and revises the proof of notice requirements as they relate to affected landowners for consistency with Senate Bill 1281 (87R). Adopted §22.52 also requires notice for telephone licensing proceedings to identify the commission's docket control number and style assigned to the case by Central Records.

Service of Pleadings and Documents

Adopted §22.74 separates the standard methods of service (i.e., personal service, by e-mail, by mail, by agent or by courier, or in-person delivery) with service by filing, which is an alternative method of service that must be approved by the presiding officer. The provision also specifies the form and manner in which service must be made for each type of service.

Examination and Correction of Pleadings and Documents

Adopted §22.75 is revised to conform with the requirements of §22.72 and remove the exemption for motions for rehearing and replies to motions for rehearing. Adopted §22.75 is also eliminates the requirement for a rate change application or certificate of convenience and necessity (CCN) application to be deemed sufficient if the presiding officer has not issued a written order concluding that material deficiencies exist in the application within 35 days after the filing of the application. Adopted §22.75 also eliminates the 35-day deadline for the presiding officer to issue a written order specifying a time within which an applicant must amend a rate application or CCN application to correct material deficiencies.

Motions and Certificates of Conference

Adopted §22.77 is revised to require movants to attempt to confer with all parties that could be affected by the motion or pleading, but does not require the movant to attempt to confer with all parties to the proceeding. Adopted §22.77 also requires written motions to include a certificate of conference that substantially complies with one of two examples provided by the rule.

Responsive Pleadings

Adopted §22.78 is retitled to exclude reference to emergency action both in the title of the rule and in the text of the rule. Specifically, adopted §22.78 authorizes the presiding officer to generally take action on a pleading before the deadline for filing responsive pleadings, rather than limiting the presiding officer to take such action only in emergencies.

Commission Prescribed Forms

Adopted §22.80 is revised to authorize the immediate implementation of a new commission-prescribed form or a substantive change to an existing form on a temporary basis consistent with the requirements of §2001.034 of the Texas Administrative Procedure Act (APA) concerning emergency rulemaking, including reference in the "in Addition" section of the *Texas Register*. The adopted rule also omits proposed language authorizing commission staff to make minor updates to commission-approved forms and concerning the correction of minor conflicts between the language of a form and an underlying statute or rule associated with the form. Additionally, language regarding the maintenance of a complete index to and set of all commission prescribed forms is preserved.

Representative Appearances

Adopted §22.101 is revised to omit reference to the filing of multiple copies of notices of a change in authorized representative for consistency with the commission's filing rules §22.71, and §22.72 which were updated to require the filing of only one copy of a pleading or document. Adopted §22.101 is also revised to omit reference to facsimile (fax) numbers and include email as a type of contact information.

Standing to Intervene

Adopted §22.103 is revised to clarify that commission staff represents the public interest and is not required to file a motion to intervene. Adopted §22.103 is also revised to state that a person, not their representative, has standing to intervene if that person has a justiciable interest that may be adversely affected by the outcome of the proceeding.

Motions to Intervene

Adopted §22.104 is restructured for clarity and also requires motions to intervene to include the name and email address of the person requesting to intervene unless the motion is accompanied by a statement of no access under §22.106, relating to Statement of No Access. Adopted §22.104 clarifies that the criteria for granting late intervention include the criteria for standing identified under §22.103(b). Adopted §22.104 extends the deadline from five working days to ten working days for commissioners to place a late motion to intervene after the issuance of a proposal for decision or a proposed order on the agenda of the next scheduled open meeting or other meeting. Adopted §22.104 also omits the three-day deadline for the commission to rule on a late motion to intervene that has been filed after the issuance of a proposal for decision or a proposed order.

General Comments

Internal cross-references to commission rules

OPUC recommended that internal cross-references to other commission rules refer to the applicable chapter of the Texas Administrative Code, rather than the overall title (i.e., "§22.74 of this title" should be revised to "§22.74 of this chapter.") OPUC stated the applicable title for commission rules would be "Title 16, Economic Regulation" and therefore include rules of at least six different State of Texas agencies. OPUC noted that "of this chapter" is the correct reference in most instances, as that would refer to Chapter 22, under Part 2 of Title 16 which is the appropriate reference.

Commission response

The commission declines to implement the recommended change. Across the Texas Administrative Code there may be several instances of a specific chapter. For instance, "Chapter 22" appears in Title 1, Title 4, Tile 13, Title 16, Title 19, Title 28, and Title 43. The reference to "Title 16" is intended to ensure the Chapter 22 that is applicable to the commission rules. For this reason, the usage of "of this title" is common practice among Texas state agencies (e.g., Title 16, Part 1, Chapter 3 of the Texas Railroad Commission's rules and Title 30, Part 1, Chapter 290 of the Texas Commission on Environmental Quality's rules both use the phrase "of this title" over 200 times and "of this chapter" less than five times).

Usage of the terms "shall" vs. "must"

OPUC recommended that the term "shall" be preserved across the Chapter 22 rules, rather than be replaced with specific instances of "must" or "will," unless otherwise appropriate to do so in accordance with the Texas Code Construction Act (TCCA). OPUC maintained that the Legislature intentionally used the term "shall" when drafting the statutes that underpin the commission's rules, even as recently as the last legislative session. Accordingly, if the Legislature had meant to use a different term, then it would have done so explicitly. OPUC further contended that the Texas Code Construction Act provides clear, separate definitions of "shall" and "must" and therefore the terms are not interchangeable. OPUC noted, had the Legislature intended the terms to be interchangeable, then it would have clearly stated that in the same manner that "may not" and "shall not" are. OPUC also commented that "shall" is not an antiquated term, given that other current bodies of law, such as "The Texas Rules of Civil Procedure, Texas Disciplinary Rules of Professional Conduct, and Texas Code of Judicial Conduct" all refer to the term "shall."

Commission response

The commission declines to implement the recommended change. The commission acknowledges the general applicability of the TCCA to the commission's rules. See Texas Government Code §311.002(4) (applying the TCCA to "each rule adopted under a code"). However, forgoing use of the term "shall" or replacing the term with "may," "must," or another contextually relevant term is appropriate and not inconsistent with the TCCA. As indicated by OPUC, the TCCA does separately indicate a specific construction for the terms "may," "shall," "must," and "may not" under Texas Government §311.016(1)-(3) and (5). However, the statute also establishes that: "[t]he following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute" (emphasis added). This provision indicates a general level of flexibility in usage and interpretation of various modal verbs. More importantly, the TCCA does not require the usage of "shall" as opposed to "must" or "may" when implementing statutes in agency rules. Therefore, the commission is not prohibited by law from utilizing other modal verbs to replace "shall." Lastly, commenters have not identified instances where

the usage of a different modal verb has resulted in ambiguity as to the intended meaning.

Project 52059 E-Filing Changes

OPUC recommended language in the Chapter 22 rules be revised to reflect changes to §22.71, relating to Commission Filing Requirements and Procedures, and §22.72, relating to Form Requirements for Documents Filed with the Commission, under Project 52059, to refer to changes being made under those rules to accommodate the commission's electronic filing system.

Commission response

The commission revises the adopted rules to reflect revisions to §22.71 and §22.72 adopted under Project 52059.

Market Competition Rules

OPUC commented that some of the proposed rule changes could impact market competition and therefore be subject to review by the Governor's office in accordance with APA §2001.039.

Commission response

The commission declines to implement the recommended change. Texas Government Code §2001.039 applies only to a state agency's review of existing rules (rule reviews such as Project 56574 and Project 54589) and does not cover market competition rules subject to review by the Governor's office. OPUC is presumably referring to market competition rules under PURA §39.001(e) that are subject to judicial review. The rules amended in Project 58400 govern the standards of practice at the commission, not activities in the competitive electric markets. The commission declines to designate any of the rules in this order as competition rules.

Minor and conforming changes

The commission makes minor and conforming changes across the adopted rules for spelling, grammar, and style. The commission also corrects the term "tariff control proceeding" or "tariff control" to "tariff filing proceeding" and "tariff filing," where applicable in §22.2 and §22.31.

Proposed §22.2- Definitions

Proposed §22.2 establishes the definitions applicable to all procedural rules in Chapter 22.

Proposed §22.2(13)- Definition of "commission filing system"

Proposed §22.2(13) defines "commission filing system" as the "electronic filing system maintained for the archiving and organization of items and materials received by the commission.

The commission omits this definition as the term was intended to correspond with the revisions made to the filing rules §22.71 and §22.72 in Project 52059. However, the term "commission filing system" was omitted in the adopted versions of this rule rendering the inclusion of this term in §22.2 moot. The commission renumbers subsequent definitions accordingly.

Proposed §22.2(26)- Definition of "major rate proceeding"

Proposed §22.2(26) defines "major rate proceeding" as "[a]ny proceeding filed under PURA §§36.101- 36.112, 36.201 - 36.203, 36.205, 51.009, 53.101 - 53.113, 53.201, or 53.202 involving an increase in rates which would increase the aggregate revenues of the applicant more than the greater of $100,000 or 2.5%." The definition also states that "a major rate proceeding is any rate proceeding initiated under PURA §§36.151 - 36.156, 53.151, or 53.152 in which the respondent utility is directed to file a rate filing package" and, "[f]or water and sewer utilities, a rate filing package filed under TWC §13.187 is a major rate proceeding."

OPUC and TAWC recommended that the defined term "major rate proceeding" be revised to include rate proceedings involving Class B water or sewer utilities by referencing 13.1871, or 13.18715. OPUC further recommended the term be revised to include rate proceedings involving certain Class C water or sewer utilities. OPUC commented that Class B utilities could include up to 9,999 taps or connections, which is one less than the Class A category. Moreover, OPUC stated that a Class C utility could serve almost 2,300 taps or connections, which is comparable to a small Class B utility. OPUC and TAWC provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change as it is out of scope. The revision may have major consequences as the designation of an application as a major rate proceeding prohibits the application from being eligible for administrative review under §22.32(a), relating to Administrative Review, or for informal disposition under §22.35(a). Moreover, major rate proceedings must comply with additional requirements under §22.51(a), relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings and §22.225, relating to Written Testimony and Accompanying Exhibits. The commission will consider this revision in a later rulemaking.

Proposed §22.2(28)- Definition of "mediation"

Proposed §22.2(28) defines "mediation at" as a form of dispute resolution in which an impartial person facilitates communication between parties to promote negotiation and settlement of disputed issues.

Commission response

The commission omits the term "voluntary" from the definition of "mediation" to reflect legal practice as some forms of mediation may be involuntary (i.e., required by law or commission order).

Proposed §22.2(31)- Definition of "pleading"

Proposed §22.2(31) defines "pleading" as "[a] written document submitted by a party, or a person seeking to intervene in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding."

Oncor and OPUC noted that the proposed language for the defined term "pleading" could have unintended consequences. Oncor recommended the defined term "pleading" be revised to refer to a "document submitted by a party, or a person seeking to intervene" rather than "a person seeking to participate." Oncor stated that a utility can sometimes be a necessary participant in a proceeding but might not be an "intervenor." Oncor explained that utilities are often "applicants" in proceedings they initiate, or otherwise initiated by Staff, and frequently file pleadings in such proceedings. In other proceedings, such as complaints, a utility may file pleadings without being an "intervenor." Oncor provided draft language consistent with its recommendation. OPUC opposed implementing the proposed revision to the defined term "pleading."

Commission response

The commission declines to implement the recommended change. Applicants, including utility applicants, are considered parties in commission contested cases matters. Moreover, responses to complaints are "responsive pleadings" under §22.78(b). The revision intends to cover a broader, not narrower scope, of documents that may be considered "pleadings."

As an alternative, OPUC recommended revising the defined term "pleading" to include a written document submitted by an amicus curiae. OPUC stated that the proposed revision to the term to be applicable to intervenors may effectively exclude the public from participation in instances where they have the right or authority to do so. OPUC stated that currently, a person may file an amicus brief with the commission, but that would be precluded under the revised language. OPUC provided draft language consistent with its alternative language.

Commission response

The commission agrees with OPUC and implements the recommended change.

Proposed §22.2(45)- Definition of "working day"

Proposed §22.2(45) defines "working day" as "[a] day on which the commission is open for the conduct of business."

OPUC recommended the defined term "working day" under proposed §22.2(45) be revised to clarify whether any differences in the term exist with the term "business day." OPUC commented that the term "working day" is not used in either PURA or the Texas Water Code but do utilize the term "business day" when establishing deadlines. OPUC noted that Texas Government Code §552.0031 defines the term "business day" to mean "a day other than: (1) a Saturday or Sunday; (2) a national holiday . . . or (3) a state holiday" whereas proposed §22.2(45) defines "working day "as [a] day on which the commission is open for the conduct of business." OPUC stated that there appears to be "little to no difference between the two terms" but averred that "when a statute or rule is subject to litigation, courts or the administrative decisionmaker may scrutinize the terminology used in deciding the issue at hand. OPUC indicated that its recommended revision should therefore be implemented to provide clarity on commission deadlines to the public, courts, and administrative law judges when interpreting commission rules. OPUC noted that their recommended clarification is within the scope of the rulemaking because it is an additional modification that is reasonably related to the proposed changes to the defined term "working day."

Commission response

The commission declines to implement the recommended change. The term "working day" as defined by §22.2(45) has a different scope than the definition of "business day" under Texas Government Code §552.0031. Specifically, the term "working day" refers to "[a] day on which the commission is open for the conduct of business." The commission may not be open for business on a day other than a holiday, such as a storm or other emergency. The current definition of "working day" has proven to be sufficient in commission proceedings and revising it would entail extensive revisions to other provisions for little commensurate benefit.

Proposed §22.3- Standards of Conduct

Proposed §22.3 establishes the standards of conduct for every person appearing in a proceeding before the commission, including guidance for violations, requirements for ex parte communications, and procedures for the recusal or disqualification of an administrative law judge or the recusal of a commissioner.

Proposed §§22.3(b), 22.3(b)(2) and 22.3(b)(3)- Ex Parte Communications

Proposed §22.3(b) establishes the requirements governing ex parte communications in contested cases before the commission. Proposed §22.3(b)(2) authorizes members of the commission or administrative law judges assigned to the case to communicate ex parte with employees of the commission that are not participating in the case to utilize their special skills or knowledge of the commission and its staff in evaluating evidence. Proposed §22.3(b)(3) provides that number running procedures are not impermissible ex parte communications if memoranda "memorializing such procedures are preserved and made available to all parties of record in the proceeding to which the number running procedures relate."

OPUC recommended the existing version of §22.3(b)(1) be reinstated as its repeal, in its view, violates statutory requirements in PURA § 14.153. OPUC stated that the repeal of existing §22.3(b)(1) is unlawful because the commission is statutorily mandated to "adopt rules" for the scenarios expressly set forth in PURA §14.153. Specifically, PURA §14.153(a) requires the commission to "adopt rules governing communications with the regulatory authority or a member or employee of the regulatory authority by a public utility, an affiliate, or a representative of a public utility or affiliate. PURA §14.153(b) requires a record of communication to contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority; the name of the business entity represented; a brief description of the subject matter of the communication; and the action, if any, requested by the public utility, affiliate, or representative. Lastly, PURA §14.153(c) requires communication records compiled under PURA §14.153(b) to be made available monthly. OPUC commented that the existing version of §22.3(b)(1) relates to communications between certain individuals or entities with the commission and is distinct from the provision concerning ex parte communications. OPUC further noted that PURA §14.153 "does not limit communication with the Commission to personal communications." OPUC provided redline language consistent with its recommendation.

Commission response

The commission reinstates existing §22.3(b)(1) with a correct reference to PURA §14.153 as §22.3(c) and renumbers all subsequent provisions. The commission omits the previous list provided under existing §22.3(b) as it is more expansive and burdensome than what is required under PURA §14.153.

SPS recommended proposed §22.3(b)(2) be revised to require the commission to, upon request, maintain and make available to the public and all parties all records of permitted ex parte communications. SPS acknowledged that the proposed language closely tracks that of Texas Government Code §2001.061, but requested this additional language to be added to inform the public regarding communications that concern their proceedings and the decisionmaking process surrounding commission actions that affect the public interest. SPS further recommended that such records "identify the names of people involved in the communication, the control number, the subject matter of communication, the date of the communication, and the special skills or knowledge requested."

Commission response

The commission declines to implement the recommended change because it is not required under the APA. Moreover, the proposal would impose a new documentation requirement that would unnecessarily increase commission staff workload and use agency resources for little commensurate benefit.

OPUC recommended that proposed §22.3(b)(2) and (b)(3) be revised to comply with §2001.090 of the APA. OPUC stated that limited ex parte communications are authorized under §2001.061 and §2001.090 of the APA. However, the proposed rule only incorporates language from §2001.061, not §2001.090. OPUC commented that the §2001.090 requires "each party shall be notified either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information" and for each party to be provided an opportunity to contest officially noticed material. In contrast, proposed §22.3(b)(2) and (3) only refer to permissible ex parte communications during contested cases. Specifically, OPUC stated that the number running procedures identified as permissible ex parte communications under §22.3(b)(2) but does not comply with §2001.090 of the APA when describing the rights afforded to parties concerning the communication. OPUC provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is unnecessary. The taking of official notice is completely unrelated to ex parte communications under §22.3 and Texas Government Code § 2001.090. The official notice requirements of Texas Government Code § 2001.090 are already codified in commission rules under §22.225, relating to Official Notice.

Proposed §22.3(c)- Standards for Recusal or Disqualification of Administrative Law Judges

Proposed §22.3(c) aligns the standards for recusal or disqualification for administrative law judges with Rule 18b of the Texas Rules of Civil Procedure.

OPUC recommended proposed §22.3(c) be revised to authorize a commissioners or SOAH administrative law judges to disqualify themselves in accordance with other applicable law. OPUC commented that the provision does not account for other law that applies to administrative law judges. Specifically, OPUC recommended the provision be revised to reference Texas Government Code Chapter 572, which prescribes standards of conduct for administrative law judges as employees of the State of Texas executive branch. OPUC stated that a general statement of applicability is sufficient to ensure the rule can still apply without amendment in the event Chapter 572 is revised, unless the Legislature directs otherwise. OPUC provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is unnecessary. Commission administrative law judges frequently and voluntarily recuse themselves from commission proceedings to avoid any appearance of impropriety. Additionally, no part of Texas Government Code Chapter 572 relates to the recusal or disqualification of administrative law judges. Only one section, Texas Government Code § 572.051, imposes ethical standards of conduct on state employees which, by extension, also apply to commission administrative law judges. Such standards of conduct apply regardless of whether Chapter 572 is referenced in §22.3.

Proposed §22.3(d) and §22.3(e)- Motions for Disqualification or Recusal of an Administrative Law Judge and Standards for Recusal of Commissioners

Proposed §22.3(d) establishes the requirements and procedures for filing a motion for disqualification or recusal of an administrative law judge. Proposed §22.3(e) establishes the standards for recusal of a commissioner from a proceeding.

OPUC recommended proposed §22.3(d) be deleted as it is duplicative of proposed §22.3(e), as both provisions refer to standards for recusal of commissioners. Similar to its recommendations for recusal of administrative law judges, OPUC also recommended the addition of new §22.3(e)(4), which would require a commissioner's recusal if other state law requiring the recusal applies. OPUC also recommended minor clarifying edits to proposed §22.3(e) as a whole. OPUC provided draft language consistent with its recommendation.

Commission response

The commission agrees with OPUC and deletes the first initial instance of proposed §22.3(d), which relates to the standards for recusal of commissioners because it is duplicative of §22.3(e), which relates to motions for recusal of a commissioner. However, the commission declines to revise §22.3(e) or add §22.3(e)(4) as OPUC recommends because it is unnecessary. If another law addresses a commissioner's ability to hear a case, then that commissioner should evaluate how the law may apply and whether the commissioner should self-recuse.

Proposed §22.3(d)(1)- Contents of Motion for Disqualification or Recusal of Administrative Law Judge

Proposed §22.3(d)(1) establishes minimum requirements for the contents of motions for the disqualification or recusal of an administrative law judge.

OPUC recommended proposed §22.3(d)(1) be revised to authorize a motion for disqualification or removal of an administrative law judge to include grounds outside of those specified under proposed §22.3(c). OPUC provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is unnecessary. As proposed, §22.3(d)(1) does not expressly limit the movant's possible grounds for disqualification or recusal to those listed in proposed §22.3(c). Therefore, it is not necessary to add a provision stating that the movant is not limited to the criteria listed in §22.3(c).

Proposed §§22.3(f), 22.3(f)(2) and 22.3(f)(4)- Standards for Recusal of Commissioners

Proposed §22.3(f) establishes the requirements and procedures for filing a motion for the recusal of a commissioner. Proposed §22.3(f)(1) establishes minimum requirements for motions for the recusal of a commissioner. Proposed §22.3(f)(2) establishes the timing for filing and serving motions for recusal of a commissioner.

For consistency, OPUC recommended the terms "disqualification" and "disqualified" be omitted from §22.3(f)(2) and §22.3(f)(4), which govern the recusal of commissioners. OPUC provided draft language consistent with its recommendation.

Commission response

The commission agrees with OPUC and implements the recommended changes and either deletes the terms "disqualification" and "disqualified" or replaces those terms with "recusal" or "recused" where appropriate.

Proposed §22.4- Computation of Time

Proposed §22.4 establishes the process for computing time under Chapter 22, by commission order, or any applicable statute.

Proposed §22.4(a)- Counting Days

Proposed §22.4(a) states that, for purposes of computing time, "the period begins on the day after the act, event, or default in question. The period concludes on the last day of the designated period unless that day is not a working day, in which event the designated period runs until the end of the next working day."

OPUC recommended proposed §22.4(a) additionally specify the procedure for counting days prior to the occurrence of an act or event. OPUC stated that, in some commission proceedings, deadlines may fall before an event occurs. For clarity, OPUC recommended the rule establish how deadlines occurring prior to a specified event or action. OPUC provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is unnecessary. The current methodology for counting days under §22.4 is sufficient for commission matters. Furthermore, the addition of a separate methodology for counting days may lead to confusion and errors in scheduling or meeting deadlines for commission staff, stakeholders, and parties to contested cases.

OPUC recommended the filing deadline be 3:00 P.M. as the general public may view 5:00 P.M. as the end of the next working day.

Commission response

The commission declines to implement the recommended change. The revision to the 5:00 P.M. filing deadline is consistent with general filing changes made to §22.71 and §22.72 under Project 52059 and reflected in the Chapter 22 rules in this rule review. However, the commission revises the deadline to align with the "Central Prevailing Time" time zone for consistency with §22.71 and §22.72.

Proposed §22.4(b)- Extensions

Proposed §22.4(a) authorizes the presiding officer to, unless otherwise provided by statute, extend the time to file any documents upon the filing of a motion and prior to the expiration of the applicable period of time on a showing of good cause and that the need for extension is not caused by "the neglect, indifference, or lack of diligence of the party making the motion."

LCRA recommended proposed §22.4(b) be revised to authorize party-agreed extensions of time subject to rejection or modification by the presiding officer. LCRA stated that the proposed rule only authorizes the presiding officer to grant extension of time but noted that there may be instances where parties may independently reach an agreement to extend time amongst each other, therefore rendering the involvement of the presiding officer unnecessary. LCRA provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change. Any party is authorized to seek an extension of time and the agreement between one or more parties improves the odds of approval by the presiding officer. However, as the adjudicator charged with the timely resolution of commission proceedings, the presiding officer retains discretion on whether to grant an extension even if the request is supported by multiple parties.

Proposed §22.21- Meetings

Proposed §22.21 establishes the general procedural and scheduling requirements for open meetings held by the commissioners.

Proposed §22.21(a)- Time and Place of Open Meetings

Proposed §22.21(a) establishes that "[t]he commission will meet at times and places to be determined either by the chairman of the commission or by agreement of a majority of the commissioners."

OPUC recommended proposed §22.21(a) be revised to refer to the chairman's designee rather than by agreement of a majority of the commissioners. OPUC stated the proposed language could result in a "walking quorum" that violates the Texas Open Meetings Act.

Commission response

The commission declines to implement the recommended change. The commissioners do not need to meet and deliberate over matters under the commission's jurisdiction to coordinate suitable dates for open meetings. For example, the commissioners can provide OPDM with available dates for open meetings without conferring with each other on when to schedule open meetings. Therefore, the proposed language poses no risk of violating the Texas Open Meetings Act.

Proposed §22.52 and §22.53- Notice in Licensing Proceedings and Notice of Regional Hearings

Proposed §22.52 establishes the requirements for notice in electric and telephone licensing proceedings held at the commission. Proposed §22.53 establishes the requirements for notices of regional hearings held by the commission.

Proposed §§22.52(a)(1), 22.52(a)(1)(B), 22.52(a)(1)(D) and §22.53- Publication of notice and proof of publication of notice in electric licensing proceedings; Notice requirements for regional hearings

Proposed §22.52(a)(1) requires an applicant for an electric licensing proceedings to publish notice of the applicant's intent to secure or amend a certificate of convenience and necessity "on the applicant's website and through an appropriate medium of communication, such as social media, that is generally available in the county or counties where a certificate of convenience and necessity is being requested" on the day the application is filed. The provision also requires the notice published on the applicant's website to be "easily locatable from the homepage of the applicant's website and published for the duration of the proceeding." Proposed §22.52(a)(1)(B) requires the notice to must describe in clear, precise language the geographic area for which the certificate is being requested and the location of any alternative routes of the proposed facility. Proposed §22.52(a)(1)(D) requires proof of publication of notice to be in the form of an affidavit that specifies "each medium of communication in which the notice was published, the county or counties in which each medium of communication is generally available,

the dates upon which the notice was published, and a copy of the notice as published." The provision also requires proof of publication to be submitted to the commission as soon as is available and for proof of notice on a utility's website to be in the form of an affidavit that includes the hyperlink identifying the webpage "on which the notice can be viewed, the date upon which the notice was first published, and a copy of the notice as published."

Oncor recommended that proposed §22.52(a)(1) and proposed §22.53 specify each commission-authorized method for publishing notice for licensing proceedings, as the existing rule does. Oncor stated that the absence of prescribed methods for providing notice risks and encourages unnecessary litigation. Oncor explained that parties to a licensing proceeding may "constantly question whether utilities provided adequate notice or whether a utility incurred excessive costs to provide notice in a particular manner (as in a newspaper) that could have been avoided with a different method of notice." Oncor stated that its comments and recommendations also extend to the proof of publication of notice requirements under proposed §22.52(a)(1)(D). Oncor provided draft language consistent with its recommendation.

Commission response

The commission declines to proceed with its proposed revisions to §22.52 and §22.53 to replace newspaper notice for licensing proceedings and regional hearings with notice by social media or website notice. Therefore, the proposed recommendations are rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking. The commission also revises §22.52(a)(1)(B) to specify "the location of any alternative routes of the proposed facility using route segments proposed by the applicant."

Oncor and LCRA opposed social media being included in proposed §22.52 and proposed §22.53 as a method of notice and recommended it be removed. Oncor expressed concern about social media being a prescribed method of notice. Specifically, Oncor indicated that, while it does not oppose notice through social media for proceedings that would broadly impact its end-use customers, there may be practical concerns with using social media to publish notice for proceedings that impact a narrower spectrum of Oncor's customers or proceedings that impact individuals that may not be customers of Oncor, such as individuals affected by minor CCN proceedings that cross distribution territory not covered by Oncor. Similarly, LCRA acknowledged that newspaper or community-specific outreach methods may be more effective in reaching the intended audiences, particularly for utilities with large or rural service territories. LCRA also noted that the information required under §22.52(a)(1)(B) is not easily published or read on social media websites. LCRA stated that, as a political subdivision of the State of Texas, it is prohibited from using certain popular social media platforms "in the interest of protecting its resources and infrastructure, consistent with the directives issued by the State of Texas and the Office of the Governor." Oncor explained that social media or other direct communications to end-use customers concerning matters that do not impact them whatsoever could lead to "notification fatigue" and therefore had the unintended consequence of leading those customers to not follow or ignore Oncor's social media posts. Oncor further noted that notification through social media would "create confusion as to the manner and timing for interested parties to provide feedback to and ask questions of the utility" such as the time period for landowners to notify the utility of any obstructions. Oncor emphasized that the best practice for managing such feedback from interested parties is the current process of direct interaction with utility staff who are appropriately trained to respond and analyze that feedback. Oncor commented that a utility will possess dates by which other information is needed from interested parties, and if a response is received past those dates, it will accordingly be too late to incorporate it into CCN routing decisions. Oncor stated that publication of notice on a social media platform could accordingly "confuse and delay these other important communications."

Commission response

The commission declines to proceed with its proposed revisions to §22.52 to replace newspaper notice for licensing proceedings with notice by social media or website notice. Therefore, the proposed recommendations are rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking.

Oncor alternatively recommended that proposed §22.52(a)(1) and proposed §22.53 clarify that, if social media remains a required method of notice for CCN or other licensing proceedings despite the concerns Oncor has raised, then "temporary delays in, and temporary removals of, social media notice publications [be] permitted when necessary to prioritize significant storm- or emergency-related notifications to customers." Oncor commented that another concern with notice through social media is that in emergency situations, such as notifications issued by Oncor before and after a storm occurs, all social media advertisements unrelated to the emergency or safety are temporarily removed from circulation to ensure that only emergency-related communications are issued to customers during the crisis. Oncor stated this practice prevents unrelated communications from interfering with or distracting from any critical or time-sensitive customer communications. Oncor indicated, however, that this practice during emergencies could hinder Oncor's ability to "timely publish initial notice per the timeline required and/or to publish continuous notice for the required length of time."

Commission response

The commission declines to proceed with its proposed revisions to §22.52 to replace newspaper notice for licensing proceedings with notice by social media or website notice. Therefore, the proposed recommendations are rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking.

Oncor recommended that proposed §22.52 and proposed §22.53 authorize at least one working day after the filing of licensing application for the applicant to publish notice of the application, particularly if publication through social media remains an authorized method of notice. Oncor agreed that a full week to publish notice of the licensing application is not necessary if one or more internet-based methods of notice are to be used to publish the required notice. However, Oncor indicated that due to the possibility for CCN applications to be filed late in the day, it may be problematic to require the applicant to provide internet notice on the same day of filing.

Commission response

The commission declines to proceed with its proposed revisions to §22.52 to replace newspaper notice for licensing proceedings with notice by social media or website notice. Therefore, the proposed recommendations are rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking.

Oncor also recommended that, if newspaper notification continues to be required under proposed §22.52 and proposed §22.53, then the current one-week timeframe to provide such notice be retained.

Commission response

The commission agrees with Oncor and preserves the existing one-week timeframe for newspaper notice.

Oncor recommended that, if proposed §22.52 and proposed §22.53 authorize any internet-based method of notice, then the rule be revised to clarify that it is not necessary to clarify that notice is "generally available in the county or counties where a CCN is being requested." Oncor noted that this requirement may still be appropriate if a non-internet based medium of communication, such as newspaper publication, remains a requirement. However, Oncor indicted that preserving the county-availability requirement even if newspaper notice is retained would "create questions and ambiguities if it also applies to notification provided on an internet website or platform available to anyone who has internet access."

Commission response

The commission declines to proceed with its proposed revisions to §22.52 to replace newspaper notice for licensing proceedings with notice by social media or website notice. Therefore, the proposed recommendations are rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking.

Oncor further recommended conforming revisions to proposed §22.52(a)(1)(D) and proposed §22.53. Specifically, Oncor recommended the deletion of the requirement for the affidavit to specify "each medium of communication in which the notice was published, the county or counties in which each medium of communication is generally available."

Commission response

The commission declines to proceed with its proposed revisions to §22.52 to replace newspaper notice for licensing proceedings with notice by social media or website notice. Therefore, the proposed recommendations are rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking.

OPUC opposed eliminating the newspaper publication requirement for notice of licensing proceedings in proposed §22.52 and recommended the requirement be preserved with the addition of the term "periodical." OPUC generally opposed website and social media publication replacing a newspaper notice requirement, but did not oppose having website publication as an additional notice requirement. OPUC stated that the elimination of newspaper notice for licensing proceedings would disproportionately impact persons without internet access, which may include persons of low economic status or the elderly that rely primarily on newspapers or periodicals for news. OPUC commented that the proposed rule change would effectively mean individuals without internet access would be unaware of the occurrence of electric licensing proceedings or their procedural rights despite other commission rules, such as §22.106, expressly recognizing that not all persons affected by commission proceedings may have internet access.

Commission response

The commission agrees with OPUC and retains newspaper notice for licensing proceedings. However, the commission declines to extend notice by newspaper to periodicals without further investigation. The commission will consider alternatives to notice by newspaper in a later rulemaking.

OPUC recommended that the publication of notice on the utility's website should be presented in an easily accessible location and require no more than two clicks to locate the notice from the applicant's homepage.

Commission response

The commission declines to proceed with its proposed revisions to §22.52 to replace newspaper notice for licensing proceedings with notice by social media or website notice. Therefore, the proposed recommendation is rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking.

OPUC further commented that the terms "appropriate medium of communication," "social media," and "generally available" are ambiguous and therefore are detrimental to the public interest and market participants. OPUC emphasized that the factors or standards for determining accessibility of an appropriate medium are unclear, including who would determine the appropriate medium. OPUC questioned what social media applications or forums would be acceptable under proposed §22.52(a)(1), such as those prohibited for state agencies or employees. OPUC posed other hypothetical questions regarding the accessibility of social media to certain stakeholders such as landowners or other interested parties, as well as the quantifiability of the term "generally available."

Commission response

The commission acknowledges OPUC's concerns regarding the potential ambiguity of language relating to the issuance of notice. Given the commission's decision to retain newspaper notice for licensing proceedings, the commission will take OPUC's recommendations under consideration in a later rulemaking.

OPUC recommended that posting notice to social media under §22.52(a)(1) should be optional, not a requirement. OPUC further recommended that it should not take the place of "other more reliable methods to communicate with consumers who may not have internet or access to social media platforms." OPUC remarked that, due to the constantly changing nature of technology, a social media forum that enjoys widespread use today may not be as popular months later. OPUC stated that utilities may use different social media platforms to communicate with customers. OPUC provided draft language consistent with its recommendation.

Commission response

The commission declines to proceed with its proposed revisions to §22.52 to replace newspaper notice for licensing proceedings with notice by social media or website notice. Therefore, the proposed recommendation is rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking.

Proposed §22.52(a)(1)(D) and 22.52(b)(1)- Publication of notice in telephone licensing proceedings

Proposed §22.52(b)(1) requires an applicant for a telephone licensing proceeding to, on the day the application is filed with the commission, publish notice of the applicant's intent to secure or amend a certificate of convenience and necessity "on the applicant's website and through an appropriate medium of communication, such as social media, that is generally available in the

county or counties where a certificate of convenience and necessity is being requested." The provision also requires the notice published on the applicant's website to be easily locatable from the homepage of the applicant's website, published for the duration of the proceeding, and identify the commission's docket number and the style assigned to the case by Central Records.

In conjunction with its recommendations for proposed §22.52(a)(1), OPUC recommended conforming revisions to proposed §22.52(a)(1)(D) and §22.52(b)(1). OPUC also recommended §22.52(b)(1) be split into three provisions, each applying to the notice of the application, the contents of the notice, and the proof of notice. Specifically, OPUC recommended the proof of notice affidavit be clarified as a "publisher's affidavit" that must specify "each newspaper or periodical" in which the notice was published in proposed §22.52(a)(1)(D) and new §22.52(b)(3).

Commission response

The commission declines to implement the restructuring changes recommended by OPUC at this time. The commission may consider reorganizing the provision in a later rulemaking. The commission also revises §22.52(b)(1) to require the notice to identify the commission's docket control number and the style assigned to the case by Central Records to mirror the same requirement under §22.52(a)(1). The commission further revises the template notice language for telephone licensing proceedings under §22.52(b)(1) by replacing the specific telephone numbers for the commission and Relay Texas with a parenthetical for inserting updated telephone information for each notice so that the rule does not require amendment in the event those numbers change. Accordingly, a telephone utility must insert the current commission toll free number and Relay Texas number when issuing notice.

OPUC also recommended proposed §22.52(a)(1)(D) and new §22.52(b)(3) be revised to require the proof of notice affidavit to include the date and time that the copy of the notice was printed from the website. OPUC stated that, to ensure applicants are actually publishing notice of the application the same day the application was filed, the applicant should be required to take a date-stamped screenshot or printed image of the published notice on the applicant's website.

Commission response

The commission declines to proceed with its proposed revisions to §22.52 to replace newspaper notice for licensing proceedings with notice by social media or website notice. Therefore, the proposed recommendations are rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking.

OPUC further recommended proposed §22.52(a)(1)(D) and new §22.52(b)(3) be revised to explicitly require the proof of notice affidavit to be signed by the utility officer that submitted the application. OPUC provided draft language consistent with its recommendations.

Commission response

The commission declines to implement the recommended change. The utility officer signing the affidavit may not necessarily be the person with personal knowledge regarding all facts contained in the affidavit. A utility should retain discretion to select the affiant who must demonstrate personal knowledge through the affidavit.

SPS and TAWC recommended §22.52(a)(1) be revised to state that "the applicant must [provide] notice of the applicant's intent to secure or amend a certificate of convenience and necessity…" for clarity.

Commission response

The commission agrees with SPS and TAWC and implements the recommended change.

LCRA recommended that proposed §22.52(a)(1) be revised to authorize a utility to issue notice in advance of filing an application in licensing proceedings. Specifically, LCRA recommended a utility be authorized to post notice on its website up to 25 days prior to filing its CCN application with the commission. LCRA stated that limiting the issuance of notice to only the day of filing is overly rigid and limits a utility's flexibility in providing advance notice prior to filing its application. LCRA provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change. The proposed revision would require the active monitoring of the Interchange by interested parties for when the application will be filed. Before application filing, interested persons might wish to intervene, but there would be no contested case to allow for intervention. Moreover, the proposed rule does not prohibit an applicant from making a disclosure or announcement on its website prior to filing the application. The rule only requires publication on the date the application is filed.

LCRA recommended that proposed §22.52(a)(1) be revised to authorize joint applicants in licensing proceedings to share a website for the publication of notice associated with licensing proceedings. As an example, LCRA referenced that the 765 kilovolt transmission line development associated with the Permian Basin infrastructure projects may see efficiencies in providing joint notice on a single website. LCRA provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change as it could bring about potential disputes as to responsibility and liability for the joint notice. The commission will consider investigating joint notice and note it for potential review in a future rulemaking.

SPS recommended proposed §22.52(a)(1)(D) be revised for clarity. Specifically, SPS recommended the provision state: "Proof of publication of notice for notice provided on a utility's website must be in the form of an affidavit that…." SPS stated that the provision, as proposed, is ambiguous because it could be "interpreted to mean that the proof of notice itself is on the website." SPS commented that the language is likely intended to establish additional requirements for the proof of publication for notice published on a utility's website. SPS provided draft language consistent with its recommendation.

Commission response

The commission declines to proceed with its proposed revisions to §22.52 to replace newspaper notice for licensing proceedings with notice by social media or website notice. Therefore, the proposed recommendation is rendered moot. The commission will consider alternatives to notice by newspaper in a later rulemaking.

Proposed §22.52(a)(2) and 22.52(a)(4)- Notice to municipalities, neighboring utilities, and other entities

Proposed §22.52(a)(2) establishes the requirements for an applicant to mail notice of its application to certain entities such as the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse on the date it files an application. Proposed §22.52(a)(4) requires an applicant to hold a public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Proposed §22.52(a)(4) also requires that direct mail notice of the public meeting must be sent by first-class mail to certain entities such as the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse. Proposed §22.52(a)(4) further requires the applicant to provide written notice to "the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse of the planned filing of an application prior to completion of the routing study" if no public meeting is held.

Oncor recommended proposed §22.52(a)(2) and §22.52(a)(2)(a)(4) be revised to state: "and the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse or similar entity as designated by the Department of Defense…." Oncor stated that this revision would account for instances where it has been requested or required to issue notice to an entity of the Department of Defense other than that Military Aviation and Installation Assurance Siting Clearinghouse in specific proceedings. Oncor provided draft language consistent with its recommendation.

Commission response

The commission agrees with Oncor and implements the recommended change.

Proposed §22.52(a)(3) and 22.52(a)(3)(D)- Notice to landowners and issuance of notice prior to final approval

Proposed §22.52(a)(3) establishes the requirements for the applicant to mail notice of its application to directly affected landowners within a certain distance of the transmission project on the date it files an application. Proposed §22.52(a)(3)(D) requires an applicant to notify directly affected landowners of any modification to a transmission route prior to final approval. The provision authorizes proof of notice to be established by an affidavit that affirms that the applicant issued notice by first class mail to each directly affected landowner as listed on the current county tax rolls.

OPUC recommended proposed §22.52(a)(3) and §22.52(a)(3)(D) to require notice of a licensing application and notice prior to commission approval, respectively, be issued to landowners in accordance with the most current tax appraisal rolls of the applicable central appraisal district at the time the utility commission received the application for the certificate or amendment. OPUC stated that this requirement is located in Texas Water Code §13.246(a-1), not in PURA. OPUC acknowledged that, while the Texas Water Code is inapplicable, "the statute does establish precedent for protocol the legislature considered adequate for CCN applicants to notify landowners." OPUC provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is unnecessary. The commission is not aware of any issues with the current notice process that warrants such a revision. Moreover, the rule provision as proposed entitles directly affected landowners to notice, which more accurately identifies persons with a justiciable interest compared to those landowners on the county tax rolls as of a particular date.

Proposed §22.74- Service of Pleadings and Documents

Proposed §22.74 establishes the requirements and procedures for each authorized method of service of pleadings and documents submitted to the presiding officer that must also be filed with the commission and served on other parties.

Proposed §22.74(b) and 22.74(c)- Methods of service and alternative methods of service

Proposed §22.74(b) establishes the requirements for service of a copy of a pleading or document to "the party's authorized representative or attorney of record by email; in person; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record." Proposed §22.74(c) establishes the requirements for alternative methods of service if a person has filed a statement of no access under §22.106 of this title, relating to Statement of No Access. Specifically, the provision requires service on such persons to be "made by delivery of a copy of the pleading or document to the party or the party's authorized representative or attorney of record either by hand delivery; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record."

SPS recommended the authority for the presiding officer to order "service by filing" under existing §22.74(c) be retained in proposed §22.71(b). SPS stated that the omission of this option renders it unclear as to when such service is authorized.

Commission response

The commission agrees with SPS and implements the recommended change. The commission generally reorganizes §22.74(b) and (c) for clarity. Specifically, the commission revises §22.74(b)(1)-(5) to specify when the standard methods of service are deemed complete. Such standards methods of service are: in-person service; service by e-mail; service by mail; service by agent or courier receipted delivery; or service by in-person delivery. The commission also differentiates the alternative method of service that may be approved by the presiding officer, including service by filing, under §22.74(c). The commission further specifies that service by filing is complete upon acceptance for filing on the Interchange.

Proposed §22.74(b)(1)- Service by e-mail

Proposed §22.74(b)(1) establishes that service by e-mail is complete "upon sending an email message with the pleading or document attached to the message to the email address of record for the party that was provided."

Oncor recommended revising proposed §22.74(b)(1) to state that service by e-mail is deemed complete upon e-mailing the link to the document where it is hosted on the Commission's Interchange. Oncor commented that this revision would mirror language in proposed §22.74(b)(2) that authorizes the same for service with notice. Oncor stated that the ability to effectuate service in this manner is extremely useful, particularly when the filing party may be serving voluminous filings on several other parties that may otherwise be too large to attach to e-mail. Oncor provided draft language consistent with its recommendation.

Commission response

The commission agrees with Oncor and implements the recommended change. As stated previously, the commission generally reorganizes §22.74(b) and (c) for clarity.

OPUC recommended revising proposed §22.74(b)(1) to qualify service by e-mail being deemed complete once received by the person being served. OPUC indicated that, in some instances, a person may send an e-mail message, but the e-mail has not left the sender's outbox. Accordingly, OPUC recommends that an e-mail be considered served when the sent e-mail leaves the sender's sent or outbox folder, not when the person clicks "send." OPUC provided draft language consistent with its recommendation: "Service by email is complete upon sending an email message with the pleading or document attached to the message to the email address of record for the party that was provided by the person being served."

Commission response

The commission declines to implement the recommended change. The revision would change the point in time when service is deemed to have been issued to the time of receipt by the person being served. This would invite disputes involving if and when the recipient actually received the e-mail. Additionally, such a change is inconsistent with the commission's current practice. The commission notes that the time an e-mail is actually sent should be the time of issuance for purposes of service, not when the email is placed in an outbox or something similar.

Proposed §§22.74(b), 22.74(c)(1), and 22.74(c)(2)- Service by mail and service by agent or by courier receipted delivery

Proposed §22.74(c)(1) establishes that service by mail is complete "upon deposit of the document, enclosed in a wrapper properly addressed, stamped and sealed, in a post office or official depository of the United States Postal Service, except for state agencies. For state agencies, mailing will be complete upon deposit of the document with the General Services Commission." Proposed §22.74(c)(1) establishes that service by agent or by courier receipted delivery is complete upon delivery to the agent or courier.

SPS recommended the directions as to when alternative methods of service, such as mail and courier service, be moved from proposed §22.74(c)(1) and §22.74(c)(2) back into proposed §22.71(b). SPS stated that since §22.71(b) refers to the available options for service, each provision governing the directions for such service should therefore be in the same provision.

Commission response

The commission agrees with SPS and implements the recommended change. As stated previously, the commission generally reorganizes §22.74(b) and (c) for clarity.

Proposed §22.74(b)(3)- Service by filing without notice

Proposed §22.74(b)(3) establishes that service without notice is complete upon filing with Central Records. The provision further establishes that, if service without notice is required, "the presiding officer may encourage parties to sign up with the commission's Filings Notification System on its website to receive automatic notifications of filings in the docket."

OPUC strongly opposed the addition of proposed §22.74(b)(3) on the basis that service by filing without notice should never be permissible. OPUC emphasized that parties and residential intervenors require notices since they are unfamiliar with commission rules or procedures, particularly in rate cases. OPUC commented that the commission is obligated to protect "the public interest inherent in the rates and service of public utilities" and that serving a party or intervenor without notice directly conflicts with that obligation and should therefore be removed as an option.

Commission response

The commission declines to implement the recommended change. The commission agrees that service by filing should not be the default form of permissible service, however extraordinary circumstances may warrant a presiding officer finding good cause exists to permit service by filing on a case-by-case basis. (e.g., when the service list has hundreds of parties). The commission also generally reorganizes §22.74(b) and (c) for clarity.

Proposed §22.74(c)(1)- Service by mail

OPUC recommended that proposed §22.74(c)(1) be revised to state that service by mail or commercial delivery service is complete upon deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. OPUC stated this language mirrors the Rule §21(b)(1) of the Texas Rules of Civil Procedure.

Commission response

The commission agrees with OPUC and implements the recommended change.

Proposed §22.74(c)(2)- Service by agent or by courier receipted delivery

OPUC recommended that the reference to the General Services Commission should be removed from §22.74(c)(2) because that agency was abolished in 2001 by Senate Bill 311, which was passed in the 77th Legislative session.

Commission response

The commission agrees with OPUC and implements the recommended change. Specifically, the commission omits the reference to the General Services Commission in the reorganized provision.

Proposed §22.75- Examination and Correction of Pleadings and Documents

Proposed §22.75 establishes the requirements for the examination and correction of pleadings and documents filed with the commission.

Proposed §22.75(a)- Construction of pleadings and documents

Proposed §22.75(a) requires all pleadings and documents to be construed so as to do substantial justice.

OPUC and TAWC recommended reinserting the word "be" in §22.75 as it appears to have been inadvertently deleted: "All pleadings and documents must be construed so as to do substantial justice."

Commission response

The commission agrees with OPUC and TAWC and implements the recommended change.

Proposed §§22.75(c), 22.75(c)(1)-(3), 22.75(d), and 22.75(d)(2)-(3)- Notice of material deficiencies in rate change applications and applications for certificates of convenience and necessity for electric transmission lines

Proposed §22.75(c) establishes the requirements for notices of material deficiencies in rate change applications filed under PURA Chapter 36, Subchapter C, or Chapter 53, Subchapter C. Proposed §22.75(c)(1) authorizes the presiding officer to require a document that does not comply with §22.72 of this title to be re-filed. Proposed §22.75(c)(1) further states that a motion for rehearing or a reply to a motion for rehearing that is required to be re-filed will retain the original filing date. Proposed §22.75(c)(2) establishes that, if the presiding officer determines that a material deficiency exists in the rate change application the presiding officer must issue a written order specifying a time within which the applicant must amend its application and correct the application. Proposed §22.75(d) establishes the requirements for notices of material deficiencies applications for certificates of convenience and necessity for electric transmission lines. Proposed §22.75(d)(2) establishes that, if the presiding officer determines that a material deficiency exists in the certificate application the presiding officer must issue a written order specifying a time within which the applicant must amend its application and correct the application.

OPUC recommended that the applicability of §22.75(c) regarding notice of material deficiencies be revised to extend to rate change applications under Texas Water Code Chapter 13, Subchapter F and the applicable subsequent proceedings under Subchapter E. OPUC stated that extending the requirements to water rate proceedings would create uniformity in commission procedures in rate proceedings.

Commission response

The commission declines to implement the recommended change because it is out of scope. Substantive changes to this provision were not proposed that would extend the applicability of this provision to another industry. The commission also deletes the sentence "a motion for rehearing or a reply for a motion for rehearing that is required to be re-filed will retain the original filing date" from §22.75(b)(1) to ensure consistency with the filing rules.

Oncor, SPS, and LCRA opposed the deletion of existing §22.75(c)(2) and §22.75(d)(2) which respectively require the automatic determination of sufficiency for rate applications and CCN proceedings where the presiding officer has not issued a written order concluding that material deficiencies exist within 35 days of the filing of the application. Oncor, SPS, and LCRA also opposed the deletion of the requirement for the presiding officer to issue a written order within 35 days of the filing of the rate or CCN application if the presiding officer determines a material deficiency exists under §22.75(c)(3) and §22.75(d)(3), respectively. Oncor and SPS emphasized the need for certainty among applicants and other parties that late determinations will not be made regarding material deficiencies in rate proceedings or CCN applications. Oncor stated that the proposed revisions not only remove the potential for applications to be automatically deemed sufficient if the presiding officer has not made a finding of material deficiency within the 35-day deadline, but also authorizes the presiding officer to determine that a rate or CCN application is materially deficient at any point in time. Oncor also observed that, because §22.75(c)(3) and §22.75(d)(3) still require statutory deadlines to be calculated based on the date of filing a sufficient application, the deletion of the 35-day timeline under makes it difficult for an applicant or other parties to a rate or CCN proceeding to calculate such deadlines due to the constant risk of an application being deemed insufficient months after filing and after a procedural schedule has been issued by the presiding officer. SPS and LCRA remarked that the existing 35-day timeline appropriately balances the need for the presiding officer to have sufficient time to review rate and CCN applications while providing the requisite certainty among applicants and preventing unnecessary delays in processing the applications. LCRA noted that the proposed revisions have a high likelihood of risking the indefinite delay of rate and CCN applications which undermine efficiency and predictability of the commission's processes surrounding these proceedings and therefore would result in additional regulatory lag. As an alternative, Oncor recommended that the final sentence of §22.75(c)(3) be revised to state that statutory deadlines "will be calculated based on the date of filing the application" instead of the "date of filing the sufficient application," with additional language authorizing the tolling or extension of a statutory deadline if the presiding officer later determines a material deficiency in the rate application. Oncor provided draft language consistent with its recommendations. Oncor also opposed the deletion of the requirement for the presiding officer to issue a written order regarding a material deficiency in a CCN application filed under PURA §39.203(e) within the 28-day deadline from the date an application is filed for similar reasons.

Commission response

The commission disagrees with commenters and declines to implement the recommended change. A determination that an application is sufficient by commission inaction does not serve the public interest and is an extraordinary outcome that is inconsistent with commission standard practice. The only instances in which the commission complies with such a practice is when required by statute.

Proposed §22.76- Amended Pleadings

Proposed §22.76 establishes the requirements for amending pleadings in proceedings before the commission.

New §22.76(a)(5)

Oncor recommended new §22.76(a)(5) be added which would authorize a pleading amendment that was either unanimously agreed upon by the parties or unopposed by other parties without a showing of good cause and regardless of whether the amendment is made within seven days of the hearing date. Oncor stated that the existing rule requires a party to show good cause for amending a pleading within seven days of a hearing yet still provides the presiding officer with discretion to deny such a request. Oncor indicated, however, that if all parties agree to permit a pleading amendment, then the amendment is therefore not adverse to any party and therefore should not require a showing of good cause. Oncor provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is unnecessary. If good cause exists for a late pleading amendment, the presiding officer may grant it. If the pleading amendment is not granted by the presiding officer, it will not matter that all of the parties are unopposed to the amendment. The purpose of the seven-day requirement is, in part, to provide sufficient time for the presiding officer and the parties to the proceeding to adequately prepare for a hearing.

Proposed §22.77- Motions

Proposed §22.77 establishes the requirements for motions filed in proceedings before the commission.

Proposed §§22.77(a), 22.77(a)(3) and new §22.77(a)(4)- General requirements and certificate of conference

Proposed §22.77(a) establishes the general requirements for motions, including a requirement that the motion must be in writing unless the motion is made on the record at a prehearing conference or hearing and that the motion must state the relief sought and the specific grounds supporting a grant of relief.

Proposed §22.77(a)(3) requires a written motion to include a certificate of conference that substantially complies with either of the examples provided under §22.77(a)(3)(A) or (B).

TAWC and LCRA recommended the requirement for a certificate of conference should be limited only to certain types of motions, such as schedule or discovery-related motions. TAWC stated that a conference should not be required in instances where there will likely be no agreed resolution, such as when a party believes a request to intervene should be denied, a pleading be struck, or sanctions imposed. LCRA stated that universally requiring all motions to include a certificate of conference would be burdensome and that limiting the requirement to discovery, procedural, and scheduling motions is consistent with current commission practice. LCRA provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change. A certificate of conference is necessary for the presiding officer to know whether the motion is opposed. Moreover, the certificate of conference also requires parties to speak with opposing parties to attempt to reach agreement before involving other parties and the presiding officer.

New §22.77(a)(3)(D)-(E)

Oncor recommended the requirement for all motions to include a certificate of conference under proposed §22.7(a)(3) should either be eliminated or substantially narrowed. Oncor stated the proposed requirement poses difficulties in certain proceedings, such as in multi-party proceedings like rate cases or CCN proceedings where there may be dozens of parties. Oncor remarked that the proposed change would require the moving party to "attempt to confer with each respective party and to document each conference or attempt to confer in this certificate." Oncor indicated that in such proceedings, attempting to confer with every other party "could take hours or even days" and therefore prevent the obligated party to file motions close to the deadline despite the need for relief becoming apparent around that time. Oncor commented that there are circumstances where the moving party may be seeking relief that may only potentially negatively impact one or several parties but would not impact every other party. By way of example, Oncor stated that an obligation to confer with "party X regarding the movant' s request to strike testimony filed by party Y" would be unnecessary. Similar to Oncor, SPS commented that parties should only be required to confer with those directly affected by the motion in multi-party cases. Oncor alternatively recommended exemptions to the certificate of conference requirement be added as new §22.71(a)(3)(C)-(E) if the requirement for a certificate of conference is retained. Oncor commented that the exemptions would authorize the movant to not provide a certificate of conference in the following circumstances: (1) when there is insufficient time to confer with other parties due to the urgent nature of the relief sought and the time necessary to seek such relief; (2) when the relief sought only impacts the rights of one or more specific parties, but not all other parties - only those parties whose rights were impacted were conferred with; and (3) the movant offered to hold a conference with all parties, but no other parties elected to confer.

Commission response

The commission modifies the provision to narrow the certificate of conference requirement. Specifically, the commission revises the provision such that a movant is required to confer with all parties that could be affected by the motion or pleading, but not all parties to the proceeding (e.g., a motion to compel should require conference with the party who would be compelled, but not all other parties in the proceeding).

Proposed §22.78- Responsive Pleadings and Emergency Action

Proposed §22.78 establishes the general requirements for responsive pleadings and emergency action by the presiding officer.

Proposed §22.78(c)- Action by the presiding officer

Proposed §22.78(c) authorizes the presiding officer to take action on a pleading before the deadline for filing responsive pleadings unless otherwise precluded by law or Chapter 22. The provision also establishes that such action may be subject to modification based on a timely responsive pleading.

SPS opposed the revision to §22.78(c) that presumes all pleadings are received on the date of filing, regardless of the method of service used. SPS commented that the presumption that all pleadings are received on the filing should only apply if e-mail is the required method of service. Vistra similarly recommended proposed §22.78(c) retain the five-day presumption of receipt of a pleading prior to the beginning of the five-working day window to file a responsive pleading. Vistra noted that the proposed language establishes a presumption that all pleadings are received as of the filing date, unless the presiding officer is advised otherwise. Vistra commented that, in addition to preserving the five-day period for receiving a pleading, the five-working day window to file a responsive pleading should begin once the pleading to which the response is made is received, which may not necessarily be the filing date. Vistra provided redline language consistent with its recommendation.

Commission response

The commission declines to implement the recommended changes as they are unnecessary. All pleadings served by e-mail should be presumed to be received on the filing date. All other forms of service should have a presumption that the pleading was received within three days.

OPUC, Oncor, Vistra, SPS, and TAWC recommended that the presiding officer should withhold ruling on a pleading until all arguments from other parties have been presented. OPUC, Oncor, Vistra, and TAWC opposed the removal of language in proposed §22.78(c) that would limit a presiding officer to act on a pleading prior to the responsive pleading deadline only "when necessary to prevent or mitigate imminent harm or injury to persons or to real or personal property." OPUC commented that the removal of this language would broadly expand the presiding officer's ability to rule on initial pleading without providing other parties an opportunity to respond. OPUC stated that the importance of conducting efficient proceedings should not sacrifice a consumer's due process and representation rights before the commission. OPUC noted that this may have unique impacts on ratepayer intervenors and consumers that are already unfamiliar with commission rules and SOAH processes.

OPUC noted that the general deadline to file a response to a pleading is five working days under §22.78(a) and 21 days under §22.78(b) to respond to complaints. OPUC remarked that the average consumer is unfamiliar with the commission's filing deadlines and, in effect, is very likely to have less time to respond. OPUC noted that, in turn, it would undermine the public interest by limiting ratepayer participation in most commission and SOAH proceedings. OPUC further commented that the proposed change could "have the same implications as ex parte communications" as the presiding officer would potentially only be hearing the position of the filer of the pleading and not the positions of other parties to the proceeding that may respond. OPUC provided redline language consistent with its recommendation. Similar to OPUC, Oncor commented that the proposed revision to §22.78(c) would negate the five-working day responsive pleading deadline under §22.78(a) unless otherwise specified by statute. Oncor explained that if a presiding officer rules on a motion prior to the responsive pleading deadline, the presiding officer would effectively negate a party's ability to respond within five working days. Like OPUC, Oncor noted that such a ruling by the presiding officer would be premature because it does not afford all other parties an opportunity to respond and the presiding officer would only hear one side of the argument before issuing an order. Oncor further recommended that, regardless of whether the provision is amended to allow premature rulings prior to the deadline for responsive pleadings outside of emergency situations, the rule should "continue to require the presiding officer to consider the potential need to modify the premature action on the pleading once a timely responsive pleading is subsequently filed." Oncor provided redline language consistent with its recommendation. Vistra commented that retaining the existing language would "preserve the rights of parties who file responsive pleadings and would retain the effective function of a responsive pleading deadline." Vistra provided redline language consistent with its recommendation. SPS remarked that the presiding officer waiting to rule on such pleadings until the responsive pleading deadline has passed is both fairer and more efficient. SPS commented that the proposed language risks the presiding officer issuing multiple orders on the same motion due to all arguments not having been presented when the presiding officer initially rules on the motion. SPS further noted that waiting until the responsive pleading deadline has passed before issuing an order prevents parties from filing pleadings that only state the filer intends to respond, which has occurred infrequently in recent years. TAWC commented that the proposed revision is unnecessary and would undermine utilities' due process rights to be heard before a presiding officer acts. OPUC also opposed the revision of the subtitle of proposed §22.78(c) from "Emergency action" to "Action by the Presiding Officer" and recommended the original title be preserved.

Commission response

The commission declines to implement the recommended change. However, the commission retitles the provision to "Responsive Pleadings" for consistency with the proposed revisions. The proposed changes expanded the presiding officer's ability to act on a pleading before the responsive pleading deadline when not otherwise precluded by law. Under the existing language, the presiding officer could only act before the responsive pleading deadline "when necessary to prevent or mitigate imminent harm or injury to persons or to real or personal property." This language sometimes resulted in inefficiencies where parties felt obligated to incur the expense of responding to a frivolous motion and the presiding officer was unable to save the parties such time and expense by denying the motion earlier. If the proposed language were to be adopted, in practice the presiding officer would usually wait until the period for any responses are due and would likely only act if no additional information from the respondent is necessary to act on the motion. Moreover, if a party is aggrieved by the action of a presiding officer, whether rendered before or after the deadline for response, that party may file a motion for rehearing and appeal to the commission, as applicable. Additionally, the corresponding changes to certificates of conference under §22.77 will assist the presiding officer in knowing before the response deadline whether a pleading is opposed. The proposed changes to both this rule and §22.77 will empower the presiding officer to act more expediently on unopposed motions. To OPUC's specific point regarding ex parte communications, acting on a motion, even before the response deadline has passed, is not at all like an ex parte communication. Unlike an ex parte communication, all parties receive the communication contemporaneously to the presiding officer; the communication is filed and therefore available for any person to review; and even if the presiding officer acts before the response deadline, all parties have the opportunity to respond to the communication.

Proposed §22.78(d)- PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D Investigations or Complaints

Proposed §22.78(d) authorizes the presiding officer to determine the scope of a response that an electric or telecommunication utility is required to file in a complaint proceeding filed under PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D which may be "up to and including the filing of a full rate filing package." The provision also requires the presiding officer to set an appropriate deadline for the utility to respond.

OPUC recommended proposed §22.78(d) be revised to apply to water-related complaints. OPUC stated that since commission has jurisdiction over providers of water and sewer service, the same complaint procedures should apply, to the extent authorized by statute. OPUC provided draft language consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is out of scope. Substantive changes to this provision were not proposed that would extend the applicability of this provision to another industry.

Proposed §22.79- Continuances

Proposed §22.79 establishes the requirements for motions for continuance filed in certain commission proceedings.

Proposed §22.79(c) and §22.79(c)(2)- Requirements for granting motions for continuance

Proposed §22.79(c) establishes the requirements for granting motions for continuance. Proposed §22.72(c)(2) authorizes the presiding officer to grant continuances in a manner consistent with any applicable statutory deadline.

Oncor recommended preserving existing language in §22.79(c)(2) that would require the presiding officer to grant continuances agreed to by all parties. Oncor noted that a motion for continuance that has been unanimously agreed upon by all parties is therefore not adverse to any party. Oncor stated that such language is beneficial as it allows parties to postpone a hearing that all parties agree should not be held yet and provides additional time for settlement and categorically avoids

a hearing. In turn, this would save the commission and the parties to a contested case time and resources.

Commission response

The commission declines to implement the recommended change. Many commission proceedings have statutory deadlines and state leadership has expressed the importance of regularly meeting such deadlines. Despite this, parties frequently propose procedural schedules or requests extensions, stays, or abatements that would render it impossible for the commission to meet these statutory deadlines. The proposed revision permits the presiding officer to consider a motion for continuance and restores discretion to the presiding officer that had previously been omitted from the rule.

Proposed §22.80- Commission Prescribed Forms

Proposed §22.80 generally authorizes the commission to prescribe forms for use by the public and by regulated entities.

Oncor and OPUC recommended preserving language from existing §22.80 that would require the commission filing clerk to maintain a complete index of all commission forms along with a set of all commission forms. OPUC and Oncor emphasized the need for a public-facing central repository or index of commission-prescribed forms on the commission website for the benefit of stakeholders and filers. Oncor noted that a utility or other entity may require a form that it has not filed before or has not been used for years. In that event, the potential filer needs to know whether a commission form exists for that type of filing. Oncor further stated that even among routine filers, there is a need for certainty that the most up-to-date version of a commission-prescribed form is being used. Oncor and OPUC commented that intervenors, complainants, and other stakeholders may also want to confirm that a utility or applicant is using the most current version of a commission-prescribed form. OPUC noted that there are several older variants of commission-prescribed forms circulating in the general public, therefore highlighting the benefit of having a central repository of up to date-forms.

Commission response

The commission agrees with Oncor and OPUC that maintaining a complete index of commission-prescribed forms provides value to stakeholders and other members of the public seeking to access a current commission-prescribed form. The commission modifies the rule to include a provision codifying the commission's current practice of maintaining an index of commission-prescribed forms. However, the commission removes the reference to the index being maintained by the commission filing clerk for operational flexibility.

Proposed §22.80(a) and §22.80(a)(2)- Usage of commission-prescribed forms

Proposed §22.80(a) authorizes the commission to require that certain reports and applications be submitted on commission-prescribed forms. Proposed §22.80(a)(2) establishes that any significant change in a commission-prescribed form or a new form will be published in the "In Addition" section of the *Texas Register* for public comment prior to the implementation of the new form or significant change. The provision also establishes that new forms or significant changes to existing forms may be implemented without publication on an interim basis for a period not to exceed 180 days for good cause.

OPUC recommended deleting language from proposed §22.80(a)(2) that authorizes the implementation of new forms or significant changes to existing forms be implemented for 180 days without publication in the *Texas Register*. OPUC instead recommended adding language that would authorize the adoption of a new form or significant change to an existing form with less than 30 days' notice using emergency rulemaking procedures under §2001.034 of the APA due to imminent peril to the public, health, safety, or welfare, or a requirement of state or federal law. OPUC stated that it is unclear what the legal basis is of the proposed language that would allow a state agency to create new forms or make significant changes to existing forms without a rulemaking process is unclear. OPUC commented that allowing changes to commission-prescribed forms without formal rulemaking processes and public participation is contrary to the spirit of the APA, if not the actual legal requirements of it. OPUC noted that there are provisions for an emergency rulemaking in the APA but are not reflected in the proposed language. OPUC remarked that the provision does not define "good cause" and recommended the provision be revised to account for emergency rulemaking under §2001.034 if the intention was to use that process. OPUC expressed concern over the 180-day interim effective period for new forms or significant changes to existing forms implemented without publication. OPUC stated that the APA allows a rule to be "effective for not longer than 120 days and may be renewed once for not longer than 60 days," but with certain prerequisites that are not provided in the proposed language.

Commission response

The commission declines to implement OPUC's recommended change. The commission modifies the proposed rule to remove the existing rule language that permits the temporary implementation of a new form or a substantive change to an existing form for good cause because it is unnecessary. Section 2001.034 of the APA provides the commission with emergency rulemaking authority, and the commission can implement a temporary form as part of an emergency rulemaking using that authority, if required to address an imminent peril to the public or a statutory requirement.

LCRA recommended that new forms or significant changes to forms should be posted on the commission's website and posted in a commission project dedicated to this purpose. LCRA also informally recommended a 30-day comment period be authorized for such changes. LCRA commented that, despite the APA not requiring notice and comment for "forms, instructions, applications, and guidance documents," there are significant efficiencies by providing some form of notice beyond what the amended rule proposes. Therefore, notice and an opportunity for comment for the publication of new forms or the significant amendment of existing forms prior to implementation should be considered. LCRA stated that a 30-day comment period may not be necessary for minor changes to commission-prescribed forms, but for new forms or significant changes to existing forms, it may help preserve staff time in managing and facilitating feedback from frustrated stakeholders. LCRA explained that enhanced notice and opportunity for comment would be beneficial to all stakeholders given the volume of commission-prescribed forms and the limited benefit of providing notice solely through the *Texas Register*. To this point, LCRA noted that the commission currently has over 100 forms on the electric forms page alone, with several more to be added such as the report on dispatchable and non-dispatchable generation and the template for the executive summary of emergency operations plans.

Commission response

The commission declines to modify the rule to require notice-and-comment for new forms and significant modification to existing forms because it is unnecessary. The proposed rule already treats such form changes as formal rule changes and provides a full comment period. The commission will also continue its current practice of publishing proposed substantive form changes to the filing interchange on its website, as requested by LCRA, but declines to modify the rule to state this explicitly, to preserve operational flexibility as the commission continues to update its website and related systems.

Proposed §22.80(a)(3)- Minor or nonsubstantive updates to commission-prescribed forms

Proposed §22.80(a)(3) generally authorizes commission staff to make minor or nonsubstantive updates to commission-approved forms or change the method of form submission such as typos, updates to contact information or citation, accessibility changes, and the resolution of minor conflicts between the form language and the underlying statute or rule associated with the form.

OPUC recommended deleting language from proposed §22.80(a)(3) that would authorize commission staff to update or add citations to a form and correct minor conflicts between the language of a form and an underlying statute or rule associated with a form. OPUC stated that such revisions are substantive, as it could result in significant changes to the content or meaning of a relevant sentence or paragraph in the form depending on the citations or the language corrected to refer to a statute or rule. OPUC further recommended that commission staff should not be authorized to make "minor" changes to a commission form as the public may perceive such a change as "major." OPUC stated its proposed changes would minimize confusion and eliminate differing standards. OPUC provided draft language consistent with its recommendation.

Commission response

The commission generally agrees with OPUC that the primary determining factor with regards to whether a formal commission notice-and-comment period is required for a form change is whether the change is substantive or ministerial, not the magnitude of the change. Accordingly, the commission modifies the rule to remove the references to commission staff's ability to make "minor" form changes. The commission does not agree, however, that merely adding or correcting a statutory or rule reference to a form constitutes a substantive change to the form. Statutory and rule language is authoritative over the language of a form, so providing the public with a direct reference to the relevant language ensures that the individual filling out the form can easily access the applicable legal standards.

Proposed §22.80(b)- Conflict between commission-prescribed form and statute or rule

Proposed §22.80(b) establishes that, in the event of a conflict "between the requirements of a commission-prescribed form and the requirements of the underlying statute or rule associated with that form, the statute or rule prevails."

OPUC recommended revising proposed §22.80(b) to state: "In the event of a conflict between the requirements of a commission-prescribed form and the requirements of the underlying statute or rule associated with that form, the statute or rule prevails to the extent the rule complies with the statute." OPUC characterized this revision as a clarification.

Commission response

The commission declines to implement the recommended change because it is unnecessary. The provision concerns discrepancies between a form and a rule or a form and a statute. Each commission rule should be construed as harmonious with the statutes authorizing its adoption.

Proposed §22.103- Standing to Intervene

Proposed §22.103 establishes the minimum requirements for a person to intervene in a proceeding before the commission.

Proposed §22.103(b) and §22.103(b)(2)- Standing to intervene

Proposed §22.103(b) establishes the criteria by which a person has standing to intervene and the requirements associated with filing a motion to intervene under §22.104 of this title, relating to Motions to Intervene. Proposed §22.103(b)(2) establishes that a person has standing to intervene if that person has a justiciable interest which may be adversely affected by the outcome of the proceeding.

OPUC opposed the deletion of language in §22.103(b)(2) that would exclude representatives of persons with a justiciable interest from having to standing to intervene in a commission proceeding. OPUC stated that the proposed revision limits persons with a justiciable interest that are adversely affected by the outcome of the proceeding from their right to representation. Specifically, the revision would preclude such persons from having an "authorized representative" file a motion to intervene or appear on their behalf regarding such motions.

Commission response

The commission disagrees with OPUC and declines to implement the recommended change. The deletion was intentional because a person may have a justiciable interest and that person may also have a designated or authorized representative, but that representative does not have their own right to intervene. The revision is intended to clearly delineate who is the intervenor (i.e., the person with the justiciable interest) and whose justiciable interest is affected (i.e., again, the intervening person). For example, a landowner that may be adversely affected by a water CCN amendment. That landowner may intervene and retain a law firm as the landowner's authorized representative. The law firm being retained as counsel does not give the law firm itself the right to be an intervenor. Rather, the law firm represents the landowner intervenor and it is the landowner intervenor's interests that are at stake. Moreover, OPUC has statutory standing in commission proceedings in accordance with PURA §13.003. The inquiry is always whether the party being represented has standing (i.e., a justiciable interest); not the authorized representative. The revision does not preclude parties from being represented by an attorney nor does it preclude OPUC from performing its statutory duties.

Proposed §22.104- Motions to Intervene

Proposed §22.104 establishes the general requirements for filing a motion to intervene, the timing of filing such motions, the rights of persons with pending motions to intervene, and seeking later interventions.

Proposed §22.104(b)- Time for filing motion

Proposed §22.104(b) establishes that a motion to intervene "must be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding officer." The provision also establishes a 30-day deadline from the date the application is filed for CCN applications filed under PURA §39.203(e) or

transmission facilities subject to PURA §37.057. The provision further requires motions to include "the email address of the person requesting to intervene unless the motion is accompanied by a statement of no access" under §22.106 and "be served upon all parties to the proceeding and upon all persons that have pending motions to intervene" in accordance with §22.74.

OPUC recommended that proposed §22.104(b) be revised to grant a person filing a motion to intervene a reasonable time frame after filing to notify the commission they have no internet access before action is taken on the motion. OPUC explained that, if a person has no internet access, they may also be unaware of the requirement to file a statement of no access to be exempted from service by e-mail under §22.103(d) or to respond in the event of an adverse ruling against their motion to intervene.

Commission response

The commission declines to implement the recommended change because it is unnecessary. Specifically, the provision already provides specific timelines for filing a motion for intervene generally and for CCN proceedings. Moreover, am e-mail address or, if applicable, a statement of no access is necessary for inclusion in the motion to intervene. Such information is essential for other parties to a proceeding and the commission to ensure proper service. However, the commission subdivides §22.104(b) into §22.104(b)(1) and (2) for clarity.

OPUC recommended that proposed §22.104(b) be revised to replace the requirement for a person filing a motion to intervene to serve the motion upon all persons that have pending motions to intervene with a requirement for the person to file the motion and the presiding officer notify all parties of the motion and, for parties with no access to the internet, the procedures to notify such parties of the motion. OPUC stated that the existing requirement is overly burdensome, particularly when such persons with a pending motion to intervene are numerous and because noncompliance risks an adverse ruling on a motion to intervene.

Commission response

The commission declines to implement the recommended change. A person who has presented a motion to intervene may have a justiciable interest even if the presiding officer has not ruled on the motion. The existing rule and proposed rule appropriately afford such persons with pending motions to intervene with the same rights as parties, including the receipt of all pleadings by service.

OPUC recommended §22.104(b) be revised to require the presiding officer to advise ratepayer intervenors about the requirement to serve subsequent pleadings or documents on all parties to the proceeding and provide the procedures for providing non-electronic notice for intervenors with no internet access in each order granting a motion to intervene.

Commission response

The commission declines to implement the recommended change. All parties to a commission proceeding or other commission matter are required to comply with commission rules. Such compliance is not contingent on reminders or admonishments in orders ruling on intervention.

OPUC recommended the deadline for motions to intervene be revised from "45 days from the date an application is filed with the commission" to "45 days from the date an application is filed with the commission [and] deemed administratively complete by commission staff and notice is given to all affected persons including customers of the utility." OPUC also recommended, for CCN applications filed under PURA §39.203(e) or an application for a CCN for a transmission facility subject to PURA §37.057, the deadline for motions to intervene be revised from "within 30 days from the date the application filed with the commission" to within 30 days from the date the application is filed with the commission is deemed administratively complete by commission staff and notice given to affected persons."

Commission response

The commission declines to implement the recommended change because it is contrary to statute. CCN proceedings have statutory deadlines that are tied to the date a CCN application is filed (e.g., PURA §37.057 has a 180-day timeline from the date the application is filed), not tied to dates associated with administrative completeness or notice.

Proposed §22.104(c)- Time for filing motion

Proposed §22.104(c) provides that a person who has filed a motion to intervene has all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.

TAWC commented that the right to participate in a proceeding should not be granted to a person that has filed a motion to intervene if the presiding officer has not granted intervention. TAWC stated that this may lead to instances where a person may file a motion to intervene and then immediately request voluminous discovery from a utility by a date prior to the presiding officer ruling on the motion.

Commission response

The commission declines to implement the recommended change. The proposed revision is only a grammatical change to a long-standing provision. The existing and proposed version of the provision effectively provide that any person that has not intervened in a proceeding, or who has been denied permission to intervene, is not considered to be a party. The commission has interpreted §22.104(b) and the rest of §22.104 as a whole to provide that a person whose motion to intervene has not yet been ruled on by the presiding officer has the rights of a party until the motion to intervene has been denied. This entitles the movant to things like service and discovery rights. This provisional allowance is essential to full and fair participation in a commission matter, particularly in commission proceedings with short discovery and testimony deadlines. To the extent a party believes a person who does not have a justiciable interest is therefore improperly propounding discovery, the party subject to the discovery may raise an objection for the presiding officer's consideration.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

16 TAC §§22.2 - 22.4

These 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 and Texas Water Code §13.041(b), which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Of-

fice of Administrative Hearings. The amended rules are also adopted under PURA §12.202, which requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission; PURA §14.153, which requires the regulatory authority to adopt rules governing communications, including records retention of such communications, with the regulatory authority or a member or employee of the regulatory authority by a public utility, an affiliate, or a representative of a public utility or affiliate; PURA §37.054, which requires the commission to provide notice of an application for a certificate to interested parties and to the Office of Public Utility Counsel and set a time and place for a hearing and give notice of the hearing; PURA §37.057, which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than the 180th day after the date the application is filed; Texas Government Code §2001.051, which entitles each party in a contested case to a hearing and an opportunity to respond and to present evidence and argument on each issue involved in the case; and Texas Government Code §2001.052, which specifies the requirements for the contents of a notice of a hearing in a contested case.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.2. Definitions.

The following terms, when used in this chapter, have the following meanings, unless the context or specific language of a section clearly indicates otherwise:

(1) Administrative law judge--The person designated to preside over a proceeding.

(2) APA--The Texas Administrative Procedure Act, codified at Chapter 2001, Texas Government Code.

(3) Administrative review--The process under which an application submitted to the commission may be decided without a formal hearing.

(4) Affected person--For a matter involving an entity that provides electric or telecommunications service, the definition of affected person has the meaning provided by PURA §11.003(1). For a matter involving an entity that provides water or sewer service, the definition of affected person has the meaning provided by TWC §13.002(1).

(5) Applicant--A person, including commission staff, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

(6) Application--A written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

(7) Arbitration--A form of dispute resolution in which each party presents its position on any unresolved issues to an impartial third person who renders a decision on the basis of the information and arguments submitted.

(8) Arbitration hearing--The hearing conducted by an arbitrator to resolve any issue submitted to the arbitrator. An arbitration hearing is not a contested case under the APA.

(9) Arbitrator--The commission, any commissioner, any commission employee, or any SOAH administrative law judge selected to serve as the presiding officer in a compulsory arbitration hearing.

(10) Authorized representative--A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate in a proceeding. The appearance may be entered in person or by subscribing the representative's name upon any pleading filed on behalf of the party or person seeking to be a party or otherwise to participate in the proceeding. The authorized representative is considered to remain a representative of record unless a statement or pleading to the contrary is filed or stated in the record.

(11) Chairman--The commissioner designated by the Governor of the State of Texas to serve as chairman of the commission.

(12) Commission--The Public Utility Commission of Texas.

(13) Commissioner--One of the members of the Public Utility Commission of Texas.

(14) Complainant--A person, including commission staff or the Office of Public Utility Counsel, who files a complaint intended to initiate a proceeding with the commission regarding any act or omission by any person subject to the commission's jurisdiction.

(15) Compulsory arbitration--The arbitration proceeding conducted by the commission or its designated arbitrator in accordance with the commission's authority under FTA96 §252.

(16) Contested case--A proceeding as defined by APA §2001.003(1).

(17) Control number--The number assigned by Central Records to a docket, project, or tariff filing proceeding.

(18) Days--Calendar days, not working days, unless otherwise specified by this chapter or the commission's substantive rules.

(19) FTA96--The federal Telecommunications Act of 1996, codified under Title 47, United States Code §§151 et seq.

(20) Final order--The final disposition, in whole or in part, by the commission of the issues before the commission in a proceeding, rendered in accordance with §22.263 of this title (relating to Final Orders).

(21) Financial interest--Any legal or equitable interest, or any relationship as officer, director, trustee, advisor, or other active participant in the affairs of a party. An interest as a taxpayer, utility ratepayer, or cooperative member is not a financial interest. An interest a person holds indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of that person's control is not a financial interest.

(22) Hearing--Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(23) Intervenor--A person, other than the applicant, respondent, or commission staff representing the public interest, who is permitted by law or by ruling of the presiding officer, to become a party to a proceeding.

(24) Licensing proceeding--Any proceeding involving the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, including a proceeding regarding a notice of intent to build a new electric generating unit.

(25) Major rate proceeding--Any proceeding filed under PURA §§36.101- 36.112, 36.201 - 36.203, 36.205, 51.009, 53.101 -

53.113, 53.201, or 53.202 involving an increase in rates which would increase the aggregate revenues of the applicant more than the greater of $100,000 or 2.5%. In addition, a major rate proceeding is any rate proceeding initiated under PURA §§36.151 - 36.156, 53.151, or 53.152 in which the respondent utility is directed to file a rate filing package. For water and sewer utilities, a rate filing package filed under TWC §13.187 is a major rate proceeding.

(26) Mediation--A form of dispute resolution in which an impartial person facilitates communication between parties to promote negotiation and settlement of disputed issues.

(27) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home-rule, or special laws of Texas. A municipality is a person as defined in this section.

(28) Party--A party under subchapter F of this chapter (relating to Parties).

(29) Person--An individual, partnership, corporation, association, governmental subdivision, entity, or public or private organization.

(30) Pleading--A written document submitted by a party, a person seeking to intervene, or an amicus curiae, in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, or other matters relating to a proceeding.

(31) Prehearing conference--Any conference or meeting of the parties, prior to the hearing on the merits, on the record and presided over by the presiding officer.

(32) Presiding officer--The commission, any commissioner, or any hearings examiner or administrative law judge presiding over a proceeding or any portion thereof.

(33) Proceeding--Any hearing, investigation, inquiry or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint, conducted by the commission or SOAH.

(34) Project--A rulemaking or other proceeding that is not a docket or a tariff filing proceeding.

(35) Protestor--A person who is not a party to the case who submits oral or written comments. A person classified as a protestor does not have rights to participate in a proceeding other than by providing oral or written comments.

(36) PURA--The Public Utility Regulatory Act, Texas Utilities Code, Title 2, as amended.

(37) Relative--An individual, or spouse of an individual, who is related to the individual in issue, or the spouse of the individual in issue, within the second degree of consanguinity or relationship according to the civil law system.

(38) Respondent--A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.

(39) Retail Public Utility--Has the meaning as defined by Texas Water Code §13.002(19).

(40) Rulemaking--A proceeding under the APA, Texas Government Code, Chapter 2001, subchapter B, conducted to adopt, amend, or repeal a commission rule.

(41) SOAH--The State Office of Administrative Hearings.

(42) TCEQ--The Texas Commission on Environmental Quality.

(43) TWC--The Texas Water Code, as amended.

(44) Working day--A day on which the commission is open for the conduct of business.

§22.3. Standards of Conduct.

(a) Standards of Conduct.

(1) Every person appearing in any proceeding must comport himself or herself with dignity, courtesy, and respect for the commission, the presiding officer, and all other persons participating in the proceeding. Professional representatives must observe and practice the standard of ethical and professional conduct prescribed for their professions.

(2) Upon a finding of a violation of paragraph (1) of this subsection, any party, witness, attorney, or other representative may be excluded by the presiding officer from any proceeding for such period and upon such conditions as are just, or may be subject to other just, reasonable, and lawful disciplinary action as the commission may prescribe.

(b) Ex parte communications. Ex parte communications are governed by § 2001.061 of the APA.

(1) Unless required for the disposition of an ex parte matter authorized by law, members of the commission or administrative law judges assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of law or fact with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate.

(2) Members of the commission or administrative law judges assigned to render a decision or to make findings of fact or conclusions of law in a contested case may communicate ex parte with employees of the commission who have not participated in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence.

(3) Number running procedures do not constitute impermissible ex parte communications if memoranda memorializing such procedures are preserved and made available to all parties of record in the proceeding to which the number running procedures relate.

(c) Communications. Communications by public utilities, their affiliates or representatives, or any person with the commission or any employee of the commission are governed by §14.153 of PURA. Records will be kept of all such communications and will be available to the public on a monthly basis.

(d) Standards for Recusal or Disqualification of Administrative Law Judges. An administrative law judge must disqualify himself or herself or must recuse himself or herself on the same grounds and under the same circumstances as specified in Rule 18b of the Texas Rules of Civil Procedure.

(e) Motions for Disqualification or Recusal of an Administrative Law Judge.

(1) Any party may move for disqualification or recusal of an administrative law judge stating with particularity the grounds why the administrative law judge should not sit. The motion must:

(A) be made on personal knowledge;

(B) set forth such facts as would be admissible in evidence; and

(C) be verified by affidavit.

(2) The motion must be filed within ten working days after the facts that are the basis of the motion become known to the party, or within 15 working days of the commencement of the proceeding, whichever is later. The motion must be served on all parties in accordance with §22.74 of this title (relating to Service of Pleadings and Documents).

(3) A party's response to a motion for disqualification or recusal must be in writing and filed within three working days after the filing of the motion. The administrative law judge may require that responses be made orally at a prehearing conference or hearing.

(4) The administrative law judge must rule on the motion for disqualification or recusal within ten working days of the filing of the motion. No hearing will be held on a motion for disqualification or recusal unless ordered by the presiding officer.

(A) If the administrative law judge who is the subject of the motion disqualifies or recuses himself or herself, the director of docket management must assign a different administrative law judge to the case.

(B) If the administrative law judge who is the subject of the motion declines to disqualify or recuse himself or herself, the director of docket management must assign another administrative law judge to consider and rule on the motion.

(i) At the discretion of the assigned administrative law judge, a hearing may be held on the motion.

(ii) If the assigned judge finds that the presiding administrative law judge is disqualified or should be recused, the director of docket management must assign a different presiding administrative law judge to the case.

(5) The administrative law judge must not rule on any other issues in the proceeding while a motion for disqualification or recusal is pending. In a case that has been referred to SOAH, SOAH must appoint another administrative law judge to preside on all matters that are the subject of the motion for recusal until the issue of disqualification is resolved.

(6) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.

(7) If the administrative law judge determines that a motion for disqualification or recusal was frivolous or capricious, or filed for purposes of delaying the proceeding, the movant may be sanctioned in accordance with §22.161 of this title (relating to Sanctions).

(8) Disqualification or recusal of an administrative law judge, in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal or disqualification was filed.

(f) Standards for Recusal of Commissioners. A commissioner must recuse himself or herself from sitting in a proceeding, or from deciding one or more issues in a proceeding, in which any one or more of the following circumstances exist:

(1) the commissioner in fact lacks impartiality or the commissioner's impartiality has been reasonably questioned;

(2) the commissioner, or any relative of the commissioner, is a party or has a financial interest in the subject matter of the issue or in one of the parties, or the commissioner has any other interest that could be substantially affected by the determination of the issue; or

(3) the commissioner or a relative of the commissioner has participated as counsel, advisor, or witness in the proceeding or matter in controversy.

(g) Motion for Recusal of a Commissioner.

(1) Any party may move for recusal of a commissioner stating with particularity grounds why the commissioner should not sit. Such a motion must be filed prior to the date the commission is scheduled to consider the matter unless the information upon which the motion is based was not known or discoverable with reasonable effort prior to that time. The motion must:

(A) be made on personal knowledge,

(B) set forth such facts as would be admissible in evidence, and

(C) be verified by affidavit.

(2) Subject to the provisions of paragraph (1) of this subsection the motion must be filed within ten working days after the facts that are the basis of the motion become known to the party or within 15 days of the commencement of the proceeding, whichever is later. The motion must be served on all parties and the commissioner for whom recusal is sought in accordance with §22.74 of this title.

(3) Parties may file written responses to the motion within seven working days from the date of filing the motion. The commission may require that responses be made orally at an open meeting.

(4) The commissioner sought to be recused must issue a decision as to whether he or she agrees that recusal is appropriate or required before the commission is scheduled to act on the matter for which recusal is sought, or within 15 days after filing of the motion, whichever occurs first.

(5) The parties to a proceeding may waive any ground for recusal after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.

(6) Recusal of a commissioner, in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.

§22.4. Computation of Time.

(a) Counting Days. In computing any period of time prescribed or allowed by this chapter, by order of the commission or any administrative law judge, or by any applicable statute, the period begins on the day after the act, event, or default in question. The period concludes on the last day of the designated period unless that day is not a working day, in which event the designated period runs until 5:00 P.M. Central Prevailing Time of the next working day.

(b) Extensions. Unless otherwise provided by statute, the time for filing any documents may be extended by the presiding officer, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion.

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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Seaver Myers
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: August 15, 2025
For further information, please call: (512) 936-7433

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SUBCHAPTER B. THE ORGANIZATION OF THE COMMISSION

16 TAC §22.21, §22.23

These 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 and Texas Water Code §13.041(b), which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings. The amended rules are also adopted under PURA §12.202, which requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission; PURA §14.153, which requires the regulatory authority to adopt rules governing communications, including records retention of such communications, with the regulatory authority or a member or employee of the regulatory authority by a public utility, an affiliate, or a representative of a public utility or affiliate; PURA §37.054, which requires the commission to provide notice of an application for a certificate to interested parties and to the Office of Public Utility Counsel and set a time and place for a hearing and give notice of the hearing; PURA §37.057, which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than the 180th day after the date the application is filed; Texas Government Code §2001.051, which entitles each party in a contested case to a hearing and an opportunity to respond and to present evidence and argument on each issue involved in the case; and Texas Government Code §2001.052, which specifies the requirements for the contents of a notice of a hearing in a contested case.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

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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Seaver Myers
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SUBCHAPTER C. CLASSIFICATION OF APPLICATIONS OR OTHER DOCUMENTS INITIATING A PROCEEDING

16 TAC §22.31

These 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 and Texas Water Code §13.041(b), which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings. The amended rules are also adopted under PURA §12.202, which requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission; PURA §14.153, which requires the regulatory authority to adopt rules governing communications, including records retention of such communications, with the regulatory authority or a member or employee of the regulatory authority by a public utility, an affiliate, or a representative of a public utility or affiliate; PURA §37.054, which requires the commission to provide notice of an application for a certificate to interested parties and to the Office of Public Utility Counsel and set a time and place for a hearing and give notice of the hearing; PURA §37.057, which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than the 180th day after the date the application is filed; Texas Government Code §2001.051, which entitles each party in a contested case to a hearing and an opportunity to respond and to present evidence and argument on each issue involved in the case; and Texas Government Code §2001.052, which specifies the requirements for the contents of a notice of a hearing in a contested case.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.31. Classification in General.

(a) Classification and assignment of control number. Central Records will determine whether an application or other document initiating a proceeding should be designated as a docket, tariff filing, or project. Central Records will assign an appropriate control number to each docket, tariff filing, or project.

(b) Control numbering system. Central Records will establish and maintain a control numbering system.

(c) Control number log. Central Records will maintain a record or log of all applications or other documents assigned a control

number, which will include the style, the date the application or other document was filed or the proceeding initiated, the nature of the proceeding, and the presiding officer assigned to the proceeding, if any. The log will be accessible to the public.

(d) Control number assignment. A control number will be assigned to a proceeding only at the time of filing an application unless otherwise required by rule or on approval of the Office of Policy and Docket Management or the director's designee.

(e) Closing unused control numbers. Any control number assigned before the filing of an application may be closed by the presiding officer if the application is not filed within 25 days of assignment of the control number.

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. NOTICE

16 TAC §§22.52, 22.53, 22.56

These 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 and Texas Water Code §13.041(b), which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings. The amended rules are also adopted under PURA §12.202, which requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission; PURA §14.153, which requires the regulatory authority to adopt rules governing communications, including records retention of such communications, with the regulatory authority or a member or employee of the regulatory authority by a public utility, an affiliate, or a representative of a public utility or affiliate; PURA §37.054, which requires the commission to provide notice of an application for a certificate to interested parties and to the Office of Public Utility Counsel and set a time and place for a hearing and give notice of the hearing; PURA §37.057, which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than the 180th day after the date the application is filed; Texas Government Code §2001.051, which entitles each party in a contested case to a hearing and an opportunity to respond and to present evidence and argument on each issue involved in the case; and Texas Government Code §2001.052, which specifies the requirements for the contents of a notice of a hearing in a contested case.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.52. Notice in Licensing Proceedings.

(a) Notice in electric licensing proceedings. In all electric licensing proceedings, except minor boundary changes and service area exceptions, the applicant must give notice in the following ways:

(1) An applicant must publish notice of the applicant's intent to secure or amend a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice must identify the commission's docket control number and the style assigned to the case by Central Records. In electric transmission line cases, the applicant must obtain the docket control number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice must identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice must describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) The notice must include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice must state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed under PURA §39.203(e) or an application for a certificate of convenience and necessity for a new transmission facility subject to PURA §37.057) and that a letter requesting intervention should be received by the commission by that date.

(B) The notice must describe in clear, precise language the geographic area for which the certificate is being requested and the location of any alternative routes of the proposed facility using route segments proposed by the applicant. This description must refer to area landmarks, including geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. In addition, the notice must include a map that identifies any of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.

(C) The notice must state a location where a detailed routing map may be reviewed. The map must clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, and must reflect area landmarks, including geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

(D) Proof of publication of notice must be in the form of a publisher's affidavit which must specify each newspaper in which the notice was published, the county or counties in which each newspaper is of general circulation, the dates upon which the notice was published,

and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available.

(E) The applicant must provide a copy of each environmental impact study or assessment for the project to the Texas Parks and Wildlife Department (TPWD) for its review within seven days of filing the application. Proof of submission of the information to TPWD must be provided in the form of an affidavit to the commission, which must specify the date the information was mailed or otherwise provided to TPWD, and must provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.

(2) The applicant must, on the date it files an application, mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, each county government for all counties in which any portion of the proposed facility or requested territory is located, and the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse or similar entity as designated by the Department of Defense. In addition, the applicant must, upon filing the application, serve the notice on the Office of Public Utility Counsel using a method specified in §22.74(b) of this title (relating to Service of Pleadings and Documents). The notice must contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, counties, the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse or similar entity as designated by the Department of Defense, and the Office of Public Utility Counsel must specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification to the applicant's proposed route, applicant must provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification must state such entities will have 20 days to intervene.

(3) The applicant must, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax rolls, who would be directly affected by the requested certificate. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. For purposes of this paragraph, land is also directly affected if it is adjacent to a property on which a substation proposed to be authorized by the certificate of convenience and necessity will be located or is directly across a highway, road, or street that is adjacent to a property on which such a substation will be located.

(A) Required contents of notice. The notice must contain all information required in paragraph (1) of this subsection and must include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket control number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.

(B) Map of route. The notice must include a map as described in paragraph (1)(C) of this subsection.

(C) Notice of proposed substations. Notice of each substation proposed to be authorized by a certificate of convenience and necessity to each owner of:

(i) property adjacent to the property on which the proposed substation will be located; and

(ii) property located directly across a highway, road, or street that is adjacent to the property on which the proposed substation will be located.

(D) Issuance of notice prior to final approval. Before final approval of any modification in the applicant's proposed route, applicant must provide notice as required under subparagraphs (A) through (C) of this paragraph to all landowners directly affected by the modification who have not already received notice. Proof of notice of the modification may be established by an affidavit affirming that the applicant sent notice by first-class mail to each landowner directly affected by the modification as listed on the current county tax rolls.

(E) Proof of notice. Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax rolls. The proof of notice must include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice must be filed with the commission no later than 20 days after the filing of the application.

(F) Cure of insufficient notice. Upon the filing of proof of notice as described in subparagraph (E) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it must immediately advise the commission by written pleading and must provide notice to such landowners by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) through (C) of this paragraph, except that the notice must state that the person has fifteen days from the date of delivery to intervene. The utility must immediately file a supplemental affidavit of notice with the commission.

(4) The utility must hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting must be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, an owner of land within 500 feet of the centerline of a transmission project greater than 230kV, an owner of land adjacent to a property on which a substation proposed to be authorized by the certificate of convenience and necessity will be located, or an owner of land directly across a highway, road, or street that is adjacent to such a substation. The utility must also provide written notice of the public meeting to the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse or similar entity as designated by the Department of Defense . In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility must not describe routes as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes. If no public meeting is held, the utility must provide written notice of the planned filing of an application to the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse or similar entity as designated by the Department of Defense prior to completion of the routing study.

(5) Failure to provide notice in accordance with this section will be cause for day-for-day extension of deadlines for intervention and for commission action on the application.

(6) Upon entry of a final, appealable order by the commission approving an application, the utility must provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection must be provided to the commission's staff.

(A) If the owner's land is directly affected by the approved route, the notice must consist of a copy of the final order.

(B) If the owner's land is not directly affected by the approved route, the notice must consist of a brief statement that the land is no longer the subject of a pending proceeding and will not be directly affected by the facility.

(7) All notices of an applicant's intent to secure a certificate of convenience and necessity whether provided by publication or direct mail must include the following language: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."

(b) Notice in telephone licensing proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant must give notice in the following ways:

(1) Applicants must publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity This notice must identify the commission's docket control number and the style assigned to the case by Central Records. This notice must identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. The notice must state the established intervention deadline. The notice must also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (Commission local and toll-free telephone numbers). Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (Relay Texas telephone number). The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must request intervention to the commission by that date." Proof of publication of notice must be in the form of a publisher's affidavit, which must specify the newspaper or newspapers in which the notice was published; the county or counties in which the newspaper or newspapers is or are of general circulation; the dates upon which the notice was published and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available.

(2) Applicant must also mail notice of its application, which must contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant must also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments must be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties must specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

(3) Failure to provide notice in accordance with this section will be cause for day-for-day extension of deadlines for intervention.

§22.53. Notice of Regional Hearings.

The presiding officer may require the utility that is the subject of a proceeding to publish conspicuous notice of a regional hearing in newspapers of general circulation in the general area of the hearing and to provide other reasonable notice to customers and affected municipalities.

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

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SUBCHAPTER E. PLEADINGS AND OTHER DOCUMENTS

16 TAC §§22.74 - 22.80

These 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 and Texas Water Code §13.041(b), which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings. The amended rules are also adopted under PURA §12.202, which requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission; PURA §14.153, which requires the regulatory authority to adopt rules governing communications, including records retention of such communications, with the regulatory authority or a member or employee of the regulatory authority by a public utility, an affiliate, or a representative of a public utility or affiliate; PURA §37.054, which requires the commission to provide notice of an application for a certificate to interested parties and to the Office of Public Utility Counsel and set a time and place for a hearing and give notice of the hearing; PURA §37.057, which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than the 180th day after the date the application is filed; Texas Government Code §2001.051, which entitles each party in a contested case to a hearing and an opportunity to respond and to present evidence and argument on each issue involved in the case; and Texas Government Code §2001.052, which specifies the requirements for the contents of a notice of a hearing in a contested case.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b);

PURA §§12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.74. Service of Pleadings and Documents.

(a) Pleadings and Documents submitted to a presiding officer. At or before the time any document or pleading regarding a proceeding is submitted by a party to a presiding officer, a copy of such document or pleading must be filed and served on all parties. These requirements do not apply to documents that are offered into evidence during a hearing or that are submitted to a presiding officer for in camera inspection; provided, however, that the party submitting documents for in camera inspection must file and serve notice of the submission upon the other parties to the proceeding. Pleadings and documents submitted to a presiding officer during a hearing, prehearing conference, or open meeting must be filed with Central Records as soon as is practicable.

(b) Methods of service. Except as otherwise expressly provided by order, rule, or other applicable law, service on a party may be made by delivery of a copy of the pleading or document to the party's authorized representative or attorney of record by email; in person; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record. If a person has filed a statement of no access under §22.106 of this title (relating to Statement of No Access), service on such a person must be made by delivery of a copy of the pleading or document to the party's authorized representative or attorney of record; in person; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record.

(1) Service in person is complete upon in-person delivery to the party or the party's authorized representative or attorney of record.

(2) Service by email is complete upon sending an email that provides a link to the filing on the Interchange in an email message or providing the filing itself attached to the message to the email address of record for the party that was provided.

(3) Service by mail is complete upon deposit of the document, postpaid and properly addressed, in the mail.

(4) Service by agent or by courier receipted delivery is complete upon delivery to the agent or courier.

(c) Alternative methods of service. In response to the motion of a party or on the presiding officer's own motion, the presiding officer may require service by filing, by any method specified in subsection (b) of this section, or any combination of those methods. Service by filing is complete upon acceptance for filing on the Interchange.

(d) Evidence of service. A return receipt or affidavit of any person having personal knowledge of the facts is prima facie evidence of the facts shown thereon relating to service. A party may present other evidence to demonstrate facts relating to service.

(e) Certificate of service. Every document required to be served on all parties must contain the following or similar certificate of service: "I, (name) (title) certify that a copy of this document was served on all parties of record in this proceeding on (date) in the following manner: (specify each method). Signed, (signature)." The list of the names and email addresses of the parties on whom the document was served should not be appended to the document.

§22.75. Examination and Correction of Pleadings and Documents.

(a) Construction of pleadings and documents. All pleadings and documents must be construed so as to do substantial justice.

(b) Procedural sufficiency of pleadings and documents.

(1) Except for a motion for rehearing or a reply to a motion for rehearing, the presiding officer may require a pleading or document that does not comply with the applicable requirements of §22.72 of this title (relating to Form Requirements for Documents Filed with the Commission) to be re-filed.

(2) Upon notification by the presiding officer of a deficiency in a pleading or document, the responsible party must correct or complete the pleading or document in accordance with the notification. If the responsible party fails to correct the deficiency, the pleading or document may be stricken from the record.

(c) Notice of material deficiencies in rate change applications. This subsection applies to applications for rate changes filed under PURA, chapter 36, subchapter C or chapter 53, subchapter C.

(1) Motions to find a rate change application materially deficient must be filed no later than 21 days after an application is filed. Such motions must specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find a rate change application materially deficient must be filed no later than five working days after such motion is received.

(2) If the presiding officer determines that material deficiencies exist in an application, the presiding officer must issue a written order specifying a time within which the applicant must amend its application and correct the deficiency. The effective date of the proposed rate change will be 35 days after the filing of a sufficient application. The statutory deadlines will be calculated based on the date of filing the sufficient application.

(d) Notice of material deficiencies in applications for certificates of convenience and necessity for electric transmission lines.

(1) Motions to find an application for certificate of convenience and necessity for electric transmission line materially deficient must be filed no later than 21 days after an application is filed. Such motions must specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application for certificate of convenience and necessity for electric transmission line materially deficient must be filed no later than five working days after such motion is received.

(2) If the presiding officer determines that a material deficiency exists in an application, the presiding officer must issue a written order specifying a time within which the applicant must amend its application and correct the deficiency.

(3) For an application for certificate of convenience and necessity filed under PURA §39.203(e), a pleading alleging a material deficiency in the application must be filed no later than 14 days after the application is filed, and must be served on the applicant in accordance with §22.74 of this title (relating to Service of Pleadings and Documents). The applicant must reply to a pleading alleging a material deficiency no later than seven days after it is received. If the presiding officer determines that a material deficiency exists in an application, the presiding officer must issue a written order ordering the applicant to amend its application and correct the deficiency within seven days.

§22.77. Motions.

(a) General requirements. A motion must be in writing, unless the motion is made on the record at a prehearing conference or hearing and must state the relief sought and the specific grounds supporting a grant of relief.

(1) If the motion is based upon alleged facts that are not a matter of record, the motion must be supported by an affidavit.

(2) Written motions must be served on all parties in accordance with §22.74 of this title (relating to Service of Pleadings and Documents).

(3) A movant is required to attempt to confer with all parties that could be affected by the motion or pleading, but is not required to attempt to confer with all parties to the proceeding. Written motions must include a certificate of conference that complies substantially with one of the following examples:

(A) Example one: "Certificate of Conference: I certify that I conferred with {name of other party or other party's authorized representative} on {date} about this motion. {Succinct statement of other party's position on the action sought and/or a statement that the parties negotiated in good faith but were unable to resolve their dispute before submitting it to the judge for resolution.} Signature."

(B) Example two: "Certificate of Conference: I certify that I made reasonable but unsuccessful attempts to confer with {name of other party or other party's authorized representative} on {date or dates} about this motion. {Succinctly describe these attempts.} Signature."

(b) Time for response. The time for responding to motions is governed by §22.78 of this title (relating to Responsive Pleadings and Emergency Action), unless otherwise provided by the presiding officer, commission rule, or statute.

(c) Rulings on motions. The presiding officer must serve orders ruling on motions upon all parties, unless the ruling is made on the record in a hearing or prehearing conference open to the public.

§22.78. Responsive Pleadings.

(a) General rule. Unless otherwise specified by statute, by this chapter, or by order of the presiding officer, a responsive pleading, if made, must be filed by a party within five working days after receipt of the pleading to which the response is made. Responsive pleadings must state the date of receipt of the pleading to which response is made. Unless the presiding officer is advised otherwise, it is presumed that all pleadings are received on the filing date.

(b) Responses to complaints. Unless otherwise specified by statute, by this chapter, or by order of the presiding officer, responsive pleadings to complaints filed to initiate a proceeding must be filed within 21 days of the receipt of the complaint. This subsection does not apply to complaints filed under PURA, chapter 36, subchapter D or chapter 53, subchapter D, or for a complaint filed under TWC §13.004 (relating to Jurisdiction of Utility Commission Over Certain Water Supply or Sewer Service Corporations).

(c) Action by the Presiding Officer. Unless otherwise precluded by law or this chapter, the presiding officer may take action on a pleading before the deadline for filing responsive pleadings. Action taken under this subsection may be subject to modification based on a timely responsive pleading.

(d) PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D Investigations or Complaints. In a complaint proceeding filed under PURA, chapter 36, subchapter D or chapter 53, subchapter D, the presiding officer must determine the scope of the response that the electric or telecommunications utility is required to file, up to and including the filing of a full rate filing package. The presiding officer will also set an appropriate deadline for the electric or telecommunications utility's response.

§22.79. Continuances.

(a) Requirements for motions for continuance.

(1) Unless otherwise ordered by the presiding officer, motions for continuance of the hearing on the merits must be in writing and must be filed not less than five days prior to the hearing.

(2) Motions for continuance must:

(A) set forth the specific grounds for which the moving party seeks continuance; and

(B) refer to all other motions for continuance filed by the moving party in the proceeding.

(3) The moving party must attempt to contact all other parties and must state in the motion each party that was contacted and whether that party objects to the relief requested.

(b) Burden of proof. The moving party has the burden of proof with respect to the need for the continuance at issue.

(c) Requirements for granting motions for continuance.

(1) A continuance will not be granted based on the need for discovery if the party seeking the continuance previously had the opportunity to obtain discovery from the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence which could not have been discovered previously through reasonably diligent effort by the moving party.

(2) The presiding officer may grant continuances provided that any continuance is consistent with any applicable statutory deadline.

(3) A motion for continuance agreed to by all parties may be filed within five days of the hearing on the merits, and must state suggested dates for rescheduling of the hearing.

§22.80. Commission Prescribed Forms.

(a) The commission may require that certain reports and applications be submitted on commission-prescribed forms.

(1) All documents that are the subject of a commission-prescribed form must contain all matters designated in the form and must conform substantially to the form.

(2) Prior to the implementation of any new commission-prescribed form or substantive change to an existing form, the change or new form will be referenced in the "In Addition" section of the *Texas Register* for public comment.

(3) Commission staff may make nonsubstantive updates to commission-approved forms or change the method of form submission (e.g., transitioning to an online portal for submission) provided the updates or changes do not conflict with the underlying statute or rule associated with the form. The types of changes that are authorized under this paragraph include changes such as correcting typographical errors, updating or adding relevant phone numbers or citations, and making nonsubstantive modifications to a form to improve accessibility across different submission platforms.

(4) The commission will maintain a complete index to and set of all commission-prescribed forms.

(b) In the event of a conflict between the requirements of a commission-prescribed form and the requirements of the underlying statute or rule associated with that form, the statute or rule prevails.

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) 936-7433

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SUBCHAPTER F. PARTIES

16 TAC §§22.101, 22.103, 22.104

These 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 and Texas Water Code §13.041(b), which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings. The amended rules are also adopted under PURA §12.202, which requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission; PURA §14.153, which requires the regulatory authority to adopt rules governing communications, including records retention of such communications, with the regulatory authority or a member or employee of the regulatory authority by a public utility, an affiliate, or a representative of a public utility or affiliate; PURA §37.054, which requires the commission to provide notice of an application for a certificate to interested parties and to the Office of Public Utility Counsel and set a time and place for a hearing and give notice of the hearing; PURA §37.057, which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than the 180th day after the date the application is filed; Texas Government Code §2001.051, which entitles each party in a contested case to a hearing and an opportunity to respond and to present evidence and argument on each issue involved in the case; and Texas Government Code §2001.052, which specifies the requirements for the contents of a notice of a hearing in a contested case.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.103. Standing to Intervene.

(a) Commission staff representing the public interest. Commission staff represents the public interest, and has standing in all proceedings before the commission. Commission staff is not required to file a motion to intervene.

(b) Standing to intervene. A person desiring to intervene must file a motion to intervene and be recognized as a party under §22.104 of this title (relating to Motions to Intervene) to participate as a party in a proceeding. Any association or organized group must include in its motion to intervene a list of the members of the association or group that are persons other than individuals that will be represented by the association or organized group in the proceedings. The group or association must supplement the list of members represented in the motion at any time a member is added or deleted from the list of members represented. A person has standing to intervene if that person:

(1) has a right to participate that is expressly conferred by statute, commission rule or order or other law; or

(2) has a justiciable interest that may be adversely affected by the outcome of the proceeding.

(c) Dispute resolution under the Federal Telecommunications Act of 1996 (FTA96). Standing to intervene in proceedings concerning dispute resolution and approval of agreements under the commission's authority under FTA96 is subject to the requirements of subchapter D of chapter 21 of this title (relating to Dispute Resolution).

(d) By requesting to intervene in a proceeding, a person agrees to accept delivery by email any motions for rehearing and replies to motions for rehearing in accordance with §22.74 of this title (relating to Service of Pleadings and Documents), unless he or she has filed a statement under §22.106 of this title (relating to Statement of No Access).

§22.104. Motions to Intervene.

(a) Necessity for filing motion to intervene. Applicants, complainants, and respondents, as defined in §22.2 of this title (relating to Definitions), are necessary parties to proceedings which they have initiated or which have been initiated against them and need not file motions to intervene to participate as parties in such proceedings.

(b) Time, content, and procedure for filing motion. Motions to intervene must be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding officer.

(1) For an application for a certificate of convenience and necessity (CCN) filed under PURA §39.203(e) or an application for a CCN for a transmission facility subject to PURA §37.057, motions to intervene must be filed within 30 days from the date the application is filed with the commission.

(2) The motion must include the name and email address of the person requesting to intervene unless the motion is accompanied by a statement of no access under §22.106 of this title (relating to Statement of No Access) and be served upon all parties to the proceeding and upon all persons that have pending motions to intervene in accordance with §22.74 of this title (relating to Service of Pleadings and Documents).

(c) Rights of persons with pending motions to intervene. A person who has filed a motion to intervene has all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.

(d) Late intervention.

(1) Criteria for granting late intervention. A motion to intervene that was not timely filed may be granted by the presiding officer. In acting on a late filed motion to intervene, the presiding officer will consider, in addition to the criteria for standing identified in §22.103(b) of this title (relating to Standing to Intervene):

(A) any objections that are filed;

(B) whether the movant had good cause for failing to file the motion within the time prescribed;

(C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;

(D) whether any disruption of the proceeding might result from permitting late intervention; and

(E) whether the public interest is likely to be served by allowing the intervention.

(2) Limitations on intervention. The presiding officer may impose limitations on the participation of an intervenor to avoid delay and prejudice to the other parties.

(3) Record and procedural schedule. Except as otherwise ordered, an intervenor must accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene.

(4) Intervention as a matter of right. In an electric licensing proceeding in which a utility did not provide direct notice to an owner of land directly affected by the requested certificate, late intervention will be granted as a matter of right to such a person, provided that the person files a motion to intervene within 15 days of actually receiving the notice. Such a person should be afforded sufficient time to prepare for and participate in the proceeding.

(5) Late intervention after proposal for decision (PFD) or proposed order (PO) issued. For late interventions, other than those allowed by paragraph (4) of this subsection, the procedures in subparagraphs (A) and (B) of this paragraph apply:

(A) Agenda ballot. Upon receipt of a motion to intervene after the PFD or PO has been issued, the commission's Office of Policy and Docket Management (OPDM) will send separate ballots to each commissioner to determine whether the motion to intervene will be considered at an open meeting. An affirmative vote by one commissioner is required for consideration of a motion to intervene at an open meeting. OPDM will notify the parties by letter whether a commissioner by individual ballot has added the motion to intervene to an open meeting agenda, but will not identify the requesting commissioner.

(B) Denial. If after ten working days of the filing of a motion to intervene, which has been filed after the PFD or PO has been issued, no commissioner has by agenda ballot, placed the motion on the agenda of an open meeting, the motion is deemed denied. If any commissioner has balloted in favor of considering the motion, it will be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioners may direct by the agenda ballot. In the event two or more commissioners vote to consider the motion, but differ as to the date the motion will be heard, the motion will be placed on the latest of the dates specified by the ballots.

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

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.56

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.56, relating to Temporary Emergency Electric Energy Facilities (TEEEF), with changes to the proposed text as published in the August 15, 2025, issue of the *Texas Register* (50 TexReg 5284). 16 TAC §25.56 will be republished.

The amendments to §25.56 implement Public Utility Regulatory Act (PURA) §39.918, as revised by Senate Bill (SB) 231 during the 89th Regular Texas Legislative Session, by establishing additional technical requirements for TEEEF units--including around mobility, boot-up time, and maximum generating capacity per unit--and providing that transmission and distribution utilities (TDUs) may enter into a lease for TEEEF without prior commission approval if the lease includes a provision that allows alteration of the lease based on commission order or rule.

The amendments to §25.56 are adopted under Project Number 58392.

The commission received initial written comments on the amendments to §25.56 from AEP Texas Inc. (AEP), CenterPoint Energy Electric Houston, LLC. (CenterPoint), City of Houston (Houston), Office of Public Utility Counsel (OPUC), Oncor Electric Delivery Company, LLC. (Oncor), Steering Committee of Cities Served by Oncor (OCSC), and Texas Energy Association for Marketers (TEAM).

Comments on questions for comment

Question 1.a

Under new PURA §39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the commission further modify the proposed rule to account for PURA §39.918(f-1)(2)? If so, how?

Houston and OPUC asserted that the proposed rule language is insufficient and recommended modifying the language to: 1) prohibit large alteration penalties from being included in leases subject to commission alteration; 2) limit the capacity of TEEEF that can be leased without prior commission approval to the larger of either 10 percent of total approved TEEEF capacity or 10 MW; and 3) require an informational filing from TDUs upon entering into a TEEEF lease without prior commission authorization. Oncor, CenterPoint, and AEP all disagreed with the first recommendation, the second recommendation, or both, arguing that there is a lack of statutory support. Oncor and CenterPoint further argued, in reference to the first recommendation, that a prohibition on alteration penalties would further limit the already small pool of TEEEF lessors, increase TEEEF lease costs, and hamper a TDU's ability to negotiate favorable lease terms. AEP further argued, in reference to the second recommendation, that the concept of "approved TEEEF fleet capacity" does not exist and that, because a TDU is most likely to enter a TEEEF lease under emergency conditions, it may not be prudent to impose a blanket

limitation on the TEEEF capacity a TDU may lease without prior commission authorization.

Commission response

The commission declines to modify the proposed rule to prohibit large alteration penalties or limit the capacity of TEEEF that can be leased under PURA §39.918(f-1)(2) as recommended by Houston and OPUC because such a prohibition and limitation, respectively, are not provided for in PURA §39.918.

The commission agrees with Houston and OPUC that a TDU that enters into a TEEEF lease under PURA §39.918(f-1)(2) should be required to make an informational filing on the lease. Accordingly, the commission adopts a public notice requirement under §25.56(d)(2)(A)(ii).

CenterPoint asserted that, in addition to the proposed rule language, the rule should: 1) describe the type of language that an alteration provision should contain, and 2) authorize the lease parties to either terminate the lease--if unable to agree on a required alteration--or alter other provisions of the lease, including the lease rate, as consideration for agreeing to the required alteration language. Houston disagreed with CenterPoint's second recommendation and argued that, if a lease is terminated without the consent of the commission, the associated costs should not be recovered from ratepayers without a prudence review. OPUC also disagreed with CenterPoint's second recommendation, opposing any lease alteration provision that would result in an increase in the lease rate from the one that was originally agreed to by the lessor and the TDU. OPUC argued that, if the TDU and lessor are authorized to increase the lease rate, then the TDU's increased recovery should be subject to review in a subsequent rate proceeding.

Commission response

The commission declines to modify the proposed rule to describe the language that a TEEEF lease alteration provision should contain or authorize specific considerations to be included in a TEEEF lease as recommended by CenterPoint. Provided that a lease complies with the requirements of adopted §25.56(d)(2)(A), the lease terms and conditions, including the specific language of the alteration provision, or considerations for a lease amendment are subject to negotiation and agreement between the parties executing the lease.

OPUC and Houston asserted that the proposed rule language should be further modified to require an alteration provision to be included in all TEEEF leases that were entered into before SB 231, specifically upon renewal or extension of these leases.

Commission response

The commission declines to modify the proposed rule to require all TEEEF leases entered into before SB 231 to include an alteration provision upon renewal or extension as recommended by OPUC and Houston because it is unnecessary. Adopted §25.56(d)(2)(A) specifies that, if a TDU enters into, renews, or extends a lease involving a TEEEF without prior commission authorization, the lease must include an alteration provision.

OCSC and OPUC recommended in its initial comments that any modifications be focused on establishing a standard lease alteration process and ensuring active commission oversight in TEEEF leasing and deployment.

OCSC additionally recommended that, while it believes the instances in which a TDU leases TEEEF without prior commission authorization should be limited, the procedural process for alteration of these leases should be limited to eliciting comments. Oncor agreed with OCSC that a lease alteration proceeding should not equate to a complete contested case and additionally recommended that interested parties and the TDU have the opportunity to provide input on the original lease terms and any impacts of lease term alterations.

Commission response

The commission agrees with OCSC and OPUC that the rule should include language specifying how the commission will review a TEEEF lease for alteration and adopts §25.56(f) to provide that commission review of a TEEEF lease will entail a contested case proceeding.

The commission agrees with Oncor that interested parties and the TDU should have the opportunity to participate in these proceedings and specifies in adopted §25.56(f)(1)(A) that commission staff, the TDU, OPUC, any other parties to the lease, and anyone granted intervenor status by the proceeding's presiding officer may participate in these proceedings as parties.

AEP asserted that the proposed rule language should be modified to: 1) limit commission alteration of a lease to the first time the lease is reviewed for prudence, and 2) only allow the commission to alter a lease once. OPUC opposed the first recommendation, arguing that it lacks statutory support and is contrary to the legislative intent.

Commission response

The commission declines to modify the proposed rule to limit the commission's ability to alter a TEEEF lease as recommended by AEP because such limitations are not established by PURA §39.918. The manner in which a TDU leases and deploys TEEEF can have significant consequences for public safety, regulated rates, and the health of the competitive market. The commission will not, by rule, limit its ability to intervene when required to protect the public interest.

AEP recommended that TDUs be able to recover costs associated with a lease alteration and provided redlines consistent with its recommendation. While OPUC expressed openness to this recommendation, Houston argued both that the commission already has discretion to review and consider a TDU's lease costs and that costs associated with leases entered under PURA §39.918(f-1)(2) should be fully borne by the TDU.

Commission response

The commission declines to modify the proposed rule to specify that lease alteration costs are recoverable as recommended by AEP because it is unnecessary. Adopted §25.56(i) provides that reasonable and necessary costs of leasing and operating a TEEEF, including the present value of future payments required under the lease, are eligible for recovery under §25.56. However, the commission also emphasizes that imprudently incurred alteration costs may be disallowed during the TDU's base rate case.

Question 1.b.i

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule provide that PURA § 39.918(f-1)(2) applies only to emergency TEEEF leases under 16 TAC § 25.56(d)?

AEP asserted that PURA §39.918(f-1)(2) should be limited to emergency TEEEF leases under proposed §25.56(d).

Houston, CenterPoint, Oncor, OPUC, and OCSC asserted that PURA §39.918(f-1)(2) should not be limited to emergency TEEEF leases under proposed §25.56(d). However, OCSC additionally asserted that the instances in which TDUs enter into TEEEF leases without prior commission authorization should be limited.

Commission response

The commission agrees with Houston, CenterPoint, OPUC, and OCSC that the language of PURA §39.918(f-1)(2) does not apply only to emergency TEEEF leases under proposed §25.56(d). Accordingly, the commission adopts §25.56(d)(2)(A) and (B) to govern, respectively, leases entered into under PURA §39.918(f-1)(2) and emergency TEEEF leases.

Question 1.b.ii

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule provide that the commission can only require a TDU to alter a lease entered into under PURA § 39.918(f-1)(2) when expenses are deemed imprudent in a ratemaking proceeding?

Houston, OCSC, CenterPoint, and OPUC asserted that the rule should not provide that the grounds for lease alteration under PURA §39.918(f-1)(2) are limited to when the commission deems expenses imprudent in a ratemaking proceeding because PURA §39.918(f-1)(2) provides no such limitation.

AEP asserted that the rule should provide that the grounds for lease alteration under PURA §39.918(f-1)(2) are limited to only when the commission deems expenses imprudent in a ratemaking proceeding. AEP reasoned that "The risk that the Commission can initiate an action at any time to require a utility to alter a lease would serve to increase risks to both contracting parties." Further, AEP requested that, if the commission determines it can alter a lease on grounds beyond an imprudence determination, the commission identify specific circumstances under which lease alterations may occur.

Commission response

The commission agrees with Houston, OCSC, CenterPoint, and OPUC that PURA §39.918(f-1)(2) does not limit the grounds upon which the commission may alter a lease to an imprudence finding in a ratemaking proceeding. Under PURA 39.918(f-1)(2) a TDU is not required to obtain commission authorization before entering into a TEEEF lease if the lease "includes a provision that allows alteration of the lease based on commission order or rule." The narrowest interpretation of this provision, as recommended by AEP, is that this language only functions to ensure that TEEEF leases allow for the lease terms to be altered if the commission determines that the costs associated with the lease are imprudent. The commission rejects this interpretation because it would render the statutory provision virtually meaningless. The parties to a TEEEF lease are already capable of negotiating lease terms that protect the TDU and TEEEF vendor from having to remain in contracts that face regulatory scrutiny or renegotiating a TEEEF lease if mutually beneficial to the two parties. Moreover, there are no instances in which a TDU is legally required by the commission to enter into or retain TEEEF leases, and the commission is already capable of protecting ratepayers from imprudent lease costs through prudence reviews in rate cases.

Taking into account the broad statutory language, the legitimate policy concerns surrounding TEEEF leases, and the political context in which this language was adopted--following the events of Hurricane Beryl, multiple legislative hearings, reports, and statements that contained concerns over costs, procurement practices, operational characteristics, lease terms, etc.--it is clear that the Legislature intended for the commission to have the authority to intervene in TEEEF leases before the prudence review. In addition to protecting both TDUs and ratepayers from incurring unreasonable costs, this also ensures the commission has tools to protect the public from unreliable technology during emergencies, safeguard the competitive market from incursion by regulated entities, and unwind contractual agreements that resulted from fraudulent procurement practices.

Question 1.b.iii

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule provide that the commission can initiate an action at any time to require a TDU to alter a lease entered into under PURA § 39.918(f-1)(2)?

Houston, OCSC, and OPUC asserted that the rule should provide that the commission can initiate an action to alter a lease under PURA §39.918(f-1)(2) at any time.

CenterPoint asserted that it is unnecessary for the rule to provide that the commission is able to initiate an action to alter a lease under PURA §39.918(f-1)(2) at any time. However, CenterPoint recommended that, if such a provision is included in the rule, it should specify that only those leases that did not receive prior commission authorization under proposed §25.56(d) are subject to alteration. CenterPoint provided redlines consistent with its recommendation.

AEP asserted that the commission should only be able to initiate an action to alter a lease under PURA §39.918(f-1)(2) during the lease's initial prudency review. AEP argued that "The risk that the Commission can initiate an action at any time…would serve to increase costs to enter the lease to balance the risk the counterparty would be assuming for entering such an agreement." OPUC disagreed with AEP's argument and contended that such a limitation to the commission's ability to alter a lease could result in ratepayer harm.

Commission response

The commission agrees with Houston, OCSC, and OPUC that the commission can initiate an action to alter a lease at any time and adopts language to that effect in §25.56(f).

Question 1.b.iii.1

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule provide that the commission can initiate an action at any time to require a TDU to alter a lease entered into under PURA § 39.918(f-1)(2)? If yes: Under what circumstances should the commission initiate a proceeding to order a TDU to alter a TEEEF lease? What types of alterations might the com-

mission consider ordering in response to these circumstances? Does this include early termination of the lease?

Houston asserted that the commission should be able to initiate a proceeding to alter a TEEEF lease in two scenarios: 1) upon a determination that TEEEF units are likely incapable of, or are unlikely to be, used and useful in the TDU's service territory; and 2) when the lease cost or expenses appear to be excessive, lacking cost-benefit, or otherwise imprudent. OPUC agreed with Houston's recommended alteration scenarios. AEP expressed openness to Houston's second alteration scenario, provided the commission's review is limited to instances where the leases have been found imprudent. CenterPoint opposed Houston's second alteration scenario, noting that assessing costs for reasonableness is the purpose of a ratemaking proceeding.

OCSC asserted that the commission should be able to initiate a proceeding to alter a lease entered into without prior commission authorization if a TDU fails to demonstrate that: 1) the TDU lacked the necessary leased TEEEF generating capacity to restore power; 2) the amount of TEEEF generating capacity leased without prior commission authorization did not exceed the necessary megawatts to restore power; or 3) the lease term did not exceed the time necessary to restore power. OPUC agreed with OCSC's recommendations.

CenterPoint asserted that the commission should only initiate a lease alteration proceeding if necessary to: 1) ensure compliance with PURA §39.918(d); 2) impose changes to TEEEF units' capacity or functionality; or 3) amend the lease term. OPUC agreed with CenterPoint's recommendations. CenterPoint further urged the commission to exercise its authority to alter leases infrequently, lest TEEEF vendors charge higher premiums for a lease alteration provision due to regulatory uncertainty. CenterPoint provided redlines consistent with its recommendation.

OPUC asserted that the commission should be able to initiate a proceeding based on: 1) non-compliance with PURA §39.918(d)(3) or (d)(4); 2) imprudence during emergency conditions, including for not deploying TEEEF; 3) after-action report findings; 4) non-compliance with competitive bidding requirements; and 5) non-compliance with ERCOT directives.

Commission response

Instead of enumerating specific circumstances that will trigger commission review of a lease, the commission specifies in adopted §25.56(f) that, on its own motion or on the motion of commission staff, the commission may initiate a contested case proceeding to review a lease entered into under adopted §25.56(d)(2)(A) to determine whether the public interest requires the alteration or termination of the lease.

Houston asserted that the commission may alter a lease agreement by reducing the lease term, ordering an early termination of the lease, or altering the lease agreement terms. OPUC asserted that commission alteration of a TEEEF lease may include early termination of the lease, modification of the lease term or number of leased TEEEF, and assignment of the lease.

Commission response

The commission agrees with Houston and OPUC that, under PURA §39.918(f-1)(2), the commission has permissive authority to order a TDU to alter a TEEEF lease, including by ordering the TDU to terminate the lease, and incorporates language to that effect throughout the adopted rule. However, the commission also recognizes that the alteration or termination of a lease is a relatively extreme remedy that should not be taken lightly. Further, the commission acknowledges that it must proceed with caution and deliberation when requiring the alteration or termination of a TEEEF lease because such a decision is not isolated in impact and may result in externalities like increased TEEEF lease costs due to regulatory uncertainty.

Question 1.b.iii.2

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule provide that the commission can initiate an action at any time to require a TDU to alter a lease entered into under PURA § 39.918(f-1)(2)? If yes: What standard or criteria should the commission use to evaluate whether to order a TDU to alter a TEEEF lease?

Houston asserted that the commission should use the same standards and criteria it would use in a ratemaking proceeding or separate contested case hearing to determine the appropriate capacity, function, or prudent expense of a TEEEF lease. OPUC agreed with Houston's recommendation.

CenterPoint asserted that the commission should use different criteria as grounds for lease alterations, depending on how the lease is executed. For leases executed under PURA §39.918(f-1)(2), CenterPoint recommended the alteration be consistent with the requirements of PURA §39.918(d). For leases executed under PURA §39.918(f-1)(2) that come after an authorization under PURA §39.918(f-1)(1), CenterPoint recommended the alteration be consistent with the capacity and functionality restrictions established in the commission's prior authorization. OPUC agreed with CenterPoint's recommendations.

OPUC asserted that the commission should evaluate TEEEF leases for imprudence of a lease itself and the costs associated with the lease, use patterns of leased TEEEF, and non-compliance with regulatory requirements, including the TEEEF specifications under PURA §39.918(d)(3) and (d)(4), the competitive bidding requirements under proposed §25.56(c)(5), and ERCOT directives.

AEP asserted that the commission's evaluation standard for lease alteration should be "whether the TDU acted as a prudent operator of a utility based on the information available at the time of the decision was made to enter the lease and that the lease terms comport with that standard." OPUC agreed with AEP's recommendation.

Commission response

The commission adopts a public interest standard under §25.56(f) and specifies in adopted §25.56(f)(2) that, in evaluating the public interest of a lease, the commission may consider any factors it deems appropriate, including compliance with the requirements of PURA, §25.56, and any other applicable law; operational failures; deployment history; and the size, characteristics, and deployment history of the TDU's leased TEEEF fleet.

Question 1.b.iii.3

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule provide that the commission can initiate an action

at any time to require a TDU to alter a lease entered into under PURA § 39.918(f-1)(2)? If yes: Should the proposed rule include procedural language governing a contested case proceeding to evaluate whether a TDU should be ordered to alter its lease? What should that procedural language look like?

Houston asserted that the rule should include language that resembles the procedural language for an application processed in a contested case proceeding. Further, Houston asserted that the procedural language should require justification for initiating the proceeding that demonstrates why the lease is not in the public interest. Oncor disagreed with Houston's recommendation that the rule should include procedural language akin to a contested case proceeding.

OCSC asserted that procedural language no more robust than eliciting comments should be added to the rule. CenterPoint agreed with OCSC's recommendation.

CenterPoint asserted that §25.56(c)(2) should provide that the procedure for governing a lease alteration proceeding will be governed by 16 TAC §22.241, relating to Investigations, under an expedited procedural schedule that requires a final order in the proceeding to be issued within 60 days of the proceeding's initiation. CenterPoint provided redlines consistent with its recommendation. OCSC and OPUC opposed CenterPoint's recommendation.

OPUC asserted that the rule should include broad procedural language that imposes no additional limitations to the timeline or scope of a lease alteration proceeding but grants OPUC the right to intervene.

AEP asserted that the rule should include procedural language mirroring that of the Distribution Cost Recovery Factor (DCRF) proceeding. OCSC and OPUC opposed AEP's recommendation.

Commission response

The commission agrees with Houston and provides under adopted §25.56(f) that, on its own motion or on the motion of commission staff, the commission may initiate a contested case proceeding to review a lease entered into under adopted §25.56(d)(2)(A) to determine whether the public interest requires the alteration or termination of the lease. Further, adopted §25.56(f)(1) specifies that commission staff, the TDU, OPUC, any other parties to the lease, and anyone granted intervenor status by the presiding officer may participate in the proceeding as parties and that commission staff is responsible for providing notice of the proceeding to those parties.

Question 1.c

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule provide standard language for leases entered into under PURA §39.918(f-1)(2)? If so, what should that standard language include? (i.e., language that authorizes commission alteration of a TEEEF lease based on commission order or rule, commission-specific termination clause, etc.)

Houston and OCSC expressed general support for including standard lease alteration language in the rule. Houston recommended that the standard lease language require an acknowledgement that the lease may be subject to alteration under PURA §39.918(f-1)(2). OCSC reasoned that a standardized language requirement would streamline compliance with regulatory requirements, ensure consistent language across all TEEEF leases under PURA §39.918(f-1)(2), and put all parties to a lease on notice that the lease has not be previously authorized by the commission and is therefore subject to potential review and alteration.

Oncor and OPUC expressed support for including standard lease alteration language in the rule, provided that the language is broad or provided as an example of acceptable language. Oncor expressed concern that the imposition of mandatory, specific language would limit TDUs' TEEEF vendor options or push TDUs to only utilize the other statutorily provided leasing avenues. OPUC expressed concern that specific language requirements could cause contention during lease negotiations and hinder TDUs from securing TEEEF leasing arrangements.

CenterPoint and AEP asserted that the rule should not include standard lease alteration language. CenterPoint argued that, because vendors often have their own standard lease language, vendors may be reluctant to utilize language mandated by the commission. AEP argued that, because each utility has different characteristics, the language requirements should remain flexible.

Commission response

The commission declines to provide specific mandatory or example lease alteration language in the adopted rule because lease terms and conditions, including the specific language used in a lease agreement, are subject to negotiation and agreement between the parties executing the lease. Instead, the commission adopts §25.56(d)(2)(A)(i) to specify that a TDU's lease must include the following general provisions: 1) a provision that allows alteration or termination of the lease based on commission order or rule; 2) a provision in which the parties of the lease acknowledge that the commission may, at any time, initiate a proceeding to order alteration or termination of the lease; 3) a provision stating that the commission retains, without restriction, the right to investigate, request access to, and review the lease, including the subject matter and parties of the lease, at any time; and 4) a provision stating that any party to the lease agrees to the terms described in the prior provisions and consents to the commission's jurisdiction in any investigation or proceeding to alter or terminate the lease.

Question 1.d

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule require TDUs to provide notice to the commission upon entering into a lease under PURA § 39.918(f-1)(2)?

Houston, OCSC, CenterPoint, and OPUC supported--and Oncor conditionally supported--a notice requirement for leases entered into under PURA §39.918(f-1)(2). Oncor specified that it was supportive of such a requirement only if the notice is limited to basic lease information--such as the number of leased TEEEF, the generating capacity of leased TEEEF, and the lease term--and entities have a minimum of seven days to file the notice. OCSC and OPUC supported Oncor's minimum filing timeline recommendation but asserted that notices should be filed no later than 15 days after lease execution.

AEP asserted that a notice requirement is unnecessary and argued that, because TDUs often enter into a TEEEF lease and

file to recover the associated costs in the same year, all relevant parties will be noticed to the TEEEF lease in that cost recovery proceeding. Houston and OCSC disagreed with AEP and argued that a notice requirement is important for both public transparency and ensuring the commission's ability to timely review leases entered into under PURA §39.918(f-1)(2).

Commission response

The commission adopts §25.56(d)(2)(A)(ii) to require a TDU to file, not later than 14 days after entering into the lease and in a control number designated for this purpose by commission staff, a public notice that contains a high-level description of the lease and leased TEEEF and a statement of compliance with adopted §25.56(d)(2)(A)(i).

Question 1.d.i

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule require TDUs to provide notice to the commission upon entering into a lease under PURA § 39.918(f-1)(2)? If yes: Should the notice be provided publicly?

Houston, OCSC, and OPUC supported--and CenterPoint and Oncor conditionally supported--a public notice requirement. CenterPoint and Oncor specified that they were willing to file notice publicly if the commission designates a project for that purpose and the notice is not required to include confidential or commercially sensitive information. OPUC agreed that the commission should open a dedicated project for these notices.

AEP asserted that a notice requirement is unnecessary.

Commission response

The commission adopts §25.56(d)(2)(A)(ii) to require a TDU to file, not later than 14 days after entering into the lease and in a control number designated for this purpose by commission staff, a public notice that contains a high-level description of the lease and leased TEEEF and a statement of compliance with adopted §25.56(d)(2)(A)(i).

Question 1.d.ii

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule require TDUs to provide notice to the commission upon entering into a lease under PURA § 39.918(f-1)(2)? If yes: Should the notice include: 1. the lease itself; 2. a description of the leased TEEEF, including the size, quantity, and characteristics of the leased units, the functions the units were leased to perform, the length of the lease, the cost of the units, etc.; or 3. an attestation from the TDU that the lease includes alteration language as required by PURA § 39.918(f-1)(2)?

Houston, OCSC, and OPUC asserted that a TDU's notice should include the lease itself, a description of the leased TEEEF, and an attestation from the TDU that the lease includes language permitting alteration. Houston additionally asserted that a TDU's notice should include a discussion of the need and prudence of the lease. OPUC additionally asserted that a TDU's notice should disclose the process used to obtain the lease and that the attestation should be signed by the TDU's chief executive officer.

CenterPoint and Oncor asserted that a TDU's notice should not be required to include the lease itself because leases contain highly sensitive or confidential information. However, Oncor requested that, if leases are a required part of the notice, TDUs be allowed to file the leases as highly sensitive confidential material. OCSC and OPUC supported Oncor's recommendation, provided that the notice includes a protective order certification and interested parties can obtain access to the confidential or highly sensitive components of the notice. Oncor opposed OCSC's and OPUC's recommendation that confidentially filed leases be made accessible via protective order and asserted that no interested parties, except for the commission, commission staff, and perhaps OPUC, should be able to access the commercially sensitive details of these leases.

CenterPoint and Oncor were willing to provide a high-level description of the lease in the public notice--including the number of leased TEEEF, the generating capacity of the leased TEEEF, the lease term, and overall costs--provided that the disclosure of commercially sensitive and detailed cost information is not required. Oncor requested that TDUs not be required to list the specific functions TEEEF were leased to perform. Houston opposed Oncor's request and asserted that disclosure of the leased TEEEF's intended functions is important for public transparency and commission oversight.

Oncor was willing to provide an attestation as part of the notice, provided that any company officer can make the attestation. CenterPoint opposed such a requirement--calling it unnecessary--but expressed willingness to instead provide a "statement of compliance."

AEP asserted that a notice requirement is unnecessary.

Commission response

The commission adopts §25.56(d)(2)(A)(ii) to require a TDU to file, not later than 14 days after entering into the lease and in a control number designated for this purpose by commission staff, a public notice that contains a high-level description of the lease and leased TEEEF and a statement of compliance with adopted §25.56(d)(2)(A)(i).

Question 1.d.iii

Under new PURA § 39.918(f-1)(2), a TDU can enter into a lease for TEEEF without receiving prior approval from the commission if "the lease includes a provision that allows alteration of the lease based on commission order or rule." Should the proposed rule require TDUs to provide notice to the commission upon entering into a lease under PURA § 39.918(f-1)(2)? If yes: What, if any, action should the commission take in response to the notice?

Houston asserted that, after a TDU's notice is filed, the commission need only review the notice and issue a response that either affirms the rule requirements are met or directs the TDU to submit an application under proposed §25.60(d).

OCSC asserted that, if the commission can initiate a lease alteration action at any time, no action in response to a notice is necessary. However, OCSC recommended that the rule authorize the commission to request any additional information deemed necessary after a notice is filed. OPUC supported OCSC's recommendation that the rule should authorize the commission to request any additional information necessary in response to a notice.

CenterPoint and Oncor asserted that no commission action is needed in response to a notice. CenterPoint noted that proposed §25.60(c)(6) allows the commission and commission staff to request a copy of the lease on a confidential basis if desired. Oncor asserted that the notice should serve as an informational filing only and, if desired, the commission can open an inquiry into the lease. However, Oncor recommended that the rule specify that the commission can only require a lease alteration if the commission initiates an inquiry into the lease within 180 days of receiving notice from the utility. OPUC opposed Oncor's recommendation to impose a 180-day deadline on the commission's initiation of an inquiry.

OPUC asserted that the commission should initiate a proceeding to alter a lease if the notice alerts the commission to non-compliance with rule requirements.

AEP asserted that a notice requirement is unnecessary.

Commission response

The commission agrees with Houston, OCSC, CenterPoint, and Oncor that a TDU's notice does not require responsive commission action.

Question 2

New PURA § 39.918(f-2) provides that "the commission may limit the period during which an authorization issued under Subsection (f-1) is valid." Proposed 16 TAC § 25.56(c)(4) provides that "the commission's final order will include... the date or dates the authorization expires (i.e., TEEEF leases must not extend past this date)." Should the proposed rule maintain this case-by-case authorization approach, or establish a uniform time limit on authorizations for TEEEF leases under proposed 16 TAC § 25.56(c)? If advocating for the latter, what should that uniform limit be?

Houston, CenterPoint, Oncor, and OPUC recommended that a case-by-case authorization approach continue to be used.

OCSC and AEP recommended that the commission establish a uniform time limit on TEEEF authorizations. Specifically, OCSC recommended implementing a tiered, uniform time limit approach based on the length of TEEEF leases. OCSC reasoned that TDUs with longer TEEEF leases should be required to seek reauthorization to ensure the commission can evaluate whether the lease terms are appropriate, and that the usage of such facilities remains effective. Oncor recommended that, if implemented, any uniform time limit allow a minimum five-year lease term length.

Commission response

The commission declines to adopt a uniform time limit on TEEEF authorizations and instead retains a case-by-case authorization approach in adopted §25.56(e)(3)(B).

Question 3

What else should the commission consider in implementing the changes made to PURA §39.918 by SB 231?

Houston recommended that proposed §25.56(c)(4)(B) establish a mandatory TEEEF dispatch and connection timeframe. OPUC supported Houston's recommendation. Oncor, CenterPoint, and AEP disagreed with Houston's recommendation, reasoning that PURA §39.918 does not provide a timeframe for TEEEF dispatch and that the specification of such a timeframe would be impracticable due to the operational and situational considerations a TDU must make when dispatching a TEEEF.

Commission response

The commission declines to modify the proposed rule to establish a mandatory TEEEF dispatch and connection timeframe as recommended by Houston because such a requirement is not provided for in PURA §39.918.

CenterPoint urged the commission to include rule language that reduces the risk of TEEEF expenses associated with leases that received prior authorization being deemed imprudent in a ratemaking proceeding. OCSC and OPUC disagreed with CenterPoint's recommendation, arguing that full commission review of the reasonableness, necessity, and prudence of TEEEF lease expenses in a ratemaking proceeding is necessary to reduce the risk of harm to all parties, including ratepayers.

Commission response

The commission declines to modify the proposed rule to include language that reduces the risk of TEEEF lease expenses being deemed imprudent in a ratemaking proceeding as recommended by CenterPoint because such a modification is outside of the noticed scope of this rulemaking.

OPUC recommended that the commission add a penalty provision to the adopted rule, applicable to TDUs that do not deploy their TEEEF in qualifying situations. Oncor, CenterPoint, and AEP opposed OPUC's recommendation. Oncor and AEP argued that the introduction of such penalty language would ignore the variety of operational and situational factors that a TDU must consider during an emergency situation. Further, Oncor argued that, if any penalty is assessed against a TDU, it should happen only after a robust analysis is conducted by the commission. CenterPoint argued that OPUC's recommendation goes beyond the noticed rulemaking scope of changes required to implement SB 231.

Commission response

The commission declines to modify the proposed rule to add a penalty provision for non-deployment of TEEEF as recommended by OPUC because such a modification is outside of the noticed scope of this rulemaking.

Comments on proposed §25.56

General comments

Emergency TEEEF leases

Oncor recommended that the phrase "without prior commission authorization" be restored and added, respectively, to the emergency TEEEF lease provisions in proposed §25.56(e)(1) and (c)(3) to clarify that a TDU may enter into an emergency TEEEF lease without prior commission authorization.

Commission response

The commission deletes proposed §25.56(c)(3) and (e)(1) and adopts a single provision--§25.56(d)(2)(B)--to govern emergency TEEEF leases. Further, the commission specifies in adopted §25.56(d)(2)(B) that, contingent on meeting the provision's requirements, a TDU may enter into a lease involving a TEEEF without prior authorization from the commission and without complying with the requirements of adopted §25.56(d)(2)(A).

Proposed §25.56(c)(5)

Proposed §25.56(c)(5) requires, with an exception for emergency TEEEF leases, TDUs to use a competitive bidding process to lease TEEEF.

Oncor asserted that, despite attempts to procure TEEEF competitively, there may be situations in which there is only one qualified vendor willing and able to lease the particular TEEEF needed. Accordingly, Oncor recommended adding language to proposed §25.56(c)(5) to clarify that, even if only one vendor submits a bid, a TDU will be considered to have used a competitive bidding process if it solicited bids from multiple vendors.

Commission response

The commission declines to modify proposed §25.56(c)(5) to clarify that, regardless of the volume of vendor bids received, a TDU will be considered to have used a competitive bidding process if it solicited bids from multiple vendors as recommended by Oncor because it is unnecessary. The competitive bidding process requirements under adopted §25.56(d)(3) govern a TDU's bid solicitation process, not the volume of responsive bids received.

Proposed §25.56(c)(6)

Proposed §25.56(c)(6) establishes that a TDU must allow for the inspection of any TEEEF lease if requested by a commissioner or commission staff and that, if the commissioner or commission staff retains a copy of a TEEEF lease, the lease will be treated as a confidential document if so requested by the TDU.

AEP recommended that proposed §25.56(c)(6) be revised to provide that, if a commissioner or a member of commission staff retains a copy of a TEEEF lease, the lease will be treated as highly sensitive protected material instead of confidential material. AEP also asserted that, because PURA §39.918 requires TDUs to use a competitive bidding process to lease TEEEF, the lease terms and pricing should, at minimum, be considered competitively information and trade secrets of the lessees.

Commission response

The commission declines to modify proposed §25.56(c)(6) as recommended by AEP because such a modification is outside the noticed scope of this rulemaking.

The amendment is adopted under Public Utility Regulatory Act (PURA) §§ 14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; 14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and 39.918, which directs the commission to allow TDUs to lease, operate, and recover costs for TEEEF to aid in restoring power to a utility's distribution customers during a significant power outage.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001; 14.002; and 39.918.

§25.56. Temporary Emergency Electric Energy Facilities (TEEEF).

(a) Purpose and applicability. This section establishes the requirements for a transmission and distribution utility (TDU) to lease, operate, and recover costs associated with a temporary emergency electric energy facility (TEEEF). This section applies to a TDU that operates facilities in the Electric Reliability Council of Texas (ERCOT) region to serve distribution customers.

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

(1) Affected generator or load resource--a generator or load resource that:

(A) is registered with ERCOT for purposes of settlement; and

(B) is located within the portion of the grid that is isolated from the bulk power system and where a TEEEF is energized to restore power.

(2) Significant power outage--an event that:

(A) causes ERCOT to order a TDU to shed load;

(B) the Texas Division of Emergency Management, ERCOT, or the executive director of the commission determines is a significant power outage; or

(C) results in a loss of electric power that:

(i) affects a significant number of a TDU's distribution customers, and has lasted, or is expected to last, for at least six hours;

(ii) affects distribution customers of a TDU in an area for which the governor has issued a disaster or emergency declaration;

(iii) affects distribution customers served by a radial transmission or distribution facility, creates a risk to public health or safety, and has lasted, or is expected to last for, at least 12 hours; or

(iv) creates a risk to public health or safety because it affects a critical infrastructure facility that serves the public such as a hospital, health care facility, law enforcement facility, fire station, or water or wastewater facility.

(3) Temporary emergency electric energy facility (TEEEF)--a facility that provides electric energy to distribution customers on a temporary basis.

(c) TEEEF requirements. A TDU must not enter into, renew, or extend any lease involving a TEEEF, unless the TEEEF:

(1) has a maximum generation capacity of five megawatts or less;

(2) is mobile;

(3) is capable of being moved from its staged location in less than 12 hours; and

(4) is capable of generating electric energy within three hours after being connected to a demand source.

(d) Lease requirements. A TDU must not enter into, renew, or extend any lease involving a TEEEF, except as provided in this subsection.

(1) With prior authorization. After receiving authorization under subsection (e) of this section, a TDU may enter into, renew, or extend one or more leases for TEEEF, simultaneously or consecutively, provided that the capacity and characteristics of the entire portion of the TDU's leased TEEEF fleet that is authorized under subsection (e) of this section complies with the authorization provided at all times.

(2) Without prior authorization.

(A) Lease with alteration provision. Notwithstanding an emergency lease under subparagraph (B) of this paragraph, a TDU may only enter into, renew, or extend a lease involving a TEEEF without prior authorization from the commission if:

(i) the lease contains:

(I) a provision that allows alteration or termination of the lease based on commission order or rule;

(II) a provision in which the parties of the lease acknowledge that the commission may, at any time, initiate a proceeding to order alteration or termination of the lease;

(III) a provision stating that the commission retains, without restriction, the right to investigate, request access to, and review the lease, including the subject matter and parties of the lease, at any time; and

(IV) a provision stating that any party to the lease agrees to the terms described in this clause and consents to the commission's jurisdiction in any investigation or proceeding to alter or terminate the lease.

(ii) Not later than 14 days after entering into the lease, the TDU files, in a control number designated for this purpose by commission staff, a public notice that:

(I) discloses the number of leased TEEEF, the generating capacity and intended function of each leased TEEEF, and the lease term; and

(II) includes a statement that affirms the lease contains the provisions required under clause (i) of this subparagraph.

(B) Emergency lease.

(i) A TDU may enter into a lease involving a TEEEF without prior authorization from the commission and without complying with the requirements of subparagraph (A) of this paragraph if:

(I) the TDU lacks the leased TEEEF generating capacity necessary to aid in restoring power to its distribution customers, consistent with subsection (g) of this section;

(II) the leased amount of TEEEF generating capacity does not exceed the amount of megawatts necessary to restore electric service to its distribution customers by more than a reasonable amount; and

(III) the lease term does not exceed the length of time necessary to restore electric service to its distribution customers by more than a reasonable amount.

(ii) A TDU that enters into a lease under this subparagraph must provide during its next base-rate proceeding sufficient documentation to support the reasonableness, necessity, and prudence of the leased TEEEF generating capacity and any costs associated with the lease.

(3) Competitive bidding process. Except for an emergency lease entered into under paragraph (2)(B) of this subsection, a TDU must use a competitive bidding process to lease a TEEEF.

(A) In any proceeding in which the commission is reviewing the reasonableness, necessity, or prudence of the costs associated with leasing a TEEEF under this section, the commission may also consider whether the contracts the TDU entered into to lease TEEEF were reasonable relative to other bids that were available to the TDU, if any.

(B) In any proceeding in which a TDU is requesting recovery of costs associated with a TEEEF that was leased without using a competitive bidding process, the TDU must demonstrate that the TEEEF was leased under paragraph (2)(B) of this subsection.

(C) A TDU may not enter into a lease for TEEEF with a competitive affiliate of the TDU unless that lease was subject to a competitive bidding process.

(4) If requested by a commissioner or commission staff, a TDU must allow for the inspection of any lease entered into under this section. If the commissioner or commission staff retains a copy of the lease, the lease will be treated as a confidential document if so requested by the TDU.

(e) Prior authorization to lease TEEEF. A TDU may apply for commission authorization to lease a TEEEF in accordance with this subsection.

(1) Application. An application must include:

(A) The TDU's history with TEEEF, including:

(i) Whether the TDU is currently or has previously been authorized by the commission to lease TEEEF, the details of existing or prior authorizations, and each docket number in which the authorization was granted;

(ii) A description of all TEEEF the TDU has under lease at the time of the application, including the total capacity the TDU has under lease, the length of the lease or leases, a description of the capacity, intended functions, and relevant characteristics of each leased unit, and whether each leased unit has been energized to aid in restoring power during a significant power outage;

(iii) A description of any previous emergency leases of TEEEF or prior use of another TDU's TEEEF under a mutual assistance agreement or program. A TDU must include an explanation for the necessity of each use of TEEEF under an emergency lease or mutual assistance agreement or program;

(iv) A copy of every after-action report submitted by the TDU to the commission under this section during the five years prior to the date on which the application was filed, including a cover page with summary statistics on significant power outages and TEEEF energizations in the TDU's service territory; and

(v) The interchange item number of the TDU's most recently filed emergency operations plan filed in project no. 53385.

(B) The total capacity of TEEEF the TDU is requesting authorization to lease, each function the requested TEEEF will serve (e.g. to restore power to individual facilities, to restore power to feeders to assist in load rotation, etc.) and how much of the requested capacity is requested for each function, and the length of time for which the TDU is requesting authorization. In support of its request, the TDU must include the following:

(i) A description of any necessary characteristics a TEEEF unit must have to perform each of the functions for which authorization is requested. These characteristics should be identified with enough specificity to allow the commission to evaluate, in a subsequent proceeding, whether the TDU's leased TEEEF fleet complies with the commission's authorization. These characteristics should include, as applicable, the capacity or range of capacities of individual units, the mobility of individual units, the types of connections the units must be compatible with, such as mid-span or point-of-use, fuel type, and whether the units can fulfill the function individually or with multiple units working in tandem;

(ii) An explanation with any necessary supporting documentation that the functions the TEEEF is being requested to perform are reasonable and necessary to aid in the restoration of power under this section. This supporting documentation must include, at minimum, historical data on significant power outages that occurred in the TDU's service territory and would have qualified for TEEEF deployment for the five-year period preceding the date of the application, including:

(I) the start and end date of the outage and information on how long customers were affected by the outage;

(II) a description of the events that caused the outage;

(III) the number of affected distribution customers and amount of load, in megawatts, that were affected by the outage; and

(IV) the number and type of critical load, critical care customers, or other critical infrastructure facilities as defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers) affected by the outage.

(iii) A description of any additional measures being implemented or scheduled for implementation that may mitigate the need for TEEEF, such as the TDU's implementation of a resiliency plan measure under §25.62 of this chapter, relating to Transmission and Distribution System Resiliency Plans.

(C) As appropriate, data provided under this section must be filed in a format native to Microsoft Excel and must permit basic data manipulation functions, such as copying and pasting of data.

(2) Commission processing. An application will be processed in a contested case proceeding as follows.

(A) Sufficiency. An application is sufficient if it includes the information required by paragraph (1) of this subsection and the TDU has filed proof that notice has been provided in accordance with this subsection.

(i) Within 30 calendar days of the TDU filing its application, commission staff must file a recommendation on sufficiency of the application. If commission staff recommends the application be found deficient, commission staff must identify the deficiencies in its recommendation. The TDU will have five working days to file a response, which may include an amendment to the application to attempt to cure the deficiency.

(ii) If the presiding officer determines the application is deficient, the presiding officer will file a notice of deficiency and cite the particular requirements with which the application does not comply. The presiding officer must provide the TDU an opportunity to amend its application. Commission staff must file a recommendation on sufficiency within 10 working days after the filing of an amended application, when the amendment is filed in response to a notice of deficiency.

(iii) If the presiding officer has not filed a written order concluding that the application is deficient within 10 working days after a deadline for a recommendation on sufficiency, the application is deemed sufficient.

(B) Notice and intervention. Within one working day after the TDU files its application, the TDU must provide notice of its filed application, including the docket number assigned to the application and the deadline for intervention in accordance with this paragraph. The intervention deadline is 30 days from the date service of notice is complete. The notice must be provided using a reasonable method of notice to:

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

(ii) all parties in the TDU's last base-rate proceeding;

(iii) each retail electric provider that provides service in the TDU's service area; and

(iv) the Office of Public Utility Counsel.

(3) Commission evaluation and decision.

(A) The commission will authorize a TDU to lease TEEEF under this subsection if it determines that leasing the requested TEEEF is reasonable and necessary to aid in restoring power to the TDU's distribution customers during a significant power outage that qualifies for TEEEF energization.

(B) The commission's final order will include the total TEEEF capacity the TDU is authorized to lease, the capacity of TEEEF the TDU is authorized to lease for each function the TEEEF fleet will perform, and the date or dates the authorization expires (i.e., TEEEF leases must not extend past this date). The commission may include additional requirements related to the characteristics of the TEEEF the TDU is authorized to lease.

(f) Alteration or termination of a TEEEF lease. The commission, on its own motion or on the motion of commission staff, may initiate a contested case proceeding to review a lease entered into under subsection (d)(2)(A) of this section to determine whether the public interest requires the alteration or termination of the lease.

(1) Parties and notice.

(A) Commission staff, the TDU, OPUC, any other parties to the lease, and anyone granted intervenor status by the presiding officer may participate in the proceeding as parties.

(B) Commission staff must provide notice, using a reasonable method of notice, of the proceeding to the TDU, OPUC, and any other parties to the lease. The TDU must facilitate the provision of notice to other parties to the lease by assisting commission staff in identifying and contacting these parties, as requested. The notice must include the docket number of the proceeding, identify the lease and TEEEF at issue, and state the factual and legal basis for initiating the proceeding.

(2) Commission evaluation and decision. If the commission determines the lease is not in the public interest, the commission may order the alteration or termination of the lease. In evaluating the public interest, the commission may consider any factors it deems appropriate, including compliance with the requirements of PURA, this section, and any other applicable law; operational failures; deployment history; and the size, characteristics, and deployment history of the TDU's leased TEEEF fleet.

(A) As appropriate, the commission will provide the TDU a reasonable amount of time to renegotiate the lease. The commission may open a compliance docket for this purpose.

(B) The commission's decision on whether to order the alteration or termination of a TEEEF lease is not, in itself, a determination on the prudence of the TDU entering into the lease.

(3) Nothing in this subsection prevents the parties to a lease from terminating a lease the commission orders altered in accordance with applicable law.

(g) Energization of TEEEF.

(1) A TDU may energize TEEEF to aid in restoring power to its distribution customers during an event that a TDU reasonably determines is a significant power outage in which:

(A) ERCOT has ordered the TDU to shed load; or

(B) the TDU's distribution facilities are not being fully served by the bulk power system under normal operations.

(2) A TDU may loan its leased TEEEF to other TDUs or otherwise utilize its leased TEEEF in another TDU's service territory under a mutual assistance agreement or program, provided that all costs and reimbursements associated with such a loan or utilization are properly accounted for and reconciled.

(3) A TDU that leases a TEEEF must not sell energy or ancillary services from the facility.

(4) A TEEEF must:

(A) be operated in isolation from the bulk power system; and

(B) not be included in locational marginal price calculations, pricing, or reliability models developed by ERCOT.

(5) Notice. A TDU must issue notices under subparagraphs (A), (B), (C), and (D) of this paragraph to ERCOT and all operators of affected generators or load resources. Notice under this paragraph is not required if the area isolated from the bulk power system does not contain any affected generators or load resources.

(A) Prior to isolation. For an isolation from the bulk power system due to circumstances within a TDU's control in which TEEEF will be energized, a TDU must issue notice at least 10 minutes prior to isolation of an affected area from the bulk power system. For an isolation from the bulk power system due to circumstances beyond a TDU's control in which TEEEF will be energized, a TDU must issue notice as soon as is reasonably practicable. Notices prior to isolation of an affected area from the bulk power system must include:

(i) identification of each substation and modeled load associated with customer load that will be served by TEEEF;

(ii) the total amount of load expected to be served by TEEEF;

(iii) the time the affected area is anticipated to be isolated from the bulk power system;

(iv) the time the affected area is anticipated to be reconnected to the bulk power system;

(v) identification of each generator or load resource that will be an affected generator or load resource following the energization of TEEEF; and

(vi) a statement that any energy produced by an affected generator during the time it is isolated from the bulk power system will not be settled through ERCOT.

(B) Upon isolation. For an isolation from the bulk power grid due to circumstances within a TDU's control in which TEEEF will be energized, a TDU must issue notice immediately upon isolation of an affected area from the bulk power system. For an isolation from the bulk power system due to circumstances beyond a TDU's control in which TEEEF will be energized, a TDU must issue notice as soon as is reasonably practicable. A notice issued under this subparagraph must state the time an affected area's isolation from the bulk power system was completed.

(C) Prior to reconnection. A TDU must issue notice at least 10 minutes prior to the reconnection of an affected area to the bulk power system. A notice issued under this subparagraph must state the anticipated time that an affected area will be reconnected to the bulk power system.

(D) Upon reconnection. A TDU must issue notice immediately after the reconnection of an affected area to the bulk power system has been completed. A notice issued under this subparagraph must state the time the reconnection of an affected area to the bulk power system was completed.

(E) If a TDU has issued notice under subparagraphs (A) or (C) of this paragraph, and coordination with ERCOT under paragraph (6) of this subsection results in a delay in the anticipated time of isolation or reconnection, the TDU must notify operators of affected generators and load resources of such delay.

(6) Coordination with ERCOT.

(A) TDUs. The requirements of this subparagraph apply only to energizations of TEEEF that occur outside of an energy emergency declared by ERCOT. A TDU's isolation or reconnection of load associated with an energization of TEEEF must be coordinated with ERCOT according to the following timeframes if the total amount of load at any single substation that would be isolated or reconnected exceeds 20 megawatts.

(i) For isolations of load from the bulk power system due to circumstances within a TDU's control, a TDU should coordinate with ERCOT within a period of 10 minutes.

(ii) For isolations of load from the bulk power system due to circumstances beyond a TDU's control, a TDU should coordinate with ERCOT as soon as is reasonably practicable.

(B) Affected generators and load resources.

(i) Upon receiving notice from a TDU that an affected area will be isolated from the bulk power system, an operator of an affected generator or load resource that is required by ERCOT protocols to provide status telemetry to ERCOT must, at the expected time of isolation as indicated in the TDU's notice, update its real-time status telemetry and current operating plan information to reflect that the affected generator or load resource is disconnected from the ERCOT system, is unavailable for dispatch by ERCOT, and will be unavailable for dispatch by ERCOT for the time period specified by the TDU in its notice.

(ii) Upon receiving notice from a TDU that an affected area has been reconnected to the bulk power system, the operator of any affected generator or load resource must update its real-time status telemetry and current operating plan information to reflect the appropriate status of the affected generator or load resource.

(7) A TDU's liability related to the provision of service using a TEEEF is governed by §25.214 of this title, relating to Terms and Conditions of Retail Delivery Service Provided by Investor-Owned Transmission and Distribution Utilities.

(8) A TDU will ensure, to the extent reasonably practicable, that:

(A) A retail distribution customer's usage during the TDU's operation of a TEEEF is excluded or removed from the electric usage reported to ERCOT for final settlement and to retail electric providers (REPs) for customer billing; and

(B) Energy generated in an area isolated from the bulk power system in accordance with this section, including any energy generated by an affected generator, is excluded or removed from the generation reported to ERCOT for final settlement purposes.

(9) During an energy emergency declared by ERCOT, the amount of any load shed by a TDU for the area operated in isolation from the bulk power system during TEEEF energization must be accounted for net of any generation in the affected area that was online

and producing before the area was isolated from the bulk power system.

(10) After-action report. After each significant power outage in a TDU's service territory that meets the criteria for TEEEF energization under paragraph (1) of this subsection, a TDU that has leased TEEEF must file an after-action report with the commission. The report must be filed within 30 days from the last day of the significant power outage. The report must include, as applicable:

(A) A description of the events that resulted in the significant power outage within the TDU's service territory, including the dates and times the significant power outage began and ended;

(B) The estimated number of affected distribution customers and estimated amount of load, in megawatts, that were affected by the significant power outage in the TDU's service territory and the estimated number of which that were served by TEEEF;

(C) The estimated number and type of critical load, critical care customers or other critical infrastructure facilities as defined in §25.497 of this title, affected by the significant power outage and the estimated number that were served by TEEEF. A TDU must also include available details on the duration of service interruptions for these customers;

(D) The total nameplate generating capacity in megawatts and the total number of affected generators or load resources that were isolated from the bulk power system for TEEEF energization;

(E) A description of any TEEEF energizations, including the capacity, fuel type, connection configuration, mobile capability, and lease type (i.e., with prior commission authorization or without prior commission authorization) of each TEEEF unit that was energized, the function each TEEEF unit was performing, the date and time each TEEEF unit was energized, and the duration that the affected area was isolated from the bulk power system;

(F) A list of TEEEF that was not energized, including the capacity, fuel type, connection configuration, mobile capability, and lease type (i.e., with prior commission authorization or without prior commission authorization) of each TEEEF unit that was not energized and a brief summary explaining why each TEEEF unit was not energized; and

(G) A description of any TEEEF units leased under subsection (d)(2)(B) of this section or utilized under a mutual assistance agreement or program. A TDU must include an explanation for the necessity of entering into the emergency lease or utilizing the mutual assistance agreement or program.

(h) Emergency operations annex. A TDU that leases TEEEF under this section must include a detailed plan on the use of the TDU's leased TEEEF in the TDU's emergency operations plan filed with the commission, as required by §25.53 of this title, relating to Electric Service Emergency Operations Plans, that is updated, as necessary, on an ongoing basis.

(i) Eligible costs.

(1) Costs to obtain and operate a TEEEF. Reasonable and necessary costs of leasing and operating a TEEEF, including the present value of future payments required under the lease, are eligible for recovery under this section. A lease involving a TEEEF must be treated as a capital lease or finance lease for ratemaking purposes, regardless of its classification under generally accepted accounting principles or other accounting frameworks.

(2) Return. Reasonable and necessary costs under this section include a return on investment, including the present value of future payments required under the lease, using the rate of return on investment established in the commission's final order in a TDU's most recent comprehensive base-rate proceeding.

(j) Deferred recovery of certain eligible costs. A TDU may create a regulatory asset to defer the following for recovery in a future ratemaking proceeding:

(1) The reasonable and necessary incremental operations and maintenance expenses, not otherwise included in any of the TDU's rates; and

(2) The return, not otherwise included in any of the TDU's rates.

(k) Cost recovery. Eligible costs under this section may be recovered as follows.

(1) Ratemaking proceedings. A TDU may request recovery of eligible costs, including any deferred expenses, through a standalone TEEEF rider proceeding, a proceeding under §25.243 of this title, relating to Distribution Cost Recovery Factor (DCRF), or in another ratemaking proceeding where it is appropriate to recover distribution invested capital and associated costs. A river authority may request recovery of eligible costs, including any deferred expenses, through a ratemaking proceeding where it is appropriate to recover distribution invested capital and associated costs or through a standalone TEEEF rider proceeding.

(A) A TDU must provide notice to REPs of the approved rates not later than the 45th day prior to the effective date of the approval.

(B) TEEEF costs must not be allocated to, or collected from, retail transmission service customers or wholesale transmission service at transmission voltage customers.

(C) Notwithstanding the provisions of §25.243 of this title, an allocation of TEEEF costs among distribution-level rate classes, based on substation-level class non-coincident peak demand, regardless of the time at which the class demand occurs, from the TDU's current or most recent base-rate proceeding, is presumed to be reasonable.

(D) TEEEF rates may not be established on a per-kilowatt-hour basis for any customer class that includes demand charges.

(E) Upon any amendment to a lease under this section that would reduce the rate of cost recovery necessary for a TEEEF, a TDU must submit an application to reflect the reduced rate of cost recovery necessary, by the earlier of three months from the lease amendment or the TDU's next DCRF proceeding.

(F) TEEEF costs must not be included in base rates. All TEEEF costs must be recovered through a single rider associated with TEEEF. A TDU with a previously established TEEEF rider may recover additional TEEEF costs by updating the existing TEEEF rider.

(G) TEEEF costs will not be reviewed for reasonableness, necessity, or prudence in a proceeding other than a base-rate proceeding, unless the presiding officer finds good cause to review them in another proceeding.

(H) In any proceeding in which TEEEF costs are reviewed for reasonableness, necessity, or prudence, the application must include the after-action reports for significant power outages during the period for which costs are being reviewed. The application must also include the leases, filed confidentially, for any leased TEEEF for which costs are being reviewed.

(I) A TDU that, prior to the effective date of this rule, received commission approval in a contested case proceeding for an amount of TEEEF generating capacity may request approval of reductions of that capacity through a subsequent standalone TEEEF rider proceeding made in accordance with this paragraph.

(2) Notice. The notice for any ratemaking proceeding in which eligible TEEEF costs are sought must specifically identify those eligible costs.

(3) Affiliate contracts. For any contract between a TDU and an affiliate, the TDU bears the burden of proof to show that the terms to the TDU were reasonable and necessary and did not exceed the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons within the same market area or having the same market conditions. In addition, all affiliate payments must comply with the requirements of PURA §36.058.

(4) Reconciliation. If TEEEF rates include any eligible costs that have not been reviewed for reasonableness, necessity, and prudence, any rates to recover any portion of those costs are temporary rates that must be reconciled in the TDU's next base-rate proceeding, including to determine whether the costs are reasonable, necessary, and prudent.

(A) In reconciling TEEEF costs, all revenues received associated with TEEEF programs, including actual rate revenues and mutual assistance reimbursements, must be applied to offset reasonable, necessary, and prudent TEEEF costs as these costs and revenues were incurred and received.

(B) A TDU must provide comprehensive testimony and workpapers supporting the reconciliation of all eligible costs and associated rate revenues as part of any base-rate proceeding application. Any amounts recovered through rates approved under this subsection that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return, taxes, and carrying costs, must either be refunded or applied as an offset to any outstanding regulatory asset associated with eligible costs. In any proceeding in which the commission determines that a TDU has included in rates any amounts deemed unreasonable, unnecessary, or imprudent, or that the TDU has otherwise over-recovered costs, the commission may order a compliance proceeding to determine the amounts and manner of any necessary refunds to ratepayers or the proper accounting of over-recovered amounts as an offset to any outstanding regulatory assets associated with eligible costs. Carrying costs will be determined as follows:

(i) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the TDU's base rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the same rate of return that was applied to the TDU's rate base included in base rates in effect when the over-recovery began.

(ii) For the time period beginning with the effective date of the TDU's rates set in the base-rate proceeding in which the costs are reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the TDU's rate of return authorized in that base-rate proceeding.

(5) As part of the reconciliation of TEEEF costs, the commission may consider whether the leased TEEEF had the characteristics required to perform the functions authorized by the commission, whether the TEEEF was properly utilized to restore power during significant power outages, including appropriate pre-outage preparations such as positioning and securing fuel or the units, or any other factor relevant to the prudence or reasonableness of the TDU's procurement or operation of TEEEF.

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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Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 2. INDEPENDENT ORGANIZATIONS

16 TAC §25.370

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.370, relating to ERCOT Large Load Forecasting Criteria, with changes to the proposed text as published in the October 3, 2025 issue of the *Texas Register* (50 TexReg 6414). The new rule implements Public Utility Regulatory Act (PURA) §37.0561(m) as enacted by Senate Bill (SB) 6 during the Texas 89th Regular Session. The new rule identifies the criteria that a large load customer must meet for inclusion in the load data that a distribution service provider (DSP) submits to ERCOT for purposes of developing the load forecasts that ERCOT uses to identify transmission planning needs and performing resource adequacy assessments. The new rule also requires ERCOT to develop a compliance plan for the 2026 Regional Transmission Plan (RTP). This section is adopted under Project Number 58480. The rule will be republished.

The commission received written initial comments on the proposed section from AEP Texas Inc. (AEP Texas); CenterPoint Energy Houston Electric, LLC (CenterPoint); City of Red Oak; Electric Reliability Council of Texas, Inc. (ERCOT); Environmental Defense Fund (EDF); ERCOT Steel Mills; Data Center Coalition (DCC); Lone Star Chapter of Sierra Club (Sierra Club); Lower Colorado River Authority and LCRA Transmission Services Corporation (LCRA); NRG Energy, Inc. (NRG); Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company (Oncor); Schaper Energy Consulting LLC (Schaper Energy); Sharyland Utilities, L.L.C (Sharyland); Steering Committee of Cities Served by Oncor (OCSC) and Texas Coalition for Affordable Power (TCAP); Targa Resources LLC (Targa); Texas Competitive Power Advocates (TCPA); Texas Electric Cooperatives, Inc. (TEC); Texas Energy Buyers Alliance (TEBA); Texas Industrial Energy Consumers (TIEC); Texas-New Mexico Power Company (TNMP); Texas Oil & Gas Association (TXOGA); Texas Public Power Association (TPPA); and Texas Public Policy Foundation (TPPF).

The commission received written reply comments on the proposed section from AEP; CenterPoint; Crusoe Energy System LLC; DCC; Eolian, LP; ERCOT; LCRA; OCSC and TCAP; Oncor; OPUC; Rowan Digital Infrastructure LLC; Sierra Club; TCPA; TIEC; and Wind Energy Transmission Texas, LLC, Cross Texas Transmission, LLC, and Lone Star Transmission, LLC (Joint Transmission Commenters).

General Comments

Assignment of a probability score

The City of Red Oak recommended using a quantitative approach to evaluate projects by assigning a probability score where the higher the projects score, the higher they go in the queue. The City of Red Oak recommended that the probability score be comprised of: (1) a letter of support for the project from the local governing entity; (2) a deposit of a significant sum of money; (3) proof of site control; (4) the large load customer's portfolio of work; (5) audited financials showing that the large load customer has the capital required to build the project or a commitment from the capital markets; and (6) the large load customer's backup generation capabilities.

Commission Response

The commission declines to adopt the City of Red Oak's recommendation to use a quantitative approach to evaluate projects by assigning a probability score where the higher the projects score, the higher they go in the queue because it is outside the scope of this rulemaking and is more appropriately addressed in 16 TAC §25.194 (relating to Large Load Interconnection Standards), which is currently pending in Project No. 58481, Rulemaking to Implement Large Load Interconnection Standards Under PURA §37.0561.

Insert "large" before "load" and "load forecasting"

CenterPoint recommended the term "large" be inserted before all references to "load" and "load forecasting" in the proposed rule to clarify that the proposed rule applies only to large load customers and not ERCOT's load forecasting in general.

Commission Response

The commission declines to adopt CenterPoint's recommendation to insert the term "large" before all references to "load" and "load forecasting" because the term "large" is not an applicable qualifier in all instances that "load" or "load forecasting" are used in the adopted rule.

Additional criteria- on-site backup generating facilities

OPUC recommended adding a new subsection that requires each interconnected large load customer to disclose to the interconnecting transmission and/or distribution service provider (TDSP) information about the customer's on-site backup generating facilities, and requires the interconnecting TDSP to provide the information to ERCOT, as required under PURA §37.0561(e) and the applicable commission rule for net metering arrangements involving a large load customer co-located with an existing generation resource.

Commission Response

The commission declines to adopt OPUC's recommendation to add a new subsection that requires each interconnected large load customer to disclose to the interconnecting TDSP information about the customer's on-site backup generating facilities and requires the interconnecting TDSP to provide the information to ERCOT because it is outside the scope of this rulemaking and is more appropriately addressed in the pending rule in Project No. 58481.

Additional criteria- operational information

EDF recommended adding a new subsection requiring a large load customer to provide to ERCOT (1) the average amount of energy consumption used during a normal set of circumstances; (2) any factors or events that would cause the large load customer or flexible large load customer to increase or decrease the energy consumption or demand; (3) real or reactive power consumption changes and recovery time; (4) how long the customer remains connected to the grid during a given voltage and/or frequency disturbance; (5) grid connection level; (6) request for firm or flexible load, and how much; (7) backup generation schemes, including on-site generation; (8) behind-the-meter co-location, if applicable; and (9) the name and contact information of at least two individuals with decision-making authority for ERCOT to have a direct open line of communication in the event of an energy emergency alert or grid disturbance.

TPPF recommended adding a new subsection that requires ERCOT to document the degree to which a large load customer may be expected to curtail or utilize onsite generation during emergency or near-emergency conditions and estimate the cumulative impact of flexible loads on systemwide peak demand. Additionally, TPPF recommended explicitly stating in the proposed rule that ERCOT is not required to account for the maximum demand of every load when using its load forecasts for the purposes of transmission planning and resource adequacy assessments. TPPF reasoned that these changes would help to more accurately forecast peak demand by reflecting the certainty of non-firm load curtailment.

Sierra Club supported recommendations to require reporting about the ability of large load customers to flexibly control their demand by registering as controllable load resources.

Commission Response

The commission declines to adopt EDF, TPPF, and Sierra Club's recommendation to add a new subsection requiring a large load customer to disclose operational information because it is outside the scope of this rulemaking and is more appropriately addressed in the pending rule in Project No. 58481. The commission also declines to adopt TPPF's recommendation to explicitly state in the adopted rule that ERCOT is not required to account for the maximum demand of every load when using its load forecasts for the purposes of transmission planning and resource adequacy assessments because it is unnecessary. The adopted rule focuses on what criteria a large load customer must meet for inclusion in ERCOT's load forecast. Moreover, the commission makes clarifying changes to adopted §25.370(e)(3) to maintain an appropriate level of flexibility for ERCOT to develop forecasts based on the different purposes of transmission planning and resource adequacy.

Additional criteria- end-use customer

TIEC recommended adding a new subsection that requires a large load customer to disclose whether the entity seeking interconnection intends to be the ultimate end-use customer. TIEC noted that due to the lead time and value of a large interconnection, many third-party developers are pursuing interconnections that they intend to later transfer or assign to an end-use customer. Additionally, some third-party developers are pursuing interconnections where the end-use customers will use the interconnection as a tenant. For example, many data center de-

velopers will obtain interconnection and build out facilities that end-use computing companies will ultimately lease. Additional disclosures and situational awareness around this activity would be helpful in refining the load forecast over time.

Commission Response

The commission declines to adopt TIEC's recommendation to add a new subsection requiring a large load customer to disclose whether the entity seeking interconnection intends to be the ultimate end-use customer because it is outside the scope of this rulemaking and is more appropriately addressed in the pending rule in Project No. 58481.

Independent third-party forecast

CenterPoint recommended adding a new subsection that allows for the use of an independent, third-party forecast to validate and substantiate the utility's forecasted demand. CenterPoint reasoned that an independent third-party forecast, such as the one that ERCOT relied on for the Permian Basin Reliability Plan, provides ERCOT a more holistic perspective on forecasted load growth.

AEP and OPUC opposed CenterPoint's recommendation because SB 6 does not contemplate the use of third-party load forecasts as part of the requirements for large load customers wanting to interconnect to the ERCOT grid.

Commission Response

The commission declines to adopt CenterPoint's recommendation to add a new subsection that allows for the use of an independent, third-party forecast to validate and substantiate the utility's forecasted demand because it does not align with the purpose of PURA §37.0561 and the adopted rule, which is to establish criteria for a large load customer to be included in ERCOT's load forecasts for transmission planning studies and resource adequacy assessments.

Load interconnection report

TCPA recommended adding a subsection requiring ERCOT to publish an aggregated report of megawatts (MW) by county level that meet the criteria under proposed §25.370(c) for inclusion in the load forecast. TCPA also recommended that for loads that have requested interconnection but have not met all the criteria under proposed §25.370(c), ERCOT should publish the aggregated MW by county level that have met each of the different sub criteria under proposed §25.370(c). TCPA noted that confidentiality of information will remain protected as only aggregate MW for each county level will be reported. TCPA also noted that Nodal Protocol Revision Request (NPRR) 1267 was introduced to create such a report for large load customers to provide transparency and while NPRR 1267 was approved by the commission on July 31, 2025, it has not yet been implemented. TCPA would support the commission directing ERCOT to prioritize implementation of NPRR 1267 as part of the order on this rulemaking.

Eolian agreed aggregate forecast data is important but recommended clarifying that the information ERCOT obtains pursuant to its access rights set forth in PURA §37.0561(k) is to be used by ERCOT internally for validation purposes and must not be published.

Commission Response

The commission declines to adopt TCPA's recommendation to add a new subsection requiring ERCOT to publish an aggregated report of MW by county level that meet the criteria under adopted §25.370(c) for inclusion in the load forecast because it is unnecessary. As TCPA noted, NPRR 1267 already requires such a report.

The commission also declines to adopt Eolian's recommendation to modify the adopted rule to clarify that the information ERCOT obtains pursuant to its access rights set forth in PURA §37.0561(k) is to be used by ERCOT internally for validation purposes and must not be published because there may be instances, such as for purposes of compliance with NPRR 1267, when it is appropriate for ERCOT to use the information in a public report provided action is taken to protect any confidential information.

Readiness-based forecasting framework

Eolian recommended that whether a large load customer should be included in ERCOT's load forecasts should depend on demonstrated and verifiable project readiness and system impact, a concept that Eolian describes in greater detail in its comments filed on October 10, 2025 in Project No. 58481. In essence, Eolian recommended that the commission adopt a two-track structure consisting of: (1) a streamlined advanced readiness/critical infrastructure track for projects that demonstrated substantial progress toward site control, environmental permitting, and financing or that serve critical industrial, infrastructure, or manufacturing functions; and (2) an expedited deployment/early-state verification track for large load projects (such as digital infrastructure, high-performance computing, and technology-driven facilities) that operate under compressed commercial timelines where speed to market is essential to project viability. To align with its recommendation in Project No. 58481, Eolian recommended that proposed §25.370 be modified to include a cross-reference to the two-track structure in the rule under development in Project No. 58481.

Commission Response

The commission declines to adopt Eolian's recommendation to modify the adopted rule to include a cross-reference to the two-track structure in the rule under development in Project No. 58481 because it is unnecessary. The adopted rule is sufficiently flexible in identifying the criteria for a large load customer's inclusion in ERCOT's load forecasts that, if the commission ultimately adopts Eolian's recommendation in Project No. 58481, the adopted rule will align with that decision.

Coordinated evaluation of paired load and generation resources

Eolian recommended modifying proposed §25.370 to include a requirement for ERCOT to evaluate paired large load customers and generation resources in a coordinated manner. Eolian reasoned that the absence of a defined mechanism for coordinated study of paired load and generation resources or energy storage resources results in duplicative or inconsistent analyses, conflicting upgrade requirements, and inefficient use of transmission planning resources. A unified analytical framework ensures accurate modeling and timely interconnection.

Commission Response

The commission declines to adopt Eolian's recommendation to include a requirement for ERCOT to evaluate paired large load customers and generation resources in a coordinated manner because it is outside the scope of this rulemaking, which is to establish criteria for a large load customer's inclusion in ERCOT's load forecasts.

Governance of large load interconnection request queue and processing

Eolian recommended modifying proposed §25.370 to establish a framework by which the commission can adequately govern the large load interconnection request queue and the processing and evaluation of requests. Because both the steep increase in large load interconnection requests and the corresponding challenges is relatively new, current TDSP processes tend to be insufficiently clear and, to the extent they can be ascertained, inconsistent. In Eolian's experience, TDSPs vary widely in the type of readiness demonstration they seek from large load customers and their responsiveness to load developers' initial requests and submission of documentation. Without regularization of the large load interconnection request process, TDSPs may exercise undue preference as to which projects have the opportunity to demonstrate such viability and the order in which projects' demonstrations are accepted and thereby included in studies and forecasts.

Commission Response

The commission declines to adopt Eolian's recommendation to modify adopted §25.370 to establish a framework by which the commission governs the large load interconnection request queue and the processing and evaluation of requests because it is outside the scope of this rulemaking and is more appropriately addressed through other avenues. The commission notes that commission staff has opened Project No. 58481 to standardize the interconnection standards for large load customers and ERCOT is currently developing a batch study process, which is expected to address the concerns raised by Eolian.

Regular forecast review and backcasting analysis

DCC recommended that ERCOT conduct annual assessments comparing past forecasts to actual outcomes (i.e., backcasting) to identify any sources of error and opportunities to improve future forecasts. According to DCC, this backcasting should confirm whether the load that was removed from the forecast is still pending review in the queue, and if so, determine the total aggregated amount of load pending review in the queue. DCC recommended requiring ERCOT to publicly post these assessments and obtain stakeholder comments and recommendations.

Commission Response

The commission agrees with DCC that identifying any sources of error and opportunities to improve future forecasts could be useful to both the commission and stakeholders to assess the effectiveness of the criteria developed for large load customers to be included in ERCOT's load forecast. Moreover, ERCOT should track this data and provide periodic updates to the commission without compromising confidentiality of the underlying data. Accordingly, the commission modifies the adopted rule to add new §25.370(e)(4) to implement this reporting requirement. The commission also adds language requiring ERCOT to identify sources of error and provide recommendations for improvement in the forecasting process.

Related pending rulemaking

Oncor recommended either waiting to adopt the rule in Project No. 58481 so that the criteria in that rule could be copied and pasted in this proposed rule; or to cite directly to the pending rule in Project No. 58481.

Commission Response

The commission agrees with Oncor's recommendation to cite directly to the pending rule in Project No. 58481 and modifies the adopted rule accordingly.

Proposed §25.370(b)(1)- Definition for large load customer

Proposed §25.370(b)(1) defines a large load customer as an entity seeking interconnection of one or more facilities at a single site with an aggregate new load or load addition greater than or equal to 25 megawatts (MW) behind one or more common points of interconnection or service delivery points.

Demand threshold

AEP, CenterPoint, DCC, ERCOT Steel Mills, LCRA, NRG, OPUC, Oncor, Schaper Energy, Targa, TCPA, TEC, TEBA, TIEC, TXOGA, and TPPA recommended that the threshold for determining whether a customer is a large load customer be increased from 25 MW to 75 MW.

EDF, ERCOT, and Sierra Club supported proposed §25.370(b)(1)'s use of a 25 MW demand threshold for defining a large load customer.

Commission Response

The commission agrees with AEP, CenterPoint, DCC, ERCOT Steel Mills, LCRA, NRG, OPUC, Oncor, Schaper Energy, Targa, TCPA, TEC, TEBA, TIEC, TXOGA, and TPPA that the demand threshold in the definition for a large load customer should be set to 75 MW to align with other rules implementing SB 6. However, the commission shares ERCOT's concerns that there may be a significant amount of interconnection requests for loads between 25 MW and 75 MW that may impact system upgrades. The commission expects to address the appropriate criteria for including these loads in ERCOT's forecasts in a future rulemaking. The commission further notes that the adopted rule does not change ERCOT's existing authority to gather information about and validate loads that are below 75 MW.

Voltage level at point of interconnection

OPUC recommended modifying proposed §25.370(b)(1) to specify that a large load customer is an entity seeking interconnection behind one or more common points of interconnection or service delivery points where the point of interconnection or service delivery point is at transmission-level voltage.

CenterPoint Energy countered that adding qualifications, specifically distinguishing between large load customers seeking to interconnect at transmission voltage from large load customers seeking to interconnect at distribution voltage would frustrate PURA §37.0561(c)'s mandate that all large load customers be included in ERCOT's large load forecasts. CenterPoint has experienced large industrial loads with a demand threshold of 75 MW and greater, such as data centers and manufacturing facilities, interconnecting or seeking to interconnect at distribution voltage. It is the size of the load, and not whether such load is interconnected at transmission voltage, that causes transmission system impacts.

Commission response

The commission declines to adopt OPUC's recommendation to modify proposed §25.370(b)(1) to specify that a large load customer is an entity seeking interconnection behind one or more common points of interconnection or delivery service points where the point of interconnection or service delivery point is at transmission-level voltage. The commission agrees with CenterPoint that the size of the load, and not whether such

load is interconnected at transmission voltage, is the relevant factor for defining a large load customer.

Clarify that any load exceeding the threshold is a large load customer and exclude energy storage resources and their associated charging loads

TPPA recommended clarifying that the definition for a large load customer to specify that any load exceeding the commission's threshold should be considered a large load customer. TPPA reasoned that proposed §25.370(b)(1) could be read such that an entity could initially interconnect with a demand that is one MW below the commission's threshold and not be considered a large load customer. After the initial interconnection, the entity could request the interconnection of additional demand, and as long as the additional amount is at least one MW below the threshold, it would still not be classified as a large load customer. To the extent this is not the intent, TPPA recommended clarifying the definition.

TPPA also recommended clarifying that the definition for a large load customer excludes energy storage resources and their associated charging loads.

Commission Response

The commission adopts TPPA's recommendation to modify adopted §25.370(b)(2) to clarify that any load exceeding the 75 MW threshold is a large load customer. The commission declines to adopt TPPA's recommendation to modify proposed §25.370(b)(1) to clarify that the definition for a large load customer excludes energy storage resources and their associated charge loads because it is unnecessary. Energy storage resources have their own interconnection process within the generation interconnection queue and ERCOT's load forecast does not currently include energy storage resource's charging load.

Proposed §25.370(b)(1) and (2)- Definitions for large load customer and load

Proposed §25.370(b)(1) defines a large load customer and proposed §25.370(b)(2) defines load.

ERCOT Steel Mills recommended consolidating the definitions in proposed §25.370(b)(1) and (2) into a single definition to ensure that the term "load" is interpreted solely within the context of criteria defining a large load customer. As drafted, proposed §25.370(b)(2) defines "load" as "non-coincident peak demand in MW" and is structured as a standalone definition that could possibly be referenced or applied outside the intent of proposed §25.370(b). ERCOT Steel Mills reasoned that this approach would be unreasonable because ERCOT forecasts various load measures, not only non-coincident peak. Either eliminating the definition of "load" from the rule or clarifying within the definition of a "large load customer" that the commission will use the non-coincident peak demand for the purpose of determining whether the load qualifies as a "large load customer" will provide greater clarity to stakeholders as compared to placing them in separate definitions.

Commission Response

The commission adopts ERCOT Steel Mills' recommendation to consolidate the definitions in proposed §25.370(b)(1) and (2) into a single definition and modifies the adopted rule accordingly.

Proposed §25.370(b)(3)- Definition for TDSP

Proposed §25.370(b)(3) defines a TDSP as the electric utility, municipally owned utility, or electric cooperative that is certificated to provide retail electric service at the site that a large load customer seeks to interconnect or the transmission service provider (TSP) delegated authority by the electric utility, municipally owned utility, or electric cooperative to act on its behalf for purposes of providing information to ERCOT.

Reference to "distribution"

OPUC recommended modifying proposed §25.370(b)(3) to remove the reference to "distribution" to align with OPUC's recommendation that the definition for a large load customer should be tied to interconnection at transmission-level voltage.

Commission Response

The commission declines to adopt OPUC's recommendation to modify proposed §25.370(b)(3) because it is unnecessary. The commission removes the definition for TDSP in the adopted rule. The terms transmission service provider and distribution service provider are already separately defined in §25.5 of this Title (relating to Definitions) for purposes of Chapter 25 and those definitions are appropriate in the context of the adopted rule. Therefore, it is unnecessary to define the terms in the adopted rule.

Entities authorized to submit load data to ERCOT

Crusoe, Eolian, Joint Transmission Commenters, Schaper Energy and Sharyland recommended modifying proposed §25.370(b)(3) to allow TSPs to submit load data to ERCOT. Sharyland reasoned that large load customers must provide complete interconnection information to the TSP as part of the interconnection process, regardless of how they plan to structure their retail service arrangements. This makes TSPs a comprehensive and reliable source for reporting large load customers interconnecting at transmission voltage, even if such a TSP is ultimately not the retail TDSP. Moreover, by requiring that TDSPs submit load data, the proposed rule may have the unintended consequence of large load customers avoiding working with TSPs, which could create additional backlog in moving large load customers through the interconnection queue. Moreover, in response to ERCOT staff's statements at the public workshop held on September 2, 2025 that ERCOT needs to have a single source of information to avoid duplicative reporting, Sharyland suggested there are at least three more efficient solutions to address that concern: (1) ERCOT can use large load interconnection numbers assigned during the interconnection process to quickly filter duplicative submissions; (2) the notarized attestations in proposed §25.370(d) could themselves be backed by customer attestations to the TSP to confirm that the load data has been provided to only the reporting TSP; or (3) TSPs and TDSPs will continue collaborating with one another and with ERCOT to reconcile data sets.

Commission Response

The commission declines to adopt Crusoe, Eolian, Joint Transmission Commenters, Schaper Energy, and Sharyland's recommendation to modify proposed §25.370(b)(3) to allow TSPs to submit load data to ERCOT because the commission removes the definition for TDSP from the adopted rule. Moreover, the commission determines that the DSP, which has the retail relationship with the large load customer irrespective of the voltage at which that large load customer receives service, is the more appropriate entity to submit the load data to ERCOT to avoid confusion and unintended consequences in areas that are served by municipally owned utilities and electric cooperatives. Therefore,

the commission declines to make the change elsewhere in the adopted rule.

Split definition for TSP and distribution service provider

Crusoe recommended splitting the definition of TDSP into separate definitions for TSP and distribution service provider. The TSP is the interconnecting utility that conducts the large load interconnection studies, but it might not be the utility with the obligation to provide retail electric delivery service to the large load customer.

Commission Response

The commission agrees with Crusoe's recommendation to split the definition of TDSP into separate definitions for TSP and distribution service provider. However, the commission notes that §25.5 of this Title already defines TSP and DSP. Therefore, the inclusion of these definitions is not necessary. The commission modifies the adopted rule to remove the definition for TDSP and replace references to "TDSP" with "TSP" and "DSP" as applicable.

Definition for TDSP is unnecessary

OCSC and TCAP recommended modifying proposed §25.370(b)(3) to remove the definition for TDSP because it is unnecessary. OCSC and TCAP reasoned that the definition is unnecessary because the term TDSP has been in common parlance in ERCOT for decades. Alternatively, OCSC and TCAP recommended modifying proposed §25.370(b)(3) to align the definition with the definition for TDSP in the ERCOT protocols.

Commission Response

The commission agrees with OCSC and TCAP that the definition for TDSP is unnecessary because §25.5 of this Title already defines TSP and DSP. Therefore, the commission modifies the adopted rule to remove the definition for TDSP and to replace references to "TDSP" with "TSP" and "DSP" as appropriate.

Proposed §25.370(c)- Criteria for inclusion in ERCOT load forecast

Proposed §25.370(c) prohibits inclusion of a large load customer's forecasted demand unless the large load customer executed and securitized an interconnection agreement or meets specific criteria.

ERCOT determination versus TDSP determination

Eolian recommended modifying proposed §25.370(c) to state that ERCOT, not the TDSP, determines whether to include a large load customer in ERCOT's load forecast used for transmission planning and resource adequacy models and reports. As drafted, Eolian had concerns that proposed §25.370(c) relies on TDSP determinations, such as demonstrated financial commitment and site control, when the TDSPs' role in the planning process is limited to supporting ERCOT's role by providing necessary data and verifying certain information. Eolian's recommended changes to proposed §25.370(c) would clarify that TDSPs may not withhold information from ERCOT or unilaterally make the determination to exclude or condition the inclusion of specific large load customers in the load forecast.

Commission Response

The commission declines to adopt Eolian's recommendation to modify adopted §25.370(c) to state that ERCOT, not the TDSP, determines whether to include a large load customer in ERCOT's load forecast used for transmission planning studies and resource adequacy assessments. Although the TDSP's role is to provide necessary data and verify certain information, that step necessarily requires that the TDSP make a preliminary determination that a large load customer has met the criteria and should be included.

Analysis of scenarios

ERCOT recommended modifying proposed §25.370(c) to clarify that ERCOT can perform analysis of scenarios. For example, the Long-Term System Assessment (LTSA) is used to inform which of various transmission options to recommend in the Regional Transmission Plan (RTP) or Regional Planning Group (RPG) process but the load development scenarios included in the LTSA would not meet the criteria specified in proposed §25.370(c) because the LTSA is based on a 10 to 15 year planning horizon (well before a large load customer would secure land rights or undertake financial commitments). ERCOT was concerned that proposed §25.370(c) could be read to prohibit the analysis that it conducts for the LTSA. Therefore, ERCOT recommended specifying that a large load customer's forecasted demand must not be included in ERCOT load forecast used for identifying transmission planning needs or performing resource adequacy assessments unless the large load customer executed and signed an interconnection agreement or meets specific criteria.

OPUC supported ERCOT's recommended changes. However, to ensure the statutory floor is not circumvented by the new language, OPUC recommended the following modification to ERCOT's recommendation: Criteria for inclusion in ERCOT load forecast. A large load customer's forecasted demand must not be included in an ERCOT load forecast used for identifying transmission planning needs or performing resource adequacy assessments unless the large load customer meets the following criteria or has executed and securitized an interconnection agreement that at a minimum includes the criteria set forth below. If an interconnection agreement fails to include all of the criteria established in the following subparagraphs, then the load shall not be included in ERCOT's load forecast used for transmission planning or resource adequacy.

Commission Response

The commission adopts ERCOT's recommendation to modify adopted §25.370(c) to clarify that ERCOT can perform analysis of scenarios and makes conforming changes throughout the adopted rule. The commission declines to adopt OPUC's recommendation to further modify adopted §25.370(c) to state that a large load customer must meet the criteria set forth and that, if an interconnection agreement fails to include all the criteria set forth, then the load must not be included in ERCOT's load forecast used for transmission planning or resource adequacy. Instead, the commission modifies adopted §25.370(c) to state that a large load customer must execute an interconnection agreement that meets the requirements under §25.194 (relating to Large Load Interconnection Standards) to be included in ERCOT's load forecast.

Amount of security posted

ERCOT recommended adding a new subsection to clarify that the amount of security posted by a large load customer that is counted in the load data based on an executed and securitized interconnection agreement must be equal to or greater than the amount of security that is required for the financial commitments under proposed §25.370(c)(4). Otherwise, it is possible that the amount of security required could vary across TDSPs and be-

come an avenue for large load customers to circumvent the requirements of the interconnection standards.

TIEC opposed ERCOT's recommendation, reasoning that the dollar per MW financial security should be viewed as a generic proxy that will allow loads to demonstrate sufficient financial commitment to be studied. Once the studies have been completed, the financial requirements under an actual service agreement for a large load customer will be based on the actual costs of the interconnection and will typically be much greater than any reasonable "proxy" security requirement that is applied on a dollar per MW basis. However, in the rare instance where that is not true, there is no reason to require a level of financial commitment above the TSP's actual costs or the potential risks to the system of the large load not materializing. If the actual cost happens to be less than the proxy after the load has been studied, the actual cost should be used. TIEC further explains that PURA §37.0561(h) allows proof of financial commitment to include: (a) the interim dollar per MW security; (b) security (or cash) provided under a discretionary services agreement for significant equipment or services; or (c) the contribution in aid of construction (CIAC) or security provided under a facilities extension agreement (FEA). Under this framework, the commission should make it clear that once an FEA is in place, the project-specific FEA financial requirements should be sufficient to protect against stranded costs and should supersede all generic dollar per MW security requirements, even if this results in a lower level of security in some scenarios.

Commission Response

The commission declines to adopt ERCOT's recommendation because the commission determines that the appropriate rule to address the specific criteria is in §25.194 (relating to Large Load Interconnection Standards). Therefore, the commission modifies adopted §25.370(c) to simply cite to the interconnection agreement that may be required under §25.194.

Option to execute and securitize an interconnection agreement

OPUC recommended modifying proposed §25.370(c) to remove the option to execute and securitize an interconnection agreement for a large load customer to be captured in a TDSP's load data submitted to ERCOT if the interconnection agreement fails to include the standards described in PURA §37.0561. OPUC reasoned that PURA §37.0561 sets forth certain standards the Texas Legislature required be met before a large load customer could interconnect to the grid and that it naturally follows that these standards should also be required before a large load customer is included in ERCOT's load forecast. OPUC concluded that the statute does not give the commission the option to offer an alternative path (i.e., executing and securitizing an interconnection agreement) in lieu of the statutorily outlined criteria.

Oncor and Rowan opposed OPUC's recommendation. Oncor reasoned that OPUC's recommendation is in direct opposition to the Texas Legislature's longstanding direction for ERCOT to focus on including more loads seeking interconnection in its forecasts, not less. Interconnection agreements themselves establish sufficient certainty to include a large load in ERCOT's forecasts whereas the added requirements that OPUC recommended would leave loads that are certain to interconnect out of ERCOT forecasts.

Rowan reasoned that PURA §37.0561(m) does not compel the commission to determine that a large load may only be included in an ERCOT load forecast if the large load has met all of the requirements for large load interconnection under PURA §37.0561(a)-(k). Rowan recommended that proposed §25.370(c) creates appropriate pathways for large load customers to demonstrate legitimacy consistent with what is allowed under the statute, while also ensuring that a legitimate large load is not excluded from ERCOT's load forecasts simply because it has not yet satisfied all of the interconnection standards in the rule. Moreover, the proposed rule should provide additional pathways for a large load to qualify for inclusion in an ERCOT load forecast, which would more accurately reflect the agreements and documentation that a large load customer is actually able to provide to demonstrate legitimacy. An FEA or equivalent agreement establishes the contractual relationship between a large load customer and the TDSP to develop and commit to paying for the necessary infrastructure in these circumstances. Accordingly, Rowan recommended modifying proposed §25.370(c) to add language stating that a large load customer must be included in ERCOT load forecasts if the large load customer executes and securitizes an FEA or an agreement equivalent to an interconnection agreement or an FEA.

Commission Response

The commission declines to adopt OPUC's recommendation to remove the option to execute and securitize an interconnection agreement for a large load customer to be captured in a TDSP's load data submitted to ERCOT if the interconnection agreement fails to include the standards described in PURA §37.0561. Instead, the commission modifies adopted §25.370(c) to require that a large load customer execute an interconnection agreement that meets the requirements under §25.194, which is intended to implement the specific requirements of PURA §37.0561 and thus addresses OPUC's concern.

Previously approved large load customer requests

TEBA recommended modifying proposed §25.370(c) to incorporate previously approved large load customer requests that require transmission upgrades but have not yet posted their security so that a large load customer will only be included in the RPG forecast once it has both posted the required security and demonstrated site control. TEBA reasoned that this would help filter out speculative projects and ensure that only committed loads are reflected in ERCOT's transmission planning forecasts.

Commission Response

The commission agrees with TEBA that the adopted rule's applicability to projects that have already progressed through the large load interconnection process but have not completed system upgrades through the RPG process, should be clearly defined. The commission acknowledges that the same criteria imposed on large load customers to be included in the load forecast should also extend to projects going through the RPG process because those projects are considered transmission studies. Therefore, all projects which have not been submitted for RPG review as of the effective date of the adopted rule, are subject to this requirement. The commission modifies adopted §25.370(e)(3) accordingly.

Proposed §25.370(c)(1)- Separate request for electric service

Proposed §25.370(c)(1) requires a large load customer to disclose to the TDSP whether the large load customer is pursuing a separate request for electric service, the approval of which would result in the customer materially changing, delaying, or withdrawing the interconnection request, and if so, the location,

size, and anticipated timing of energization associated with such request.

Disclosure of location, size, and anticipated timing of energization

AEP recommended modifying proposed §25.370(c)(1) to remove the requirement that the large load customer disclose the location, size, and anticipated timing of energization associated with a separate request for electric service because this could result in the disclosure of sensitive information. AEP reasoned that disclosure of the separate request is adequate to achieve the goals of the proposed rule.

OPUC countered that AEP's concern about the potential, not certain, disclosure of sensitive information is covered by both PURA §37.0561(k) and proposed §25.370(g). Overbuilding transmission or risking grid reliability should not be compromised for the sake of a potential disclosure of sensitive information-especially when the state legislature already accounted for that fact and specifically addressed it.

Commission Response

The commission declines to adopt AEP's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(1). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(1) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

ERCOT jurisdiction and communication

DCC recommended modifying proposed §25.370(c)(1) to clarify that the disclosures only pertain to areas within ERCOT's jurisdiction. DCC reasoned that the data center industry is an extremely dynamic and competitive industry so there must be confidentiality protections in place to ensure commercially sensitive information is not exposed. DCC also noted that while a project may appear duplicative, a company may be building out data centers to serve Texas's multiple markets. Therefore, establishing a process by which large load customers could directly communicate with ERCOT on adjusting demand projects would streamline the flow of information to provide a more accurate and transparent picture of requested capacity in the large load interconnection study queue.

OPUC countered that DCC's recommended change is inconsistent with the statute. PURA §37.5671(d) requires large load customers to disclose another "request for electric service in this state." If a request outside of the ERCOT service area is real, but the request inside is speculative, then the non-ERCOT area request is necessary to help determine whether transmission truly needs to be built for the less committed ERCOT area request. In addition, the Texas Legislature is very familiar with ERCOT's service areas. If it had intended for a request to be disclosed only for ERCOT's jurisdiction, it would have stated such. With respect to DCC's comments related to the ability of large load customers to communicate directly with ERCOT, OPUC recommend that is not necessary to address this issue in the proposed rule because ERCOT has anticipated this need and is already working to address it.

TCPA recommended that if disclosure of requests in areas outside of ERCOT is a concern, this could be remedied in the pending interconnection standard rulemaking by setting adequate financial security requirements and conditioning refunds on the load materializing in ERCOT.

Commission Response

The commission declines to adopt DCC and TCPA's recommendations because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(1). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(1) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Additional engineering and design information

CenterPoint recommended modifying proposed §25.370(c)(1) to permit a utility to require additional engineering and design information from a large load customer.

Commission Response

The commission declines to adopt CenterPoint's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(1). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(1) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Not pursuing a separate request for interconnection

TPPA recommended modifying proposed §25.370(c)(1) to require a large load customer to disclose to the TDSP that it is not pursuing a separate request for interconnection. TPPA reasoned that this change would sufficiently avoid duplicative counting of projects between TDSPs.

Commission Response

The commission declines to adopt TPPA's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(1). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(1) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Attestation

TPPA recommended modifying proposed §25.370(c)(1) to require an attestation from the large load customer.

Commission Response

The commission declines to adopt TPPA's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(1). Therefore, the commission modifies adopted §25.370(c) to remove proposed §25.370(c)(1).

Proposed §25.370(c)(2)- Demonstration of site control

Proposed §25.370(c)(2) requires a large load customer to demonstrate site control for the proposed load location through an ownership interest, lease, or other means accepted in the

applicable commission rule for large load interconnection standards.

Purchase option

Crusoe, LCRA, Rowan, Schaper Energy, and TIEC recommended modifying proposed §25.370(c)(2) to allow a large load customer to demonstrate site control through a purchase option. Additionally, LCRA recommended that the large load customer be required to provide documentation to the interconnecting TDSP and to submit updated documentation in the case of any duration-limited option or lease agreement in order to satisfy the statutory requirement to demonstrate continued site control for the duration of the interconnection study period. Crusoe recommended that requiring fee simple ownership or a fully executed lease at the early stages of project development is commercially unrealistic and would create unnecessary barriers to investment and economic growth in Texas. Most developers cannot responsibly acquire property outright or enter into long-term leases before confirming the availability of electric service and completing necessary interconnection studies. If the rule were to require only actual ownership or leasehold interests, many viable projects would be stalled or abandoned due to the unacceptable financial exposure this would create. Rowan noted that it may not be appropriate for a large load customer to purchase a property if interconnection is not certain in a reasonable timeframe, which is why a large load customer often enters into a binding letter of intent to purchase a property or an exclusivity agreement as a means of obtaining site control. Schaper Energy noted that the current interconnection procedural delays prevent developers from responsibly acquiring property in fee without first confirming the availability of electric service. Similarly, Targa recommended modifying proposed §25.370(c)(2) to expressly recognize options to lease or purchase as acceptable forms of site control, provided the option runs with the land or is otherwise enforceable.

In contrast, CenterPoint, Oncor, and TNMP recommended that the commission accept only actual ownership interests or leasehold interests as sufficient to demonstrate site control for a proposed large load location. CenterPoint recommended that a purchase option is insufficient evidence of site control because the holder of the purchase option (1) is not obligated to purchase the underlying property, and (2) does not have a possessory interest in the underlying property. If the commission determines that future ownership interests should be included, TNMP recommended that the commission limit recognition of future interests to exclusive options to purchase or lease that are supported by significant consideration. Speculative future interests such as life estates or executory interests should not be considered sufficient to demonstrate required site control. Similarly, if the commission elects to allow contractual rights to establish proof of site control, Oncor recommended requiring that non-refundable financial deposits be in place under those contracts to substantiate that an interconnecting large load is sufficiently invested in the chose site location. The interconnecting large load should be required to provide either a copy of the purchase contract or an attestation that this requirement has been met.

Commission Response

The commission declines to adopt Crusoe, LCRA, Rowan, Schaper Energy, and TIEC's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(2). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(2) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Acreage, geography, and zoning requirements

OPUC recommended modifying proposed §25.730(c)(2) to require a large load customer to confirm that its site has sufficient acreage and no less than one MW per acre, geography, and zoning requirements to support the large load customer's interconnection request. Additionally, OPUC recommended replacing reference to "other means" with "another legal interest" to better align with PURA §37.0561.

Oncor supported OPUC's recommendation to require validation of property interests on the basis of potential for power consumption. Confirming that the project property is large enough to hold a facility that would consume the amount of requested capacity prevents a developer from entering the interconnection queue and ERCOT load forecasts with an inexpensive, undersized property, which the developer may walk away from or only expand once it is certain that it wants to proceed with construction.

Commission Response

The commission declines to adopt Oncor and OPUC's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(2). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(2) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Attestation

TPPA recommended modifying proposed §25.370(c)(2) to require an attestation from the large load customer.

Commission Response

The commission declines to adopt TPPA's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(2). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(2) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Proposed §25.370(c)(3)- Study fee

Proposed §25.370(c)(3) requires a large load customer to pay a study fee that is the greater of $100,000 or an amount that is set by the applicable commission rule for large load interconnection standards.

Study fee amount

AEP recommended modifying proposed §25.370(c)(3) to state that a large load customer must pay a study fee that is at least $100,000 instead of the greater of $100,000 or an amount that is set by the applicable commission rule for large load interconnection standards. TNMP recommended setting the study fee to at least $100,000 but also allowing for additional study cost factors to be applied to permit individual utilities to evaluate project-specific costs and calculate total study fee costs accordingly. Cen-

terPoint recommended modifying proposed §25.370(c)(3) to increase the minimum study fee to $150,000.

Crusoe opposed TNMP's recommendation to establish a minimum study fee with allowance for additional, undefined project-specific charges. Crusoe asserted that TNMP's proposal lacks clear limits and transparency, creating uncertainty for large load customers and potentially resulting in unpredictable and excessive costs.

Rowan recommended modifying proposed §25.370(c)(3) to state that a large load customer must pay the lesser of $100,000 or an amount that is set by the applicable commission rule for large load interconnection standards based on the TDSP's verifiable study costs, which shall be the only study fee payment required for a period of five years from the date of payment, and thereafter the study fee amount may increase annually based on the TDSP's verifiable costs to conduct studies. Rowan reasoned that these changes provide additional clarity for TDSPs and large load customers.

TIEC recommended that the proposed rule should simply refer to the standards adopted in Project No. 58481.

Commission response

The commission declines to adopt AEP, TNMP, CenterPoint, and Rowan's recommendations because the commission agrees with TIEC's recommendation to simply refer to the criteria set forth in the pending rule in Project No. 58481. Because Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(3), the commission modifies adopted §25.370(c) to remove proposed §25.370(c)(3).

Request for additional capacity

OPUC recommended modifying proposed §25.370(c)(3) to include a statement consistent with PURA §37.0561(f): a large load customer that requests additional capacity following an initial screening must pay an additional study fee that is the greater of $100,000 or other amount that is set by the applicable commission rules for large load interconnection standards.

Commission Response

The commission declines to adopt OPUC's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(3). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(3) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

ERCOT costs

TEBA recommended modifying proposed §25.370(c)(3) to state that a portion of the $100,000 study fee should be given to ERCOT to offset costs. TEBA reasoned that providing ERCOT with dedicated funding will increase its bandwidth to assess and approve the abundance of capacity currently in the queue in an efficient manner.

In reply comments, LCRA opposed TEBA's recommendation because the main purpose of the study fee is to ensure that TDSPs are able to recover the cost of conducting interconnection studies. ERCOT established a large load interconnection fee of $14,000 in its NPRR 1234 for recovery of ERCOT's costs, and the amount should be updated through a subsequent revision request if it is deemed to be inadequate.

Commission Response

The commission declines to adopt TEBA's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(3). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(3) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Proposed §25.370(c)(4)- Financial commitment

Proposed §25.370(c)(4) requires a large load customer to demonstrate commitment to the TDSP by means of (A) payment of security on a dollar per megawatt basis as set by the applicable commission rule for large load interconnection standards; (B) payment of CIAC; or (C) payment of security provided under an agreement that requires the large load customer to pay for significant equipment or services in advance of signing an agreement to establish electric delivery service; or (D) payment of security provided under an agreement that requires the large load customer to pay for significant equipment or services in advance of signing an agreement to establish electric delivery service.

Mirror financial and collateral requirements in Project No. 58481

DCC recommended that the financial commitment requirements outlined for inclusion in the proposed rule mirror the financial and collateral requirements that will be implemented by the commission in Project No. 58481.

TIEC recommended that the proposed rule should simply refer to the standards adopted in Project No. 58481.

Commission Response

The commission declines to adopt DCC's recommendations because the commission agrees with TIEC's recommendation to simply refer to the criteria set forth in the pending rule in Project No. 58481. Because Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(4), the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(4) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

TDSP exclusive right to determine the form of financial security

LCRA recommended modifying proposed §25.370(c)(4) to: (1) recognize the sole and exclusive right of the TDSP to determine the form of financial security that is required; (2) require that the CIAC is an amount equal to the estimated cost of the Transmission Interconnection Facilities, subject to refund if the large load customer does not execute a final agreement to establish electric delivery service; and (3) permit the payment of security for significant equipment or services to include the estimated cost of the Transmission Interconnection Facilities as determined by the TDSP.

Eolian countered that allowing TDSPs to control the inclusion of specific large loads in ERCOT's forecasts risks inconsistent regional criteria thereby undermining accuracy and increasing confusion. Accordingly, Eolian recommended modifying proposed

§25.370(c) or (e) to add language stating that ERCOT retains the ultimate authority to determine whether to include a large load in its forecasts, based on the criteria established by the commission.

OPUC recommended that if the commission adopts LCRA's recommendation to modify proposed §25.370(c)(4), the term "Transmission Interconnection Facilities" should be defined.

Commission Response

The commission declines to adopt LCRA, Eolian, and OPUC's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(4). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(4) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Fixed dollar per MW security

TNMP recommended replacing the fixed dollar per MW security requirement with a percentage-based security requirement relative to total project development to ensure fairness across large load interconnection projects, aligning securitization requirements with actual system and grid impacts. TNMP reasoned that the purpose of financial requirements is to demonstrate a large load customer's ability to meet its CIAC for direct service facilities and, in theory, to provide assurance of its financial capacity to support necessary network system improvements. Because large load customers vary significantly in terms of project size, specifications, site location, engineering design, and the extent to which system upgrades are required, a uniform dollar per MW value may be unnecessarily strict and inequitable to both large load customers and other market participants.

Rowan agreed with TNMP that the dollar per MW security requirement could fail to reflect the unique system impacts of each individual large load customer. A fairer way to demonstrate financial commitment is through payment of security based on the large load customer's pro-rata share of network upgrades to establish service. Accordingly, Rowan recommended modifying proposed §25.370(c)(4)(A) to replace the dollar per MW security requirement with a security requirement based on the project's pro-rata share of network upgrades required to establish electric delivery service.

Commission Response

The commission declines to adopt TNMP and Rowan's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(4). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(4) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

A form of financial commitment acceptable to the commission

DCC and OPUC recommended modifying proposed §25.370(c)(4) to include a statement consistent with PURA §37.0561(h), requiring the large load customer to demonstrate financial commitment by means acceptable to the commission as set forth in the applicable commission rules for large load interconnection standards.

Commission Response

The commission declines to adopt DCC and OPUC's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(4). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(4) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Inclusion after satisfying one of the interim security options

Schaper Energy recommended modifying proposed §25.370(c)(4) to specify that a load may be included in ERCOT's forecast only after the customer satisfies one of the interim security options established in Project No. 58481.

Commission Response

The commission declines to adopt Schaper Energy's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(4). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(4). However, the commission agrees that the adopted rule should cite to the pending rule in Project No. 58481 and modifies the adopted rule accordingly.

Refundable security for significant equipment or services

Targa recommended modifying proposed §25.370(c)(4)(C) to state, "Customer security provided under this subsection (4) is refundable upon withdrawal or cancellation of the interconnection request, less the TDSP's actual, reasonable, and verifiable costs or upon achievement of required customer milestones, including but not limited to specified demand level milestones." Targa reasoned that explicitly stating that security for significant equipment or services is refundable aligns incentives, reduces unnecessary risk premiums, and maintains fairness across functionally similar commitment instruments.

Crusoe supported Targa's recommendation to make refundability explicit, which aligns incentives, reduces unnecessary risk premiums, and ensures fairness for all parties.

OPUC recommended that if the commission addresses this concept in the proposed rule, then the language added should be limited to stating: "Any security provided under subparagraph (4)(A) is refundable, in whole or in part, pursuant to the conditions set forth in PURA Section 37.0561(i) and the Commission's applicable rule on large load interconnection standards."

Commission Response

The commission declines to adopt Crusoe, Targa, and OPUC's recommendations because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(4). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(4). and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards)

Proposed §25.370(c)(5)- Load ramping schedule

Proposed §25.370(c)(5) requires a large load customer to provide a load ramping schedule to the TDSP, if applicable.

LCRA recommended modifying proposed §25.370(c)(5) to clarify that the load ramping schedule will be expressed in MW and megavolt-ampere reactive (MVAr) units (i.e., real power and reactive power). LCRA also recommended modifying proposed §25.370(c)(5) to require large load customers to provide dynamic load models. LCRA reasoned that dynamic models are necessary for planning studies that analyze the behavior of large loads under varying system conditions and will be mandatory for the large load interconnection study upon implementation of Planning Guide Revision Request (PGRR) 115. In reply comments, CenterPoint made similar recommendations.

OPUC recommended modifying proposed §25.370(c)(5) to specify that the load ramp schedule includes the customer's expected total demand at the proposed load location, starting at the time of expected initial interconnection and any subsequent expected demand growth, including the timing of expected demand growth.

Rowan recommended modifying proposed §25.370(c)(5) to reflect that the submitted load ramps are subject to change at the large load customer's discretion. Load ramps may be impacted by potential construction acceleration or delays, changes to the large load's use case (for example, a change in a planned data center from cloud computing to artificial intelligence), or the type of computing equipment being used (which is rapidly evolving).

Commission Response

The commission declines to adopt LCRA, OPUC, and Rowan's recommendations because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(5). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(5) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Proposed §25.370(c)(6)- Site-related studies and engineering services

Proposed §25.370(c)(6) requires a large load customer to submit an attestation to the TDSP that attests significant, verifiable progress toward completion of site-related studies and engineering services required for project development before energization (e.g., water, wastewater, or gas).

Remove the requirement for site-related studies and engineering services

CenterPoint, Crusoe, DCC, LCRA, Oncor, Schaper Energy, Targa, and TEBA recommended modifying proposed §25.370(c) to remove the requirement for a large load customer to submit an attestation to the TDSP that attests significant, verifiable progress toward completion of site-related studies and engineering services requirement for project development before energization. DCC reasoned that the timing of these activities varies considerably among large load customers. Moreover, many large load customers are considered non-speculative before a number of site-related studies and engineering services would be required. Therefore, by requiring these attestations before a large load customer can be part of the forecast, the commission and ERCOT risk underreporting these large load customers in the forecast.

Schaper Energy reasoned that ERCOT lacks the institutional or technical expertise to evaluate progress in areas of real estate development, environmental permitting, or municipal approvals that are wholly outside the scope of electrical interconnection. Similarly, Targa reasoned that ERCOT does not possess the subject matter expertise to determine when it is commercially reasonable for non-electric studies to be complete; non-electric studies can have materially shorter lead times and critical paths than major electric interconnection facilities and transmission upgrades, which can take four to seven years to build; and the proposed rule already contains more tailored, indicators of seriousness and viability that are relevant to the electric system. TEBA asserted that requiring the submission of an attestation related to site-related studies and engineering services exceeds the statutory requirements and could impose an unnecessary administrative burden, creating barriers for legitimate large load customers seeking to interconnect.

OPUC countered that requiring large load customers to submit attestations to TSPs regarding information relevant to the customer's project development before the project is fully operational and ready for energization helps separate the projects that will materialize from those that will not. Consequently, the underlying basis for proposed §25.370(c)(6) is within the confines and intent of SB 6.

Commission Response

The commission adopts CenterPoint, Crusoe, DCC, LCRA, Oncor, Schaper Energy, Targa, and TEBA's recommendation to modify adopted §25.370(c) to remove proposed §25.370(c)(6). However, the commission does so because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(6).

Plans and progress

OPUC recommended modifying proposed §25.370(c)(6) to require TDSPs to request from each potential new large load customer its project status and plan for completion, including the following uniform milestones: (1) determination of the site development contractor; (2) purchase orders for major equipment; (3) initiation of onsite work; (4) construction initiation and completion dates; and (5) building occupation information. OPUC also recommended the plan for completion should be accompanied by an attestation signed by a representative of the large load customer with binding decision making and legal authority that states at the time of signing the attestation, the information contained within the plan is complete and accurate. Finally, OPUC recommended that, upon the TDSP's request, a large load customer be required to provide a project status update that has a comprehensive summary describing the customer's completion of or progress towards each milestone.

Oncor countered that OPUC's recommendation to modify proposed §25.370(c)(6) to require a large load to submit a plan of completion would increase delays in the modeling of loads that otherwise comply with the large load interconnection standards. Site-related services and engineering services often occur only months before interconnection while the electrical loads seeking inclusion in ERCOT forecasts are commonly electrically planning six or more years in advance. Similarly, TIEC noted that OPUC's suggestions conflict with comments filed by multiple utilities that the Commission, ERCOT, and utilities are not in a position to make an independent determination on the progress of these requirements. Moreover, embedding such judgments in interconnection and forecasting criteria invites inconsistent, subjective determinations and potential disputes.

TIEC recommended modifying proposed §25.370(c)(6) to require disclosures around the customer's plans and progress but not using it as a gating item. TIEC reasoned that while each project has a different timeline, industrial loads do not typically expend significant resources on those studies until after signing an interconnection agreement. Moreover, by requiring large loads to achieve certain development milestones that do not occur until later in the development process, or after the load signs an interconnection agreement, proposed §25.370(c)(6) could recreate the timing issues that House Bill 5066, as enacted by the 88th Texas Legislature, Regular Session, addressed.

NRG supported the inclusion of proposed §25.370(c)(6) to vet projects but recommended that "significant, verifiable progress" should be weighed relative to the planned energization date and, depending on how far in the future that date is, the large load customer should be able to meet this criterion by showing site-related studies have commenced and services agreements are in negotiation rather than requiring them to be completed. NRG reasoned that site-related studies and services agreements are often lengthy to complete and excluding loads from the forecast on this basis would hinder visibility into future load growth, as loads would only be included in the forecast at the last stages of development.

Commission Response

The commission declines to adopt OPUC, TIEC, and NRG's recommendations because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(6). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(6) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Attestation

TCPA recommended modifying proposed §25.370(c)(6) to require an attestation for significant, verifiable progress, as appropriate for the current stage of development. TCPA reasoned that different stages of development require different progress toward applicable studies and there may be studies that have not been completed or obtained or the process begun because it is too early in the development cycle to warrant any action. TCPA cautioned that without the added modifying language, the unintended consequence is under counting load coming to ERCOT and not having enough transmission infrastructure or generation to serve real load that is being developed but has not reached a stage to warrant certain studies. Adding the language "as appropriate for the current stage of development" would allow for loads to present evidence that they are undertaking the tasks they will need to complete in order to energize by their planned date, without excluding them from the forecast in later years based on them not having completed tasks that would not be expected at their stage of development.

Commission Response

The commission declines to adopt TCPA's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(6). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(6) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Collection of data

EDF recommended modifying proposed §25.370(c)(6) to clearly authorize the TDSP to collect data reasonably needed to validate large load customers' "verifiable progress" attestations, to ensure that the TDSP and ERCOT will be able to effectively enforce such a requirement.

Commission Response

The commission declines to adopt EDF's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(6). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(6) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

TDSP obligation

LCRA recommended clarifying that the only obligation for the TDSP under proposed §25.370(c)(6) is to confirm the provision of the applicable attestation because TDSPs are not positioned to make an independent determination on the progress of site studies and engineering services.

Rowan agreed with LCRA that TDSPs are not positioned to make an independent determination on the progress of site studies, engineering services, or state and local regulatory approvals. Whether a project has made significant progress is adequately reflected in the load ramp, as a large load customer is not able to agree to a load ramp until it has committed to a project development schedule. Accordingly, Rowan recommended modifying proposed §25.370(c)(6) to require attestation to reasonable progress toward realization of the load ramp schedule instead of significant, verifiable progress toward completion of site-related studies and engineering services.

Commission Response

The commission declines to adopt LCRA and Rowan's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(6). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(6) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Proposed §25.370(c)(7)- State and local regulatory approvals

Proposed §25.370(c)(7) requires a large load customer to submit an attestation to the TDSP that attests significant, verifiable progress toward obtaining state and local regulatory approvals required for project development before energization (e.g., water, air, or backup generation permits, or city or county building permits).

Remove the requirement for state and local regulatory approvals

CenterPoint, Crusoe, DCC, LCRA, Oncor, Rowan, Schaper Energy, and TEBA recommended modifying proposed §25.370(c) to remove the requirement for a large load customer to submit an attestation to the TDSP that attests significant, verifiable progress toward obtaining state and local regulatory approvals

required for project development before energization. CenterPoint, DCC, and Oncor reasoned that the requirement for attestation of significant, verifiable progress toward obtaining state and local regulatory approvals could lead to large load customers being underreported in the forecast because the necessary approvals and permits occur much later during the project timelines. TEBA asserted that requiring the submission of an attestation related to state and local regulatory approvals exceeds the statutory requirements and could impose an unnecessary administrative burden, creating barriers for legitimate large load customers seeking to interconnect.

Schaper Energy reasoned that ERCOT lacks the institutional or technical expertise to evaluate progress in areas of real estate development, environmental permitting, or municipal approvals that are wholly outside the scope of electrical interconnection. Similarly, Targa reasoned that ERCOT does not possess the subject matter expertise to determine when it is commercially reasonable for non-electric permits to be complete; non-electric permits can have materially shorter lead times and critical paths than major electric interconnection facilities and transmission upgrades, which can take four to seven years to build; and the proposed rule already contains more tailored, indicators of seriousness and viability that are relevant to the electric system.

OPUC countered that requiring large load customers to submit attestations to TSPs regarding information relevant to the customer's project development before the project is fully operational and ready for energization helps separate the projects that will materialize from those that will not. Consequently, the underlying basis for proposed §25.370(c)(7) is within the confines and intent of SB 6.

Commission Response

The commission adopts CenterPoint, Crusoe, DCC, LCRA, Oncor, Rowan, Schaper Energy, and TEBA's recommendation to modify adopted §25.370(c) to remove proposed §25.370(c)(7). However, the commission does so because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(7).

Plans and progress

OPUC recommended modifying proposed §25.370(c)(7) to require a large load customer to identify all known permits required before the customer can be operational; a description of the customer's efforts to obtain the respective permit approval; and an attestation signed by a high-level representative that the information contained in the document is complete and accurate at the time of signature.

Oncor countered that OPUC's recommendation to modify proposed §25.370(c)(7) to require a large load to submit a list of all currently known federal, state, and local regulatory permits and approvals would increase delays in the modeling of loads that otherwise comply with the large load interconnection standards. These permits and approvals are often obtained only months before interconnection while the electrical loads seeking inclusion in ERCOT forecasts are commonly electrically planning six or more years in advance. Similarly, TIEC noted that OPUC's suggestions conflict with comments filed by multiple utilities that the Commission, ERCOT, and utilities are not in a position to make an independent determination on the progress of these requirements. Moreover, embedding such judgments in interconnection and forecasting criteria invites inconsistent, subjective determinations and potential disputes

Sierra club recommended modifying proposed §25.370(c)(7) to add "or a timeline for obtaining state and local regulatory approvals required for project development if progress has not begun."

TIEC recommended modifying proposed §25.370(c)(7) to require disclosures around the customer's plans and progress but not using it as a gating item. TIEC reasoned that while each project has a different timeline, industrial loads do not typically expend significant resources on those permits until after signing an interconnection agreement. Moreover, as a practical matter proposed §25.370(c)(7) could recreate the timing issues that House Bill 5066 addressed by requiring large loads to achieve certain development milestones that do not occur until later in the development process, or after the load signs an interconnection agreement.

NRG supported the inclusion of proposed §25.370(c)(7) to vet projects but recommended that "significant, verifiable progress" should be weighed relative to the planned energization date and, depending on how far in the future that date is, the large load customer should be able to meet this criterion by showing that the requests, applications, or filing for such regulatory approvals and permits have been submitted rather than requiring them to be completed. NRG reasoned that excluding loads from the forecast on the basis that they have not yet completed state and local regulatory approvals would hinder visibility into future load growth, as loads would only be included in the forecast at the last stages of development.

Commission Response

The commission declines to adopt OPUC, Sierra Club, TIEC, and NRG's recommendations because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(7). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(7) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Attestation

TCPA recommended modifying proposed §25.370(c)(7) to require an attestation for significant, verifiable progress, as appropriate for the current stage of development. TCPA reasoned that different stages of development require different progress toward applicable permits and there may be permits that have not been completed or obtained or the process begun because it is too early in the development cycle to warrant any action. TCPA cautioned that without the added modifying language, the unintended consequence is under counting load coming to ERCOT and not having enough transmission infrastructure or generation to serve real load that is being developed but has not reached a stage to warrant certain permits. Adding the language "as appropriate for the current stage of development" would allow for loads to present evidence that they are undertaking the tasks they will need to complete in order to energize by their planned date, without excluding them from the forecast in later years based on them not having completed tasks that would not be expected at their stage of development.

Commission Response

The commission declines to adopt TCPA's recommendation because the commission determines that the pending rule in

Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(7). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(7) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Collection of data

EDF recommended modifying proposed §25.370(c)(7) to clearly authorize the TDSP to collect data reasonably needed to validate large load customers' "verifiable progress" attestations, to ensure that the TDSP and ERCOT will be able to effectively enforce such a requirement.

Commission Response

The commission declines to adopt EDF's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(7). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(7) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

TDSP obligation

LCRA recommended clarifying that the only obligation for the TDSP under proposed §25.370(c)(7) is to confirm the provision of the applicable attestation because TDSPs are not positioned to make an independent determination on the progress of state and local regulatory approvals.

Commission Response

The commission declines to LCRA's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(7). Therefore, the commission modifies adopted §25.370(c) to remove the requirement set forth in proposed §25.370(c)(7) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Proposed §25.370(c)(6) and (7)- Site-related studies and engineering services and state and local regulatory approvals

If the commission does not adopt the recommendation to remove proposed §25.370(c)(6) and (7), Oncor recommended consolidating proposed §25.370(c)(6) and (7) into a single attestation that features a negative, reading that the large load "is not experiencing material issues conducting studies, obtaining needed engineering services or state and local regulatory approvals that will delay the planned interconnection timeline."

Commission Response

The commission declines to Oncor's recommendation because the commission determines that the pending rule in Project No. 58481 is the appropriate place to address the criteria set forth in proposed §25.370(c)(6) and (7). Therefore, the commission modifies adopted §25.370(c) to remove the requirements set forth in proposed §25.370(c)(6) and (7) and replaces it with a requirement to execute an interconnection agreement that meets the requirements under §25.194 of this Title (relating to Large Load Interconnection Standards).

Proposed §25.370(d)- Submission of load data to ERCOT

Proposed §25.370(d) requires that a TDSP submit a notarized attestation sworn to by the TDSP's highest-ranking representative, official, or officer with binding authority over the TDSP, attesting that each large load customer included in the TDSP's load data meets the criteria set forth in proposed §25.370(c). Proposed §25.370(d) also requires a TDSP to report a change to ERCOT by updating its load data not later than 10 working days after the TDSP reasonably determines there is a change in the load data that the TDSP submitted to ERCOT.

Remove proposed subsection (d)

AEP, Oncor, and TPPA recommended striking the requirement for a TDSP to report a change in load data not later than 10 working days after the TDSP reasonably determines there is a change in the load data that the TDSP submitted to ERCOT because the 10 working day timeline would be administratively burdensome. TPPA reasoned that forecasts inherently include some degree of inaccuracy and requiring TDSPs to routinely report changes would create an onerous obligation, effectively requiring them to continuously reconcile past submissions with ever-changing forecasts. AEP recommended considering an alternative such as a threshold to the forecasted load data that would be considered substantive enough to require updating or requiring an update to the load forecasts on a twice annual basis so that all numbers are updated more frequently. Similarly, Oncor recommended that an update to load data should not be required more frequently than every six months.

Commission Response

The commission adopts AEP, Oncor, and TPPA's recommendation because the commission determines that the processes and timelines for updating load data submitted to ERCOT should be developed in the ERCOT protocols, which receive stakeholder input and must be approved by the commission. This approach allows for greater coordination based on ERCOT's other processes and procedures relating to load forecasts. Therefore, the commission modifies adopted §25.370(d) to remove the requirement to report a change in load data not later than ten working days after a TDSP reasonably determines there is a change in the load data.

Defining what constitutes a "change" and timeline for reporting

LCRA recommended modifying proposed §25.70(d) to better define the level of load data "change" that would obligate a TDSP to report an update to ERCOT. LCRA reasoned that forecasts are an exercise in estimation and minor modification in input will not necessarily produce considerable or even noticeable changes in output. Therefore, it is necessary to establish reasonable bounds to mitigate this reporting burden on TDSPs. LCRA recommended either (1) defining a "material change" for purposes of proposed §25.70(d) as an increase or decrease to the 75 MW demand threshold and using this value to trigger reporting to ERCOT; or (2) to align the reporting requirement with Steady State Working Group updates or RTP case builds during the year (i.e., annually or semi-annually).

If Oncor's recommendation to remove the reporting requirement altogether is not adopted, then Oncor recommended, in the alternative, modifying proposed §25.370(d) to include a materiality qualifier to the language requiring TDSPs to report a change in load data and define what constitutes a material change (e.g., a 6-month change in load ramp or a 75 MW change in peak load) because small deviations in peak loads should not automatically

require update. ERCOT needs to be able to move forward and study without being continually asked to modify loads due to marginal customer modifications. In reply comments, OPUC supported Oncor's alternative recommendation.

CenterPoint recommended changing the process by which a TDSP provides updated load data to ERCOT. Because forecasted load data frequently changes, depending on the status of proposed load to be interconnected, CenterPoint recommended that it is more efficient for a TDSP to provide updated load data to ERCOT when requested instead of 10 working days after a change is reasonably determined to have occurred.

Sierra Club supported recommendations to require TDSPs to provide information upon request by ERCOT instead of 10 working days after a change is reasonably determined to have occurred.

Commission Response

The commission declines to adopt LCRA's recommendation, Oncor's alternative recommendation, and CenterPoint's recommendation because the commission modifies adopted §25.370(d) to remove the requirement to report a change in load data not later than ten working days after a TDSP reasonably determines there is a change in the load data. Therefore, the changes recommended by LCRA, Oncor, and CenterPoint are unnecessary.

Access to updated system models

To improve accuracy and coordination, DCC recommended that TDSPs should have access to updated system models and be actively involved in their review. DCC reasoned that forecasting challenges often arise because TDSPs face difficulties in obtaining information about loads interconnecting within other TDSP service territories.

Commission Response

The commission agrees with DCC that TDSP access to updated system models could improve accuracy and coordination. However, the commission notes that ERCOT is currently developing a communication system for large load customers. Therefore, the commission determines accuracy, and coordination will improve without the need for changes to the adopted rule.

Attestation

OPUC recommended modifying proposed §25.370(d) to state that the TDSP must attest that each large load customer included in the TDSP's load data meets all of the criteria set forth in proposed §25.370(c) and if applicable, any executed and securitized interconnection agreements in place satisfy the conditions identified in proposed §25.370(c).

Oncor recommended modifying proposed §25.370(d) to authorize a representative, official, officer, or other authorized person with binding authority to execute the attestation instead of requiring the highest-ranking representative, official, or officer with binding authority over the TDSP. This change mirrors other attestation and affidavit requirements in other commission rules, such as the power generation company registration affidavit requirement found in §25.109(c)(5). Oncor also recommended clarifying whether "load data" includes all of the information submitted to ERCOT to support a given load's inclusion in ERCOT load forecasts or simply includes peak demand and load ramp data for loads that meet the ERCOT load forecast inclusion criteria. In reply comments, CenterPoint also recommended modifying proposed §25.370(d) to allow an officer of a TDSP, rather than the highest-ranking officer to submit the attestation.

Schaper Energy recommended modifying proposed §25.370(d) to state that the interconnecting TSP performing the large load interconnection study may attest directly to ERCOT that the load meets the criteria set forth in proposed §25.370(c). Schaper Energy reasoned that this approach maintains proper roles, avoids procedural bottlenecks, and ensures that the entity provides the attestation with firsthand technical knowledge of the interconnection. In reply comments, Cruose supported Schaper Energy's recommendation.

Commission Response

The commission declines to adopt OPUC's recommendation to modify proposed §25.370(d) to state that the TDSP must attest that each large load customer included in the TDSP's load data meets all of the criteria set forth in proposed §25.370(c) and if applicable, any executed and securitized interconnection agreements in place satisfy the conditions identified in proposed §25.370(c) because it is unnecessary. Instead, the commission modifies adopted §25.370(c) to require that a large load customer execute an interconnection agreement that meets the requirements under §25.194, thereby requiring large load customers meet the criteria that was set forth in proposed §25.370(c). Additionally, the commission modifies adopted §25.370(d) to require that a DSP submit a notarized attestation sworn to by the DSP's representative, official, or officer with binding authority over the DSP, attesting that each large load customer included in the DSP's load data meets the criteria for an interconnection agreement, as may be set forth in §25.194.

The commission adopts Oncor's recommendation to modify adopted §25.370(d) to authorize a representative, official, officer or other authorized person with binding authority to execute the attestation instead of requiring the highest-ranking representative, official, or officer with binding authority over the TDSP.

The commission declines to adopt Schaper Energy's recommendation to modify proposed §25.370(d) to state that the interconnecting TSP performing the large load interconnection study may attest directly to ERCOT that the load meets the criteria set forth in proposed §25.370(c). The commission determines that the DSP with the retail relationship with the large load customer is the appropriate entity to submit the load data.

Required inclusion of load data submitted by TSP

If Sharyland's recommendation to modify proposed §25.370(b)(3) is not adopted, then Sharyland recommended modifying proposed §25.370(d) to state that if a TDSP that is certificated to provide retail electric service at the site that a large load customer seeks to interconnect receives a large load customer's forecasted demand that otherwise meets the requirements of the proposed rule from an affected transmission service provider, the TDSP must include that forecasted demand in its load data submitted to ERCOT unless the TDSP reasonably determines the forecasted demand is not valid.

Joint Transmission Commenters supported Sharyland's alternative recommendation if its primary recommendation to modify proposed §25.370(b)(3) is not adopted. Additionally, Joint Transmission Commenters recommended that the TDSP should also be required communicate with large load customers and the TSP regarding any issues with the load data received, and the parties should coordinate to address these issues. Finally, Joint Transmission Commenters recommended requiring TDSPs to provide

notice to the party that provided the load data when the data is submitted to ERCOT.

Commission Response

The commission substantively adopts Sharyland and Joint Transmission Commenters' recommendation to modify adopted §25.370(d) to state that if a DSP receives a large load customer's forecasted demand from a TSP, the DSP must include that load data in its submission of load data to ERCOT unless the DSP determines that the load data from the TSP is not valid or is duplicative. The commission modifies adopted §25.370(d) accordingly and also modifies §25.370(d) to impose the same attestation requirements on a TSP submitting load data to a DSP. The commission substantively adopts Joint Transmission Commenters' recommendation to modify adopted §25.370(d) to require a DSP to communicate with the TSP regarding any issues with the load data received and to provide notice to the TSP when the load data is submitted to ERCOT. The commission modifies adopted §25.370(d) accordingly.

Proposed §25.370(e)- ERCOT forecast

Proposed §25.370(e) requires ERCOT to develop load forecasts for the ERCOT region using the load data provided by TDSPs.

ERCOT recommended modifying the proposed rule to remove the language in proposed §25.370(e) and renumber proposed §25.370(e)(1) and (2) or rephrase proposed §25.370(e) to state that "ERCOT's forecasts of large load customer demand used for identifying transmission planning needs or performing resource adequacy assessments may not include load data that does not meet the criteria in subsection (c)." ERCOT reasoned that to the extent the purpose of the proposed rule is to create criteria for ERCOT to use when forecasting large load customers' demand, and not to impose an additional requirement for ERCOT to conduct any one or more particular load forecasts, this purpose is already served by proposed §25.370(c).

TEBA recommended modifying proposed §25.370(e) to remove paragraphs (1) and (2) relating to validating load data and making adjustments to load data. TEBA reasoned that adding an additional validation step is unnecessary and introduces risk and further delays for projects that have met all legal requirements. Moreover, excluding a load that has met all the requirements set forth in SB 6 could lead to inaccurate transmission planning and misrepresentation of future demand.

If the commission does not modify proposed §25.370(e) to remove paragraphs (1) and (2), then TEBA recommended modifying proposed §25.370(e)(1) to make the exclusion of load data discretionary instead of mandatory because the proposed rule does not describe what validation is, how it will be done, or how transparently it will be done.

Commission Response

The commission declines to adopt ERCOT's recommendation to remove the language in adopted §25.370(e) requiring ERCOT to develop load forecasts for the ERCOT region using the load data submitted by DSPs. However, the commission modifies adopted §25.370(e) to state that ERCOT must use the load data submitted by DSPs to develop load forecasts for the ERCOT region, rather than require ERCOT to develop load forecasts using the load data submitted by DSPs. The commission declines to adopt TEBA's recommendation to modify adopted §25.370(e) to remove subsections (e)(1) and (2) because a mechanism for adjusting load data is necessary if an error is identified or if a large load customer's interconnection request is withdrawn or cancelled prior to energization. Additionally, a mechanism should exist for ERCOT to adjust the load data in a scenario where the load data suggests more load growth in the ERCOT region than is expected in the entire country based on an independent, national survey. However, the commission modifies adopted §25.370(e)(2) to more clearly articulate the expectations for load adjustments consistent with the recommendations of other commenters.

Proposed §25.370(e)(1)- Validation of load data

Proposed §25.370(e)(1) authorizes ERCOT and commission staff to access information collected by a DSP to ensure compliance with the proposed rule and validate load data submitted by a TDSP. Additionally, proposed §25.370(e)(1) requires load data to be excluded from ERCOT's load forecast if the load data cannot be validated.

DCC recommended modifying proposed §25.370(e)(1) to provide TDSPs an avenue to correct issues with load data before ERCOT excludes data from the load forecast.

Commission Response

The commission declines to adopt DCC's recommendation to modify adopted §25.370(e)(1) to provide TDSPs an avenue to correct issues with load data before ERCOT excludes data from the load forecast because ERCOT already has an established process that serves this purpose. Therefore, the change is unnecessary. However, the commission modifies adopted §25.370(e)(2) to state that ERCOT may make certain adjustments to load data if the adjustment is agreed to by the DSP.

TCPA recommended modifying proposed §25.370(e)(1) to state that if load data submitted by a TDSP cannot be validated, including the use of other objective, credible, independent information, the data must be excluded from the load forecast developed by ERCOT. TCPA reasoned that if load forecasts yield an expected load that is outside of the expectations for all markets across the country or some other type of benchmarking data point that renders it impossible for the amount expected for ERCOT alone to materialize, then it is appropriate to make changes to ensure a forecast within the bounds of realistic potential.

TPPA recommended modifying proposed §25.370(e)(1) to state that ERCOT and commission staff must request the information, rather than having presumptive access, consistent with best practices for cybersecurity and data integrity.

Commission Response

The commission declines to adopt TCPA's recommendation to modify adopted §25.370(e)(1) to state if load data submitted by a TDSP cannot be validated, including the use of other objective, credible, independent information, the data must be excluded from the load forecast developed by ERCOT because it is unnecessary. Adopted §25.370(e)(2) authorizes ERCOT to make adjustments to the load data based on objective, credible, independent information. The commission declines to adopt TPPA's recommendation to modify adopted §25.370(e)(1) to state that ERCOT and commission staff must request the information, rather than having presumptive access because it is unnecessary. The adopted rule addresses the authority to access the information not the physical capability to access the information.

Proposed §25.370(e)(2)- Adjustments to load data

Proposed §25.370(e)(2) authorizes ERCOT, in consultation with commission staff, to adjust the load data provided by a TDSP based on actual historical realization rates or other objec-

tive, credible, independent information. Additionally, proposed §25.370(e)(2) requires ERCOT to provide the TDSP with the data and calculations used to adjust the forecasted load.

Remove proposed subsection (e)(2)

AEP and Oncor recommended removing proposed §25.370(e)(2). AEP reasoned that the TDSPs are the entities that have the relationship with the loads and can provide the most accurate information for use in forecasting. Moreover, permitting ERCOT or commission staff to adjust load data would inject unnecessary uncertainty into the load forecasting process. Additionally, AEP recommended that proposed §25.370(e)(1), which provides ERCOT with the ability to exclude load data that cannot be validated from the load forecast is sufficient to mitigate the risk of inaccurate load data. Oncor reasoned that PURA §37.0561(m) makes clear that ERCOT has no discretion to reduce peak demand load levels because this provision of PURA states the commission must establish criteria by which ERCOT includes forecasted large load of any peak demand.

OCSC and TCAP disagreed with Oncor's interpretation of SB 6 as restricting ERCOT's validation of peak demand load levels. In OCSC and TCAP's view, SB 6 only sets the floor for mandatory minimum validation.

Commission Response

The commission declines to adopt AEP and Oncor's recommendation to modify adopted §25.370(e) to remove proposed §25.370(e)(2) because a mechanism for adjusting load data is necessary if an error is identified or if a large load customer's interconnection request is withdrawn or cancelled prior to energization. Additionally, a mechanism should exist for ERCOT to adjust the load data in a scenario where the load data suggests more load growth in the ERCOT region than is expected in the entire country based on an independent, national survey. Accordingly, the commission modifies adopted §25.370(e)(2) to more clearly articulate the expectations for load adjustments.

Holistic review of load data submitted by all TDSPs and standardized criteria

LCRA recommended that if proposed §25.370(e)(2) is ultimately adopted by the commission in its final rule, then the commission should give clear direction that ERCOT should look holistically at load data submitted by all the TDSPs prior to making any adjustments, rather than singling out an individual TDSP. Additionally, LCRA recommended that ERCOT establish standardized criteria to identify and adjust the load forecast after consultation with the appropriate stakeholder groups.

Eolian and OCSC and TCAP supported LCRA's recommendation that any proposed load forecast adjustment methodology should be vetted in the ERCOT stakeholder process.

CenterPoint recommended modifying proposed §25.370(e)(2) to require ERCOT to establish a process for the adjustment of load data submitted by a TDSP.

Commission Response

The commission declines to adopt LCRA's recommendation to direct ERCOT to look holistically at load data submitted by all TDSPs prior to making adjustments because a holistic review may not always be appropriate. The commission also declines to adopt Eolian, OCSC and TCAP, and LCRA's recommendation to require vetting in the ERCOT stakeholder process and declines to adopt CenterPoint's recommendation to require ERCOT to establish a process for load data adjustments. The commission determines that adjustments to correct errors or account for withdrawal or cancellation of a large load customer's request for interconnection should be made with the DSP's agreement but otherwise does not need to be approved by stakeholders. However, for other types of adjustments, the commission determines that the adjustment should be reviewed for approval by the commission consistent with the recommendations of other commenters. The commission modifies adopted §25.370(e)(2) accordingly and includes a deadline for public comment at the commission.

TDSP, stakeholder and market participant engagement

DCC, OCSC and TCAP, Sierra Club, TCPA, TXOGA, and TPPA recommended modifying proposed §25.370(e)(2) to require engagement with some combination of TDSPs, stakeholders, and market participants before adjusting load data. Specifically, OCSC and TCAP and TPPA recommended modifying proposed §25.370(e)(2) to allow a TDSP to participate in any adjustments to load data, considering a TDSP is best positioned to adjust its own load data and ultimately it is the TDSP's responsibility to ensure service to a customer requesting interconnection, not ERCOT. In reply comments, CenterPoint also recommended that TDSPs be provided an opportunity to provide input on any adjustments to the load data that they submit to ERCOT.

Additionally, OCSC and TCAP recommended modifying proposed §25.370(e)(2) to require ERCOT to consult with market participants and stakeholders before making adjustments to its large load forecasting methodology. Similarly, TXOGA recommended requiring an opportunity for stakeholder comment.

TCPA recommended modifying proposed §25.370(e)(2) to state that ERCOT must provide a market notice to market participants with the data and calculations used to adjust the forecasted load if directed to make adjustments by the commission.

Commission Response

The commission declines to adopt DCC, OCSC and TCAP, Sierra Club, TCPA, TXOGA, and TPPA's recommendation to modify adopted §25.370(e)(2) to require engagement with some combination of TDSPs, stakeholders, and market participants before adjusting load data. The commission also declines to adopt OCSC and TCAP's recommendation to modify adopted §25.370(e)(2) to require ERCOT to consult with market participants and stakeholders before making adjustments to its large load forecasting methodology. However, the commission agrees that TDSPs, stakeholders, and market participants should have an opportunity for engagement prior to an adjustment to load data. Therefore, the commission modifies adopted §25.370(e)(2) to require the DSP's agreement for adjustments that are made to correct an error or account for the withdrawal or cancellation of a large load's interconnection request. The commission also modifies adopted §25.370(e)(2) to require commission approval for other types of adjustments and adopts TXOGA's recommendation to provide an opportunity for public comment. The commission modifies the adopted rule accordingly. The commission declines to adopt TCPA's recommendation to modify adopted §25.370(e)(2) to require ERCOT to provide a market notice to market participants with the data and calculations used to adjust the forecasted load if directed to make adjustments by the commission and instead requires ERCOT to publish a market notice if requesting commission approval of an adjustment to load data.

Historical realization rates and scope of an adjustment

TEC, TCPA, TIEC, and TXOGA recommended modifying proposed §25.370(e)(2) to narrow the scope of adjustments to the load forecast.

TEC recommended that until new realization rates can be observed and quantified, ERCOT should refrain from relying on historical realization rates that are no longer applicable with the stricter and uniform inclusion standards. TEC reasoned that the proposed tightening of forecast projections is already likely to yield a more accurate forecast, and utilizing historical realization rates on top of these new stricter standards may place ERCOT in a position of under forecasting load growth. TCPA noted that the load forecast projections for the next five to 10 years are at a pace not seen in recent history so actual historical realization rates likely have less bearing on the veracity of current load forecasts projecting growth over the next decade than during more steady growth periods. Therefore, those should not be the sole basis for adjusting the load forecasts, particularly after the forecasts are determined using the commission-prescribed standard process this rulemaking will yield.

TIEC recommended modifying proposed §25.370(e)(2) to limit the applicability of ERCOT's adjustments to load data to resource adequacy models and reports. TIEC reasoned that unlike transmission planning, resource adequacy analyses do not have a series of "back-end" checks where the load can later be removed or restudied before any costs are imposed on the system. Rather, the resource adequacy forecasts and resulting analyses provide a one-time snapshot that can be used to advocate for costly market design changes. Resource adequacy analyses are also used by the public and policymakers to evaluate the overall reliability of the grid. As a result, the goal should be to come up with a realistic forecast of expected peak demand.

Commission Response

The commission declines to adopt TEC, TCPA, TIEC, and TXOGA's recommendation to modify adopted §25.370(e)(2) to narrow the scope of adjustments to the load forecast. The commission agrees that recent historical data may not be an appropriate basis for making adjustments to the load forecast given the unprecedented load growth. However, the rule applies prospectively and as time goes on, the historical data should evolve with the load growth on the ERCOT system. The commission declines to adopt TIEC's recommendation to modify adopted §25.370(e)(2) to limit the applicability of ERCOT's adjustments to load data to resource adequacy assessments. Adjustments to load data used in transmission planning may be appropriate to correct errors in the load data or to account for an interconnection request that is withdrawn or cancelled. Moreover, given the unprecedented load growth that TCPA highlighted, the commission determines that some level of flexibility is appropriate to make reasonable adjustments.

Reason for adjustment

OCSC and TCAP and TPPA recommended modifying proposed §25.370(e)(2) to require ERCOT to provide not only the data and calculation supporting an adjustment but also the specific reasoning behind the adjustment.

Commission Response

The commission adopts OCSC and TCAP and TPPA's recommendation to modify adopted §25.370(e)(2) to require ERCOT to provide not only the data and calculation supporting an adjustment but also the specific reasoning behind the adjustment. Additionally, the commission modifies adopted §25.370(e)(2) to more specifically require ERCOT to provide in detail the data, calculations, and methodology supporting a requested adjustment.

Commission review

TCPA, TXOGA, and TPPA recommended modifying proposed §25.370(e)(2) to require commission review and approval of adjustments.

CenterPoint, DCC, OPUC, and TXOGA recommended that any future modifications by ERCOT to the customer-specific load data provided a TDSP should require commission review and approval. TXOGA reasoned that to allow ERCOT discretion to adjust the customer-specific TDSP forecasts risks a continuation of inadequate transmission planning. OPUC recommended the ERCOT board of directors also approve the adjustment before it goes into effect and that this adjustment authority sunset after five years if not sooner.

TCPA recommended modifying proposed §25.370(e)(2) to state that the commission may direct ERCOT to adjust the load data provided by a TDSP based on objective, credible, independent information (i.e., not actual historical realization rates).

Commission Response

The commission declines to adopt TCPA, TXOGA, and TPPA's recommendation to modify adopted §25.370(e)(2) to require commission review and approval of adjustments. The commission also declines to adopt CenterPoint, DCC, OPUC, and TXOGA's recommendation to require commission review and approval of adjustments to customer-specific load data provided by a TDSP. Finally, the commission declines to adopt TCPA's recommendation to modify adopted §25.370(e)(2) to state that the commission may direct ERCOT to adjust the load data provided by a TDSP based on objective, credible, independent information (i.e., not historical realization rates). The commission determines that not all adjustments rise to the level of needing commission review. For example, the commission does not need to approve an adjustment agreed to by a DSP to correct an error or account for the withdrawal or cancellation of a large load customer's interconnection request. However, the commission does agree that other adjustments should be subject to commission review and modifies the adopted rule accordingly. With respect to historical realization rates, the commission determines that some level of flexibility to make reasonable adjustments is appropriate in light of the unprecedented load growth in the ERCOT region. Moreover, as time goes on, the historical data should evolve with the load growth on the ERCOT system and become a more valuable data point. Therefore, the commission declines to remove historical realization rates as a potential basis for adjusting the load data.

Proposed §25.370(e)(3)- Use of load forecasts

Proposed §25.370(e)(3) requires ERCOT to use the load data provided by TDSPs in its transmission planning and resource adequacy models and reports. Additionally, proposed §25.370(e)(3) permits applicable adjustments to the load forecast to accommodate differences in study scope, time horizons, and modeling details.

AEP recommended modifying proposed §25.370(e)(3) to add a statement requiring ERCOT to recognize the different purposes of the load forecasts used in transmission planning and resource adequacy and make applicable adjustments to account for the different purposes.

DCC recommended that ERCOT be required to obtain stakeholder input before adjusting load forecasts for transmission planning and resource adequacy models due to "differences in study scope, time horizons, and modeling details." DCC reasoned that an opportunity for stakeholder review and input would improve the accuracy of load forecasts and result in greater transparence to enable companies to plan their projects accordingly.

ERCOT recommended modifying proposed §25.370(e)(3) to remove the first sentence which appears to serve only as a restatement of ERCOT's obligations to develop forecasts. This modification avoids potential confusion about whether ERCOT's duty to rely on TDSP forecasts is subject to ERCOT's authority to adjust described in proposed §25.370(e)(2). ERCOT also recommended modifying proposed §25.370(e)(3) to align with the fact that ERCOT does not simply use a single load forecast but instead develops multiple load forecasts for different purposes. The reference in proposed §25.370(e)(3) to "study scope, time horizon, and modeling details" appears to contemplate factors that ERCOT believes would be more relevant to the development of a different forecast instead of adjustments to a single standard load forecast. Accordingly, ERCOT recommended modifying proposed §25.370(e)(3) to state "ERCOT may use different load forecasts to reflect different study scopes, time horizons, scenarios, and modeling details in developing its transmission planning and resource adequacy reports."

TCPA recommended modifying proposed §25.370(e)(3) to state applicable adjustments to the load forecast may be made to accommodate differences in use cases. TCPA reasoned that while the data may have different use cases and it is appropriate to make adjustments based on the use case, the actual, final load forecast should be the same regardless of whether it is used for transmission planning purposes or resource adequacy. If loads are coming to ERCOT, they will need transmission infrastructure, as well as generation. Therefore, the actual load expected in determining what transmission needs to be built should be the same as the load expected in determining the regions' resource adequacy needs.

TIEC recommended modifying proposed §25.370(e)(3) to state that ERCOT must recognize the different purposes of the load forecasts used in transmission planning and resource adequacy and make applicable adjustments to the underlying data to account for the different uses. Transmission forecasts are often required to allow a utility to offer a service agreement to a customer. However, based on the results of the study, the customer may or may not move forward. The study process is just one of many steps in transmission planning, and load may fall off at each step. Resource adequacy, by contrast, must try to predict how much load will actually materialize, and how it will behave during peak conditions. Further, transmission planning must provide sufficient interconnectivity to serve the maximum end-state of the project the highest expected level of demand. However, a load may ramp up to that maximum demand over time. This is often not reflected, if at all, in transmission planning studies because it is more efficient to build out the full connection up front. Transmission cannot be built "granularly" as a load ramps up in most instances. For all of these reasons, TIEC recommended that the forecasts and modeling techniques used for transmission planning and resource adequacy are not the same, and the rule should not promote that outcome.

TXOGA noted that while ERCOT should include the large load customer demand data as defined in the proposed rule in both transmission planning and resource adequacy forecasts, the actual resulting forecasts used by ERCOT should not be the same. Rather, these forecasts should continue to reflect the different requirements of the analyses being conducted.

TPPA recommended modifying proposed §25.370(e)(3) to clarify whether "applicable adjustments" applies more broadly to the ERCOT load data and forecasts used for transmission planning versus resource adequacy, and not to the underlying TDSP load data. If so, TPPA recommended requiring commission approval of such adjustments to the transmission planning load forecast and the resource adequacy load forecast. Alternatively, TPPA recommended requiring these adjustments be discussed through the ERCOT stakeholder process and codified in the ERCOT protocols to truly determine what adjustments are appropriate for use in transmission planning reporting versus resource adequacy reporting.

In reply comments, TIEC noted that while ERCOT's recommendation to modify proposed §25.370(e)(3) seems consistent with TIEC's position, ERCOT's proposed modifications to the language are not explicit enough. Specifically, ERCOT suggests the provision say, "ERCOT may use different load forecasts to reflect the different study scopes, time horizons, scenarios, and modeling details in developing its transmission planning and resource adequacy reports." TIEC asserted, however, that stakeholders would benefit from the rule definitively stating that resource adequacy forecasts will require more substantial adjustments. Moreover, contrary to TCPA's position, TIEC reiterated that the resource adequacy forecast should always be lower than the transmission planning forecast. Transmission planning and resource adequacy studies are fundamentally different with different purposes and goals. Transmission studies are meant to ensure the grid can serve customer needs under extreme loading and contingency conditions (i.e., n-1 contingencies). Conversely, load forecasts for resource adequacy must identify the outcome with the highest probability of occurrence and contingencies are managed through a reserve margin. Transmission forecasts also need to reflect the ultimate interconnection capacity, whereas resource adequacy forecasts should reflect how a load plans to ramp up over time. Using a transmission forecast for resource adequacy analyses would therefore be fundamentally wrong and essentially require double coverage for contingencies. It would also undoubtedly lead to unrealistic and alarmist resource adequacy forecasts. To avoid this result, TIEC recommended the proposed rule make it clear that ERCOT's resource adequacy and transmission planning analyses are subject to different adjustments.

Commission Response

The commission adopts ERCOT's recommendation to remove the first sentence of proposed §25.370(e)(3) and modifies the adopted rule language to clarify that ERCOT's forecasts must be developed using the data provided by DSPs, subject to any adjustments made in accordance with adopted §25.370(e)(1) and (2).

The commission agrees with comments by AEP, ERCOT, TCPA, TIEC, and TXOGA describing differences in load forecasts for different scenarios or use cases. As such, the commission adopts ERCOT's recommendation to modify adopted §25.370(e)(3) to reflect that the reference to applicable adjustments is more relevant to the development of different forecasts rather than as adjustments to a single, standard forecast. Differences in the underlying assumptions or methodologies used to develop different forecasts, using the same underlying data,

recognize the unique nature of the use cases to which these forecasts are applied. However, the Commission declines to adopt related comments by TIEC which would stipulate specific language around how different forecasts are developed or require a specific, presupposed outcome.

Proposed §25.370(f)- Confidential information

Proposed §25.370(f) states that customer-specific information or competitively sensitive information is confidential and not subject to disclosure under Chapter 552 of the Texas Government Code.

Eolian recommended modifying proposed §25.370(f) to include language that mirrors PURA §37.0561(k), which provides that standards adopted by the commission must establish a procedure to allow ERCOT to access any information collected by the interconnecting electric utility or municipally owned utility to ensure compliance with the standards for transmission planning analysis.

Commission response

The commission declines to adopt Eolian's recommendation to modify adopted §25.370(f) because the suggested change is best addressed in the pending rule in Project No. 58481.

Proposed §25.370(g)- ERCOT compliance

Proposed §25.370(g) requires ERCOT to develop the necessary protocols to ensure its 2026 RTP complies with the proposed rule. Additionally, if ERCOT cannot timely implement the protocols to ensure the 2026 RTP complies with the proposed rule, then proposed §25.370(g) requires ERCOT, in consultation with commission staff, to submit a compliance plan to the commission, detailing how it will ensure the 2026 RTP complies with the proposed rule.

TPPA recommended modifying proposed §25.370(g) to require ERCOT to develop protocols for implementing the proposed rule more broadly, rather than limiting the development of protocols to the RTP. TPPA reasoned that ERCOT will need to revise several of its protocols to effectuate portions of the proposed rule not related to the 2026 RTP, and the proposed language could be read to limit ERCOT only to updating its protocols related to the 2026 RTP.

Commission Response

The commission adopts TPPA's recommendation to modify adopted §25.370(g) to require ERCOT to develop protocols for implementing the rule more broadly, rather than limiting the development of protocols to the RTP. Additionally, the commission adds adopted §25.370(h) to provide additional clarity that ERCOT must use the load data submitted for the 2026 RTP in its transmission planning studies and resource adequacy assessments until new load data is submitted by DSPs using the criteria in adopted §25.370(c).

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 regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §37.056, which requires the commission to consider historical load, forecasted load growth, and additional load currently seeking interconnection, including load for which the electric utility has yet to sign an interconnection agreement, as determined by the electric utility with the responsibility for serving the load, when considering need for additional service; §37.0561, which requires the commission by rule to establish criteria by which ERCOT includes forecasted large load of any peak demand in the organization's transmission planning and resource adequacy models and reports; §39.151, which grants the commission authority to oversee ERCOT; and §39.166, which requires ERCOT to use forecasted electrical load, as reasonably determined by the certificated transmission service provider, to identify each region in which transmission capacity is insufficient to meet the region's existing and forecasted electrical load.

Cross Reference to Statutes: Public Utility Regulatory Act §14.001; §14.002; §37.056; §37.0561; §39.151; and §39.166.

§25.370. ERCOT Large Load Forecasting Criteria.

(a) Purpose. The purpose of this section is to establish criteria for including the load of a large load customer in ERCOT's load forecasts used for identifying transmission planning needs and performing resource adequacy assessments.

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

(1) Contracted peak demand--The total peak demand that a large load customer requests be served at a site as stated in an agreement.

(2) Large load customer--An entity requesting a new or expanded interconnection where the customer's total expected non-coincident peak demand at a single site is equal to or greater than 75 megawatts (MW).

(c) Criteria for inclusion in ERCOT load forecast. A DSP must not submit a large load customer's forecasted demand for purposes of inclusion in an ERCOT load forecast used for identifying transmission planning needs or performing resource adequacy assessments unless the large load customer executed an interconnection agreement as required under §25.194 of this Title (relating to Large Load Interconnection Standards) and provided all of the disclosures and financial commitments required for such an agreement under §25.194 of this Title. ERCOT must not include a large load customer's forecasted demand in a load forecast used for identifying transmission planning needs or performing resource adequacy assessments unless the large load customer executed an interconnection agreement as required under §25.194 of this Title and provided all of the disclosures and financial commitments required for such an agreement under §25.194 of this Title.

(d) Submission of forecasted load data to ERCOT. A DSP may submit load data to ERCOT only for a large load customer that is located or seeks interconnection at a location that is in the DSP's certificated service area. At the time that a DSP submits its load data to ERCOT through a mechanism designated by ERCOT, the DSP must also submit to ERCOT a notarized attestation sworn to by the DSP's representative, official, officer, or other authorized person with binding authority over the DSP, attesting that each large load customer included in the DSP's load data meets the criteria for an interconnection agreement as set forth in §25.194 of this Title.

(1) In its submission to ERCOT, a DSP must include load data that is received from a transmission service provider (TSP) and is associated with a large load customer that is located or seeks interconnection at a location that is in the DSP's certificated service area unless the DSP reasonably determines that the load data is not valid or is du-

plicative. The DSP must notify the TSP when the load data that was submitted by the TSP is provided to ERCOT, whether any load data submitted by the TSP is excluded, and the basis for exclusion, if applicable.

(2) A TSP that submits load data to a DSP under this section must submit to the DSP a notarized attestation sworn to by the TSP's representative, official, officer, or other authorized representative with binding authority over the TSP, attesting that each large load customer included in the load data submitted by the TSP meets the criteria for an interconnection agreement as set forth in §25.194 of this Title and provided all of the disclosures and financial commitments required for such an agreement under §25.194 of this Title.

(3) A DSP may designate another electric utility, municipally owned utility, or electric cooperative to submit the load data to ERCOT on its behalf.

(e) ERCOT load forecast. ERCOT must use the load data provided by DSPs under this section, subject to any adjustments made in accordance with this subsection, to develop load forecasts used in transmission planning studies and resource adequacy assessments for the ERCOT region, including Regional Planning Group project submissions after the effective date of this section.

(1) Validation of load data. ERCOT and commission staff may access information collected by a DSP or TSP to ensure compliance with this section and validate the accuracy of load data submitted by a DSP. If the accuracy of load data submitted by a DSP cannot be validated, ERCOT may exclude the data from the load forecast developed by ERCOT in accordance with subsection (e)(2) of this section.

(2) Adjustments to load data.

(A) ERCOT may make adjustments to the load data provided by the DSP under this section to correct errors in load data or to account for the withdrawal or cancellation of a large load customer's request for interconnection if the DSP agrees with the adjustments. Commission approval is not required for any mutually agreed adjustment to correct errors in load data or to account for the withdrawal or cancellation of a large load customer's request for interconnection. For any adjustment that a DSP does not agree to, ERCOT must request commission approval under subsection (e)(2)(B) of this section.

(B) ERCOT, in consultation with commission staff, must request commission approval to adjust the load data provided by DSPs under this section for any adjustment not made under subsection (e)(2)(A) of this section. The commission may approve ERCOT's request to adjust the load data if the adjustment is supported by actual historical realization rates or other objective, credible, independent information. ERCOT must file its request with the commission and publish market notice of the requested adjustment not less than 30 days before the commission's consideration at an open meeting. The commission may, at its discretion, consider the matter at an earlier open meeting. ERCOT's filed request must provide in detail the data, methodology, and calculations used for the recommended adjustment to the load data, and the specific reasoning behind the requested adjustment. Public comment related to the requested adjustment must be filed not later than 14 days after ERCOT's filed request, unless the commission establishes a different deadline.

(3) Use of load forecasts. ERCOT may use different forecasts to accommodate differences in study scope, time horizon, scenarios, and modeling details in developing its transmission planning and resource adequacy reports.

(4) Annual assessment. ERCOT must file an annual assessment with the commission that:

(A) compares past forecasts to actual outcomes;

(B) identifies sources of error; and

(C) provides recommendations for improvement in the forecasting process.

(f) Confidential information. Customer-specific or competitively sensitive information obtained under this section is confidential and not subject to disclosure under Chapter 552 of the Texas Government Code.

(g) ERCOT compliance. ERCOT must develop the necessary protocols to ensure its transmission planning studies and resource adequacy assessments comply with this section. If ERCOT cannot timely implement the protocols to ensure the 2026 Regional Transmission Plan (RTP) complies with this section, then ERCOT, in consultation with commission staff, must submit a compliance plan to the commission, detailing how it will ensure the 2026 RTP substantially complies with this section. The 2026 RTP compliance plan must ensure that load data is submitted to ERCOT not later than April 1, 2026 and that a large load customer included in the load data has executed an agreement that meets the criteria described below.

(1) A large load customer must disclose whether the large load customer is pursuing a separate request for electric service, the approval of which would result in the customer materially changing, delaying, or withdrawing the interconnection request; and if so, the location, size, anticipated timing of energization, and the electric utility, municipally owned utility, or electric cooperative associated with such request.

(2) A large load customer must demonstrate site control for the proposed load location through one of the following interests:

(A) a signed and executed lease agreement for the proposed load location for a duration of at least five years from the date the large load customer is expected to reach the contracted peak demand; or

(B) a deed for the proposed load location.

(3) A large load customer must provide a load ramping schedule, if applicable;

(4) A large load customer must demonstrate financial commitment by means of one of the following:

(A) posting of security in the amount of $100,000 per MW of contracted peak demand;

(B) posting of financial security to the DSP or TSP in an amount equal to the DSP and TSP's expected costs for equipment with a lead time of at least six months and services necessary to interconnect the large load; or

(C) payment of contribution in aid of construction (CIAC) in an amount that is equal to the DSP and TSP's expected costs to interconnect the large load customer that are directly attributable to interconnecting the large load customer. The costs for CIAC must be remitted through a direct cash payment and include the following:

(i) costs associated with one or more new transmission lines built to interconnect the large load customer to the existing transmission network, including substation upgrades necessary to interconnect the new large load customer; and

(ii) costs associated with system upgrades that would not be required but for the interconnecting large load customer.

(5) Security posted under this subsection must be remitted in one of the following forms:

(A) cash collateral;

(B) a letter of credit issued by a major U.S. commercial bank, or a U.S. branch office of a major foreign commercial bank, with a credit rating of at least "A-" by Standard & Poor's or "A3" by Moody's Investor Service; or

(C) corporate or parental guaranty, only if the corporation or parent has a credit rating equivalent of BBB-/Baa3 or higher from Standard & Poor's or Moody's.

(h) Effective date. ERCOT must use load data submitted for the 2026 RTP in its transmission planning studies or resource adequacy assessments, including Regional Planning Group project submissions until ERCOT constructs new planning cases with the load data submitted by DSPs using the criteria in subsection (c) of this section. For all transmission planning studies and resource adequacy assessments that are conducted before the implementation of any protocols or compliance plan adopted under subsection (g) of this section, ERCOT must continue to use its load forecast practices in effect immediately prior to the effective date of this section.

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

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TRD-202600556
Seaver Myers
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: October 3, 2025
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SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.520

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.520, relating to Firm Fuel Supply Service (FFSS), with changes to the proposed text as published in the November 7, 2025 issue of the *Texas Register* (50 TexReg 7197). The new rule implements Public Utility Regulatory Act (PURA) §39.159 as enacted by Senate Bill (SB) 3 during the Texas 87th Regular Legislative Session. The new rule will establish the criteria for a resource to participate in the Firm Fuel Supply Service (FFSS) program and the requirements for ERCOT to implement the FFSS program. This section is adopted under Project Number 58434. This rule will be republished.

The commission received written comments on the proposed section from the Electric Reliability Council of Texas, Inc. (ERCOT); Lower Colorado River Authority (LCRA); NRG Energy, Inc. (NRG); Office of Public Utility Counsel (OPUC); Potomac Economics (Potomac); Steering Committee of Cities Served by Oncor (OCSC) and Texas Coalition for Affordable Power (TCAP); Texas Electric Cooperatives, Inc. (TEC); Texas Industrial Energy Consumers (TIEC); Texas Public Power Association (TPPA); and Vistra Corporate Service Company (Vistra).

The commission invited interested persons to address two questions related to various provisions of the proposed rule.

1. If the offers submitted by resources under proposed subsections (c)(1) and (2) are insufficient for ERCOT to allocate 70% of the budget to those resources, as required by proposed subsection (d)(2), how should the awards be allocated?

ERCOT, NRG, TEC, and TIEC recommended that if the offers submitted by resources under proposed subsections (c)(1) and (2) are insufficient to allocate 70% of the budget to those resources, then the remaining portion of the budget (after all resources under proposed subsections (c)(1) and (2) are procured) should be reallocated to resources under proposed subsection (c)(3). Similarly, Vistra recommended ERCOT be given discretion to short fill with resources under proposed subsection (c)(3).

TPPA recommended that reallocation is unnecessary if the language in the proposed rule is revised to instead state that no more than 30% of the budget can be used to procure resources under proposed subsection (c)(3).

LCRA recommended that load should avoid uplifted settlement costs proportional to the unspent budget. Additionally, LCRA and OPUC recommended that such circumstances are an indicator that the budget, offer caps, or targeted procurement of megawatts (MW) should be reevaluated to attract new investment.

Potomac recommended replacing the bifurcated budget with a single budget.

Commission Response

The commission disagrees with TPPA that if the language in the rule is revised to instead state that no more than 30% of the budget can be used to procure resources under adopted §25.520(c)(2), then reallocation is unnecessary. This is simply stating the inverse and still does not address a scenario where only 60% of the budget is captured by offers from resources under adopted §25.520(c)(1) and (2) and 30% of the budget is captured by offers from resources under adopted §25.520(c)(3), leaving ambiguity as to whether the remaining 10% of the budget may be reallocated.

The commission declines to adopt Potomac's recommendation to replace the bifurcated budget with a single budget because a single budget is likely to result in resources under adopted §25.520(c)(3) crowding out resources under adopted §25.520(c)(1) and (2). The commission notes that a single clearing price would likely eliminate oil-fired resource participation because gas-fired resources have lower heat rates and can offer more competitively (i.e., at lower prices). The bifurcated budget preserves space for oil-fired resources while allowing limited opportunity for participation by gas-fired resources, maintaining incentives for oil-fired resources to submit competitive offers.

The commission agrees with ERCOT, NRG, TEC, TIEC, and Vistra that if the offers submitted by resources under adopted §25.520(c)(1) are insufficient to allocate 70% of the budget to those resources, then the remaining portion of the budget (after all resources under adopted §25.520(c)(1) are procured) should be reallocated to resources under adopted §25.520(c)(2). The commission also agrees with LCRA that load should avoid uplifted settlement costs proportional to the unspent budget. Accordingly, the commission modifies the rule to specify that if the offers submitted by resources under adopted §25.520(c)(1) are insufficient to allocate 70% of the budget to those resources, then ERCOT may reallocate the remaining portion of the budget, after all resources under adopted §25.520(c)(1) are procured, to resources under adopted §25.520(c)(2). This approach main-

tains flexibility in procuring additional resources to provide the service if appropriate while also acknowledging that ERCOT is not required to spend the entirety of the budget and thus, load should avoid uplifted settlement costs proportional to the unspent budget.

2. What process should be used to establish the heat rate and offer cap described in subsection (e)?

For purposes of developing the fuel prices for resources that burn fuel oil, ERCOT recommended calculating the offer cap using the four-month forecasted price of natural gas reflected in dollars per Million British Thermal Units (MMBtu). Then, adding 50 cents per MMBtu to account for fuel storage and transportation costs. This value of 50 cents would reflect the value established as the default for use in other processes by the ERCOT Verifiable Cost Manual §3.4(1). Subsequently, ERCOT converts the total fuel price value from units of dollars per gallon to units of dollars per MMBtu. With respect to the heat rate, ERCOT recommended that the use of multiple heat rates is appropriate to differentiate among categories of resources eligible to provide FFSS. To develop an average heat rate for each resource category that is then used in the calculation of the updated offer caps each year, ERCOT recommended using a combination of information from its comprehensive database of resource-specific parameters and the U.S. Environmental Protection Agency's (EPA) database. ERCOT proposed using this information as follows:

1. use resource-specific parameters and EPA data to calculate heat rates for each existing generation resource that operated using fuel oil or natural gas during the winter in the past three years;

2. compare the heat rate values derived from the ERCOT and EPA data and if the difference is less than 10%, assume both sources are similar and use either source. Otherwise, select the source (ERCOT or EPA) that better reflects the resource's heat rate based on ERCOT's experience and historical data;

3. for each resource, find heat rates for output levels within ±20% of the midpoint of the range between the resource's low sustained limit (LSL) and high sustained limit (HSL) over the last three years; and

4. average the heat rates by fuel type and resource category.

NRG recommended using the same 12 MMBtu heat rate to calculate the offer caps. OPUC recommended using the same heat rate but different fuel price to calculate the offer caps.

TEC recommended the same 15 MMBtu heat rate for all resources and the price of fuel oil to establish a single clearing price. TEC reasoned that the use of a single heat rate across resources creates a market efficiency by comparing the costs of operation on the same playing field and ultimately rewarding the lowest cost and most efficient resources. At a minimum, TEC recommended that the heat rates for on-site natural gas should be the same as line-fed natural gas plants with firm contracts. TEC reasoned that the underlying fuel is the same. The nature of acquisition should not impact the heat rate assessment. Moreover, allowing for the creation of a separate heat rate could allow line-fed plants with firm contracts to benefit as compared to the on-site resources that have a firmer fuel supply and should be considered as the superior resource for purposes of the FFSS.

Potomac recommended using a resource-specific heat rate and offer cap. Potomac reasoned that a resource-specific offer cap mitigates market power concerns given that each resource's historical heat rate is well known. Since the resources described in proposed §25.520(c)(2) may contain either oil-fired or gas-fired resources, the offer cap would need to be set to accommodate oil-fired resources, in which case gas-fired resources will have an opportunity to offer materially above their cost and still outcompete the oil-fired resources in this category.

Vistra recommended using historical fuel prices.

LCRA cautioned against overly conservative generic values as unit efficiencies and fuel prices may vary considerably from season to season. OCSC and TCAP recommended that procurement should be for a target quantity based on reliability criteria instead of based on a price cap.

Commission Response

The commission agrees with ERCOT that the offer cap should be calculated using the forecasted price of natural gas reflected in dollars per MMBtu that is forecasted for the four months comprising the FFSS obligation period. Then, adding 50 cents per MMBtu to account for fuel storage and transportation costs. Moreover, the commission agrees with ERCOT that the use of multiple heat rates is appropriate to differentiate among categories of resources eligible to provide FFSS. To develop an average heat rate for each resource category that is then used in the calculation of the updated offer caps each year, ERCOT should use a combination of information from its comprehensive database of resource-specific parameters and the U.S. Environmental Protection Agency's (EPA) database. This approach accounts for the fact that heat rates are dynamic rather than static. As technology improves, generation resources may become more efficient and have lower heat rates. Heat rates can also slowly degrade as a generation resource ages. Therefore, the commission declines to include a specific heat rate in the adopted rule for each resource category.

The commission declines to adopt Potomac's recommendation to use a resource-specific heat rate and offer cap because the category-level heat rates and offer caps in the adopted rule already account for differences in fuel type and resource characteristics, balancing simplicity and fairness.

The commission declines to adopt Vistra's recommendation to use historical fuel prices because projected fuel prices account for both historical fuel prices and the future state of fuel prices thus yielding a more accurate estimate in this context.

The commission agrees with OCSC and TCAP that procurement should be for a target quantity based on reliability criteria instead of based on a price cap. However, a price cap is a necessary ceiling to evaluate reasonable offers and ERCOT is best positioned to evaluate the appropriate target quantity based on each FFSS obligation period. Therefore, the commission declines to specify a target quantity in the adopted rule.

General Comments

Participation of gas-fired resources

Potomac recommended against allowing gas-fired resources with off-site storage to participate in the FFSS program because the FFSS program is intended to incentivize resources that can store their fuel, i.e., oil-fired resource or dual fuel capable resources, to do so in case these resources need to be called on for a longer deployment. Potomac reasoned that gas-fired resources do not store their fuel, are already incentivized to maintain firm supply, and will outcompete and displace oil-fired resources.

Similarly, OCSC and TCAP urged the commission to establish a "discrete" service, which will result in more reliability and promote a competitive market. OCSC and TCAP contended that the proposed rule conflicts with the reliability and security goals sought by the Texas Legislature following Winter Storm Uri. The addition of gas-fired resources with off-site storage arrangements in the proposed rule subject the grid to what are widely considered "riskier" resources that will displace more reliable on-site fuel in the FFSS procurement process, considering the proposed rule allows ERCOT to spend a maximum of $54 million in standby payments during a single winter season. OCSC and TCAP also asserted that the proposed rule conflicts with PURA §39.001 and ERCOT's competitive market design because the proposed rule does not include any defined competitive bid process and instead allows ERCOT to unilaterally procure FFSS ahead of each winter season, while spending a maximum of $54 million in standby payments. OCSC and TCAP concluded that the proposed expanded FFSS eligibility and procurement provisions result in excessive out-of-market costs that are passed through to consumers.

Relatedly, TPPA recommended clarifying the purpose of FFSS, i.e., whether the purpose is to incentivize new investments in dual-fuel capability and on-site fuel storage or to compensate generators who were already providing this additional reliability without payment. If the intent is to drive greater investment in enhanced reliability through dual-fuel capability or fuel storage, the program would need to offer significantly more lucrative incentives. Allowing generation resources that rely on firm intrastate gas contracts with third parties to qualify for the service undermines the core reliability value it is supposed to provide. These types of fuel arrangements were unreliable during Winter Storm Uri, leading to system wide generation disruptions which prompted the creation of FSS. Furthermore, expanding eligibility to include generators with off-site storage reduces the incentive to invest in on-site or dual fuel storage.

Commission Response

The commission declines to adopt Potomac and OCSC and TCAP's recommendation to modify the rule to disallow gas-fired resources with off-site storage from participating in the FFSS program. PURA §39.159(c)(2) requires the commission to ensure an FFSS resource include on-site storage, dual fuel capability, or fuel supply arrangements. Thus, the statute contemplates the inclusion of gas-fired resources, and it is appropriate to allow those resources to participate in the FFSS program. Moreover, the commission disagrees that the gas-fired resources will outcompete and displace oil-fired resources. The FFSS program as set forth in the adopted rule recognizes the different attributes of gas-fired resources and oil-fired resources by requiring that ERCOT establish different heat rates and fuel prices for these different types of resources. The heat rate and fuel price for gas-fired and oil-fired resources is then used as part of the calculation for setting an offer cap that is unique to gas-fired resources and an offer cap that is unique to oil-fired resources.

By designing the offer caps for each set of unique resources in a manner that accounts for their different attributes and allocating a percentage of the budget for each category of resources, the adopted rule ensures that gas-fired resources will not outcompete and displace oil-fired resources while also encouraging greater competition, which is expected to result in ERCOT procuring a greater number of MW at a lower price per MW thus incurring a greater reliability benefit at a lower cost. The commission also disagrees with OCSC and TCAP's assertion that the adopted rule does not include a competitive bid process. The adopted rule requires ERCOT to solicit, evaluate, select, and award offers submitted by a qualified scheduling entity (QSE) on behalf of a resource based on specific criteria and authorizes ERCOT to reject offers that are non-compliant or unreasonable.

The commission also declines to adopt TPPA's recommendation to modify the adopted rule to clarify the purpose of the FFSS by specifying whether the purpose is to incentivize new investments in dual-fuel capability and on-site fuel storage or to compensate generators who were already providing this additional reliability without payment because it is unnecessary. The purpose is already clearly stated in adopted §25.520(a).

Clearing price mechanism

Potomac recommended using a single price clearing mechanism. Potomac reasoned that FFSS resources provide a single reliability benefit, and resources participating in the FFSS program should all compete within a single price clearing mechanism to offer that benefit. The clearing structure in the proposed rule amplifies the distortion to price formation.

Commission Response

The commission declines to adopt Potomac's recommendation to use a single clearing price mechanism. A single clearing price mechanism would result in the gas-fired resources outcompeting and displacing oil-fired resources, thereby creating the problematic issues that Potomac has identified. The distinct clearing price mechanisms mitigate the concerns raised by Potomac and are expected to result in a greater reliability benefit by enabling ERCOT to procure more MW at a lower cost per MW, which benefits consumers.

Lack of replacement charge

Potomac recommended including a replacement charge to ensure that an adverse price impact that is created by an FFSS resource's absence falls on the FFSS resource that failed to perform rather than on consumers who paid for the service. Although the proposed claw back addresses the concern that the market paid for a service it did not receive when a FFSS resource fails to perform, Potomac noted that the proposed claw back does not address the fact that prices increase when a FFSS resource fails to perform because the expected and paid-for capacity is absent at the moment it is needed. According to Potomac, a replacement charge addresses this gap in the proposed rule.

Commission Response

The commission declines to adopt Potomac's recommendation to include a replacement charge. The commission determines that a replacement charge is better suited to evaluation in the development of ERCOT protocols which receive stakeholder input and are reviewed by the commission for approval.

Additional market power mitigation tools

TIEC recommended clarifying that the independent market monitor (IMM) and ERCOT have the ability to impose additional market power mitigation tools as needed. TIEC noted that there is potential for market power for the existing set of FFSS resources, who will continue to provide 70% of the expanded service and will likely set the clearing price. Under the current formulation of FFSS, prices have consistently cleared at the offer cap. Therefore, the commission may want to consider other market power mitigation tools for FFSS. Today, offer caps are determined based on a uniform $17/MMBtu and heat rate of 15. In-

stead of using the same offer cap for all resources, the proposed rule directs ERCOT to establish separate offer caps for each category of resources by multiplying the projected fuel price of fuel oil and a heat rate (MMBtu/MWh) for each category of eligible resources. The resulting offer cap will likely be similar for existing resources providing FFSS through on-site fuel, which will leave the market power issues more or less unchanged if all existing FFSS resources continue to bid in the cap.

Commission Response

The commission declines to adopt TIEC's recommendation to modify the adopted rule to clarify that the IMM and ERCOT have the ability to impose additional market power mitigation tools as needed because it is unnecessary. The adopted rule does not limit the IMM or ERCOT's authority to address market power abuse.

Use cases

TPPA recommended providing use cases which define times when it is appropriate for ERCOT to dispatch FFSS. TPPA reasoned that expanding eligibility to include resources that continue to rely on pipeline-delivered gas would undermine the rationale ERCOT has cited for the program's use to date. Specifically, ERCOT deploys FFSS so that generation resources with non-pipeline fuel sources are dispatched, thereby freeing up pipeline capacity and gas availability for other generators, even on days with relatively normal weather while non-dispatchable power production was not usually low.

Commission Response

The commission declines to adopt TPPA's recommendation to provide use cases, which define times when it is appropriate for ERCOT to dispatch FFSS. The adopted rule strikes the appropriate balance of providing parameters for ERCOT's dispatch of FFSS while also maintaining flexibility for ERCOT to determine in real-time whether dispatch of FFSS is needed to maintain system reliability. Moreover, the commission notes that ERCOT deploys FFSS if: (1) the event is within the FFSS obligation period; (2) there is evidence of an impending or actual fuel supply disruption affecting a FFSS resource; (3) system conditions require a FFSS resource to be manually dispatched online; and (4) ERCOT has issued a Watch for extreme cold weather.

Costs and payments

TPPA recommended modifying the proposed rule to clearly define and distinguish between "standby payments" and "payments." TPPA also recommended clarifying how payments will be calculated and potentially "reduced" or "clawed back" under proposed §25.520(h).

Commission Response

The commission declines to adopt TPPA's recommendation to modify the proposed rule to define "standby payments" and "payments." However, the commission modifies the adopted rule to replace references to "standby payments" with "procurement costs" and adds definitions for "procurement costs" and "non-procurement costs." The commission declines to adopt TPPA's recommendation to clarify how payments will be calculated and potentially "reduced" or "clawed back" because it is unnecessary. The adopted rule requires ERCOT to develop these details in ERCOT protocols, which receive stakeholder input and must be approved by the commission.

Reporting and implementation

Vistra recommended clarifying whether ERCOT intends to formalize the existing RFP process or to establish new, additional requirements for FFSS agreements and performance standards. The performance standards, Vistra claimed, should also include a detailed description of how ERCOT will inspect resource-controlled FFSS and contractual off-site resources. The inspection should extend beyond the generation plant to ensure that the resources and the fuel facilities (off-site storage) are prepared to participate during the FFSS obligation period.

Commission Response

The commission declines to adopt Vistra's recommendation to clarify whether ERCOT intends to formalize the existing RFP process or to establish new, additional requirements for FFSS agreements and performance standards. Whether the existing RFP process or new, additional requirements for FFSS agreements and performance standards will be used should be addressed in the ERCOT protocols, which receive stakeholder input, are approved by the ERCOT Board of Directors, and must be approved by the commission to be implemented. The commission also declines to adopt Vistra's recommendation to modify the proposed rule to include a detailed description of how ERCOT will inspect FFSS resources because these details are more appropriately addressed through the ERCOT protocols, which receive stakeholder input, are approved by the ERCOT Board of Directors, and must be approved by the commission to be implemented.

Proposed §25.520(a) -- Purpose

Proposed §25.520(a) states the purpose of the proposed rule is to promote reliability through the procurement of FFSS for deployment during the winter season.

Vistra recommended modifying proposed §25.520(a) to state that the purpose is to promote reliability through the procurement of FFSS to maintain system reliability during a natural gas curtailment or other fuel supply disruption during the winter season.

Commission Response

The commission substantively adopts Vistra's recommendation to modify adopted §25.520(a) to state that the purpose is to promote reliability through the procurement of FFSS to maintain system reliability during a natural gas curtailment or other fuel supply disruption during the winter season. The commission modifies adopted §25.520(a)to state the purpose is to promote reliability through the procurement of FFSS for deployment during, or in preparation for, a natural gas curtailment or other fuel supply disruption during extreme cold weather conditions.

Proposed §25.520(b)(1) -- Definition for FFSS obligation period

Proposed §25.520(b)(1) defines an FFSS obligation period as a period that coincides with the winter season for which a resource is obligated to provide FFSS.

ERCOT recommended modifying proposed §25.520(b)(1) by adding "procured" in front of "resource" to clarify which resource is so obligated.

Vistra recommended modifying proposed §25.520(b)(1) to define an FFSS obligation period as a period that overlaps with the winter season for which a resource is obligated to provide FFSS, ranging from December 1 through February 28. Vistra reasoned that this would align the FFSS obligation period with the winter season for the commission's emergency preparedness rule and would allow additional opportunities for both resource-controlled

FFSS and contractual off-site FFSS resources to complete (or start) critical outages and repairs to ensure reliability of the units. Currently. ERCOT Nodal Protocols Section 3.14.4.3(3) prohibits an FFSS resource from scheduling or requesting a Planned Outage that would occur between December 1 to March 1. However, an FFSS resource remains prohibited from taking a maintenance outage, including a scenario where a transmission outage nearby results in a resource outage.

Commission Response

The commission adopts ERCOT's recommendation to modify adopted §25.520(b)(1) by adding "procured" in front of "resource" to clarify which resource is so obligated. The commission declines to adopt Vistra's recommendation to modify adopted §25.520(b)(2) to overlap with the winter season for which a resource is obligated to provide FFSS, ranging from December 1 through February 28 because outlier events can occur within the tails of the current November 15 through March 15 FFSS obligation period.

Proposed §25.520(b)(4) -- Definition for offer cap

Proposed §25.520(b)(4) defines an offer cap as the maximum dollar amount per megawatt (MW) that a QSE representing a resource may offer into the FFSS program.

ERCOT recommended modifying proposed §25.520(b)(4) to clarify that the offer cap is specific to the resource category established under proposed §25.520(c) by adding "for that category of resource" to the end of the sentence.

Commission Response

The commission agrees with ERCOT's recommendation to modify adopted §25.520(b)(4) to clarify that the offer cap is specific to the resource category established under adopted §25.520(c). Accordingly, the commission adds "for that FFSS category" to the end of the sentence.

Proposed §25.520(b)(5) -- Definition for winter season

Proposed §25.520(b)(5) defines a winter season as November 15 through March 15.

Vistra recommended striking the definition for winter season and replacing references to winter season in the proposed rule with "FFSS obligation period" to streamline the proposed rule.

Commission Response

The commission adopts Vistra's recommendation to modify adopted §25.520(b) by removing the definition for winter season and replacing references to winter season with "FFSS obligation period" to streamline the adopted rule. The commission also makes conforming changes to adopted §25.520(b)(1), which defines an FFSS obligation period, to state that an FFSS obligation period includes the period from November 15 through March 15.

Proposed §25.520(c) -- Resource requirements for FFSS eligibility

Proposed §25.520(c) states that a resource is eligible to be selected by ERCOT in the procurement process to provide FFSS if: (1) has dual fuel capability, the ability to establish and burn an alternative on-site stored fuel, and has on-site fuel storage capability; (2) the resource has on-site natural gas or fuel oil storage capability or off-site natural gas storage where the resource or QSE owns and controls the natural gas storage and pipeline to deliver the required amount of reserve natural gas to the resource from the storage facility; or (3) has a transportation contract with a natural gas pipeline that is a critical natural gas facility, as defined in §25.52 (relating to Reliability and Continuity of Service), and: (A) is subject to the Federal Energy Regulatory Commission's (FERC) jurisdiction; (B) is an intrastate natural gas pipeline that is not operated by a gas utility; or (C) is an intrastate pipeline that is owned or operated by a gas utility that meets certain additional criteria..

Vistra recommended modifying proposed §25.520(c) to more clearly distinguish between different types of resources that are eligible to provide FFSS by creating a category for resource-controlled FFSS and a category for contractual off-site FFSS.

ERCOT recommended modifying §25.520(c)(2) by inserting "transportation" in front of pipeline for clarity.

ERCOT recommended modifying proposed §25.520(c)(3) to add language that requires a resource contracting for transportation also contract for fuel storage. Additionally, ERCOT recommended modifying proposed §25.520(c)(3) to incorporate language from the definition of "Firm Gas Storage Agreement" under ERCOT Protocol §2.1.

Commission Response

The commission adopts Vistra's recommendation to modify adopted §25.520(c) to more clearly distinguish between different types of resources that are eligible to provide FFSS but declines to consolidate the resources in adopted §25.520(c)(1) and (2) into a single category. Instead, the commission labels the three separate categories on-site FFSS, resource-controlled FFSS, and contractual off-site FFSS to more clearly distinguish between the different types of resources that are eligible to provide FFSS. The commission declines to adopt ERCOT's recommendation to modify adopted §25.520(c)(1)(B) to include "transportation" in front of pipeline because it is unnecessary. The commission adopts ERCOT's recommendation to modify adopted §25.520(c)(2) to require an FFSS resource that contracts for transportation of natural gas to also contract for storage of that natural gas. The commission also adds a definition for firm gas storage agreement.

Proposed §25.520(d) -- Budget for standby payments

Proposed §25.520(d)(1) establishes a maximum budget of $54 million in standby payments for ERCOT to procure FFSS during a single winter season and lists circumstances in which ERCOT may reject an offer that a QSE submits on behalf of a resource. Proposed §25.520(d)(2) requires that at least 70% of the $54 million budget be used for procurement costs allocated to eligible resources described in proposed §25.520(c)(1) and (2).

LCRA and NRG recommended modifying proposed §25.520(d)(1) to increase the overall budget of $54 million. NRG recommended increasing the overall budget to $65 million to provide room for future changes in fuel prices. LCRA recommended increasing the overall budget to $70 million and modifying proposed §25.520(d)(2) to reserve $54 million of the overall budget for resources that currently participate in the FFSS program and reserving $16 million of the increased budget for the new category of resources introduced by the proposed rule.

LCRA reasoned that physical fuel security under extreme weather and bulk fuel system shortages requires resource owners to invest in infrastructure above and beyond normal operations. The costs associated with maintaining dual-fuel capabilities or off-site natural gas storage have not decreased

since Winter Storm Uri. Weakening the only in-market investment signal to maintain or expand these attributes diminishes the likelihood of new market entrants improving fuel security for the region.

NRG recommended modifying proposed §25.520(d)(2) to include a transition mechanism where the budget allocation for resources described in proposed §25.520(c)(1) and (2) decreases from 70% to 50% after three winter seasons. NRG noted that while dual-fuel resources have been the primary source of FFSS since the program's inception and have historically been a standard technology for fuel resiliency in power generation, the proliferation of natural gas production and availability has significantly increased the potential to expand off-site gas storage and firm transport capability to generation resources in ERCOT.

Vistra recommended modifying proposed §25.520(d)(1) to remove the reference to a specific budget amount and replace it with authority for ERCOT to set a maximum budget. Vistra reasoned that this approach would provide the commission with flexibility during major fuel-supply shocks, such as that experienced in 2022 when events between Russia and the Ukraine resulted in an 85% increase to the produce price index for natural gas.

Vistra also recommended modifying proposed §25.520(d)(2) to increase the amount of the budget allocated to resource-controlled FFSS from 70% to 75%.

Potomac recommended replacing the $54 million budget with a dynamic budget. Potomac reasoned that PURA §39.159(b)(2) requires the commission and ERCOT to evaluate, on annual basis, the quantity of reliability services that ERCOT should procure, including FFSS. Therefore, the annual budget for the FFSS program should be based on risk criteria used to evaluate the grid's preparedness for winter events.

TEC recommended modifying proposed §25.520(d)(1)(B) to clearly identify whether ERCOT may reject an offer because the offer does not meet the requirements for an acceptable FFSS offer or because the offer is an outlier as compared to other acceptable offers submitted.

Commission Response

The commission declines to adopt LCRA and NRG's recommendation to increase the overall budget to procure FFSS. Increasing the budget is likely to magnify the concern that resources have consistently cleared at the offer cap during the last two years. The commission declines to adopt NRG's recommendation to modify adopted §25.520(d)(2) to include a transition mechanism where the budget allocation for resources described in adopted §25.520(c)(1) and (2) decreases from 70% to 50% after three winter seasons. The commission may reevaluate the budget allocation in the future but is not persuaded at this time that a different allocation is justified three years from now. The commission declines to adopt Vistra's recommendation to give ERCOT unilateral discretion to set the budget because such policy decisions should remain within the purview of the commission.

While the commission agrees that FFSS procurement should be for a target quantity based on reliability criteria, the commission declines to adopt Potomac's recommendation to implement a dynamic budget based on risk criteria. Adopted §25.520(d)(1) establishes a maximum budget for each FFSS obligation period but does not require that the full amount be spent in every period. ERCOT is best positioned to evaluate the appropriate target quantity (and corresponding budget necessary to procure this amount) in each FFSS obligation period.

The commission declines to adopt TEC's recommendation to modify adopted §25.520(d)(1)(B) to clearly identify whether ERCOT may reject an offer because the offer does not meet the requirements for an acceptable FFSS offer or because the offer is an outlier as compared to other acceptable offers submitted because it is unnecessary. The adopted rule permits ERCOT to reject an offer for either of those reasons.

Proposed §25.520(e) -- Offer cap

Proposed §25.520(e) establishes how an offer cap is calculated.

ERCOT recommended modifying proposed §25.520(e) to more explicitly recognize that there will be three offer caps, one for each of the resource categories established in proposed §25.520(c).

LCRA recommended clarifying the heat rate and offer cap calculations to maximize transparency and regulatory certainty because proposed §25.520(e)(3) could be interpreted to require a unique heat rate (and therefore a unique offer cap) for each resource based upon that resource's "specific characteristics."

NRG recommended modifying proposed §25.520(e)(1)-(3) to use a heat rate in the calculation of the offer cap that is above the average heat rate of the ERCOT gas fleet of generation at a minimum of 12 MMBtu/MWh and apply a 3X multiplier to the projected cost of natural gas. NRG reasoned that the costs of providing FFSS for a resource described in proposed §25.520(c)(3) encompasses more than just the purchase of fuel. Resources utilizing off-site storage facilities with firm transport from natural gas suppliers must pay storage facility reservation fees and firm delivery charges, which are comparable to the cost of the fuel in storage over the course of a winter.

TPPA recommended modifying proposed §25.520(e) to clarify that QSEs submitting offers on behalf of resources may not exceed the offer cap, and that each offer cap will be administratively set by ERCOT in advance of an FFSS procurement period.

TPPA also recommended modifying proposed §25.520(e)(3) and proposed §25.520(i) to clarify the distinction between "category" and "type."

Vistra recommended modifying proposed §25.520(e) to use a six-month lookback period to determine the amount at which fuel oil is trading for the winter season and to clarify that a separate heat rate will be established for resource-controlled FFSS and contractual off-site FFSS.

Commission Response

The commission adopts ERCOT's recommendation to modify adopted §25.520(e) to more explicitly recognize that there will be three offer caps, one for each of the resource categories established in proposed §25.520(c). The commission adopts LCRA's recommendation to modify adopted §25.520(e)(3) to more clearly articulate that a single heat rate must be used for each category of resources instead of a different heat rate for each resource.

The commission declines to adopt NRG's recommendation to modify proposed §25.520(e)(1)-(3) to use a heat rate in the calculation of the offer cap that is above the average heat rate of the ERCOT gas fleet of generation at a minimum of 12 MMBtu/MWh and apply a 3X multiplier to the projected cost of natural gas. ERCOT currently includes an appropriate fuel adder in its evaluation

of the projected price of fuel oil. Therefore, the recommended change is unnecessary.

The commission declines to adopt TPPA's recommendation to modify adopted §25.520(e) to state that QSEs submitting offers on behalf of resources may not exceed the offer cap. Instead, the commission modifies adopted §25.520(d) to state that ERCOT may reject an offer that a QSE submits on behalf of a resource if ERCOT determines that the offer exceeds the applicable offer cap. The commission substantively adopts TPPA's recommendation to modify adopted §25.520(e) to state that each offer cap will be administratively set by ERCOT in advance of an FFSS procurement period and modifies adopted §25.520(e) accordingly. The commission adopts TPPA's recommendation to modify adopted §25.520(i) to clarify that the category of FFSS resources providing FFSS must be reported.

The commission declines to adopt Vistra's recommendation to modify proposed §25.520(e) to use a six-month lookback period to determine the amount at which fuel oil is trading for the winter season because projected fuel prices account for both historical fuel prices and the future state of fuel prices thus yielding a more accurate estimate in this context.

Proposed §25.520(f) -- FFSS program requirements

Proposed §25.520(f) states that in addition to program requirements established by ERCOT, the following requirements apply to the FFSS program: (1) An FFSS resource must be represented by a QSE; (2) ERCOT must establish qualification for a QSE to represent an FFSS resource; (3) ERCOT must establish performance criteria for an FFSS resource and a QSE representing an FFSS resource; (4) An FFSS resource's offer must be submitted to ERCOT through a QSE representing the FFSS resource; (5) ERCOT may deploy FFSS as necessary throughout the FFSS obligation period; (6) when deployed by ERCOT, an FFSS resource must deploy consistent with its obligations; (7) ERCOT may limit the restocking of fuel to manage the overall cost of the service or for reliability needs; and (8) ERCOT must establish procedures for testing an FFSS resource.

ERCOT recommended modifying proposed §25.520(f) to add "at least the following requirements apply to the FFSS program" and to delete the specific requirements delineated in proposed §25.520(f)(1)-(4). ERCOT reasoned that the additional language would maintain flexibility for ERCOT and stakeholders to propose additional, more granular requirements for the FFSS program in the ERCOT Protocols and Other Binding Documents as necessary without the potentially circular reference to existing ERCOT requirements. With respect to proposed §25.520(f)(1)-(4), ERCOT reasoned that all resources that participate in the ERCOT market must be represented by QSEs and the necessity of that relationship and related aspects, such as QSE qualification, are sufficiently established by the current overarching regulatory framework.

TEC recommended modifying proposed §25.520(f)(8) to add "in consultation with a resource owner" to the end of the sentence. TEC reasoned that this addition ensures coordination between ERCOT and resource owners regarding vital testing procedures.

TPPA recommended modifying proposed §25.520(f)(6) to remove the statement in proposed §25.520(f)(6)(B) that an FFSS resource must stay deployed until "the fuel supply disruption no longer exists" because it is unclear when this provision would be met and that proposed §25.520(f)(6)(C) would not also be met.

Commission Response

The commission adopts ERCOT's recommendations to modify adopted §25.520(f) in part. The commission modifies adopted §25.520(f) to clarify that the listed requirements are minimum requirements. The commission declines to adopt ERCOT's recommendation to delete the specific requirements delineated in adopted §25.520(f)(1)-(4). Although the requirements specified in adopted §25.520(f)(1)-(4) are already established by the current overarching regulatory framework, the commission determines that the identification of those specific requirements in the adopted rule provides additional clarity and transparency for stakeholders and the public. The commission declines to adopt TEC's recommendation to modify adopted §25.520(f)(8) to include "in consultation with a resource owner" at the end of the sentence. Instead, the commission modifies adopted §25.520(f)(8) to require ERCOT to develop protocols to establish procedures for testing FFSS resources so that stakeholders have an opportunity to provide input and to ensure that any testing procedures involve the resource owner, as appropriate. The commission declines to adopt TPPA's recommendation to modify adopted §25.520(f)(6) to remove the statement that an FFSS resource must stay deployed until the "fuel supply disruption no longer exists" because the statement makes transparent the commission's FFSS policy intention.

Proposed §25.520(g) -- FFSS payment and charges

Proposed §25.520(g) requires ERCOT to (1) make a payment to each QSE representing an FFSS resource based on a market clearing price mechanism, subject to modifications determined by ERCOT based on the FFSS resource's availability during an FFSS obligation period and the FFSS resource's performance in a deployment event; and (2) charge each load serving entity (LSE) for FFSS procurement costs based upon the LSE's load ratio share during the relevant FFSS obligation period. Additionally, proposed §25.520(g)(3) states that non-procurement costs may be charged to an LSE based on the LSE's load ratio share during the FFSS resource's deployment.

LCRA recommended modifying proposed §25.520(g) to more clearly formalize a single clearing price for physical FFSSRs (described in proposed §25.520(c)(1) and (2)) and a single clearing price for contractual FFSSRs (described in proposed §25.520(c)(3)).

TPPA recommended clarifying the purpose of proposed §25.520(g)(3) and why these charges would be allocated based on FFSS resource deployments rather than obligation periods.

Commission Response

The commission adopts LCRA's recommendation to modify adopted §25.520(g) to more clearly formalize a single clearing price for resources that are eligible to provide resource-controlled FFSS under adopted §25.520(c)(1) and a single clearing price for resources that are eligible to provide contractual off-site FFSS under adopted §25.520(c)(2). The commission modifies adopted §25.520(g) accordingly.

The commission declines to adopt TPPA's recommendation to state the purpose of proposed §25.520(g)(3) and why these charges would be allocated based on FFSS deployments rather than obligation periods. However, the commission adds definitions for procurement costs and non-procurement costs, which serves to provide the clarity that TPPA seeks.

Proposed §25.520(h) -- Compliance

Proposed §25.520(h) requires ERCOT to (1) establish criteria to reduce a QSE's payment, claw back a QSE's payment, sus-

pend a QSE from participation for failure to meet its FFSS obligation; (2) establish criteria to suspend an FFSS resource based on noncompliance; (3) notify the commission of all alleged instances of noncompliance; and (4) maintain records relating to any alleged noncompliance.

OPUC recommended modifying proposed §25.520(h) to incorporate stronger monetary penalties or a suspension for at least three years in the proposed rule. OPUC reasoned that there are instances where a FFSS resource could receive payment for FFSS without providing the called upon reliability service. As such, the current claw back system does not incentivize supply resources to provide reliable FFSS.

TEC recommended modifying proposed §25.520(h) to remove reference to "or a related ERCOT protocol." TEC reasoned that compliance, and associated repercussions should be related to the service being offered. If a resource has met its obligations and performed as needed for FFSS, they should not be punished for failures under another protocol. Rather, that punishment should relate specifically to the violated protocol. For example, if a resource participates in both the ERCOT Contingency Reserve Service (ECRS) and FFSS, and the resource fails to meet its ECRS obligation but does perform under FFSS, the resource should face compliance penalties related to ECRS, not FFSS. The resource may have unique characteristics that allow it to perform better under one service versus another. To bar a resource from participation altogether may inadvertently reduce the pool of eligible dispatchable resources entirely.

Commission Response

The commission declines to adopt OPUC's recommendation to modify adopted §25.520(h) to incorporate stronger monetary penalties or a suspension of at least three years because it is unnecessary. The adopted rule mirrors the commission's usual compliance-focused approach as it relates to underperforming resources by first, enabling ERCOT to reduce or claw back payments made; second, enabling ERCOT to suspend a resource from future participation in the FFSS program; and third, relying on its own authority to seek enforcement for violations of its rules or ERCOT protocols. Furthermore, the commission finds it is appropriate for the ERCOT stakeholder community to establish the specific claw back and suspension provisions for the FFSS program, both of which will be subject to the commission's future review once protocol language is developed.

The commission declines to adopt TEC's recommendation to modify adopted §25.520(h) to remove references to "or a related ERCOT protocol" because the change is unnecessary. A related ERCOT protocol would necessarily have to be one that is related to FFSS.

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): §39.151, which grants the commission authority to oversee ERCOT; and §39.159, which requires the commission to ensure that ERCOT procures ancillary or reliability services on a competitive basis to increase reliability during extreme code weather conditions and during times of low non-dispatchable power produced in the ERCOT region.

Cross Reference to Statutes: PURA §39.151 and §39.159.

§25.520. Firm Fuel Supply Service (FFSS).

(a) Purpose. The purpose of this section is to promote reliability through the procurement of FFSS for deployment during, or in preparation for, a natural gas curtailment or other fuel supply disruption during extreme cold weather conditions.

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

(1) Firm gas storage agreement--An agreement for firm off-site storage of natural gas, as the term is defined in ERCOT protocols.

(2) Firm transportation agreement--An agreement for firm transportation of natural gas to a resource from an off-site storage facility, as the term is defined in ERCOT protocols.

(3) FFSS obligation period--The period from November 15 through March 15 for which a procured resource is obligated to provide FFSS.

(4) FFSS resource--A generation resource that ERCOT procures for FFSS.

(5) Market clearing price--The dollar amount per megawatt (MW) that is awarded for an FFSS resource that ERCOT procures for an FFSS obligation period.

(6) Non-procurement costs--The fuel restocking payments to FFSS resources following a deployment during the FFSS obligation period.

(7) Offer cap--The maximum dollar amount per MW that a qualified scheduling entity (QSE) representing a resource may offer into the FFSS program for the applicable FFSS category.

(8) Procurement costs--The standby payments to FFSS resources for an FFSS obligation period.

(c) Resource requirements for FFSS eligibility. A resource that meets the requirements for one of the three FFSS categories under this subsection is eligible and may be selected by ERCOT in the procurement process to provide FFSS for an FFSS obligation period.

(1) On-site FFSS category. An FFSS resource that provides on-site FFSS must successfully demonstrate dual fuel capability, have the ability to establish and burn an alternative on-site stored fuel, and have on-site fuel storage capability.

(2) Resource-controlled FFSS category. An FFSS resource that provides resource-controlled FFSS must have an on-site natural gas or fuel oil storage capability or off-site natural gas storage where the resource or QSE owns and controls both the natural gas storage facility and the pipeline to deliver the required amount of reserved natural gas to the resource from the storage facility.

(3) Contractual off-site FFSS category. An FFSS resource that provides contractual off-site FFSS must have a firm gas storage agreement with a storage provider for firm storage of the natural gas at the storage facility and have a firm transportation agreement with a natural gas pipeline that is a critical natural gas facility, as defined in §25.52 of this title (relating to Reliability and Continuity of Service) for firm transportation of the natural gas from the storage facility to the FFSS resource. The natural gas pipeline providing firm transportation of the natural gas from the storage facility to the FFSS resource must be:

(A) subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C. §717 et seq);

(B) an intrastate natural gas pipeline that is not operated by a gas utility, as defined in Title 3 of the Texas Utilities Code; or

(C) an intrastate natural gas pipeline that is owned or operated by a gas utility, as defined in Title 3 of the Texas Utilities Code. An intrastate natural gas pipeline that is owned or operated by a gas utility must:

(i) provide only transmission service in accordance with its gas utility tariff;

(ii) certify that, if the gas utility reduces firm deliveries to customers pursuant to §7.455 of this title (relating to Curtailment Standards), the intrastate pipeline will have sufficient operational capacity, including sufficient pipeline pressure, to provide the volume of gas required for the transportation path between the storage facility and FFSS resource to provide continuous service in the event of a curtailment; and

(iii) certify that the pipeline has not curtailed deliveries of gas, under §7.455 of this title or an order issued by the Railroad Commission of Texas, to a resource that was subject to a firm transportation agreement during a curtailment event that occurred after January 1, 2021.

(d) FFSS procurement. ERCOT must procure FFSS ahead of each FFSS obligation period to help maintain reliability during, or in preparation for, a natural gas curtailment or other fuel supply disruption.

(1) ERCOT may spend a maximum of $54 million in procurement costs during a single FFSS obligation period. ERCOT may reject an offer that a QSE submits on behalf of a resource if ERCOT determines that:

(A) the offer is unreasonable;

(B) the offer is an outlier when evaluating the parameters of an acceptable offer;

(C) the offer exceeds the applicable offer cap;

(D) ERCOT lacks a sufficient basis to verify whether the resource complied with ERCOT established performance standards in an event in which the resource was deployed by ERCOT during the preceding FFSS obligation period;

(E) the QSE representing the resource fails to reserve sufficient fuel for the first deployment for the FFSS obligation period; or

(F) the QSE representing the resource fails to reserve sufficient emissions allowances or credits to meet at least three deployments for the FFSS obligation period.

(2) ERCOT must allocate a combined amount of at least 70% of the $54 million budget to procure resources under the on-site FFSS category and the resource-controlled FFSS category, unless insufficient offers were submitted for resources under those categories. If insufficient offers were submitted for resources under the on-site FFSS category and the resource-controlled FFSS category to allocate 70% of the budget to those resources, then ERCOT may reallocate the remainder of that portion of the budget to resources under the contractual off-site FFSS category.

(e) Offer caps. Before the start of an FFSS obligation period, ERCOT must administratively set the offer cap for each category of eligible resources. The offer cap must be calculated as a function of maximum hours per deployment (hours), heat rate (MMBtu/MWh), and fuel price ($/MMBtu), using the following equation: Offer cap ($/MW) = hours * heat rate * fuel price

(1) The fuel price for resources eligible to provide FFSS under the on-site FFSS category and the resource-controlled FFSS category must be based on the projected price of fuel oil for the upcoming FFSS obligation period.

(2) The fuel price for resources eligible to provide FFSS under the contractual off-site FFSS category must be based on the projected price of natural gas for the upcoming FFSS obligation period.

(3) ERCOT must establish a heat rate for each of the three categories of resources that are eligible to provide FFSS under subsection (c) of this section. The heat rate for each category must be based on the characteristics of the resources that are eligible to provide FFSS under that category.

(f) FFSS program requirements. The following minimum requirements apply to the FFSS program.

(1) An FFSS resource must be represented by a QSE.

(2) ERCOT must establish qualifications for a QSE to represent an FFSS resource.

(3) ERCOT must establish performance criteria for an FFSS resource and a QSE representing an FFSS resource.

(4) An FFSS resource's offer must be submitted to ERCOT through a QSE representing the FFSS resource.

(5) ERCOT may deploy FFSS as necessary throughout the FFSS obligation period.

(6) When deployed by ERCOT, an FFSS resource must deploy consistent with its obligations and must remain deployed until the earlier of:

(A) exhaustion of the fuel reserved to generate at the MW level and for the specified duration associated with the FFSS award, including any fuel that was restocked following approval or instruction by ERCOT;

(B) the fuel supply disruption no longer exists; or

(C) ERCOT determines the FFSS deployment is no longer needed.

(7) ERCOT may limit the restocking of fuel to manage the overall cost of the service or for reliability needs.

(8) ERCOT must develop protocols to establish procedures for testing FFSS resources.

(g) FFSS payment and charges.

(1) ERCOT must establish a single market clearing price mechanism for resources eligible to provide FFSS under the on-site FFSS category and the resource-controlled FFSS category. ERCOT must establish a separate market clearing price mechanism for resources eligible to provide FFSS under the contractual off-site FFSS category.

(2) ERCOT must make a payment to each QSE representing an FFSS resource based on the appropriate market clearing price mechanism, subject to modifications determined by ERCOT based on the FFSS resource's availability during an FFSS obligation period and the FFSS resource's performance in a deployment event.

(3) ERCOT must charge each load serving entity (LSE) for FFSS procurement costs based upon the LSE's load ratio share during the relevant FFSS obligation period.

(4) Non-procurement costs may be charged to an LSE based on the LSE's load ratio share during the FFSS resource's deployment.

(h) Compliance.

(1) ERCOT must establish criteria to reduce a QSE's payment, claw back a QSE's payment, suspend a QSE from participation in FFSS, or any combination thereof, based on the QSE's failure to meet its FFSS obligation under this section or a related ERCOT protocol. ERCOT must also establish criteria for subsequent reinstatement.

(2) ERCOT must establish criteria to suspend an FFSS resource based on noncompliance with this section or a related ERCOT protocol. ERCOT must also establish criteria for subsequent reinstatement.

(3) ERCOT must notify the commission of all alleged instances of noncompliance with this section or a related ERCOT protocol.

(4) ERCOT must maintain records relating to any alleged noncompliance with this section or a related ERCOT protocol.

(i) Reporting. Prior to the start of each FFSS obligation period, ERCOT must publicly report the number and category of FFSS resources providing the service, the market clearing prices, the amount of reserved fuel associated with each FFSS award, the highest and lowest offers, the number of MW associated with each FFSS award, and the projected total cost to procure FFSS for that obligation period.

(j) Implementation. ERCOT must develop, in consultation with commission staff, additional procedures, guides, technical requirements, protocols, or other standards that are consistent with this section and that ERCOT finds necessary to implement FFSS, including development of a standard FFSS agreement and specific performance guidelines.

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

Filed with the Office of the Secretary of State on February 5, 2026.

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Seaver Myers
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: November 7, 2025
For further information, please call: (512) 936-7433

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

19 TAC §102.1003

The Texas Education Agency adopts an amendment to §102.1003, concerning high-quality prekindergarten programs. The amendment is adopted without changes to the proposed text as published in the December 5, 2025 issue of the *Texas Register* (50 TexReg 7826) and will not be republished. The adopted amendment adds to the eligibility criteria for public prekindergarten and updates requirements for teachers of prekindergarten classes provided by an entity with which a school district contracts to provide prekindergarten as required by House Bill (HB) 2, 89th Texas Legislature, Regular Session, 2025. The adoption also makes technical edits for clarification and to update the rule to align with updated prekindergarten guidelines and current best practices.

REASONED JUSTIFICATION: Texas Education Code (TEC), §29.153(b), as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, adds to the list of students who are eligible for free public prekindergarten the child of a person employed as a classroom teacher at a public primary or secondary school in the school district that offers a prekindergarten class under TEC, §29.153. HB 2 amended TEC, §29.167(b-1), to clarify that a teacher of a prekindergarten class provided by an entity with which a school district contracts to provide a prekindergarten program must either be certified or be supervised by a person who meets certification requirements and to clarify requirements for classrooms that serve emergent bilingual students. New TEC, §29.167(b-4), establishes that prekindergarten teacher and supervisor requirements outlined in TEC, §29.167(b-1) and (b-2), apply to any prekindergarten class provided by an entity with which a school district contracts to provide a prekindergarten program.

To implement HB 2, the following changes are made.

The adopted amendment to §102.1003 adds an eighth eligibility criterion to the existing criteria for prekindergarten eligibility; clarifies that the teacher requirements for classes provided by an entity with which a school district contracts to provide a prekindergarten program apply to programs serving eligible three and/or four year old students; and establishes that a teacher of a bilingual or English as a second language program class provided by an entity with which a school district contracts to provide a prekindergarten program may be supervised by a person who is appropriately certified to provide effective instruction to emergent bilingual students if the person is not appropriately certified.

Additional technical edits provide clarification and update the rule to align with updated prekindergarten guidelines and current best practices.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 5, 2025, and ended January 5, 2026. Following is a summary of public comments received and agency responses.

Comment: A school counselor expressed concern that children of district employees including counselors, nurses, secretaries, librarians, and administrators who are not educators are not eligible for free prekindergarten in the district even though children of classroom teachers are now eligible.

Response: The agency offers the following clarification. The specification that only children of classroom teachers are eligible for free public prekindergarten is a requirement in state law, and the rule simply implements the statutory change. Further expansion of the eligibility criteria would need to be made by the legislature.

Comment: An educator expressed dissatisfaction with the removal of references to cultural diversity.

Response: The agency disagrees that the amendments to the language are not appropriate. References to cultural diversity were not removed from the rule. A reference to family engagement being culturally responsive was broadened to ensure that engagement is responsive to a variety of backgrounds. A sec-

ond reference was adjusted to clarify that a district family engagement plan should identify partners to provide parents with all relevant resources reflective of the home language and not just culturally relevant resources.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.153(b), as amended by House Bill (HB) 2, 89th Texas Legislature, Regular Session, 2025, which outlines the eligibility criteria for a child to be enrolled in a public prekindergarten class; TEC, §29.167(b-1), as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which outlines requirements for teachers of prekindergarten classes provided by entities with which a school district contracts to provide a prekindergarten program; and TEC, §29.167(b-4), as added by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes that prekindergarten teacher and supervisor requirements outlined in TEC, §29.167(b-1) and (b-2), apply to any prekindergarten class provided by an entity with which a school district contracts to provide a prekindergarten program under TEC, §29.153.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §29.153(b) and §29.167(b-1), as amended by House Bill (HB) 2, 89th Texas Legislature, Regular Session, 2025; and TEC, §29.167(b-4), as added by HB 2, 89th Texas 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 February 9, 2026.

TRD-202600567
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1056

The Texas Education Agency adopts the repeal of §102.1056, concerning the dropout recovery pilot program. The repeal is adopted without changes to the proposed text as published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7500) and will not be republished. The adopted repeal removes the rule because its authority, Texas Education Code (TEC), §39.407 and §39.416, was repealed by Senate Bill (SB) 1376, 86th Texas Legislature, Regular Session, 2019.

REASONED JUSTIFICATION: Under TEC, §39.416 (formerly §39.366), the commissioner of education exercised rulemaking authority to adopt rules to administer the High School Completion and Success Initiative through the adoption of §102.1056. This rule established and implemented the pilot program to provide eligible entities with grants to identify and recruit students who had dropped out of Texas public schools and provide them services designed to enable them to earn a high school diploma or demonstrate college readiness. SB 1376, 86th Texas Legislature, Regular Session, 2019, repealed TEC, §§39.407, 39.411, and 39.416. The repeal of §102.1056 is necessary because the authorizing statutes no longer exist. Furthermore, funding for the pilot program ceased years before the authorizing statutes were repealed.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 21, 2025, and ended December 22, 2025. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under former Texas Education Code (TEC), §39.407, which addressed the strategic plan of the High School Completion and Success Initiative Council and included rulemaking authority for the commissioner of education; former TEC, §39.411(c), which addressed the recommendations of the High School Completion and Success Initiative Council, including implementation of those recommendations via a grant-making process; and former TEC, §39.416, which provided the commissioner of education with rulemaking authority for former TEC, Chapter 39, Subchapter M, High School Completion and Success Initiative.

CROSS REFERENCE TO STATUTE. The repeal implements former Texas Education Code, §§39.407, 39.411(c), and 39.416.

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

Filed with the Office of the Secretary of State on February 9, 2026.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER MM. COMMISSIONER'S RULES CONCERNING SUPPLEMENTAL SPECIAL EDUCATION SERVICES PROGRAM

19 TAC §102.1601

The Texas Education Agency adopts an amendment to §102.1601, concerning the supplemental special education services program. The amendment is adopted without changes to the proposed text as published in the October 31, 2025 issue of the *Texas Register* (50 TexReg 7089) and will not be republished. The adopted amendment clarifies criteria for parent-directed services for students receiving special education services to align with the passage of House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025.

REASONED JUSTIFICATION: Section 102.1601 establishes criteria for supplemental special education services. HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, changed the name of the program to Parent-Directed Services for Students Receiving Special Education Services (PDSES), so the section title has been updated to align with the new program name.

Adopted changes throughout the rule add clarity to supplemental instructional materials and services.

The adopted amendment to subsection (a) aligns with terminology updated by legislation.

The adopted amendment to subsection (c) clarifies eligibility criteria by adding that eligible students must be currently attending a public school and by repealing specifications about special education programs.

Adopted subsection (e)(2)(C) adds that service providers must maintain their eligibility to offer services through the PDSES program and that they must complete an annual agreement. Additionally, the adopted new language adds that if they do not complete this process, they will be removed from the marketplace and must notify the program if they are no longer eligible to provide services.

The adopted amendment to subsection (f)(6) adds that parents can only appeal a PDSES eligibility decision during the annual appeal window and that failure to do so means they must reapply during a subsequent application window.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 31, 2025, and ended December 1, 2025. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.041, as amended by House Bill (HB) 2, HB 6, and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes requirements for providing a supplemental special education services and instructional materials program for certain public school students receiving special education services and requires the commissioner by rule to determine, in accordance with TEC, Chapter 29, Subchapter A-1, the criteria for providing a program to provide supplemental special education services and instructional materials for eligible public school students; TEC, §29.042, as amended by HB 1926, 88th Texas Legislature, Regular Session, 2023, and HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to determine requirements related to the establishment and administration of a parent-directed program for students receiving special education services; TEC, §29.043, which requires the commissioner to establish an application process for eligible student's parent to apply for a grant held in an online account maintained under TEC, §29.042(b), and assigned to the student under TEC, §29.045; TEC, §29.044, which requires the commissioner to determine eligibility criteria for the approval of an application submitted under TEC, §29.043; TEC, §29.045, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to determine requirements for students meeting eligibility criteria and requirements for assigning and maintaining accounts under TEC, §29.042(b); TEC, §29.046, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to determine requirements and restrictions related to account use for accounts assigned to students under TEC, §29.045; TEC, §29.047, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to determine requirements related to criteria and application for agency-approved providers and vendors; TEC, §29.0475, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to determine requirements for a program participant, provider, and vendor autonomy of supplemental instructional materials; TEC, §29.048, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to determine responsibilities for the admission, review, and dismissal committee; TEC, §29.0485, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes that the determination of the commissioner is final, notwithstanding TEC, §7.057; and TEC, §29.049, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires that the commissioner adopt rules as necessary to establish and administer the SSES and instructional materials program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §29.041, as amended by House Bill (HB) 2, HB 6, and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025; §29.042, as amended by HB 1926, 88th Texas Legislature, Regular Session, 2023, and HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §29.043; §29.044; §29.045, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §29.046, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §29.047, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §29.0475, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §29.048, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; §29.0485, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and §29.049, as amended by HB 2 and SB 568, 89th Texas 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 February 9, 2026.

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Director, Rulemaking
Texas Education Agency
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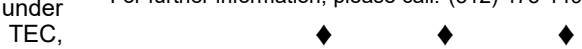

CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts new §§127.270, 127.472, 127.512, 127.824, and 127.828-127.830, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). Sections 127.270, 127.472, and 127.512 are adopted with changes to the proposed text as published in the October 10, 2025 issue of the *Texas Register* (50 TexReg 6622) and will be republished. Sections 127.824, and 127.828-127.830 are adopted without changes to the proposed text as published in the October 10, 2025 issue of the *Texas Register* (50 TexReg 6622) and will not be republished. The adopted rules add new TEKS developed by

subject matter experts convened by the Texas State Technical College and Education Service Center (ESC) Region 4 that are needed for completion of CTE programs of study.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

During the November 2022 meeting, the SBOE approved a timeline for the review of CTE courses for 2022-2025. Also at the meeting, the SBOE approved a specific process to be used in the review and revision of the CTE TEKS. The CTE-specific process largely follows the process for TEKS review for other subject areas but was adjusted to account for differences specific to CTE.

In 2023, CTE advisory committees convened to make recommendations for the review and refresh of programs of study as required by the Texas Perkins State Plan. Finalized programs of study were published in the fall of 2023 with an implementation date beginning in the 2024-2025 school year. CTE courses to be developed or revised to complete or update programs of study were determined.

At the April 2023 SBOE meeting, the board discussed and approved changes to the TEKS review process, including approving a process for selecting work group members. The changes were implemented beginning with the engineering TEKS review process. The SBOE completed the review of current CTE TEKS, the development of new CTE TEKS, and the review of innovative courses to be approved as TEKS for courses in the new engineering program of study in 2024 with its approval of new engineering TEKS for adoption in April 2025.

At the April 2024 meeting, the SBOE approved new TEKS for 23 courses in the agribusiness, animal science, plant science, and aviation maintenance programs of study as well as two STEM courses that may satisfy science graduation requirements, Physics for Engineering and Scientific Research and Design. Additionally, Texas Education Agency (TEA) staff shared an overview of upcoming interrelated needs for TEKS review and revision and instructional materials review and approval (IMRA). Staff explained upcoming needs related to development and amendment of CTE courses, made recommendations for completing the work in batches, and recommended including CTE in the next three cycles of IMRA.

At the June 2024 meeting, the board considered next steps related to the adoption of CTE courses that are needed to complete programs of study and a schedule for future CTE TEKS reviews. The SBOE approved recommendations that TEA present a set of innovative courses with minor edits for consideration for adoption as TEKS-based courses. Additionally, the SBOE authorized TEA to enter into interagency contracts with Collin College, Texas State Technical College, and ESC Region 4 to develop initial drafts of TEKS for the CTE courses.

A discussion item regarding proposed new CTE TEKS for courses in the Arts, Audio Visual Technology, and Communications; Business, Marketing, and Finance; Health Science; Law and Public Service; Manufacturing; and Transportation, Distribution, and Logistics Career Clusters was presented to the Committee of the Full Board at the January 2025 SBOE meeting, and the subject matter experts convened to complete final recommendations for the proposed new courses. At the June 2025 meeting, the SBOE approved for first reading and filing authorization new CTE TEKS for courses in the Business, Marketing, and Finance; Health Science; and Manufacturing Career Clusters for implementation in the 2026-2027 school year.

The adopted new sections ensure the standards for these career clusters support relevant and meaningful programs of study.

The following changes were made since published as proposed.

New §127.270(d)(1)(D) was added to read, "explain the role of the U.S. Small Business Administration and their loan programs."

Section 127.270(d)(12)(A) was amended by adding "commercial mortgage brokers, investors," after "loan officers."

Section 127.270(d)(12)(B) was amended by adding "commercial mortgage brokers, investors," after "real estate analysts."

Section 127.472(d)(1) was amended by replacing the phrase "differs from" with the phrase "compares to."

Section 127.472(d)(1)(B) was amended to read, "discuss supernatural explanations for illness and describe treatments, including herbal remedies, that were common prior to the Enlightenment period in Western Civilization."

New §127.472(d)(1)(C) was added to read, "describe the advancements of the Enlightenment Period in Western Civilization in medical science."

New §127.472(d)(1)(E) was added to read, "identify the pharmacological and medical advancements in the United States of America and Texas and their benefits."

New §127.472(d)(4)(D) was added to read, "examine the minimum practice standards set by the Texas State Board of Pharmacy (TSBP) for retail and independent pharmacies and identify the similarities and differences between the two practices."

Section 127.472(d)(8)(B) was amended by adding the phrase "and patients' rights to opt out of vaccine reporting" to the end of the student expectation.

New §127.472(d)(8)(D) was added to read, "analyze and discuss data related to vaccine injuries and adverse impacts using the federal government's Vaccine Adverse Events Reporting System (VAERS)."

Section 127.512(a)(2) was amended by replacing the employability skills reference from §127.15(d)(1) to §127.15(d)(2).

Section 127.512(b) was amended by striking the recommended prerequisite language to require a prerequisite of at least one credit in a course from the Health Science Career Cluster.

Section 127.512(d)(5)(B) was amended to read, "compare patient care needs throughout the lifespan using theories such as Maslow's Hierarchy of Needs, Erik Erikson's Stages of Psychosocial Development, and Jean Piaget's Theory of Child Development."

The SBOE approved the new sections for first reading and filing authorization at its June 27, 2025 meeting and for second reading and final adoption at its November 21, 2025 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2026-2027 school year. The earlier effective date will enable districts to begin preparing for the implementation of the new TEKS. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period began October 10, 2025, and ended at 5:00 p.m. on November 10, 2025. The SBOE also provided an opportunity for registered oral and written comments at its November 2025 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. A commenter stated that it would be beneficial for all students if they had up-to-date information from professionals in their field of study prior to their certification exam.

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

SUBCHAPTER F. BUSINESS, MARKETING, AND FINANCE

19 TAC §127.270

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to develop by rule and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to ensure by rule that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a) and (b-17).

§127.270. Commercial Lending and Real Estate (One Credit), Adopted 2025.

(a) Implementation.

(1) The provisions of this section shall be implemented by school districts beginning with the 2026-2027 school year.

(2) School districts shall implement the employability skills student expectations listed in §127.15(d)(2) of this chapter (relating to Career and Technical Education Employability Skills) as an integral part of this course.

(b) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: at least one credit in a Level 2 or higher course from the Business, Marketing, and Finance Career Cluster. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Business, Marketing, and Finance Career Cluster focuses on planning, managing, organizing, directing, and evaluating business functions essential to efficient and productive business management, finance, operations, and marketing.

(3) Commercial Lending and Real Estate is designed to equip students with the knowledge and skills needed to excel in the field of commercial lending. Students gain an understanding of commercial lending principles and practices, develop expertise in analyzing commercial real estate properties, learn about various types of commercial loans and their underwriting processes, and explore the role of commercial lenders in driving economic development.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other organizations that foster leadership and career development in the profession such as student chapters of related professional associations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student understands the fundamental concepts of commercial lending and real estate. The student is expected to:

(A) define commercial lending and distinguish commercial lending from residential lending;

(B) explain how the role of commercial lending affects economic development and the growth of the real estate market;

(C) describe the relationship between commercial real estate and commercial lending practices; and

(D) explain the role of the U.S. Small Business Administration and their loan programs.

(2) The student examines different types of commercial real estate. The student is expected to:

(A) identify and describe various types of commercial properties, including office buildings, retail centers, industrial facilities, and multifamily housing;

(B) analyze the unique characteristics and investment potential of each type of commercial property; and

(C) identify and evaluate the impact of market trends on different sectors of commercial real estate.

(3) The student understands the processes involved in commercial lending. The student is expected to:

(A) describe the steps involved in originating a commercial loan, including application, underwriting, and approval;

(B) analyze the criteria, including income, credit history, and collateral, that lenders use to assess creditworthiness of borrowers; and

(C) explain the role of risk assessment and mitigation in the commercial lending process.

(4) The student uses financial analysis techniques to evaluate commercial real estate investments. The student is expected to:

(A) calculate key financial metrics such as net operating income (NOI), cap rate, and return on investment (ROI) for a given commercial lending scenario;

(B) use financial modeling to project cash flows and assess the profitability of commercial real estate projects through consideration of market trends, financing options, and risk assessment; and

(C) analyze the impact of financing terms, interest rates, and loan structures on commercial real estate investments.

(5) The student examines commercial lending and real estate legal and regulatory environments. The student is expected to:

(A) identify key laws and regulations, including zoning laws, environmental regulations, and fair lending practices, that govern commercial real estate transactions;

(B) analyze the role of contracts in commercial real estate, including purchase agreements, lease agreements, and loan documents;

(C) explain the difference between surface rights and mineral rights and how they relate to commercial real estate projects; and

(D) identify and discuss how regulatory changes impact commercial lending and real estate markets.

(6) The student explores the various structures and terms used in commercial loans. The student is expected to:

(A) describe common loan structures, including fixed-rate, adjustable-rate, and interest-only loans;

(B) analyze the advantages and disadvantages of different loan terms, including loan-to-value ratio, origination costs, amortization period, and prepayment penalties; and

(C) compare creative commercial financing options such as mezzanine financing and bridge loans in commercial real estate transactions.

(7) The student analyzes commercial real estate markets to inform investment and lending decisions. The student is expected to:

(A) conduct market research to assess supply and demand dynamics in commercial real estate;

(B) evaluate the impact of economic indicators, including employment and interest rates on commercial real estate markets; and

(C) analyze and evaluate emerging trends in commercial real estate such as urbanization and technology-driven changes.

(8) The student understands the importance of risk management in commercial lending and real estate. The student is expected to:

(A) identify common risks associated with commercial lending, including default risk, interest rate risk, and market risk;

(B) research and describe risk mitigation strategies, including diversification, insurance, and due diligence, used in commercial lending and real estate transactions; and

(C) evaluate the role of loan covenants, personal guarantees, cosigners, and credit enhancements in protecting lenders.

(9) The student examines the processes involved in servicing commercial loans and managing real estate assets. The student is expected to:

(A) describe the responsibilities of loan servicers, including payment processing, account management, and collections;

(B) analyze asset management strategies for maximizing the value of commercial real estate investments, including financial analysis, performance monitoring, property management, tenant relations, market analysis, strategic planning, risk management, portfolio diversification, and exit strategy planning; and

(C) research and describe the challenges of managing distressed assets and non-performing loans such as valuation difficulties, legal and regulatory complexities, operational challenges, market and economic factors, and reputational risks.

(10) The student understands the principles and practices of commercial real estate development. The student is expected to:

(A) describe the stages of commercial real estate development from site selection to project completion;

(B) analyze the financial, legal, and regulatory considerations of commercial development projects; and

(C) analyze various impacts of development on communities, including benefits and challenges.

(11) The student identifies and understands ethical considerations in commercial lending and real estate transactions. The student is expected to:

(A) discuss ethical issues related to lending practices, including predatory lending, conflicts of interest, and transparency, and evaluate the impact of these issues on consumers and financial institutions; and

(B) propose strategies for promoting integrity and ethical behavior in the commercial lending and real estate professions, including transparency, accountability, and compliance with regulations.

(12) The student explores career opportunities in commercial lending and real estate. The student is expected to:

(A) identify various career paths in commercial lending and real estate, including loan officers, commercial mortgage brokers, investors, underwriters, real estate appraisers, real estate analysts, and developers, and describe the primary responsibilities and qualifications for each role;

(B) research and identify the education, skills, and certifications required for different roles in the industry, including loan officers, real estate appraisers, underwriters, real estate analysts, commercial mortgage brokers, investors, and developers; and

(C) develop a career plan that includes short- and long-term goals for entering and advancing in the commercial lending and real estate fields.

(13) The student explores entrepreneurship opportunities in commercial lending and real estate. The student is expected to:

(A) research and identify federal rules such as Consumer Financial Protection Bureau and Nationwide Multistate Licensing Systems rules and federal laws such as the Truth in Lending Act and Fair Credit Reporting Act related to owning and operating a mortgage firm;

(B) research and identify federal rules such as Housing Urban Development and Federal Housing Finance Agency (FHFA) rules and federal laws such as the Fair Housing Act and Equal Opportunity Act related to owning and operating a commercial real estate agency; and

(C) research and identify requirements for owning and operating a commercial real estate property.

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

Filed with the Office of the Secretary of State on February 4, 2026.

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Director, Rulemaking
Texas Education Agency
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Proposal publication date: October 10, 2025
For further information, please call: (512) 475-1497

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SUBCHAPTER J. HEALTH SCIENCE

19 TAC §127.472, §127.512

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to develop by rule and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to ensure by rule that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a) and (b-17).

§127.472. Introduction to Pharmacy Science (One Credit), Adopted 2025.

(a) Implementation.

(1) The provisions of this section shall be implemented by school districts beginning with the 2026-2027 school year.

(2) School districts shall implement the employability skills student expectations listed in §127.15(d)(1) of this chapter (relating to Career and Technical Education Employability Skills) as an integral part of this course.

(b) General requirements. This course is recommended for students in Grades 9 and 10. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostic services, health informatics, support services, and biotechnology research and development.

(3) The Introduction to Pharmacy Science course is designed to provide an overview of the history of the pharmacy profession, legal and ethical aspects of pharmacy, and the skills necessary to work in the field of pharmacy. The course addresses certifications/registration and state and federal regulations and rules pertaining to the field. Students acquire a foundational understanding of medical terminology and math, anatomy and physiology, pathophysiology, pharmacology, and wellness as they pertain to pharmacy sciences.

(A) To pursue a career in the health science industry, students should learn to reason, think critically, make decisions, solve problems, and communicate effectively. Students should recognize that quality healthcare depends on the ability to work well with others.

(B) Professional integrity in the health science industry is dependent on acceptance of ethical responsibilities. Students employ their ethical responsibilities, recognize limitations, and understand the implications of their actions.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other organizations that foster leadership and career development in the profession such as student chapters of related professional associations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student researches the history of medicine and pharmacy and how it compares to modern practices. The student is expected to:

(A) identify beliefs associated with illness and medicine from 440 BC through AD 1600;

(B) discuss supernatural explanations for illness and describe treatments, including herbal remedies, that were common prior to the Enlightenment period in Western Civilization;

(C) describe the advancements of the Enlightenment Period in Western Civilization in medical science;

(D) describe eighteenth and nineteenth century medicine, including bloodletting, purging, blistering, inoculation, amputation, and surgery and how major wars influenced medicine; and

(E) identify the pharmacological and medical advancements in the United States of America and Texas and their benefits.

(2) The student explains the ethical and legal responsibilities of pharmacists and pharmacy technicians. The student is expected to:

(A) describe basic laws and regulations that govern pharmacy at the state and federal level;

(B) describe legal terms, including medical malpractice, negligence, mislabeling, adverse drug event (ADE), and wrongful death, and consequences associated with medication errors, including civil lawsuits, professional disciplinary action, and criminal charges, related to dispensing and compounding medications;

(C) differentiate between negligence, product liability, contributory negligence, and strict liability;

(D) differentiate between the roles and responsibilities of a pharmacist and a pharmacy technician;

(E) explain the role of pharmacists in managing opioid therapies, addressing misuse, and promoting safe and effective pain management;

(F) describe why maintaining confidentiality of patient information is vital and summarize the Health Insurance Portability and Accountability Act (HIPAA);

(G) identify tort law and explain how HIPAA relates to medical negligence cases; and

(H) define professional liability.

(3) The student demonstrates professionalism and effectively communicates with healthcare workers and patients. The student is expected to:

(A) define appropriate and professional attire required for laboratory work;

(B) describe appropriate hygiene expected of pharmaceutical professionals;

(C) discuss professional attitudes and behaviors expected of pharmacy employees;

(D) identify the key characteristics of effective and ineffective communication in pharmacy practice;

(E) accurately interpret, transcribe, and communicate medical vocabulary using appropriate technologies;

(F) identify ways to eliminate barriers to effective communication in a pharmacy setting; and

(G) identify communication skills needed to work with individuals who are terminally ill, intellectually disabled or hearing and vision impaired or have other impairments in a pharmacy setting.

(4) The student examines skills, training, and certifications necessary to work in the field of pharmacy. The student is expected to:

(A) explain how time management, stress management, and change management skills can support the ability to thrive in a continuously evolving pharmacy profession;

(B) analyze applicability of interpersonal skills, including negotiation skills, conflict resolution, customer service, and teamwork within a pharmacy setting;

(C) demonstrate problem-solving skills by developing and implementing effective solutions to pharmacy challenges within a specified time frame;

(D) examine the minimum practice standards set by the Texas State Board of Pharmacy (TSBP) for retail and independent pharmacies and identify the similarities and differences between the two practices;

(E) explain methods to maintain competency in the pharmacy industry through continuing education and continuing professional development; and

(F) compare various career paths in pharmacy, including pharmacist, pharmacy technician, sales representative, and pharmaceutical research.

(5) The student uses appropriate medical vocabulary to communicate effectively with other healthcare professionals. The student is expected to:

(A) identify the various routes of drug medication administration, including oral, injection, topical, buccal, suppository, mucosal, intravenous, interosseous, nebulization, and intrathecal;

(B) differentiate between the various classes of drugs;

(C) define prefixes, roots, suffixes, and abbreviations common to the pharmacy profession;

(D) define common terms associated with pharmacology; and

(E) apply knowledge of word roots, prefixes, and suffixes to comprehend unfamiliar terms in pharmacy science.

(6) The student uses mathematical calculations and systems of measurement to solve problems in pharmacy. The student is expected to:

(A) perform medication calculations using different systems of measurement, including metric, apothecary, and household systems;

(B) convert units within and between the metric and imperial measurement systems;

(C) convert measurements between the metric, apothecary, and avoirdupois systems; and

(D) perform multistep ratio and proportion drug concentration problems.

(7) The student understands the fundamental principles of human anatomy, physiology, pathophysiology, and basic pharmacology. The student is expected to:

(A) describe the anatomy and physiology of the human body systems, including integumentary, musculoskeletal, nervous, immune, lymphatic, endocrine, cardiovascular, respiratory, gastrointestinal, renal, genitourinary, and hematological systems, and the senses;

(B) describe the pathophysiology of the main human body systems, including integumentary, musculoskeletal, nervous, immune, lymphatic, endocrine, cardiovascular, respiratory, gastrointestinal, renal, genitourinary, and hematological systems, and the senses; and

(C) identify the basic drug categories that affect each of the main human body systems, including integumentary, musculoskeletal, nervous, immune, lymphatic, endocrine, cardiovascular, respiratory, gastrointestinal, renal, genitourinary, and hematological systems, and the senses.

(8) The student explores the application of basic wellness concepts and disease prevention strategies. The student is expected to:

(A) describe the recommended vaccination schedule, including how to counsel on recommendations for patient populations with certain chronic illnesses;

(B) explain vaccine exemptions, including medical, religious belief, and conscientious exemptions, and patients' rights to opt out of vaccine reporting;

(C) explain standard procedures for delivery and documentation of immunizations;

(D) analyze and discuss data related to vaccine injuries and adverse impacts using the federal government's Vaccine Adverse Events Reporting System (VAERS);

(E) analyze the effectiveness and safety of complementary and alternative medicines (CAM) such as acupuncture, acupressure, cupping, and coining and CAM's potential impact on traditional medical treatments;

(F) explain the role of health screenings in maintaining a healthy population;

(G) research and describe the impact of external factors such as diet, exercise, alcohol, tobacco, vaping, and drug use on patient health; and

(H) explain the role of medication therapy management (MTM) in optimizing patient health and medication compliance.

(9) The student understands pharmaceutical regulations that are enforced by state and federal agencies. The student is expected to:

(A) define Occupational Safety and Health Administration (OSHA) requirements for prevention of exposure to hazardous substances, including risk assessment;

(B) define National Institute of Occupational Safety and Health (NIOSH) requirements for prevention of exposure to hazardous substances, including risk assessment;

(C) define United States Pharmacopeia (USP) requirements for prevention of exposure to hazardous substances, including risk assessment;

(D) identify hazardous medications and materials and how to safely handle, dispense, and dispose of them using information from Safety Data Sheets (SDS), NIOSH Hazardous Drug List, and USP;

(E) describe requirements for prevention and response to blood-borne pathogen exposure, including accidental needle stick and post-exposure prophylaxis; and

(F) explain OSHA Hazard Communication Standards.

§127.512. Science of Nursing (One Credit), Adopted 2025.

(a) Implementation.

(1) The provisions of this section shall be implemented by school districts beginning with the 2026-2027 school year.

(2) School districts shall implement the employability skills student expectations listed in §127.15(d)(2) of this chapter (relating to Career and Technical Education Employability Skills) as an integral part of this course.

(b) General requirements. This course is recommended for students in Grades 10 and 11. Prerequisite: at least one credit in a course from the Health Science Career Cluster. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) The Health Science Career Cluster focuses on planning, managing, and providing therapeutic services, diagnostics services, health informatics, support services, and biotechnology research and development.

(3) The Science of Nursing course introduces students to basic research-based concepts in nursing. Topics include the nursing process, regulatory agencies, professional organizations, and the importance of critical thinking in patient care. Instruction includes skills needed to pursue a nursing degree and training requirements for specialty nursing roles. Knowledge and skills include emergency care, patient assessment, basic interpretation of vital signs, identification of patients with physical and mental disabilities, patient positioning, use of assistive devices, and application of nursing theories in patient care plans.

(A) To pursue a career in the health science industry, students should learn to reason, think critically, make decisions, solve problems, and communicate effectively. Students should recognize that quality healthcare depends on the ability to work well with others.

(B) Professional integrity in the health science industry is dependent on acceptance of ethical responsibilities. Students employ their ethical responsibilities, recognize limitations, and understand the implications of their actions.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other organizations that foster leadership and career development in the profession such as student chapters of related professional associations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student understands tiers of nursing careers and the associated licensures. The student is expected to:

(A) identify and describe the educational and certification requirements for an entry-level patient care technician (PCT);

(B) identify and describe common work settings, including hospitals, doctors' offices, and healthcare agencies for PCTs;

(C) list qualifications to become a certified nursing assistant (CNA);

(D) identify and describe scope of practice for CNAs;

(E) describe the professional responsibilities of unlicensed assistive personnel (UAP) and explain how UAPs assist individuals with physical disabilities, mental disorders, and other healthcare needs;

(F) compare coursework required to obtain nursing credentials, including a licensed vocational nurse (LVN), Associate Degree Registered Nurse (ADN RN), and Bachelor of Science in Nursing Registered Nurse (BSN RN);

(G) analyze the requirements for advanced practice registered nurse (APRN) certification, including certified registered nurse anesthetist (CRNA), certified nurse midwife (CNM), certified nurse practitioner (CNP), and certified clinical nurse specialist (CNS); and

(H) compare nursing specialty options, including pediatric, critical care, emergency room, mental health, forensic, geriatric, and hospice nursing roles.

(2) The student examines how the nursing process is used to collect subjective and objective data in patient assessment. The student is expected to:

(A) describe the steps of a basic patient intake interview, including recording family history, biographical information, reason for seeking healthcare, present illness or health concerns, past health history, current medication list, and review of systems;

(B) explain the visual and physical head-to-toe assessment, including abnormal and normal structure and function of the body systems, used to evaluate patient condition;

(C) describe the importance of patient vital signs, including temperature, systolic and diastolic pressures, pulse, respiratory rate, pulse oximetry, and pain assessment using appropriate pain scales, in assessing a patient's overall health status;

(D) identify equipment, including a thermometer, sphygmomanometer, stethoscope, pulse oximeter, and time keeping device, used to measure and record patient vital signs;

(E) compare patient vital signs, including values outside of normal ranges, that establish baseline homeostasis; and

(F) explain how the steps in the nursing process are used to assist the patient to reach optimal physiological, social, mental, and emotional wellness.

(3) The student demonstrates knowledge of therapeutic care by reviewing patient activities of daily living (ADL). The student is expected to:

(A) define and differentiate between essential ADLs;

(B) explain the procedures for assessing patient independence, identifying functional limitations, and developing appropriate care plans;

(C) explain how a nurse promotes optimal patient function and quality of life;

(D) identify mental health disorders, including depression and anxiety, on patient ADLs;

(E) evaluate physical disabilities and limitations to recommend the correct assistive device for patient care; and

(F) identify and align therapeutic care to specific deficiencies in ADLs such as performing personal care, ambulating, and orienting to and using assistive devices to promote patient independence and optimize functional outcomes.

(4) The student understands the role of the nurse in providing first aid and emergency care. The student is expected to:

(A) identify and describe first aid and emergency care certifications such as Basic Life Support (BLS), Automated External Defibrillator (AED), First Aid, and Mental Health First Aid;

(B) discuss the advantages of obtaining first aid and emergency care certifications;

(C) identify and describe first aid and emergency care skills used by nurses; and

(D) explain the significance of the role of a nurse in an emergency setting such as an emergency room, intensive care unit, urgent care, or a life-saving event.

(5) The student applies nursing theory to simulate the implementation of patient care. The student is expected to:

(A) identify and explain the purpose of medical equipment that is used to assist patients with varied needs, including a Hoyer lift, hospital beds, foley catheter and drainage system, wheelchairs, gait belts, and bedside commodes;

(B) compare patient care needs throughout the lifespan using theories such as Maslow's Hierarchy of Needs, Erik Erikson's Stages of Psychosocial Development, and Jean Piaget's Theory of Child Development;

(C) identify proper patient positioning for patient needs, including Trendelenburg, Fowler's, supine, prone, lithotomy, and lateral recumbent;

(D) identify methods used to educate patients, family members, and caregivers in techniques for managing disabilities; and

(E) model the proper use of assistive medical equipment used in a variety of medical facilities, including long-term care, nursing and rehabilitation, home healthcare settings, and classroom environment.

(6) The student examines technology used in the practice of nursing. The student is expected to:

(A) identify and describe the technology, including electronic medical records, mobile computer workstations, scanning devices, and charting software, used to collect patient information;

(B) describe how to access laboratory values and normal ranges for diagnostic tests such as complete blood count, comprehensive metabolic panel, basic metabolic panel, and urinalysis to determine patient health status; and

(C) identify and describe advancements in technology, including remote patient monitoring systems, wearable monitoring systems, electronic intake patient interviews, interpreting services, deaflink communication services, and patient safety alarms.

(7) The student understands the importance of using critical-thinking skills in the nursing process. The student is expected to:

(A) analyze the components of conducting a comprehensive patient assessment;

(B) identify and differentiate between subjective and objective data, including what the patient reports and what is observable and quantifiable;

(C) compare trends in health outcomes between national, Texas, and local populations across their lifespans, including birth rates, life expectancy, mortality rates, and morbidity rates;

(D) analyze peer-reviewed medical research articles to evaluate the efficacy of specific treatments in improving patient care outcomes;

(E) create a patient care plan using procedures, including assess, diagnose, plan, implement and evaluate (ADPIE) and subjective, objective, assess, plan, implement, and evaluate (SOAPIE);

(F) analyze the impact of nursing interventions on patient condition in a simulated setting; and

(G) examine and describe clinical outcomes based upon patient assessment, care plan, and nursing interventions.

(8) The student understands pharmacology terminology associated with nursing practices. The student is expected to:

(A) identify and describe the eight rights of medication administration, including right patient, medication, dose, route, time, documentation, diagnosis, and response;

(B) identify and describe the principles of pharmacodynamics, including receptor binding, drug-receptor interactions, dose-response relationships, and therapeutic index;

(C) explain pharmacokinetics in the human body system, including the course of drug absorption, distribution, metabolism, and excretion;

(D) analyze the advantages of various routes of drug administration, including oral, injection, topical, buccal, suppository, mucosal, intravenous, interosseous, nebulization, and intrathecal; and

(E) analyze the disadvantages of various routes of drug administration, including oral, injection, topical, buccal, suppository, mucosal, intravenous, interosseous, nebulization, and intrathecal.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER O. MANUFACTURING

19 TAC §§127.824, 127.828 - 127.830

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to develop by rule and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to ensure by rule that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a) and (b-17).

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33

The Texas State Board of Pharmacy adopts amendments to §291.33, concerning Operational Standards. These amendments are adopted without changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8463). The rule will not be republished.

The amendments allow for written information reinforcing patient counseling to be provided electronically unless requested in a hard-copy format and remove the requirement to document the request.

The Board received comments from the Texas Association of Health Plans in support of the amendments.

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

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

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

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Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
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Proposal publication date: December 26, 2025
For further information, please call: (512) 305-8084

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SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy adopts amendments to §291.104, concerning Operational Standards. These amendments are adopted without changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8474). The rule will not be republished.

The amendments allow for written information reinforcing patient counseling to be provided electronically unless requested in a hard-copy format and remove the requirement to document the request.

The Board received comments from the Texas Association of Health Plans in support of the amendments.

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

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

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

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy adopts amendments to §291.133, concerning Pharmacies Compounding Sterile Preparations. These amendments are adopted with changes to the proposed text as published in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6416). The rule will be republished.

The amendments update the personnel, environment, compounding process, cleaning and disinfecting, beyond-use dating, cleansing and garbing, environmental testing, sterility testing, recall procedure, and recordkeeping requirements for pharmacies compounding sterile preparations.

The Board received comments from the Alliance for Pharmacy Compounding expressing concern that there may be a conflict between the beyond-use date section and the sterility testing section concerning the testing required for batches of less than 24 units and suggesting the Board require sterility and endotoxin testing for all Category 3 preparations regardless of batch size or, if the Board retains the exception for bathes of less than 24 units, limit beyond-use dates for untested aqueous preparations to USP-consistent durations as described in Category 2. The commentor also incorporated by reference its previous comments expressing support for some of the amendments, suggesting adoption of USP standards for sterility testing for batches of up to 250 units, revisions to certain definitions and the component selection requirements, clarification of the beyond-use date documentation required for a nonaqueous Category 3 preparation and the gloving procedures, removal of outdated references to a buffer room that is not physically separated from the anteroom, requiring sterile one-step disinfectants and filter integrity testing on each filter if multiple filters are required, and allowing pharmacies to determine their maximum batch sizes and beyond-use dates and make copies of commercially available drug products that are not reasonably available, and expressing concern about the lack of a requirement for pharmacies that compound Category 3 preparations to perform medial-fill testing conducted under the most challenging or stressful conditions.

The Board received comments from Brad Jordan, Ph.D., with Eli Lilly supporting some of the amendments, expressing concern that certain amendments may conflict with federal law, and suggesting removal of language allowing batches up to 1,000 units when using automated systems, bulk drug substances identified in British, European, or Japanese pharmacopeias, or drug components from unregistered API manufacturers, amending the definition of "not commercially available" to mirror the federal shortage list, and avoiding departures from the USP general chapters.

The Board received comments from Deeb Eid, R.Ph., with Empower Pharmacy, suggesting the Board send the rule back to the Compounding Rules Advisory Group - Sterile Subcommittee for further evaluation of proposed changes, expressing concern that limits on maximum batch sizes or beyond-use dates may introduce more risk of contamination from increased human activity in sterile areas, recommending removal of limits on maximum batch sizes or alternatively, specifying that the limits apply to manual compounding only, and allowing all Category 3 preparations to have a beyond-use date of up to 365 days when validated by stability, sterility, and other appropriate testing and stored under appropriate conditions.

The Board received comments from Stephen Snow with Bendin Sumrall & Ladner, LLC expressing concern that the estimated costs are stated as unit costs (e.g., per formulation) rather than as annualized total costs based on the volume and practices of an average pharmacy, providing an alternative estimate of costs based on the number of annual units estimated by four surveyed pharmacies, and asserting the amendments will result in higher costs that may cause independent pharmacies to go out of business or pass on the costs to patients.

The Board received comments from Jasper Lovoi, R.Ph., with The Woodlands Compounding Pharmacy supporting the beyond-use date exception for batch sizes less than 24 final yield units, expressing concern that the estimated cost of the preliminary testing requirements does not account for the number of formulations that will have to be tested, the increased cost of antimicrobial effectiveness testing requirements for multiple-dose compounded sterile preparations, and the beyond-use dating requirements do not allow pharmacists to use specific documentation or literature, and suggesting removal of the exception for radiopharmaceuticals to the temperature requirements for the clean room and compounding aseptic containment isolator and combining the beyond-use dating for aseptically processed and terminally sterilized Category 3 preparations using the dating for terminally sterilization.

The Board received comments from Jim Hrncir, R.Ph., with Las Colinas Pharmacy Compounding & Wellness expressing concern that the amendments will reduce patient access to compounded medications by increasing compliance costs, recommending that the clean room temperature requirements be suggestive instead of mandatory and allow for excursions in temperature or humidity of 26 degrees Celsius and 70% humidity lasting no longer than 24 hours, and suggesting the term "terminal sterilization" include 0.22 micron membrane filtration coupled with bubble testing and analytical lab sterilization and be subject to the Category 3 beyond-use dating as autoclave sterilization.

The Board received comments from John Daniel, R.Ph., suggesting revision to the definitions of "hazardous drugs" and "reasonable quantity," recommending that "sterile sampling media devices" includes validated in-house sterile media preparations, gloved fingertip and thumb re-qualification after a failed test requires three consecutive successful tests, and primary engineering controls for Category 2 or 3 compounded sterile preparations may not be placed in a segregated compounding area, and requesting clarification of when alternative stability data may extend beyond-use dates and the minimum retention period for environmental and sterility records.

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

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

§291.133. Pharmacies Compounding Sterile Preparations.

(a) Purpose. Pharmacies compounding sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A-S, Class B, Class C-S, and Class E-S pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded sterile preparation in Class A-S, Class B, Class C-S, and Class E-S pharmacies to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded sterile preparations by a Class A-S pharmacy for a Class C-S pharmacy; and

(4) compounding of sterile preparations by a Class C-S pharmacy and the distribution of the compounded preparations to other Class C or Class C-S pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) Classification Air Cleanliness (ISO 14644-1). For example:

(A) ISO Class 5 (formerly Class 100) is an atmospheric environment that contains less than 3,520 particles 0.5 microns and larger in diameter per cubic meter of air (formerly stated as 100 particles 0.5 microns in diameter per cubic foot of air);

(B) ISO Class 7 (formerly Class 10,000) is an atmospheric environment that contains less than 352,000 particles 0.5 microns and larger in diameter per cubic meter of air (formerly stated as 10,000 particles 0.5 microns in diameter per cubic foot of air); and

(C) ISO Class 8 (formerly Class 100,000) is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns and larger in diameter per cubic meter of air (formerly stated as 100,000 particles 0.5 microns in diameter per cubic foot of air).

(3) Ancillary supplies--Supplies necessary for the preparation and administration of compounded sterile preparations.

(4) Anteroom--An ISO Class 8 or cleaner room with fixed walls and doors where personnel hand hygiene, garbing procedures, and other activities that generate high particulate levels may be performed. The anteroom is the transition room between the unclassified area of the pharmacy and the buffer room.

(5) Aseptic processing--A mode of processing pharmaceutical and medical preparations that involves the separate sterilization of the preparation and of the package (containers-closures or packaging material for medical devices) and the transfer of the preparation into the container and its closure under at least ISO Class 5 conditions.

(6) Automated compounding device--An automated device that compounds, measures, and/or packages a specified quantity of individual components in a predetermined sequence for a designated sterile preparation.

(7) Batch--A specific quantity of a drug or other material that is intended to have uniform character and quality, within specified limits, and is produced during a single preparation cycle.

(8) Batch preparation compounding--Compounding of multiple sterile preparation units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch preparation/compounding does not include the preparation of multiple sterile preparation units pursuant to patient specific medication orders.

(9) Beyond-use date--The date, or hour and the date, after which a compounded sterile preparation shall not be used, stored, or transported. The date is determined from the date and time the preparation is compounded.

(10) Biological safety cabinet, Class II--A ventilated cabinet for personnel, product or preparation, and environmental protection having an open front with inward airflow for personnel protection, downward HEPA filtered laminar airflow for product protection, and HEPA filtered exhausted air for environmental protection.

(11) Buffer room--An ISO Class 7 or cleaner or, if a Class B pharmacy, an ISO Class 8 or cleaner, room with fixed walls and doors where primary engineering controls that generate and maintain an ISO Class 5 environment are physically located. The buffer room may only be accessed through the anteroom or another buffer room.

(12) Clean room--A room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

(13) Cleaning agent--An agent, usually containing a surfactant, used for the removal of substances (e.g., dirt, debris, microbes, residual drugs or chemicals) from surfaces.

(14) Cleanroom suite--A classified area that consists of both an anteroom and buffer room.

(15) Component--Any ingredient used in the compounding of a preparation, including any active ingredient, added substance, or conventionally manufactured product.

(16) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(17) Compounding aseptic isolator--A form of barrier isolator specifically designed for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment shall not occur unless it has first passed through a microbial retentive filter (HEPA minimum).

(18) Compounding aseptic containment isolator--A compounding aseptic isolator designed to provide worker protection from exposure to undesirable levels of airborne drug throughout the compounding and material transfer processes and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

(19) Compounding personnel--A pharmacist, pharmacy technician, or pharmacy technician trainee who performs the actual compounding; a pharmacist who supervises pharmacy technicians or pharmacy technician trainees compounding sterile preparations, and a pharmacist who performs an intermediate or final verification of a compounded sterile preparation.

(20) Critical area--An ISO Class 5 environment.

(21) Critical sites--A location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial and particulate contamination of the critical site increases with the size of the openings and exposure time.

(22) Device--An instrument, apparatus, implement, machine, contrivance, implant, in-vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(23) Direct compounding area--A critical area within the ISO Class 5 primary engineering control where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

(24) Disinfectant--An agent that frees from infection, usually a chemical agent but sometimes a physical one, and that destroys disease-causing pathogens or other harmful microorganisms but may not kill bacterial and fungal spores. It refers to substances applied to inanimate objects.

(25) First air--The air exiting the HEPA filter in a unidirectional air stream that is essentially particle free.

(26) Hazardous drugs--Drugs that, studies in animals or humans indicate exposure to the drugs, have a potential for causing cancer, development or reproductive toxicity, or harm to organs. For the purposes of this chapter, radiopharmaceuticals are not considered hazardous drugs.

(27) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(28) HVAC--Heating, ventilation, and air conditioning.

(29) Immediate use--A sterile preparation that is not prepared according to USP 797 standards (i.e., outside the pharmacy and most likely not by pharmacy personnel) which shall be stored for no longer than four hours following the start of preparing the preparation.

(30) IPA--Isopropyl alcohol (2-propanol).

(31) Labeling--All labels and other written, printed, or graphic matter on an immediate container of an article or preparation or on, or in, any package or wrapper in which it is enclosed, except any outer shipping container. The term "label" designates that part of the labeling on the immediate container.

(32) Master formulation record--A detailed record of procedures that describes how the compounded sterile preparation is to be prepared.

(33) Media-fill test--A test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as Soybean-Casein Digest Medium is substituted for the actual drug preparation to simulate admixture compounding. The issues to consider in the development of a media-fill test are the following: media-fill procedures, media selection, fill volume, incubation, time and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

(34) Multiple-dose container--A multiple-unit container for articles or preparations intended for parenteral administration only

and usually contains antimicrobial preservatives. The beyond-use date for an opened or entered (e.g., needle-punctured) multiple-dose container with antimicrobial preservatives is 28 days, unless otherwise specified by the manufacturer.

(35) Negative pressure room--A room that is at a lower pressure compared to adjacent spaces and, therefore, the net flow of air is into the room.

(36) Office use--The administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 562 of the Act, or for administration or provision by a veterinarian in accordance with §563.054 of the Act.

(37) Pharmacy bulk package--A container of a sterile preparation for potential use that contains many single doses. The contents are intended for use in a pharmacy admixture program and are restricted to the preparation of admixtures for infusion or, through a sterile transfer device, for the filling of empty sterile syringes. The closure shall be penetrated only one time after constitution with a suitable sterile transfer device or dispensing set, which allows measured dispensing of the contents. The pharmacy bulk package is to be used only in a suitable work area such as a laminar flow hood (or an equivalent clean air compounding area).

(38) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple-dose container for distribution within a pharmacy licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those pharmacies. The term as defined does not prohibit the prepackaging of drug products for use within other pharmacy classes.

(39) Preparation or compounded sterile preparation--A sterile admixture compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber. The components of the preparation may or may not be sterile products.

(40) Primary engineering control--A device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding sterile preparations. Such devices include, but may not be limited to, laminar airflow workbenches, biological safety cabinets, compounding aseptic isolators, and compounding aseptic containment isolators.

(41) Product--A commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the U.S. Food and Drug Administration (FDA). Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

(42) Positive control--A quality assurance sample prepared to test positive for microbial growth.

(43) Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile drug preparations lead to preparations that meet predetermined standards of quality.

(44) Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final compounded sterile preparations prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(45) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond-use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopeia guidelines and accreditation practices.

(46) Restricted-access barrier system--An enclosure that provides HEPA-filtered ISO Class 5 unidirectional air that allows for the ingress and/or egress of materials through defined openings that have been designed and validated to preclude the transfer of contamination, and that generally are not to be opened during operations.

(47) Segregated compounding area--A designated space, area, or room that is not required to be classified and is defined with a visible perimeter. The segregated compounding area shall contain a PEC and is suitable for preparation of Category 1 compounded sterile preparations only.

(48) Single-dose container--A single-unit container for articles or preparations intended for parenteral administration only. It is intended for a single use. A single-dose container is labeled as such. Examples of single-dose containers include pre-filled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

(49) SOPs--Standard operating procedures.

(50) Sterilizing grade membranes--Membranes that are documented to retain 100% of a culture of 10^7 microorganisms of a strain of Brevundimonas (Pseudomonas) diminuta per square centimeter of membrane surface under a pressure of not less than 30 psi (2.0 bar). Such filter membranes are nominally at 0.22-micron or 0.2 micron nominal pore size, depending on the manufacturer's practice.

(51) Sterilization by filtration--Passage of a fluid or solution through a sterilizing grade membrane to produce a sterile filtrate.

(52) Terminal sterilization--The application of a lethal process, e.g., steam under pressure or autoclaving, to sealed final preparation containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10^-6 or a probability of less than one in one million of a non-sterile unit.

(53) Unidirectional airflow--An airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(54) USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. The pharmacy shall have a pharmacist-in-charge in compliance with the specific license classification of the pharmacy.

(B) Responsibilities. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning the compounding of sterile preparations:

(i) developing a system to ensure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile preparations within the pharmacy receive appropriate education and training and competency evaluation;

(ii) determining that all personnel involved in compounding sterile preparations obtain continuing education appropriate for the type of compounding done by the personnel;

(iii) supervising a system to ensure appropriate procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of sterile preparations, and drug delivery devices;

(iv) ensuring that the equipment used in compounding is properly maintained;

(v) developing a system for the disposal and distribution of drugs from the pharmacy;

(vi) developing a system for bulk compounding or batch preparation of drugs;

(vii) developing a system for the compounding, sterility assurance, quality assurance, and quality control of sterile preparations; and

(viii) if applicable, ensuring that the pharmacy has a system to dispose of hazardous waste in a manner so as not to endanger the public health.

(2) Pharmacists.

(A) General.

(i) A pharmacist is responsible for ensuring that compounded sterile preparations are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed.

(ii) A pharmacist shall inspect and approve all components, drug preparation containers, closures, labeling, and any other materials involved in the compounding process.

(iii) A pharmacist shall review all compounding records for accuracy and conduct periodic in-process checks as defined in the pharmacy's policy and procedures.

(iv) A pharmacist shall review all compounding records for accuracy and conduct a final check.

(v) A pharmacist is responsible for ensuring the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(vi) A pharmacist shall be accessible at all times, 24 hours a day, to respond to patients' and other health professionals' questions and needs.

(B) Initial training and continuing education.

(i) All pharmacists who compound sterile preparations or supervise pharmacy technicians and pharmacy technician trainees compounding sterile preparations shall comply with the following:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE accredited provider;

(II) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the pharmacy's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(III) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph shall be supervised by an individual who is actively engaged in performing sterile compounding and is qualified and has completed training as specified in this paragraph or paragraph (3) of this subsection.

(iii) In order to renew a license to practice pharmacy, during the previous licensure period, a pharmacist engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding Category 1 or Category 2 compounded sterile preparations; or

(II) four hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding Category 2 prepared from any non-sterile starting component or Category 3 compounded sterile preparations.

(3) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Initial training and continuing education.

(i) Pharmacy technicians and pharmacy technician trainees may compound sterile preparations provided the pharmacy technicians and/or pharmacy technician trainees are supervised by a pharmacist as specified in paragraph (2) of this subsection.

(ii) All pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall:

(I) have initial training obtained either through completion of:

(-a-) a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience; or

(-b-) a training program which is accredited by the American Society of Health-System Pharmacists.

(II) and

(-a-) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides

sufficient hours of instruction and experience in the pharmacy's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(-b-) possess knowledge about:

(-1-) aseptic processing;

(-2-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-3-) chemical, pharmaceutical, and clinical properties of drugs;

(-4-) container, equipment, and closure system selection; and

(-5-) sterilization techniques.

(iii) Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided the:

(I) compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(II) individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection;

(III) supervising pharmacist conducts periodic in-process checks as defined in the pharmacy's policy and procedures; and

(IV) supervising pharmacist conducts a final check.

(iv) The required experiential portion of the training programs specified in this subparagraph shall be supervised by an individual who is actively engaged in performing sterile compounding, is qualified and has completed training as specified in paragraph (2) of this subsection or this paragraph.

(v) In order to renew a registration as a pharmacy technician, during the previous registration period, a pharmacy technician engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacy technician is engaged in compounding Category 1 or Category 2 compounded sterile preparations; or

(II) four hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacy technician is engaged in compounding Category 2 prepared from any non-sterile starting component or Category 3 compounded sterile preparations.

(4) Evaluation and testing requirements.

(A) All persons who perform or oversee compounding or support activities shall be trained in the pharmacy's SOPs. All pharmacy personnel preparing sterile preparations shall be trained conscientiously and skillfully by expert personnel through multimedia instructional sources and professional publications in the theoretical principles and practical skills of aseptic manipulations, garbing procedures, aseptic work practices, achieving and maintaining ISO Class 5 environmental conditions, and cleaning and disinfection procedures before beginning to prepare compounded sterile preparations.

(B) All pharmacy personnel preparing sterile preparations shall perform didactic review and pass written testing of aseptic manipulative skills initially and every 12 months.

(C) Pharmacy personnel who fail written tests or whose media-fill tests result in gross microbial colonization shall:

(i) be immediately re-instructed and re-evaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies; and

(ii) not be allowed to compound sterile preparations for patient use until passing results are achieved.

(D) The didactic and experiential training shall include instruction, experience, and demonstrated proficiency in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) structure and engineering controls related to facilities;

(v) equipment and supplies;

(vi) sterile preparation calculations and terminology;

(vii) sterile preparation compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures including proper gowning and gloving technique;

(x) handling of hazardous drugs, if applicable;

(xi) cleaning procedures; and

(xii) general conduct in the clean room.

(E) The aseptic technique of all compounding personnel and personnel who have direct oversight of compounding personnel but do not compound shall be observed and evaluated by expert personnel as satisfactory through written and practical tests, and media-fill testing, and such evaluation documented. Compounding personnel shall not evaluate their own aseptic technique or results of their own media-fill testing. The pharmacy's SOPs shall define the aseptic technique evaluation for personnel who do not compound nor have direct oversight of compounding personnel such as personnel who restock or clean and disinfect the sterile compounding area, personnel who perform in-process checks or final verification of compounded sterile preparations, and others (e.g., maintenance personnel, certifiers, contractors, inspectors, surveyors).

(F) Media-fill tests shall be conducted at each pharmacy where an individual compounds sterile preparations under the most challenging or stressful conditions. If pharmacies are under common ownership and control, the media-fill testing may be conducted at only one of the pharmacies provided each of the pharmacies are operated under equivalent policies and procedures and the testing is conducted under the most challenging or stressful conditions. In addition, each pharmacy shall maintain documentation of the media-fill test. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the

pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(G) For media-fill testing of compounds using only sterile starting components, the components shall be manipulated in a manner that simulates sterile-to-sterile compounding activities. The sterile soybean-casein digest media shall be transferred into the same types of container closure systems commonly used at the pharmacy.

(H) For media-fill testing of compounds using any non-sterile starting components, a commercially available non-sterile soybean-casein digest powder shall be dissolved in non-bacteriostatic water to make a 3.0% non-sterile solution. The components shall be manipulated in a manner that simulates non-sterile-to-sterile compounding activities. At least one container shall be prepared as the positive control to demonstrate growth promotion, as indicated by visible turbidity upon incubation.

(I) Final containers shall be incubated in an incubator at 20 to 25 degrees Celsius and 30 to 35 degrees Celsius for a minimum of 7 days at each temperature band to detect a broad spectrum of microorganisms. The order of the incubation temperatures shall be described in the pharmacy's SOPs. Failure is indicated by visible turbidity or other visual manifestations of growth in the media in one or more container closure unit(s) on or before the end of the incubation period.

(J) The pharmacist-in-charge shall ensure continuing competency of pharmacy personnel through in-service education, training, and media-fill tests to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least every 12 months, with the exception of media-fill testing which shall be completed every six months for compounding personnel.

(K) The pharmacist-in-charge shall ensure that proper hand hygiene and garbing practices of all compounding personnel and personnel who have direct oversight of compounding personnel but do not compound are evaluated prior to compounding, supervising, or verifying sterile preparations intended for patient use and whenever an aseptic media-fill is performed.

(i) Gloved fingertip sampling shall be performed for all compounding personnel and personnel who have direct oversight of compounding personnel but do not compound. If pharmacies are under common ownership and control, the gloved fingertip and thumb sampling may be conducted at only one of the pharmacies provided each of the pharmacies are operated under equivalent policies and procedures and the testing is conducted under the most challenging or stressful conditions. In addition, each pharmacy shall maintain documentation of the gloved fingertip and thumb sampling.

(ii) All compounding personnel and personnel who have direct oversight of compounding personnel but do not compound shall demonstrate competency in proper hand hygiene and garbing procedures and in aseptic work practices (e.g., disinfection of component surfaces, routine disinfection of gloved hands).

(iii) Sterile sampling media devices shall be used to sample the gloved fingertips of compounding personnel and personnel who have direct oversight of compounding personnel but do not compound after garbing in order to assess garbing competency and after completing the media-fill preparation (without applying sterile 70% IPA).

(iv) The visual observation shall be documented and maintained to provide a permanent record and long-term assessment of personnel competency.

(v) All compounding personnel and personnel who have direct oversight of compounding personnel but do not compound shall successfully complete an initial competency evaluation and gloved fingertip and thumb sampling procedure no less than three times before initially being allowed to compound sterile preparations for patient use. Immediately after the personnel completes the hand hygiene and garbing procedure (i.e., after donning of sterile gloves and before any disinfecting with sterile 70% IPA), the evaluator will collect a gloved fingertip and thumb sample from both hands of the compounding personnel onto contact plates or swabs by having the individual lightly touching each fingertip onto the testing medium. Samples shall be incubated in an incubator. The media device shall be incubated at 30 to 35 degrees Celsius for no less than 48 hours and then at 20 to 25 degrees Celsius for no less than five additional days. Alternatively, to shorten the overall incubation period, two sampling media devices may be incubated concurrently in separate incubators with one media device incubated at 30 to 35 degrees Celsius for no less than 48 hours and the other media device incubated at 20 to 25 degrees Celsius for no less than five days. Media devices shall be handled and stored so as to avoid contamination and prevent condensate from dropping onto the agar during incubation and affecting the accuracy of the cfu reading (e.g., invert containers). Action levels for gloved fingertip and thumb sampling are based on the total cfu count from both hands. Results of the initial gloved fingertip and thumb sampling evaluations after garbing shall indicate not greater than zero colony-forming units (0 cfu) growth on the contact plates or swabs, or the test shall be considered a failure. Results of the initial gloved fingertip evaluations after media-fill testing shall indicate not greater than three colony-forming units (3 cfus) growth on the contact plates or swabs, or the test shall be considered a failure. In the event of a failed gloved fingertip and thumb test, the evaluation shall be repeated until the individual can successfully don sterile gloves and pass the gloved fingertip and thumb sampling evaluation, defined as zero cfus growth. Surface sampling of the direct compounding area shall be performed. No preparation intended for patient use shall be compounded by an individual until the results of the initial gloved fingertip and thumb and surface sampling evaluations indicate that the individual can competently perform aseptic procedures except that a pharmacist may temporarily physically supervise pharmacy technicians compounding sterile preparations before the results of the evaluation have been received for no more than three days from the date of the test.

(vi) Re-evaluation of all compounding personnel shall occur at least every six months. Re-evaluation of personnel who have direct oversight of compounding personnel but do not compound shall occur at least every 12 months. Results of gloved fingertip and thumb tests conducted immediately after compounding personnel complete a compounding procedure shall indicate no more than 3 cfus growth, or the test shall be considered a failure, in which case, the evaluation shall be repeated until an acceptable test can be achieved (i.e., the results indicated no more than 3 cfus growth).

(vii) Personnel who have direct oversight of compounding personnel but do not compound shall complete a garbing competency evaluation every 12 months. The pharmacy's SOPs shall define the garbing competency evaluation for personnel who do not

compound nor have direct oversight of compounding personnel such as personnel who restock or clean and disinfect the sterile compounding area, personnel who perform in-process checks or final verification of compounded sterile preparations, and others (e.g., maintenance personnel, certifiers, contractors, inspectors, surveyors).

(L) The pharmacist-in-charge shall ensure surface sampling shall be conducted in all ISO classified areas on a periodic basis. Sampling shall be accomplished using contact plates or swabs at the conclusion of compounding. The sample area shall be gently touched with the agar surface by rolling the plate across the surface to be sampled.

(i) Each classified area, including each room and the interior of each ISO Class 5 primary engineering control (PEC) and pass-through chambers connecting to classified areas (e.g., equipment contained within the PEC, staging or work area(s) near the PEC, frequently touched areas), shall be sampled for microbial contamination using a risk-based approach.

(ii) For pharmacies compounding Category 1 or Category 2 compounded sterile preparations, surface sampling of all classified areas and pass-through chambers connecting to classified areas shall be conducted at least monthly. For pharmacies compounding any Category 3 compounded sterile preparations, surface sampling of all classified areas and pass-through chambers connecting to classified areas shall be completed prior to assigning a beyond-use-date longer than the limits established for Category 2 compounded sterile preparations and at least weekly on a regularly scheduled basis regardless of the frequency of compounding Category 3 compounded sterile preparations.

(iii) The following action levels for surface sampling apply:

(I) for ISO Class 5, greater than 3 cfus per media device;

(II) for ISO Class 7, greater than 5 cfus per media device; and

(III) for ISO Class 8, greater than 50 cfus per media device.

(iv) If levels measured during surface sampling exceed the levels in clause (iii) of this subparagraph for the ISO classification levels of the area sampled, the cause shall be investigated and corrective action shall be taken. Data collected in response to corrective actions shall be reviewed to confirm that the actions taken have been effective. The corrective action plan shall be dependent on the cfu count and the microorganism recovered. The corrective action plan shall be documented. If levels measured during surface sampling exceed the levels in clause (iii) of this subparagraph, an attempt shall be made to identify any microorganism recovered to the genus level with the assistance of a competent microbiologist.

(M) Personnel who only perform restocking or cleaning and disinfecting duties outside of the primary engineering control shall complete ongoing training as required by the pharmacy's SOPs.

(5) Documentation of training. The pharmacy shall maintain a record of the training and continuing education on each person who compounds sterile preparations. The record shall contain, at a minimum, a written record of initial and in-service training, education, and the results of written and practical testing and media-fill testing of pharmacy personnel. The record shall be maintained and available for inspection by the board and contain the following information:

(A) name of the person receiving the training or completing the testing or media-fill tests;

(B) date(s) of the training, testing, or media-fill testing;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or media-fill testing; and

(E) signature or initials of the person receiving the training or completing the testing or media-fill testing and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or media-fill testing of personnel.

(d) Operational standards.

(1) General requirements.

(A) Sterile preparations may be compounded:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Sterile compounding in anticipation of future prescription drug or medication orders shall be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time. The maximum batch size for all preparations requiring sterility testing shall be limited to 250 final yield units, except the maximum batch size shall be limited to 1,000 final yield units for preparations fully packaged using an automated compounding device (e.g., repeater pump).

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (8)(J) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time shall be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (8)(J) of this subsection;

(IV) quantity or amount in the container;

(V) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(VI) device-specific instructions, where appropriate.

(C) Commercially available products may be compounded for dispensing to individual patients or for office use provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet individual patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the individual patient needs the particular strength or dosage form of the preparation or why the preparation for office use is needed in the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g., the physician requests an alternate preparation due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product shall be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation shall be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription drug or medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide sterile prescription compounding services, which may include specific drug preparations and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) Compounded sterile preparations, including hazardous drugs and radiopharmaceuticals, shall be prepared only under conditions that protect the pharmacy personnel in the preparation and storage areas.

(2) Compounded sterile preparation categories. Category 1, Category 2, and Category 3 are primarily based on the state of environmental control under which they are compounded, the probability for microbial growth during the time they will be stored, and the time period within which they must be used.

(A) A Category 1 compounded sterile preparation is a compounded sterile preparation that is assigned a beyond-use date in accordance with paragraph (8)(J)(ii)(I) of this subsection and all applicable requirements of this section for Category 1 compounded sterile preparations.

(B) A Category 2 compounded sterile preparation is a compounded sterile preparation that is assigned a beyond-use date in accordance with paragraph (8)(J)(ii)(II) of this subsection and all applicable requirements of this section for Category 2 compounded sterile preparations.

(C) A Category 3 compounded sterile preparation is a compounded sterile preparation that is assigned a beyond-use date in accordance with paragraph (8)(J)(ii)(III) of this subsection and all applicable requirements of this section for Category 3 compounded sterile preparations.

(3) Depyrogenation. Dry heat depyrogenation shall be used to render glassware, metal, and other thermostable containers and components pyrogen free. The duration of the exposure period shall include sufficient time for the items to reach the depyrogenation temperature. The items shall remain at the depyrogenation temperature for the duration of the depyrogenation period. The effectiveness of the dry heat depyrogenation cycle shall be established initially and verified annually using endotoxin challenge vials to demonstrate that the cycle is capable of achieving a greater than or equal to 3-log reduction in endotoxins. The effectiveness of the depyrogenation cycle shall be re-established if there are changes to the depyrogenation cycle described in the pharmacy's SOPs (e.g., changes in load conditions, duration, or temperature). This verification shall be documented.

(4) Immediate use compounded sterile preparations. When all of the following conditions are met, compounding of compounded sterile preparations for direct and immediate administration is not subject to the requirements for Category 1, Category 2, or Category 3 compounded sterile preparations:

(A) Only simple aseptic measuring and transfer manipulations are performed with not more than three different sterile drug products, including an infusion or diluent solution, from the manufacturers' original containers and not more than two entries into any one container or package of sterile infusion solution or administration container/device;

(B) Unless required for the preparation, the compounding procedure occurs continuously without delays or interruptions and does not exceed 1 hour;

(C) During preparation, aseptic technique is followed and, if not immediately administered, the finished compounded sterile preparation is under continuous supervision to minimize the potential for contact with nonsterile surfaces, introduction of particulate matter of biological fluids, mix-ups with other compounded sterile preparations, and direct contact with outside surfaces;

(D) Administration begins not later than four hours following the start of preparing the compounded sterile preparation;

(E) When the compounded sterile preparation is not administered by the person who prepared it, or its administration is not witnessed by the person who prepared it, the compounded sterile preparation shall bear a label listing patient identification information such as name and identification number(s), the names and amounts of all ingredients, the name or initials of the person who prepared the compounded sterile preparation, and the exact 4-hour beyond-use time and date;

(F) If administration has not begun within four hours following the completion of preparing the compounded sterile preparation, the compounded sterile preparation is promptly and safely discarded. Immediate use compounded sterile preparations shall not be stored for later use;

(G) Hazardous drugs shall not be prepared as immediate use compounded sterile preparations; and

(H) Personnel are trained and demonstrate competency in aseptic processes as they relate to assigned tasks and the pharmacy's SOPs.

(5) Single-dose and multiple-dose containers.

(A) Opened or needle punctured single-dose containers, such as bags bottles, syringes, and vials of sterile products shall be used within one hour if opened in worse than ISO Class 5 air quality. Any remaining contents shall be discarded.

(B) If a single-dose vial is entered or punctured only in ISO Class 5 or cleaner air, it may be used up to 12 hours after initial entry or puncture as long as the labeled storage requirements during that 12 hour period are maintained.

(C) Open single-dose ampules shall not be stored for any time period.

(D) Once initially entering or puncturing a multiple-dose container, the multiple-dose container shall not be used for more than 28 days unless otherwise specified by the manufacturer on the labeling.

(E) Conventionally manufactured pharmacy bulk packages shall be restricted to the sterile preparation of admixtures for infusion or, through a sterile transfer device, for the filling of empty sterile containers. The pharmacy bulk package shall be used according to the manufacturer's labeling and entered or punctured only in an ISO Class 5 primary engineering control.

(F) Multiple-dose compounded sterile preparations shall meet the criteria for antimicrobial effectiveness testing and the requirements of subparagraph (G) of this paragraph. Multiple-dose compounded sterile preparations shall be stored under conditions upon which the beyond-use date is based (e.g., refrigerator or controlled room temperature). After a multiple-dose compounded sterile preparation is initially entered or punctured, the multiple-dose compounded sterile preparation shall not be used for longer than the assigned beyond-use date or 28 days, whichever is shorter.

(G) A multiple-dose compounded sterile preparation shall be prepared as a Category 2 or Category 3 compounded sterile preparation. An aqueous multiple-dose compounded sterile preparation shall additionally pass antimicrobial effectiveness testing. In the absence of supporting documentation or data in a USP/NF monograph, manufacturer's data, or previously conducted or contracted for testing, compounding personnel may rely on antimicrobial effectiveness testing conducted or contracted for in the particular container closure system in which it will be packaged.

(H) In the absence of container closure data, the container closure system used to package the multiple-dose compounded sterile preparation shall be evaluated for and conform to container closure integrity. The container closure integrity test shall be conducted only once in the particular container closure system in which the multiple-dose compounded sterile preparation shall be packaged.

(I) Multiple-dose, nonpreserved, aqueous topical, and topical ophthalmic compounded sterile preparations. Antimicrobial effectiveness testing under subparagraph (G) of this paragraph is not required if the preparation is prepared as a Category 2 or Category 3 compounded sterile preparation, for use by a single patient, and labeled to indicate that once opened, it shall be discarded after 24 hours when stored at controlled room temperature, 72 hours when stored under refrigeration, or 90 days when frozen if based on documented published stability and effectiveness data.

(J) When a single-dose compounded sterile preparation or compounded sterile preparation stock solution is used as a component to compound additional compounded sterile preparations, the original single-dose compounded sterile preparation or compounded sterile preparation stock solution shall be entered or punctured in ISO Class 5 or cleaner air and stored under the conditions upon which its beyond-use date is based (e.g., refrigerator or controlled room temperature). The component compounded sterile preparation may be used for sterile compounding for up to 12 hours once accessed or its assigned beyond-use date, whichever is shorter, and any remainder shall be discarded.

(6) Proprietary bag and vial systems. Docking and activation of proprietary bag and vial systems in accordance with the manufacturer's labeling for immediate administration to an individual patient is not considered compounding and may be performed outside of an ISO Class 5 environment. Docking of the proprietary bag and vial system for future activation and administration is considered compounding and shall be performed in an ISO Class 5 environment. Beyond-use dates for proprietary bag and vial systems shall not be longer than those specified in the manufacturer's labeling.

(7) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain current or updated copies in hard-copy or electronic format of each of the following:

(A) a reference text on injectable drug preparations, such as Handbook on Injectable Drug Products;

(B) a specialty reference text appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares hazardous drugs, a reference text on the preparation of hazardous drugs;

(C) the United States Pharmacopeia/National Formulary containing USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding--Nonsterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding; and

(D) any additional USP/NF chapters applicable to the practice of the pharmacy (e.g., USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses).

(8) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination from contacting critical sites.

(A) Air exchange requirements. For cleanroom suites, adequate HEPA-filtered airflow to the buffer room(s) and anteroom(s) is required to maintain appropriate ISO classification during compounding activities. Airflow is measured in terms of the number of air changes per hour (ACPH).

(i) Unclassified sterile compounding area. No requirement for ACPH.

(ii) ISO Class 7 room(s). A minimum of 30 total HEPA-filtered ACPH shall be supplied to ISO Class 7 rooms. At least 15 ACPH of the total air change rate in a room shall come from the HVAC through HEPA filters located in the ceiling. The ACPH from HVAC, ACPH contributed from the PEC, and the total ACPH shall be documented on the certification report.

(iii) ISO Class 8 room(s). A minimum of 20 total HEPA-filtered ACPH shall be supplied to ISO Class 8 rooms. At least 15 ACPH of the total air change rate in a room shall come from the

HVAC through HEPA filters located in the ceiling. The total ACPH shall be documented on the certification report.

(B) Cleanroom suite. Seals and sweeps should not be installed at doors between buffer rooms and anterooms. Access doors should be hands-free. Tacky mats shall not be placed within ISO-classified areas.

(C) Category 1 and Category 2 preparations. A pharmacy that prepares Category 1 compounded sterile preparations outside of a segregated compounding area or Category 2 compounded sterile preparations shall have a clean room for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room shall:

(i) be clean, well lit, and of sufficient size to support sterile compounding activities;

(ii) be maintained at a temperature of 20 degrees Celsius or cooler, except that a clean room for the compounding of sterile radiopharmaceuticals shall be maintained at a temperature of 25 degrees Celsius or cooler, and at a humidity of 60% or below, with excursions in temperature or humidity of no more than 10% and lasting no longer than 30 minutes;

(iii) be used only for the compounding of sterile preparations;

(iv) be designed such that hand sanitizing and gowning occurs outside the buffer room but allows hands-free access by compounding personnel to the buffer room;

(v) have non-porous and washable floors or floor covering to enable regular disinfection;

(vi) be ventilated in a manner to avoid disruption from the HVAC system and room cross-drafts;

(vii) have walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices (e.g., coved), non-shedding and resistant to damage by disinfectant agents;

(viii) have junctures of ceilings to walls coved or caulked to avoid cracks and crevices;

(ix) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(x) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the clean room. A Class B pharmacy may use low-linting absorbent materials in the primary engineering control device;

(xi) contain an anteroom that contains a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination. A Class B pharmacy may have a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing immediately outside the anteroom if antiseptic hand cleansing is performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations once inside the anteroom; and

(xii) contain a buffer room. The buffer room shall not contain sources of water (i.e., sinks) or floor drains other than distilled or sterile water introduced for facilitating the use of heat block wells for radiopharmaceuticals.

(D) Category 2 prepared from any non-sterile starting component and Category 3 preparations.

(i) In addition to the requirements in subparagraph (C) of this paragraph, when Category 2 prepared from any non-sterile starting component or Category 3 compounded sterile preparations are compounded, the primary engineering control shall be located in a buffer room that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 inches water column.

(ii) Presterilization procedures for Category 2 prepared from any non-sterile starting component or Category 3 compounded sterile preparations, such as weighing and mixing, shall be completed in no worse than an ISO Class 8 environment using depyrogenated equipment.

(E) Automated compounding device.

(i) General. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a daily basis, based on the manufacturer's recommendations, and review the results at least weekly.

(ii) Loading bulk drugs into automated compounding devices.

(I) Automated compounding devices may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of an automated compounding device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(III) Records of loading bulk drugs into an automated compounding device shall be maintained to show:

(-a-) name of the drug, strength, and dosage form;

(-b-) manufacturer or distributor;

(-c-) manufacturer's lot number;

(-d-) manufacturer's expiration date;

(-e-) quantity added to the automated compounding device;

(-f-) date of loading;

(-g-) name, initials, or electronic signature of the person loading the automated compounding device; and

(-h-) name, initials, or electronic signature of the responsible pharmacist.

(IV) The automated compounding device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in subclause (III) of this clause.

(F) Hazardous drugs. If the preparation is hazardous, the following is also applicable:

(i) Hazardous drugs shall be prepared only under conditions that protect personnel during preparation and storage;

(ii) Hazardous drugs shall be stored separately from other inventory in a manner to prevent contamination and personnel exposure;

(iii) All personnel involved in the compounding of hazardous drugs shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving at all times when handling

hazardous drugs, including receiving, distribution, stocking, inventorying, preparation, for administration and disposal;

(iv) Appropriate safety and containment techniques for compounding hazardous drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations;

(v) Disposal of hazardous waste shall comply with all applicable local, state, and federal requirements;

(vi) Prepared doses of hazardous drugs shall be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with hazardous agents.

(G) Blood-labeling procedures. When compounding activities require the manipulation of a patient's blood-derived material (e.g., radiolabeling a patient's or donor's white blood cells), the manipulations shall be performed in an ISO Class 5 biological safety cabinet located in a buffer room and shall be clearly separated from routine material-handling procedures and equipment used in preparation activities to avoid any cross-contamination. The preparations shall not require sterilization.

(H) Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequencies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer rooms, anterooms, and segregated compounding areas.

(i) The pharmacist-in-charge is responsible for developing written standard operating procedures (SOPs) for cleaning and disinfecting the direct and contiguous compounding areas and assuring the procedures are followed.

(ii) In a PEC, sterile 70% IPA shall be applied after cleaning and disinfecting, or after the application of a one-step disinfectant cleaner or sporicidal disinfectant, to remove any residue. Sterile 70% IPA shall also be applied immediately before initiating compounding. During the compounding process sterile 70% IPA shall be applied to the horizontal work surface, including any removable work trays, of the PEC at least every 30 minutes if the compounding process takes 30 minutes or less. If the compounding process takes more than 30 minutes, compounding shall not be disrupted and the work surface of the PEC shall be disinfected immediately after compounding.

(iii) Surfaces shall be cleaned prior to being disinfected unless a one-step disinfectant cleaner is used to accomplish both the cleaning and disinfection in one step. The manufacturer's directions or published data for the minimum contact time shall be followed for each of the cleaning, disinfecting, and sporicidal disinfectants used. When sterile 70% IPA is used, it shall be allowed to dry. In a Class B pharmacy, objects used in preparing sterile radiopharmaceuticals (e.g., dose calibrator) which cannot be reasonably removed from the compounding area shall be sterilized with an application of a residue-free disinfection agent.

(iv) Surfaces in classified areas used to prepare Category 1, Category 2, and Category 3 compounded sterile preparations shall be cleaned, disinfected, and sporicidal disinfectants applied in accordance with the following:

(I) PEC(s) and equipment inside PEC(s).

(-a-) Equipment and all interior surfaces of the PEC shall be cleaned daily on days when compounding occurs and when surface contamination is known or suspected. Equipment and all interior surfaces of the PEC shall be disinfected on days when compounding occurs and when surface contamination is known or suspected. Sporicidal disinfectants shall be applied monthly for pharmacies compounding Category 1 or Category 2 compounded sterile preparations and weekly for pharmacies compounding Category 3 compounded sterile preparations.

(-b-) Cleaning and disinfecting agents, with the exception of sporicidal disinfectants, used within the PEC shall be sterile. When diluting concentrated cleaning and disinfecting agents for use in the PEC, sterile water shall be used.

(II) Removable work tray of the PEC, when applicable. Work surfaces of the tray shall be cleaned daily on days when compounding occurs and all surfaces and the area underneath the work tray shall be cleaned monthly. Work surfaces of the tray shall be disinfected on days when compounding occurs and all surfaces and the area underneath the work tray shall be disinfected monthly. Sporicidal disinfectants shall be applied monthly on work surfaces of the tray, all surfaces, and the area underneath the work tray monthly.

(III) Pass-through chambers. Pass-through chambers shall be cleaned daily on days when compounding occurs and disinfected daily on days when compounding occurs. Sporicidal disinfectants shall be applied monthly for pharmacies compounding Category 1 or Category 2 compounded sterile preparations and weekly for pharmacies compounding Category 3 compounded sterile preparations.

(IV) Work surface(s) outside the PEC. Work surfaces outside the PEC shall be cleaned daily on days when compounding occurs and disinfected daily on days when compounding occurs. Sporicidal disinfectants shall be applied monthly for pharmacies compounding Category 1 or Category 2 compounded sterile preparations and weekly for pharmacies compounding Category 3 compounded sterile preparations.

(V) Floor(s). Floors shall be cleaned daily on days when compounding occurs and disinfected daily on days when compounding occurs. Sporicidal disinfectants shall be applied monthly for pharmacies compounding Category 1 or Category 2 compounded sterile preparations and weekly for pharmacies compounding Category 3 compounded sterile preparations.

(VI) Wall(s), door(s), door frame(s), storage shelving and bin(s), and equipment outside of the PEC(s). Walls, doors, door frames, storage shelving and bins, and equipment outside of the PECs shall be cleaned, disinfected, and sporicidal disinfectants applied on a monthly basis.

(VII) Ceiling(s). Ceilings of the classified areas shall be cleaned, disinfected, and sporicidal disinfectant applied on a monthly basis. Ceilings of the segregated compounding area shall be cleaned, disinfected, and sporicidal disinfectants applied when visibly soiled and when surface contamination is known or suspected.

(v) All cleaning materials, such as wipers, sponges, and mops, shall be non-shedding, and dedicated to use in the buffer room, anteroom, and segregated compounding areas and shall not be removed from these areas except for disposal. Floor mops may be used in both the buffer room and anteroom, but only in that order. If cleaning materials are reused, procedures shall be developed that ensure that the effectiveness of the cleaning device is maintained and that repeated use does not add to the bio-burden of the area being cleaned.

(vi) Supplies and equipment removed from shipping cartons shall be wiped with a disinfecting agent, such as sterile IPA. After the disinfectant is sprayed or wiped on a surface to be disinfected, the disinfectant shall be allowed to dry, during which time the item shall not be used for compounding purposes. However, if sterile supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the ISO Class 5 area without the need to disinfect the individual sterile supply items. No shipping or other

external cartons may be taken into the buffer room or segregated compounding area.

(vii) Before any item is introduced into the clean side of the anteroom(s), placed into pass-through chamber(s), or brought into the segregated compounding area, providing that packaging integrity will not be compromised, the item shall be wiped with a sporicidal disinfectant, EPA-registered disinfectant, or sterile 70% IPA using low-lint wipers by personnel wearing gloves. If an EPA-registered disinfectant or sporicidal disinfectant is used, the agent shall be allowed to dwell the minimum contact time specified by the manufacturer. If sterile 70% IPA is used, it shall be allowed to dry. The wiping procedure should not compromise the packaging integrity or render the product label unreadable.

(viii) Immediately before any item is introduced into the PEC, it shall be wiped with sterile 70% IPA using sterile low-lint wipers and allowed to dry before use. When sterile items are received in sealed containers designed to keep them sterile until opening, the sterile items may be removed from the covering as the supplies are introduced into the ISO Class 5 PEC without the need to wipe the individual sterile supply items with sterile 70% IPA. The wiping procedure shall not render the product label unreadable.

(ix) Critical sites (e.g., vial stoppers, ampule necks, and intravenous bag septums) shall be wiped with sterile 70% IPA in the PEC to provide both chemical and mechanical actions to remove contaminants. The sterile 70% IPA shall be allowed to dry before personnel enter or puncture stoppers and septums or break the necks of ampules.

(x) Cleaning shall be done by personnel trained in appropriate cleaning techniques.

(xi) Proper documentation and frequency of cleaning shall be maintained and shall contain the following:

(I) date of cleaning;

(II) type of cleaning performed; and

(III) name of individual who performed the cleaning.

(I) Security requirements. The pharmacist-in-charge may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile preparations shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(J) Storage requirements and beyond-use dating.

(i) Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(ii) Beyond-use dating. When assigning a beyond-use date, compounding personnel shall consult and apply drug-specific and general stability documentation and literature where available, and they should consider the nature of the drug and its degradation mechanism, the container in which it is packaged, the expected storage conditions, and the intended duration of therapy. A shorter beyond-use date shall be assigned when the physical and chemical stability of the preparation is less than the beyond-use date limits provided in subclauses (I) - (III) of this clause.

(I) Beyond-use date limits for Category 1 compounded sterile preparations. Category 1 compounded sterile preparations shall be prepared in a segregated compounding area or cleanroom suite and have a beyond-use date of not more than 12 hours when stored at controlled room temperature or 24 hours when stored in a refrigerator.

(II) Beyond-use date limits for Category 2 compounded sterile preparations. Category 2 compounded sterile preparations shall be prepared in a cleanroom suite.

(-a-) Aseptically processed compounded sterile preparations without sterility testing performed and passed.

(-1-) If prepared from one or more non-sterile starting component(s), the preparation shall have a beyond-use date of not more than one day when stored at controlled room temperature, four days when stored in a refrigerator, or 45 days when stored in a freezer.

(-2-) If prepared from only sterile starting component(s), the preparation shall have a beyond-use date of not more than four days when stored at controlled room temperature, 10 days when stored in a refrigerator, or 45 days when stored in a freezer.

(-b-) Terminally sterilized compounded sterile preparations without sterility testing performed and passed shall have a beyond-use date of not more than 14 days when stored at controlled room temperature, 28 days when stored in a refrigerator, or 45 days when stored in a freezer.

(-c-) If sterility testing is performed and passed, aseptically processed or terminally sterilized compounded sterile preparations shall have a beyond-use date of not more than 45 days when stored at controlled room temperature, 60 days when stored in a refrigerator, or 90 days when stored in a freezer.

(-d-) A Category 2 compounded sterile preparation in a nonaqueous dosage form (i.e., water activity less than 0.6) may have a beyond-use date of not more than 90 days if based on documented current literature supporting stability and sterility.

(III) Beyond-use date limits for Category 3 compounded sterile preparations. Category 3 compounded sterile preparations shall be prepared in a cleanroom suite.

(-a-) Aseptically processed compounded sterile preparations that are sterility tested and passed all applicable tests for Category 3 compounded sterile preparations shall have a beyond-use date of not more than 60 days when stored at controlled room temperature, 90 days when stored in a refrigerator, or 120 days when stored in a freezer.

(-b-) Terminally sterilized compounded sterile preparations that are sterility tested and passed all applicable tests for Category 3 compounded sterile preparations shall have a beyond-use date of not more than 90 days when stored at controlled room temperature, 120 days when stored in a refrigerator, or 180 days when stored in a freezer.

(-c-) In the presence of documented published data supporting stability, aseptically processed or terminally sterilized aqueous compounded sterile preparations in batch sizes less than 24 final yield units without sterility and endotoxin testing shall have a beyond-use date of not more than 60 days when stored at controlled room temperature, 90 days when stored in a refrigerator, or 120 days when stored in a freezer. A pharmacy may only compound one batch of less than 24 final yield units of an aseptically processed or terminally sterilized aqueous compounded sterile preparation per day without sterility and endotoxin testing, with the exception of sterile compounding for a patient specific prescription.

(-d-) A Category 3 compounded sterile preparation in a nonaqueous dosage form (i.e., water activity level less than 0.6) may have a beyond-use date of not more than 180 days if based on documented current literature supporting stability and sterility.

(-e-) Additional requirements to assign Category 3 beyond-use dates to compounded sterile preparations.

(-1-) Increased personnel competency requirements as specified in subsection (c)(4)(K) of this section apply to personnel who participate in or oversee the compounding of Category 3 compounded sterile preparations.

(-2-) Category 3 garbing requirements as specified in paragraph (15)(C)(iv)(II) of this subsection apply to all personnel entering the buffer room where Category 3 compounded sterile preparations are compounded and apply at all times regardless of whether Category 3 compounded sterile preparations are being compounded on a given day.

(-3-) Increased environmental monitoring requirements as specified in subsection (c)(4)(L) of this section and paragraph (16)(C)(vi) of this subsection apply to all classified areas where Category 3 compounded sterile preparations are compounded and apply at all times regardless of whether Category 3 compound sterile preparations are being compounded on a given day.

(-4-) The frequency of application of sporicidal disinfectants as specified in paragraph (8)(H)(iv) of this subsection applies to all classified areas where Category 3 compounded sterile preparations are compounded and applies at all times regardless of whether Category 3 compounded sterile preparations are being compounded on a given day.

(9) Primary engineering control device. The pharmacy shall prepare sterile preparations in a primary engineering control device (PEC), such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator (CAI), or compounding aseptic containment isolator (CACI) which is capable of maintaining at least ISO Class 5 conditions for 0.5 micron and larger particles while compounding sterile preparations.

(A) Laminar air flow hood. If the pharmacy is using a laminar air flow hood as its PEC, the laminar air flow hood shall:

(i) be located in the buffer room and placed in the buffer room in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(ii) be certified for operational efficiency using certification procedures, such as those outlined in the Certification Guide for Sterile Compounding Facilities (CAG-003-2022), which shall be performed by a qualified independent individual initially and no less than every six months and whenever the device or room is relocated or altered or major service to the pharmacy is performed;

(iii) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(iv) be located in a buffer room that has a minimum differential positive pressure of 0.02 inches water column.

(B) Biological safety cabinet.

(i) If the pharmacy is using a biological safety cabinet (BSC) as its PEC for the preparation of hazardous sterile compounded preparations, the biological safety cabinet shall be a Class II or III vertical flow biological safety cabinet located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better anteroom; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(ii) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clause (i) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., closed-system vial transfer device within a BSC).

(iii) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of non-hazardous sterile compounded preparations, the biological safety cabinet shall:

(I) be located in the buffer room and placed in the buffer room in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(II) be certified for operational efficiency using certification procedures, such as those outlined in the Certification Guide for Sterile Compounding Facilities (CAG-003-2022), which shall be performed by a qualified independent individual initially and no less than every six months and whenever the device or room is relocated or altered or major service to the pharmacy is performed;

(III) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(IV) be located in a buffer room that has a minimum differential positive pressure of 0.02 inches water column.

(C) Compounding aseptic isolator.

(i) If the pharmacy is using a compounding aseptic isolator (CAI) as its PEC, the CAI shall provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer room unless the isolator meets all of the following conditions:

(I) The isolator shall provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations;

(II) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site shall maintain ISO Class 5 levels during compounding operations;

(III) The CAI shall be certified for operational efficiency using certification procedures, such as those outlined in the Certification Guide for Sterile Compounding Facilities (CAG-003-2022), which shall be performed by a qualified independent individual initially and no less than every six months and whenever the device or room is relocated or altered or major service to the pharmacy is performed; and

(IV) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the isolator meets the requirements in clause (i) of this subparagraph, the CAI may be placed in a non-ISO classified area of the pharmacy; however, the area shall be segregated from other areas of the pharmacy and shall:

(I) be clean, well lit, and of sufficient size;

(II) be used only for the compounding of Category 1 or Category 2 non-hazardous sterile preparations;

(III) be located in an area of the pharmacy with non-porous and washable floors or floor covering to enable regular disinfection; and

(IV) be an area in which the CAI is placed in a manner as to avoid conditions that could adversely affect its operation.

(iii) In addition to the requirements specified in clauses (i) and (ii) of this subparagraph, if the CAI is used in the compounding of Category 2 prepared from any non-sterile starting component or Category 3 non-hazardous preparations, the CAI shall be placed in an area or room with at least ISO Class 7 quality air so that high-risk powders weighed in at least ISO Class 7 air quality conditions, compounding utensils for measuring and other compounding equipment are not exposed to lesser air quality prior to the completion of compounding and packaging of the Category 2 prepared from any non-sterile starting component or Category 3 preparation.

(D) Compounding aseptic containment isolator.

(i) If the pharmacy is using a compounding aseptic containment isolator (CACI) as its PEC for the preparation of Category 1 or Category 2 hazardous drugs, the CACI shall be located in a separate room away from other areas of the pharmacy and shall:

(I) provide at least 0.01 inches water column negative pressure compared to the other areas of the pharmacy;

(II) provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 room, unless the CACI meets all of the following conditions;

(-a-) The isolator shall provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations;

(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site shall maintain ISO Class 5 levels during compounding operations;

(-c-) The CACI shall be certified for operational efficiency using certification procedures, such as those outlined in the Certification Guide for Sterile Compounding Facilities (CAG-003-2022), which shall be performed by a qualified independent individual initially and no less than every six months and whenever the device or room is relocated or altered or major service to the pharmacy is performed; and

(-d-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the CACI meets all conditions specified in clause (i) of this subparagraph, the CACI shall not be located in the same room as a CAI, but shall be located in a separate room in the pharmacy, that is not required to maintain ISO classified air. The room in which the CACI is located shall provide a minimum of 0.01 inches water column negative pressure compared with the other areas of the pharmacy and shall meet the following requirements:

(I) be clean, well lit, and of sufficient size;

(II) be maintained at a temperature of 20 degrees Celsius or cooler, except that a clean room for the compounding of sterile radiopharmaceuticals shall be maintained at a temperature of 25 degrees Celsius or cooler, and at a humidity of 60% or below, with excursions in temperature or humidity of no more than 10% and lasting no longer than 30 minutes;

(III) be used only for the compounding of Category 1 or Category 2 hazardous sterile preparations;

(IV) be located in an area of the pharmacy with walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices, non-shedding and resistant to damage by disinfectant agents; and

(V) have non-porous and washable floors or floor covering to enable regular disinfection.

(iii) If the CACI is used in the compounding of Category 2 prepared from any non-sterile starting component or Category 3 hazardous preparations, the CACI shall be placed in an area or room with at least ISO Class 7 quality air so that high-risk powders, weighed in at least ISO Class 7 air quality conditions, are not exposed to lesser air quality prior to the completion of compounding and packaging of the Category 2 prepared from any non-sterile starting component or Category 3 preparation.

(iv) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clauses (i) and (iii) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., CACI that is located in a non-negative pressure room).

(10) Additional Equipment and Supplies. Pharmacies compounding sterile preparations shall have the following equipment and supplies:

(A) a calibrated system or device (i.e., thermometer) to monitor the temperature to ensure that proper storage requirements are met, if sterile preparations are stored in the refrigerator;

(B) a calibrated system or device to monitor the temperature where bulk chemicals are stored;

(C) a temperature-sensing mechanism suitably placed in the controlled temperature storage space to reflect accurately the true temperature;

(D) if applicable, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and subject to periodic inspection by the Texas State Board of Pharmacy;

(E) equipment and utensils necessary for the proper compounding of sterile preparations. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design, appropriate capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug preparation beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance;

(F) appropriate disposal containers for used needles, syringes, etc., and if applicable, hazardous waste from the preparation of hazardous drugs and/or biohazardous waste;

(G) appropriate packaging or delivery containers to maintain proper storage conditions for sterile preparations;

(H) infusion devices, if applicable; and

(I) all necessary supplies, including:

(i) disposable needles, syringes, and other supplies for aseptic mixing;

(ii) disinfectant cleaning solutions;

(iii) sterile 70% isopropyl alcohol;

(iv) sterile gloves, both for hazardous and non-hazardous drug compounding;

(v) sterile alcohol-based or water-less alcohol based surgical scrub;

(vi) hand washing agents with bactericidal action;

(vii) disposable, lint free towels or wipes;

(viii) appropriate filters and filtration equipment;

(ix) hazardous spill kits, if applicable; and

(x) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(11) Labeling.

(A) Prescription drug or medication orders. In addition to the labeling requirements for the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following:

(i) the generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded sterile preparation;

(ii) for outpatient prescription orders other than sterile radiopharmaceuticals, a statement that the compounded sterile preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement); and

(iii) a beyond-use date. The beyond-use date shall be determined as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF, and paragraph (8)(J) of this subsection;

(B) Batch. If the sterile preparation is compounded in a batch, the following shall also be included on the batch label:

(i) unique lot number assigned to the batch;

(ii) quantity;

(iii) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(iv) device-specific instructions, where appropriate.

(C) Pharmacy bulk package. The label of a pharmacy bulk package shall:

(i) state prominently "Pharmacy Bulk Package--Not for Direct Infusion;"

(ii) contain or refer to information on proper techniques to help ensure safe use of the preparation; and

(iii) bear a statement limiting the time frame in which the container may be used once it has been entered, provided it is held under the labeled storage conditions.

(12) Written drug information for prescription drug orders only. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing a prescription drug order. A statement which indicates that the preparation was compounded by the pharmacy shall be included in this written information. If there is no written information available, the patient shall be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate, the prescriber, concerning the drug. This paragraph does not apply to the preparation of radiopharmaceuticals.

(13) Pharmaceutical care services. In addition to the pharmaceutical care requirements for the pharmacy's specific license classification, the following requirements for sterile preparations compounded pursuant to prescription drug orders shall be met. This paragraph does not apply to the preparation of radiopharmaceuticals.

(A) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(B) Patient training. The pharmacist-in-charge shall develop policies to ensure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction when applicable, regarding:

(i) appropriate disposition of hazardous solutions and ancillary supplies;

(ii) proper disposition of controlled substances in the home;

(iii) self-administration of drugs, where appropriate;

(iv) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and

(v) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(I) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(II) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(III) handling and disposition of premixed and self-mixed intravenous admixtures; and

(IV) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(C) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(D) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:

(i) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider;

(ii) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions; and

(iii) reports of adverse events with a compounded sterile preparation are reviewed promptly and thoroughly to correct and prevent future occurrences.

(14) Drugs, components, and materials used in sterile compounding.

(A) Drugs used in sterile compounding shall be USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available, substances used in sterile compounding shall be of a chemical grade in one of the following categories:

(i) Chemically Pure (CP);

(ii) Analytical Reagent (AR);

(iii) American Chemical Society (ACS); or

(iv) Food Chemical Codex.

(C) If a drug, component or material is not purchased from a FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) All components shall:

(i) be manufactured in an FDA-registered facility; or

(ii) in the professional judgment of the pharmacist, be of high quality and obtained from acceptable and reliable alternative sources; and

(iii) be stored in properly labeled containers in a clean, dry place, under proper temperatures.

(E) Drug preparation containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug preparation beyond the desired result.

(F) Components, drug preparation containers, and closures shall be rotated so that the oldest stock is used first.

(G) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug preparation.

(H) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(15) Compounding process.

(A) Standard operating procedures (SOPs). All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed and implemented for:

(i) the pharmacy;

(ii) equipment;

(iii) personnel;

(iv) preparation evaluation;

(v) quality assurance;

(vi) preparation recall;

(vii) packaging; and

(viii) storage of compounded sterile preparations.

(B) USP/NF. Any compounded formulation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Personnel cleansing and garbing.

(i) Any person with an apparent illness or open lesion, including rashes, sunburn, weeping sores, conjunctivitis, and active respiratory infection, that may adversely affect the safety or quality of a drug preparation being compounded shall be excluded from working in ISO Class 5, ISO Class 7, and ISO Class 8 compounding areas until the condition is remedied.

(ii) Before entering the buffer room, compounding personnel shall:

(I) remove personal outer garments (e.g., bandanas, coats, hats, jackets, scarves, sweaters, vests);

(II) remove all cosmetics;

(III) remove all hand, wrist, and other body jewelry or piercings (e.g., earrings, lip or eyebrow piercings) that can interfere with the effectiveness of personal protective equipment (e.g., fit of gloves and cuffs of sleeves); and

(IV) wipe eyeglasses, if worn.

(iii) The wearing of artificial nails or extenders is prohibited while working in the sterile compounding environment. Natural nails shall be kept neat and trimmed.

(iv) Personnel shall perform hand hygiene and garbing in an order determined by the pharmacy depending on the placement of the sink. The order of garbing shall be documented in the pharmacy's SOPs. Garb shall be donned and doffed in an order that reduces the risk of contamination. Donning and doffing garb shall not occur in the same area at the same time.

(I) The minimum garbing requirements for preparing Category 1 or Category 2 compounded sterile preparations include the following:

(-a-) low-lint garment with sleeves that fit snugly around the wrists and an enclosed neck (e.g., gown or coverall);

(-b-) low-lint covers for shoes;

(-c-) low-lint cover for head that covers the hair and ears, and if appliable, cover for facial hair;

(-d-) low-lint face mask;

(-e-) sterile powder-free gloves; and

(-f-) if using a restricted-access barrier system (i.e., a compounding aseptic isolator or compounding aseptic containment isolator), disposable gloves should be worn inside the gloves attached to the restricted-access barrier system sleeves. Sterile gloves shall be worn over the gloves attached to the restricted-access barrier system sleeve.

(II) The following additional garbing requirements shall be followed in the buffer room where Category 3

compounded sterile preparations are prepared for all personnel regardless of whether Category 3 compounded sterile preparations are compounded on a given day:

(-a-) skin may not be exposed in the buffer room (i.e., face and neck shall be covered);

(-b-) all low-lint outer garb shall be sterile, including the use of sterile sleeves over gauntlet sleeves when a restricted-access barrier system is used;

(-c-) disposable garbing items shall not be reused and any laundered garb shall not be reused without being laundered and resterilized with a validated cycle; and

(-d-) the pharmacy's SOPs shall describe disinfection procedures for reusing goggles, respirators, and other reusable equipment. If compounding a hazardous drug, appropriate personal protective equipment shall be worn.

(III) After donning dedicated shoes or shoe covers, head and facial hair covers, and face masks, personnel shall perform a hand hygiene procedure by removing debris from underneath fingernails using a nail cleaner under running warm water followed by vigorous hand washing. Personnel shall begin washing arms at the hands and continue washing to elbows for at least 30 seconds with either a plain (non-antimicrobial) soap, or antimicrobial soap, and water while in the anteroom. Disposable soap containers shall not be refilled or topped off. Brushes shall not be used for hand hygiene. Hands and forearms to the elbows shall be completely dried using lint-free disposable towels, an electronic hands-free hand dryer, or a HEPA filtered hand dryer.

(IV) After completion of hand washing, personnel shall don clean non-shedding gowns with sleeves that fit snugly around the wrists and enclosed at the neck.

(V) Once inside the buffer room or segregated compounding area, and prior to donning sterile powder-free gloves, antiseptic hand cleansing shall be performed using an alcohol-based hand rub. Hands shall be allowed to dry thoroughly before donning sterile gloves.

(VI) Sterile gloves that form a continuous barrier with the gown shall be the last item donned before compounding begins. Sterile gloves shall be donned in a classified area or segregated compounding area using proper technique to ensure the sterility of the glove is not compromised while donning. The cuff of the sterile glove shall cover the cuff of the gown at the wrist. When preparing hazardous preparations, the compounder shall double glove or shall use single gloves ensuring that the gloves are sterile powder-free chemotherapy-rated gloves. Routine application of sterile 70% IPA shall occur throughout the compounding day and whenever non-sterile surfaces are touched.

(v) Garb shall be replaced immediately if it becomes visibly soiled or if its integrity is compromised. Gowns and other garb shall be stored in a manner that minimizes contamination (e.g., away from sinks to avoid splashing). If compounding Category 1 or Category 2 compounded sterile preparations, gowns may be reused within the same shift by the same person if the gown is maintained in a classified area or adjacent to, or within, the segregated compounding area in a manner that prevents contamination. When personnel exit the compounding area, garb, except for gowns, may not be reused and shall be discarded or laundered before use. The pharmacy's SOPs shall describe disinfection procedures for reusing goggle, respirators, and other reusable equipment.

(vi) During compounding activities that precede terminal sterilization, such as weighing and mixing of non-sterile ingredients, compounding personnel shall be garbed and gloved the same as when performing compounding in an ISO Class 5 environment. Properly garbed and gloved compounding personnel who are exposed to air quality that is either known or suspected to be worse than ISO Class 7 shall re-garb personal protective equipment along with washing their hands properly, performing antiseptic hand cleansing with a sterile 70% IPA-based or another suitable sterile alcohol-based surgical hand scrub, and donning sterile gloves upon re-entering the ISO Class 7 buffer room.

(vii) When compounding aseptic isolators or compounding aseptic containment isolators are the source of the ISO Class 5 environment, at the start of each new compounding procedure, a new pair of sterile gloves shall be donned within the CAI or CACI. In addition, the compounding personnel should follow the requirements as specified in this subparagraph, unless the isolator manufacturer can provide written documentation based on validated environmental testing that any components of personal protective equipment or cleansing are not required.

(16) Quality assurance.

(A) Initial formula validation. Prior to routine compounding of a sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a preparation that is sterile and that contains the stated amount of active ingredient(s).

(i) Quality assurance practices include, but are not limited to the following:

(I) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality;

(II) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments and goggles;

(III) Confirmation that media-fill tests indicate that compounding personnel and personnel who have direct oversight of compounding personnel but do not compound can competently perform aseptic procedures;

(IV) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded; and

(V) Visual inspection of compounded sterile preparations, except for sterile radiopharmaceuticals, to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

(ii) Filter integrity testing. Filters shall undergo testing to evaluate the integrity of filters used to sterilize Category 2 prepared from any non-sterile starting component or Category 3 compounded sterile preparations, such as bubble point testing or comparable filter integrity testing. Such testing is not a replacement for sterility testing and shall not be interpreted as such. Such test shall be performed after a sterilization procedure on all filters used to sterilize each Category 2 prepared from any non-sterile starting component or Category 3 compounded sterile preparation or batch preparation and the results documented. The results should be compared with the filter manufacturer's specification for the specific filter used. If a filter fails the integrity test, the preparation or batch shall be sterilized again using new unused filters.

(B) Finished preparation release checks and tests.

(i) Each time a Category 3 compounded sterile preparation is prepared, it shall be tested for sterility and meet the re-

quirements of Chapter 71, Sterility Tests of the USP/NF, or a validated alternative method that is noninferior to Chapter 71 testing. Each time a Category 2 injectable compounded sterile preparation compounded from one or more non-sterile components and assigned a beyond-use date that requires sterility testing is prepared, the preparation shall be tested to ensure that it does not contain excessive bacterial endotoxins. Each time a Category 3 injectable compounded sterile preparation compounded from one or more non-sterile components is prepared, the preparation shall be tested to ensure that it does not contain excessive bacterial endotoxins.

(ii) All compounded sterile preparations, except for sterile radiopharmaceuticals, that are intended to be solutions shall be visually examined for the presence of particulate matter and not administered or dispensed when such matter is observed.

(iii) The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded sterile preparations shall be inspected for accuracy of correct identities and amounts of ingredients, aseptic mixing and sterilization, packaging, labeling, and expected physical appearance before they are dispensed or administered.

(iv) Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation, in accordance with pharmacy's policies and procedures, and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. A pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(C) Environmental testing.

(i) Viable and nonviable environmental sampling testing. Environmental sampling shall occur, at a minimum, every six months as part of a comprehensive quality management program and under any of the following conditions:

(I) as part of the commissioning and certification of new facilities and equipment;

(II) following any servicing of facilities and equipment;

(III) as part of the re-certification of facilities and equipment;

(IV) in response to identified problems with end products or staff technique; or

(V) in response to issues with compounded sterile preparations, observed compounding personnel work practices, or patient-related infections (where the compounded sterile preparation is being considered as a potential source of the infection).

(ii) Total particle counts. Certification that each ISO classified area (e.g., ISO Class 5, 7, and 8), is within established guidelines shall be performed no less than every six months and whenever the equipment is relocated or the physical structure of the buffer room or anteroom has been altered. All certification records shall be maintained and reviewed to ensure that the controlled environments comply with the proper air cleanliness, room pressures, and air changes per hour. These certification records shall include acceptance criteria and be made available upon inspection by the Board. Testing shall be performed by qualified operators using current, state-of-the-art equipment, with results of the following:

(I) ISO Class 5 - not more than 3,520 particles 0.5 microns and larger in diameter per cubic meter of air;

(II) ISO Class 7 - not more than 352,000 particles of 0.5 microns and larger in diameter per cubic meter of air for any buffer room; and

(III) ISO Class 8 - not more than 3,520,000 particles of 0.5 microns and larger in diameter per cubic meter of air for any anteroom.

(iii) Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer room and the anteroom and between the anteroom and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 or ISO Class 8 and the general pharmacy area shall not be less than 0.02 inch water column.

(iv) Sampling plan. An appropriate environmental sampling plan shall be developed for airborne viable particles based on a risk assessment of compounding activities performed. Selected sampling sites shall include locations within each ISO Class 5 environment and in the ISO Class 7 and 8 areas and in the segregated compounding areas at greatest risk of contamination. The plan shall include sample location, method of collection, frequency of sampling, volume of air sampled, and time of day as related to activity in the compounding area and action levels.

(v) Viable air sampling. Evaluation of airborne microorganisms using volumetric collection methods in the controlled air environments shall be performed by properly trained individuals for all compounded sterile preparations. Volumetric active air sampling of all active classified areas using an impaction air sampler shall be conducted in each classified area (e.g., ISO Class 5 PEC and ISO Class 7 and 8 room(s)) during dynamic operating conditions. For entities compounding Category 1 or Category 2 compounded sterile preparations, this shall be completed at least every six months. For entities compounding any Category 3 compounded sterile preparations, this shall be completed within 30 days prior to the commencement of any Category 3 compounding and at least every three months thereafter regardless of the frequency of compounding Category 3 compounded sterile preparations. Air sampling sites shall be selected in all classified areas.

(vi) Air sampling process.

(I) A sufficient volume of air shall be sampled. Follow the manufacturer's instructions for operation of the impaction air sampler, including placement of media device(s). Using the impaction air sampler, test at least 1 cubic meter or 1,000 liters of air from each location sampled. At the end of each sampling period, retrieve the media device and cover it. Handle and store media devices to avoid contamination and prevent condensate from dropping onto the agar during incubation and affecting the accuracy of the cfu reading (e.g., invert plates). At the end of the designated sampling or exposure period for air sampling activities, the microbial growth media plates are recovered and their covers secured and they are inverted and incubated pursuant to the procedures in subclause (II) of this clause. Sampling data shall be collected and reviewed on a periodic basis as a means of evaluating the overall control of the compounding environment.

(II) Incubation procedures.

(-a-) Incubate the media device at 30 to 35 degrees Celsius for no less than 48 hours. Examine for growth. Record the total number of discrete colonies of microorganisms on each media device as cfu per cubic meter of air on an environmental sampling

form based on sample type (i.e., viable air), sample location, and sample date.

(-b-) Then incubate the media at 20 to 25 degrees Celsius for no less than five additional days. Examine for growth. Record the total number of discrete colonies of microorganisms on each media device as cfu per cubic meter of air on an environmental sampling form based on sample type (i.e., viable air), sample location, and sample date.

(-c-) Alternatively, to shorten the overall incubation period, two sampling media devices may be collected for each sample location and incubated concurrently.

(-1-) The media devices shall either both be trypticase soy agar or shall be one trypticase soy agar and the other fungal media (e.g., malt extract agar or Sabouraud dextrose agar).

(-2-) Incubate each media device in a separate incubator. Incubate one media device at 30 to 35 degrees Celsius for no less than 48 hours, and incubate the other media device at 20 to 25 degrees Celsius for no less than five days. If fungal media are used as one of the samples, incubate the fungal media sample at 20 to 25 degrees Celsius for no less than five days.

(-3-) Count the total number of discrete colonies of microorganisms on each media device, and record these results as cfu per cubic meter of air.

(-4-) Record the results of the sampling on an environmental sampling form based on sample type (i.e., viable air), and include the sample location and sample date.

(III) The following action levels for viable air sampling apply: a colony forming unit (cfu) count greater than 1 cfu per cubic meter of air for ISO Class 5, greater than 10 cfus per cubic meter of air for ISO Class 7, and greater than 100 cfus per cubic meter of air for ISO Class 8. If levels measured during viable air sampling exceed the action levels in this subclause for the ISO classification levels of the area sampled, the cause shall be investigated and corrective action shall be taken. Data collected in response to corrective actions shall be reviewed to confirm that the actions taken have been effective. The corrective action plan shall be dependent on the cfu count and the microorganism recovered. The corrective action plan shall be documented. If levels measured during viable air sampling exceed the action levels in this subclause, an attempt shall be made to identify any microorganism recovered to the genus level with the assistance of a competent microbiologist.

(vii) Compounding accuracy checks. Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(17) Quality control.

(A) Quality control procedures. The pharmacy shall follow established quality control procedures to monitor the compounding environment and quality of compounded drug preparations for conformity with the quality indicators established for the preparation. When developing these procedures, pharmacy personnel shall consider the provisions of USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding-Non-sterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses, USP Chapter 1160, Pharmaceutical Calculations in Prescription Compounding, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding of the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Verification of compounding accuracy and sterility.

(i) The accuracy of identities, concentrations, amounts, and purities of ingredients in compounded sterile preparations shall be confirmed by reviewing labels on packages, observing and documenting correct measurements with approved and correctly standardized devices, and reviewing information in labeling and certificates of analysis provided by suppliers.

(ii) If the correct identity, purity, strength, and sterility of ingredients and components of compounded sterile preparations cannot be confirmed such ingredients and components shall be discarded immediately. Any compounded sterile preparation that fails sterility testing following sterilization by one method (e.g., filtration) is to be discarded and not subjected to a second method of sterilization.

(iii) If individual ingredients, such as bulk drug substances, are not labeled with expiration dates, when the drug substances are stable indefinitely in their commercial packages under labeled storage conditions, such ingredients may gain or lose moisture during storage and use and shall require testing to determine the correct amount to weigh for accurate content of active chemical moieties in compounded sterile preparations.

(C) Sterility testing. Sterility testing shall be performed on a number of units equal to 5% of the number of compounded sterile preparations prepared, rounded up to the next whole number. Sterility tests resulting in failure shall prompt an investigation into the possible causes of the failure and shall include identification of the microorganism and an evaluation of the sterility testing procedure, compounding facility, process, and personnel that may have contributed to the failure. The sources of the contamination, if identified, shall be corrected and the pharmacy shall determine whether the conditions causing the sterility failure affect other compounded sterile preparations. The investigation and resulting corrective actions shall be documented.

(e) Records. Any testing, cleaning, procedures, or other activities required in this subsection shall be documented and such documentation shall be maintained by the pharmacy.

(1) Maintenance of records. Every record required under this section shall be:

(A) kept by the pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records shall be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug orders or medication orders not prepared from non-sterile ingredient(s). Compounding records for all compounded preparations shall be maintained by the pharmacy and shall include a complete for-

mula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) or official name and name(s) of the manufacturer(s) or distributor of the raw materials and the quantities of each; however, if the sterile preparation is compounded according to the manufacturer's labeling instructions, then documentation of the formula is not required.

(B) Compounding records for compounded sterile preparations prepared from non-sterile ingredient(s) or prepared for more than one patient.

(i) A master formulation record shall be created for compounded sterile preparations prepared from non-sterile ingredient(s) or prepared for more than one patient. Any changes or alterations to the master formulation record shall be approved and documented according to the pharmacy's SOPs. The master formulation record shall include at least the following information:

(I) name, strength or activity, and dosage form of the compounded sterile preparation;

(II) identities and amounts of all ingredients and, if applicable, relevant characteristics or components (e.g., particle size, salt form, purity grade, solubility, assay, loss on drying, water content);

(III) type and size of container closure system(s);

(IV) complete instructions for preparing the compounded sterile preparation, including equipment, supplies, a description of the compounding steps, and any special precautions;

(V) physical description of the final compounded sterile preparation, including desired pH of aqueous preparations for buffered eye drops and non-sterile to sterile compounding;

(VI) beyond-use date and storage requirements;

(VII) reference source to support the stability of the compounded sterile preparation;

(VIII) quality control procedures (e.g., pH testing, filter integrity testing); and

(IX) other information as needed to describe the compounding process and ensure repeatability (e.g., adjusting pH and tonicity; sterilization method, such as steam, dry heat, irradiation, or filter).

(ii) A compounding record that documents the compounding process shall be created for all compounded sterile preparations. The compounding record shall include at least the following information:

(I) name, strength or activity, and dosage form of the compounded sterile preparation;

(II) date and time of preparation of the compounded sterile preparation;

(III) assigned internal identification number (e.g., prescription, order, or lot number);

(IV) written or electronic signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;

(V) written or electronic signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting final checks of compounded preparations if pharmacy technicians or pharmacy technician trainees perform the compounding function;

(VI) name of each component;

(VII) vendor, lot number, and expiration date for each component for compounded sterile preparations prepared for more than one patient or prepared from non-sterile ingredient(s);

(VIII) weight or volume of each component;

(IX) strength or activity of each component;

(X) total quantity compounded;

(XI) final yield (e.g., quantity, containers, number of units);

(XII) assigned beyond-use date and storage requirements;

(XIII) results of quality control procedures (e.g., visual inspection, filter integrity testing, pH testing);

(XIV) if applicable, master formulation record for the compounded sterile preparation; and

(XV) if applicable, calculations made to determine and verify quantities or concentrations of components.

(f) Office use compounding and distribution of sterile compounded preparations.

(1) General.

(A) A pharmacy may compound, dispense, deliver, and distribute a compounded sterile preparation as specified in Subchapter D, Texas Pharmacy Act Chapter 562.

(B) A Class A-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations to a Class C or Class C-S pharmacy.

(C) A Class C-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations that the Class C-S pharmacy has compounded for other Class C or Class C-S pharmacies under common ownership.

(D) To compound and deliver a compounded preparation under this subsection, a pharmacy shall:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(E) This subsection does not apply to Class B pharmacies compounding sterile radiopharmaceuticals that are furnished for departmental or physicians' use if such authorized users maintain a Texas radioactive materials license.

(2) Written Agreement. A pharmacy that provides sterile compounded preparations to practitioners for office use or to another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that en-

ter into the agreement including a statement that the compounded drugs may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except to a veterinarian as authorized by §563.054 of the Act;

(B) require the practitioner or receiving pharmacy to include on a patient's chart, medication order or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient; and

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of sterile compounded preparations to a practitioner for office use or to an institutional pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) be maintained separately from the records of preparations dispensed pursuant to a prescription or medication order; and

(III) be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records shall be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Orders. The pharmacy shall maintain a record of all sterile compounded preparations ordered by a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and if applicable, the name, address and phone number of the institutional pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or institutional pharmacy to whom the preparation is distributed.

(D) Audit trail.

(i) The pharmacy shall store the order and distribution records of preparations for all sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a pharmacy licensed to compound sterile preparations for administration to a patient in such a manner as to be able to provide an audit trail for all orders and distributions of any of the following during a specified time period:

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the institutional pharmacy, if applicable;

(III) name, strength and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number.

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall procedures.

(1) The pharmacy shall have SOPs for the recall of any compounded sterile preparation provided to a patient, to a practitioner for office use, or a pharmacy for administration. The SOPs shall include, but not be limited to the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) the distribution of any affected compounded sterile preparation is determined, including the date and quantity of distribution;

(B) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(C) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(D) the board is notified of the recall, in writing, not later than 24 hours after the recall is issued;

(E) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(F) any unused dispensed compounded sterile preparations are recalled and any stock remaining in the pharmacy is quarantined; and

(G) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) Recall of out-of-specification dispensed compounded sterile preparations.

(A) If a compounded sterile preparation is dispensed or administered before the results of testing are known, the pharmacy shall have SOPs in place to:

(i) immediately notify the prescriber of a failure of specifications with the potential to cause patient harm (e.g., sterility, strength, purity, bacterial endotoxin, or other quality attributes); and

(ii) investigate if other lots are affected and recall if necessary.

(B) SOPs for recall of out-of-specification dispensed compounded sterile preparations shall contain procedures to:

(i) determine the severity of the problem and the urgency for implementation and completion of the recall;

(ii) determine the disposal and documentation of the recalled compounded sterile preparation; and

(iii) investigate and document the reason for failure.

(5) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

(6) A pharmacy that compounds sterile preparations shall notify the board immediately of any adverse effects reported to the pharmacy or that are known by the pharmacy to be potentially attributable to a sterile preparation compounded by the pharmacy.

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

Filed with the Office of the Secretary of State on February 9, 2026.

TRD-202600557
Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: March 1, 2026
Proposal publication date: October 3, 2025
For further information, please call: (512) 305-8084

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CHAPTER 295. PHARMACISTS

22 TAC §295.8

The Texas State Board of Pharmacy adopts amendments to §295.8, concerning Continuing Education Requirements. These amendments are adopted without changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8478). The rule will not be republished.

The amendments establish an electronic continuing education tracking system in accordance with Senate Bill 912, update continuing education programs in preparation for the statutory continuing education tracking system, specify that record retention requirements apply to all required courses, and make grammatical corrections.

No comments were received.

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

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

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

Filed with the Office of the Secretary of State on February 9, 2026.

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Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: September 1, 2026
Proposal publication date: December 26, 2025
For further information, please call: (512) 305-8084

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.8

The Texas State Board of Pharmacy adopts amendments to §297.8, concerning Continuing Education Requirements. These amendments are adopted without changes to the proposed text as published in the December 26, 2025, issue of the *Texas Register* (50 TexReg 8482). The rule will not be republished.

The amendments establish an electronic continuing education tracking system in accordance with Senate Bill 912, update continuing education programs in preparation for the statutory continuing education tracking system, specify that record retention requirements apply to all required courses, and make grammatical corrections.

No comments were received.

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

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

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

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Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
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Proposal publication date: December 26, 2025
For further information, please call: (512) 305-8084

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

SUBCHAPTER II. WARNING LABEL REQUIREMENTS FOR FOOD

25 TAC §§229.1001 - 229.1005

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §229.1001, concerning Purpose and Scope, §229.1002, concerning Definitions, §229.1003, concerning Exemptions, §229.1004, concerning Warning Label Requirements, and §229.1005, concerning Enforcement.

Sections 229.1002, 229.1003, and 229.1004 are adopted with changes to the proposed text as published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6301). These rules will be republished. Sections 229.1001 and 229.1005 are adopted without changes to the proposed text published in the September 26, 2025, issue of the *Texas Register* (50 TexReg 6301). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Senate Bill (SB) 25, 89th Legislature, Regular Session, 2025, which amended Health and Safety Code (HSC) Chapter 431, Subchapter D by adding §§431.0815, 431.0816, and 431.0817, which requires the department to adopt rules to implement the changes.

COMMENTS

The 31-day comment period ended October 27, 2025.

During this period, DSHS received comments regarding the proposed rules from 21 commenters. DSHS received comments from Albertsons Companies, American Bakers Association, American Beverage Association, Brookshires, Consumer Brands Association, Food Ingredient Safety Coalition, Healthcare Nutrition Council, Infant Nutrition Council of America, International Association of Color Manufacturers, International Flavors & Fragrances Inc, International Foodservice Distributors Association, National Association of Wheat Growers, North American Millers' Association, Texas Food & Fuel Association, Texas Restaurant Association, Texas Retailers Association, Texas Wheat Producers Association, The Food Industry Association, and Wei Chuan USA. DSHS also received a comment jointly signed by The Senate of the State of Texas and the Texas House of Representatives. A summary of comments relating to the rules and DSHS responses follows.

Comment: One commenter requested §229.1001(b)(3) include the warning label requirements do not apply to food product labels developed or copyrighted before January 1, 2027.

Response: DSHS disagrees and declines to make the requested change at this time since this section includes the requirements that are applicable to food product labels developed or copyrighted on or after January 1, 2027.

Comment: One commenter requested definitions for "developed" and "copyrighted" since the statute and rule are applicable to food product labels developed or copyrighted on or after January 1, 2027.

Response: DSHS disagrees that definitions for "developed" and "copyrighted" are necessary and declines to make the requested changes at this time. For enforcement purposes, DSHS defers to The Copyright Act where developed or copyrighted refers to the date the label was created.

Comment: One commenter suggested "developed" be defined as, "A food product label initially created or substantially redesigned in a way that materially alters the content, layout, or presentation after January 1, 2027."

Response: DSHS disagrees a definition for "developed" is necessary and declines to make the suggested change at this time. For enforcement purposes, DSHS defers to The Copyright Act where developed or copyrighted refers to the date the label was created.

Comment: Three commenters suggested changes to allow minimal or minor changes to food product labels as it relates to warning labels when any change is made to a food product label on or after January 1, 2027. Commenters wrote that "any change

to a food product label on or after January 1, 2027" is too broad or beyond the legislature's intent.

Response: DSHS disagrees and declines to make the suggested changes because it is inconsistent with The Copyright Act where developed or copyrighted refers to the date the label was created.

Comment: One commenter requested clarification on the following. "The proposed regulation states that the warning label requirement applies to 'food product labels developed or copyrighted on or after January 1, 2027.' The language preceding the proposed regulation states that 'Costs to businesses will only occur if labels are developed or copyrighted on or after January 1, 2027. If labels are never changed, businesses are not required to comply.' Reading the proposed regulation and preceding language together, we understand that labels which are existent prior to January 1, 2027, but copyrighted thereafter, would not be subject to any new labeling obligations."

Response: DSHS agrees and for enforcement purposes will defer to The Copyright Act where developed or copyrighted refers to the date the label was created.

Comment: One commenter requested guidance on the following. "Section 19(b): Section 431.0815, Health and Safety Code, as added by this Act, applies only to a food product label developed or copyrighted on or after January 1, 2027. We interpret this to mean that any change to an existing label after January 1, 2027, would be considered a 'label developed,' thereby triggering the new warning label requirements under the Act. However, we are seeking clarification on the sell through period for existing labels that were not changed, developed, or copyrighted after January 1, 2027. For products with these existing labels, how long may such products remain on retail shelves without violating the Act? For example, if a non-perishable item with a long shelf life has a label that was created prior to January 1, 2027, and remains unchanged, can that item be sold with its original label for 3 months? 6 months? 12 months etc.? Or is there a specific grace period or sell-through timeline contemplated under the law?"

Response: DSHS agrees with the requestor's interpretation of "label developed" and when it would trigger compliance with the requirement. The food product labels described in the example would not be subject to the rule since the labels were developed before January 1, 2027, so a grace period would not be needed. No revision is made to the rule in response to this comment.

Comment: Two commenters asked for the rule to be amended to provide clarification on whether brand owners or private label brand owners, who are not engaged in the manufacturing process, but are involved in marketing and distribution, are responsible for complying with warning label requirements. They also sought guidance on responsibility when ingredient information comes from the manufacturer, but the manufacturer does not sell directly to consumers, to ensure clear compliance and prevent unnecessary burdens on distributors not engaged in direct-to-consumer sales.

Response: DSHS disagrees with the comment and declines to make any changes to the rule in response to the comments. To the extent the brand owner or private label brand lists their name and address on the food product label, they bear responsibility for the purity and proper labeling of the food. This is included in the food manufacturer definition.

Comment: One commenter wrote the retail food establishment definition in §229.1002(g) and exemption in §229.1003(a)(3) raise issues of fairness and increased confusion. The comment provided examples of products that can be prepared, packaged, and served in a retail food establishment or farm-run business that contain the same ingredients as products that are subject to the warning label but do not require a warning and asked how the state will reconcile the inconsistencies and how this serves the public interest.

Response: DSHS considers the comment out of scope considering the amendments to HSC Chapter 431 were enacted by the Texas Legislature.

Comment: One commenter recommended to-go food be added to the restaurant definition and include restaurant websites and third-party delivery applications as examples.

Response: DSHS disagrees with adding to-go food to the restaurant definition and declines to make the recommended change. The rule includes the adoption of 25 Texas Administrative Code §229.371(2)(B)(ii) which addresses offsite consumption, and the definition adequately addresses customary restaurant operations as described in the comment.

Comment: One commenter recommended restaurant suppliers be added to the restaurant definition. The commenter wrote many products are manufactured, packaged, and labeled with the sole intent to be sold to restaurants for food preparation. The commenter wrote including restaurant suppliers in the restaurant definition will align with the legislature's intent to not regulate the food supply chains that serve restaurants.

Response: DSHS disagrees that restaurant suppliers are restaurants for purposes of the rule and declines to make the recommended change. The warning label requirements on the food product label apply to food manufacturers that manufacture food for wholesale distribution, which includes distribution to restaurants.

Comment: One commenter recommended adding "food trucks" and "commissary or central kitchens" to the list of examples in §229.1002(f) and removing "central kitchens" from the exception language in §229.1002(f)(15).

Response: DSHS disagrees the recommended changes are necessary at this time and declines to make additional changes. The definitions in the proposed rule for "restaurant" and "retail food establishment" address these types of operations.

Comment: One commenter suggested §229.1004(c) include clarification that posting information through a link, pop-up window, or secondary tab with a clear label like "nutrition and ingredients" satisfies the rule.

Response: DSHS agrees these examples are acceptable but declines to make additional changes considering the language in §229.1004(c)(3) of the adopted version.

Comment: One commenter requested DSHS clarify the applicability of the rule to foodservice distributors. The commenter wrote, "We understand that, if a foodservice distributor receives ingredient content information from a manufacturer indicating that a food contains ingredients required to bear a warning statement under proposed §229.1004, the foodservice distributor is not required to disclose this information to customers via a website or ordering platform, since the foodservice distributor is neither engaging in manufacturing activities nor selling products directly to consumers as its primary function, and thus does not

qualify as a "manufacturer" or "retailer" under the proposed rule. We request that the Department of State Health Services confirm alignment with this interpretation."

Response: DSHS agrees "food distributors" or "food wholesalers" as defined in other department rules that are not engaged in manufacturing activities or retail sales are also exempt from the requirements in the rule. No revision is made to the rule in response to this comment.

Comment: One commenter requested medical food, as defined in Section 5(b)(3) of the Orphan Drug Act, 21 United States Code 360ee(b)(3), and foods for special dietary use as defined in 21 Code of Federal Regulations Part 105 be exempted from the rule.

Response: DSHS agrees federal regulations preempt requirements from the rule and an exemption is not needed since it is out of the scope of the rule.

Comment: One commenter requested infant formula be exempted from the rule.

Response: DSHS agrees federal regulations preempt requirements from the rule and an exemption is not needed since it is out of the scope of the rule.

Comment: One commenter requested the date in HSC §431.0817, September 1, 2025, be included in the federal preemption section. The commenter wrote, "The intent of that portion of the bill, as reflected in the bill's language, is for only those federal laws and regulations enacted or issued after September 1, 2025, to be preemptive of the labeling requirements in Senate Bill 25. The legislative history of the bill confirms this."

Response: DSHS has agreed to remove federal preemption from the adopted version of the rule considering the comment and refer to HSC §431.0817.

Comment: Several commenters addressed federal preemption and requested that HHSC recognize that the Food and Drug Administration (FDA) has found bleached flour, as well as specified bleaching agents, to be safe for human consumption and therefore be exempted from the warning label requirements.

Response: DSHS has determined including federal preemption in the adopted version of the rule is unnecessary at this time and will refer to HSC §431.0817. DSHS has also determined bleaching ingredients when used in accordance with existing federal regulations and that are considered generally recognized as safe or determined to be safe by the FDA or the United States Department of Agriculture (USDA) are not subject to the rule requirements.

Comment: Two commenters requested the state's interpretation of federal preemption as written in §229.1003(b)(3) since the ingredients listed in §229.1004 are the subject of FDA regulations and have been determined to be safe for people to eat.

Response: DSHS has determined including federal preemption in the adopted version of the rule is unnecessary at this time and will refer to HSC §431.0817. DSHS has also determined ingredients considered generally recognized as safe or determined to be safe by the FDA or USDA are not subject to the rule requirements.

Comment: Several commenters requested §229.1003(b) be revised to be consistent with HSC §431.0817. Additionally, one commenter wrote HSC §431.0817 is a federal preemption statute, not an exemption statute, and these are two distinct legal concepts.

Response: DSHS agrees and has removed federal preemption from the adopted version and will refer to HSC §431.0817.

Comment: One commenter opposes the warning's wording and described it as inaccurate for most listed ingredients but supports a proposed exemption for ingredients deemed safe or regulated by the FDA or USDA. The commenter wrote this exemption is especially important for color additives that have been evaluated by the FDA and other international authorities. The commenter wrote requiring a warning label on FDA-approved colors would mislead customers and erode trust. Additionally, the commenter provided a table to demonstrate that a color additive's lack of authorization in some jurisdictions is often due to the absence of approval rather than an active ban. The commenter further stated the inclusion of FD&C Red No. 4 and Red No. 3 is unnecessary because they are no longer permitted in U.S. food products.

Response: DSHS agrees some ingredients, including red 4 (CAS 4548-53-2), listed in the statute and rules are currently not approved for use in food. DSHS declines to make any changes to the ingredient list or based on the comment since the amendments to HSC Chapter 431 were enacted by the Texas Legislature. Federal preemption relating to ingredients that are not currently allowed for use in human food will take precedence over the warning label requirements outlined in the statute and rule.

Comment: One commenter requested clarification on the proposed preamble and whether food made in store at a retail food establishment is not required to have a warning label.

Response: DSHS agrees food made in store at a retail food establishment is exempt from the warning label requirements. No revision is made to the rule in response to this comment.

Comment: One commenter recommended the rules confirm restaurants that operate from dine-in and retail operations from the same kitchen that prepare food for immediate consumption qualify for an exemption. Additionally, they include food prepared for immediate consumption by restaurants, including food served on-site, packaged for takeout, or prepared for catering as examples of operations to be included in the restaurant exemption.

Response: DSHS agrees the examples provided by the commenter are restaurant activities and exempt from the requirements in the rule. DSHS declines to make changes to the restaurant definition.

Comment: One commenter recommended acetylated esters of mono- and diglycerides (acetic acid ester) and diacetyl tartaric and fatty acid esters of mono- and diglycerides (DATEM) be removed from the list of ingredients that require a warning label. The commenter included a summary with references to expert panel reviews and links to the use of the ingredients in the countries required to be included in the warning label as well as FDA reviews. The commenter recommended HHSC work with state legislators to remove these ingredients and in the interim not enforce the rule requirements with respect to these ingredients.

Response: DSHS disagrees and declines to remove the ingredients in response to the comment considering the amendments to HSC Chapter 431 were enacted by the Texas Legislature.

Comment: Three commenters wrote that the warning required to be on the food product label is misleading since the ingredients are considered safe by global food safety agencies in those regions and elsewhere. One of the commenters also wrote the statement conflicts with United States regulations and puts manufacturers in untenable situations, raises questions of legality and may result in costly litigation for the state.

Response: DSHS considers the comments out of scope considering the amendments to HSC Chapter 431 were enacted by the Texas Legislature.

Comment: One commenter requested clarification on how the state will determine who an ordinary individual is and what customary conditions are with regards to §229.1004(b)(3).

Response: DSHS considers the comment out of scope because the rule language reflects the amendments to HSC Chapter 431 enacted by the Texas Legislature.

Comment: One commenter requested clarification on what §229.1004(c)(3) means.

Response: DSHS agrees to revise §229.1004(c)(3) to, "providing the information in other ways to the customer" to remain consistent with statute language. This section in the adopted version is consistent with statute language and gives manufacturers and retailers flexibility when determining how the warning label is communicated to the consumer.

Comment: One commenter recommended §229.1004(b)(1) be revised to, "be printed in a font size not smaller than the smallest font used to disclose the list of ingredients as required by the FDA."

Response: DSHS declines to make the recommended change at this time to prevent any potential conflict with federal food labeling regulations.

Comment: Two commenters recommended §229.1004(c)(2) be revised to only require a photo of the label and be limited to the label panel in which the warning label appears.

Response: DSHS agrees and has made the recommended revision.

Comment: Two commenters requested §229.1004 be revised to include the warning label requirements apply to ingredients that are required to be listed on the label by the FDA.

Response: DSHS declines to make the requested revision at this time since this is addressed in §229.1001(b)(2).

Comment: One commenter wrote the warning label requirements infringe on the FDA's authority regarding labeling and Texas cannot make its own warning labels for food and beverage products.

Response: DSHS considers the comment out of scope considering the amendments to HSC Chapter 431 were enacted by the Texas Legislature.

Comment: One commenter has concerns regarding the manufacturer's responsibility for online labeling disclosures under §229.1004(c) and Texas placing responsibility on manufacturers in an area over which they do not have control, since manufacturers do not have the ability to dictate what a retailer puts on their website. Additionally, the commenter wrote that Texas should provide reasonable notice and specify how manufacturers will be able to protect themselves from penalties for something outside of their control. The commenter also expressed concerns about the online proliferation of a warning label they feel is misleading and exceeds what is required under U.S. law.

Response: DSHS considers the comment out of scope considering the amendments to HSC Chapter 431 were enacted by the Texas Legislature. Additionally, DSHS does not intend to hold manufacturers or retailers accountable for websites that they do not control.

Comment: One commenter requested clarification as to whether the website must be updated when the digital shelf is copyrighted or when the label is copyrighted.

Response: DSHS has determined the statute does not address digital shelf copyright. The warning label requirements are applicable to food product labels developed or copyrighted on or after January 1, 2027. The website disclosures under §229.1004(c) of the adopted version are applicable to food product labels that are subject to the rule. No revision is made to the rule in response to this comment.

Comment: One commenter requested Chemical Abstract Substance (CAS) identifiers be included in the rule where one has been assigned to an ingredient by the FDA.

Response: DSHS disagrees that the Chemical Abstracts Service (CAS) identifiers are necessary to identify the ingredients. The ingredients are sufficiently described in Texas law.

Comment: One commenter requested clarification on the rule requiring a warning label for certified colors by the FDA. The commenter wrote the rule includes certified colors that are listed separately, which has created ambiguity in the commenter's interpretation of the regulation. The commenter asked, "Could you please clarify if Item 12 means that all FDA-certified food colors (including but not limited to those separately listed in the bill such as color additives are exempt from certification) must have a warning label on the product?"

Response: DSHS considers all certified colors, including the certified colors listed separately in the list of ingredients, subject to the warning label requirements. Colors that are exempt from certification are not subject to the warning label requirements unless the ingredient is explicitly listed in the statute. No revision is made to the rule in response to this comment.

Comment: Several comments were received urging HHSC to consider the burdens the requirements place on businesses and consumers. The commenters included the costs to relabel products, product reformulation, and impacts of state-specific labeling that may affect consumer access and increase consumer costs.

Response: DSHS considers the comments out of scope considering the amendments to HSC Chapter 431 were enacted by the Texas Legislature.

DSHS made a minor revision to §229.1002(f) and changed "eating" to "consumption" in the definition of "restaurant."

STATUTORY AUTHORITY

The new sections 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 §431.0815 and §431.241, and Texas Health and Safety Code Chapter 1001.

§229.1002. Definitions.

(a) Dietary supplement--A product a person can consume that has a "dietary ingredient" to add to the diet. A "dietary ingredient" includes vitamins and minerals, herbs, amino acids, enzymes, live bacteria (called "probiotics"), or other substances found in food. The dietary supplement can also be a mix or concentrate of any of these ingredients.

(b) Drug--Articles that are:

(1) listed in the official United States Pharmacopoeia National Formulary (USP-NF) or any of the USP-NF supplements;

(2) intended for diagnosing, curing, mitigating, treating, or preventing diseases in humans or animals;

(3) other than food, meant to influence the structure or any function of the body of humans or animals; and

(4) intended to be used as a component of any article mentioned in this definition.

(5) The term does not include devices or their parts, components, or accessories.

(6) A food for which a claim is made in accordance with Section 403(r) of the Federal Food, Drug, and Cosmetic Act (21 United States Code (U.S.C.) §301), and for which the claim is approved by the United States Secretary of Health and Human Services, is not a drug solely because the label or labeling contains such a claim.

(c) Food--Any article used by humans for food or drink, including chewing gum and items used as ingredients in other food or drink.

(d) Food manufacturer--A person who combines, purifies, processes, or packages food to sell through a wholesale outlet. This term also includes:

(1) a retail outlet that packages or labels food before selling it; and

(2) a person responsible for the purity and proper labeling of a food item by labeling the food with the person's name and address.

(e) Raw agricultural commodity--Any food in its natural state, including all fruits that can be washed, colored, or treated in their unpeeled form before being marketed. Treatment includes waxing, fumigating, or removing foreign objects or other parts of the plant, such as leaves, stems, and husks. This definition excludes transforming a harvested raw agricultural commodity into processed food by actions such as cutting, cooking, heating, chopping, irradiating, or pasteurizing.

(f) Restaurant--A place where food is made and sold directly to people for immediate consumption, examples include:

(1) cafeterias;

(2) lunchrooms;

(3) cafes;

(4) bistros;

(5) fast food places;

(6) food stands;

(7) saloons;

(8) taverns;

(9) bars;

(10) lounges;

(11) catering facilities;

(12) hospital kitchens;

(13) day care kitchens; and

(14) nursing home kitchens.

(15) "Restaurant" does not include places that provide food for interstate travel, central kitchens, and other similar places that don't serve food directly to the consumer.

(16) For purposes of this subchapter, a restaurant is a food establishment as defined in other department rules, including:

(A) §229.371 of this chapter (relating to Definitions);

(B) §229.471 of this chapter (relating to Definitions); and

(C) §228.2 of this title (relating to Definitions).

(g) Retail food establishment--A place that sells food products directly to consumers as its primary function, like:

(1) grocery stores;

(2) convenience stores;

(3) vending machines; and

(4) some farm-run businesses.

(5) "Retail food establishment" includes places that make, process, pack, or store food to sell directly to consumers. The value of food products sold directly to consumers must be higher than the sales of food products to all other buyers. "Consumers" does not include businesses.

(6) For purposes of this subchapter, a retail food establishment is also known as a food establishment as defined in other department rules, including:

(A) §229.371 of this chapter;

(B) §229.471 of this chapter; and

(C) §228.2 of this title.

§229.1003. Exemptions.

This subchapter does not apply to:

(1) an ingredient used in a product that is not meant for humans to consume;

(2) food labeled, prepared, served, or sold in a restaurant;

(3) food labeled, prepared, or served in a retail food establishment;

(4) a product regulated by the United States Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS);

(5) a product labeled with a governmental warning with a recommendation from the surgeon general of the United States Public Health Service (USPHS);

(6) a drug or dietary supplement; or

(7) a pesticide chemical, soil or plant nutrient, or other agricultural chemical used in the production, storage, or transportation of a raw agricultural commodity.

§229.1004. Warning Label Requirements.

(a) Food that contains any of the following ingredients must include a warning label described in subsection (b) of this section:

(1) acetylated esters of mono- and diglycerides (acetic acid ester);

(2) anisole;

(3) azodicarbonamide (ADA);

(4) bleached flour;

(5) blue 1 (CAS 3844-45-9);

(6) blue 2 (CAS 860-22-0);

(7) bromated flour;

(8) butylated hydroxyanisole (BHA);

(9) butylated hydroxytoluene (BHT);

(10) calcium bromate;

(11) canthaxanthin;

(12) certified food colors by the United States Food and Drug Administration (FDA);

(13) citrus red 2 (CAS 6358-53-8);

(14) diacetyl;

(15) diacetyl tartaric and fatty acid esters of mono and diglycerides (DATEM);

(16) dimethylamylamine (DMAA);

(17) dioctyl sodium sulfosuccinate (DSS);

(18) ficin;

(19) green 3 (CAS 2353-45-9);

(20) interesterified palm oil;

(21) interesterified soybean oil;

(22) lactylated fatty acid esters of glycerol and propylene glycol;

(23) lye;

(24) morpholine;

(25) olestra;

(26) partially hydrogenated oil (PHO);

(27) potassium aluminum sulfate;

(28) potassium bromate;

(29) potassium iodate;

(30) propylene oxide;

(31) propylparaben;

(32) red 3 (CAS 16423-68-0);

(33) red 4 (CAS 4548-53-2);

(34) red 40 (CAS 25956-17-6);

(35) sodium aluminum sulfate;

(36) sodium lauryl sulfate;

(37) sodium stearyl fumarate;

(38) stearyl tartrate;

(39) synthetic trans fatty acid;

(40) thiodipropionic acid;

(41) titanium dioxide;

(42) toluene;

(43) yellow 5 (CAS 1934-21-0); or

(44) yellow 6 (CAS 2783-94-0).

(b) The warning label must include the following statement, if the food contains an ingredient listed in subsection (a) of this section: "WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom." The warning label must:

(1) be printed in a font size not smaller than the smallest font used to disclose other consumer information required by the FDA;

(2) be placed in a prominent and reasonably visible location; and

(3) have sufficiently high contrast with the immediate background to ensure the warning is likely to be seen and understood by the ordinary individual under customary conditions of purchase and use.

(c) Food manufacturers and retailers who sell their products via internet that require warning labels under subsection (a) of this section must provide all labeling information required by subsection (b) of this section to consumers by:

(1) posting a legible statement on the manufacturer's or retailer's website on which the product is offered for sale;

(2) posting pictures of the food product label in which the warning label appears on the website; or

(3) providing the information in other ways to the consumer.

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

Filed with the Office of the Secretary of State on February 3, 2026.

TRD-202600496
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: February 23, 2026
Proposal publication date: September 26, 2025
For further information, please call: (512) 834-6670

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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) adopts the repeal of §507.516, concerning Tables. The repeal of §507.516 is adopted with-

out changes to the proposed text as published in the January 2, 2026, issue of the *Texas Register* (51 TexReg 32). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted repeal removes 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.

COMMENTS

The 14-day comment period ended January 16, 2026.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Health and Safety Code §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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 3, 2026.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: January 2, 2026
For further information, please call: (512) 221-9021

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.587

The Comptroller of Public Accounts adopts amendments to §3.587 concerning margin: total revenue, with changes to the proposed text as published in the August 15, 2025, issue of the *Texas Register* (50 TexReg 5330). The rule will be republished.

The comptroller amends the section to implement House Bill 446, Senate Bill 604, and Senate Bill 1243, 88th Legislature, 2023; House Bill 1195, House Bill 1520, House Bill 4492, and Senate Bill 1580, 87th Legislature, 2021; Senate Bill 1824, 86th Legislature, 2019; House Bill 3254, 85th Legislature, 2017; House Bill 500, House Bill 2451, House Bill 2766, and Senate Bill 1286, 83rd Legislature, 2013; and Senate Bill 1, 82nd Legislature, First Called Session, 2011. The amendments also address the comptroller's revised interpretation of conformity to the Internal Revenue Code.

Throughout the section, the comptroller adds titles to statutory references and makes non-substantive changes to improve readability and clarity.

The comptroller received comments from Jennifer Rabb, President, Texas Taxpayers and Research Association (TTARA), concerning conformity of the franchise tax to the current-year federal income tax return and the application of the statutory definition of "Internal Revenue Code" only where specifically referenced. The comptroller will address the comments throughout the preamble.

The comptroller amends subsection (b)(1)(H), relating to the actual cost of uncompensated care, to improve readability. The comptroller also restructures the subparagraph to provide guidance on how a single entity and a combined group compute the required adjustment to the cost of goods sold or the compensation deduction for the portion of the actual cost of uncompensated care excluded from total revenue.

Implementing House Bill 446, the comptroller amends paragraph (3), defining "health care institutions," to replace the term "the mentally retarded" with the term "individuals with an intellectual disability" and to replace the term "mental retardation" with the term "intellectual disabilities."

Ms. Rabb asks whether application of the statutory definition of "Internal Revenue Code" only applies to computing total revenue or if it applies to all components of the franchise tax. In response, the comptroller adds new paragraph (5), defining "Internal Revenue Code" based upon the statutory definition in Tax Code, §171.0001(9) (General Definitions). Throughout the section, where the term "Internal Revenue Code" is used, the definition in new paragraph (5) applies. The comptroller further confirms that the definition of "Internal Revenue Code" applies to all components of the franchise tax where specifically referenced and other rules will be updated as appropriate. The subsequent paragraphs are renumbered accordingly.

Implementing House Bill 500 and Senate Bill 604, the comptroller adds new paragraph (6) to define "landman services" pursuant to Tax Code, §171.1011(g-11) (Determination of Total Revenue from Entire Business). Subsequent paragraphs are renumbered accordingly.

The comptroller moves the definition of "product" in former paragraph (10) to clause (ii) in renumbered paragraph (16) defining "sales commission" because, in this section, the term "product" is used only in relation to sales commissions.

Implementing Senate Bill 1286, the comptroller adds new paragraph (12) to define "professional employer organization" pursuant to Tax Code, §171.0001 and §171.1011(k). Professional employer organization replaces the term "staff leasing services company" in former paragraph (13) which the comptroller deletes.

Implementing Senate Bill 1 and House Bill 3254, the comptroller adds new paragraph (13) to define "qualified courier and logistics company" pursuant to Tax Code, §171.1011(g-7).

The comptroller adds new paragraph (14) to define "qualified destination management company" pursuant to Tax Code, §171.1011(g-6) and as defined by Tax Code, §151.0565.

Implementing Senate Bill 1, the comptroller adds new paragraph (15) to define "qualified live event promotion company" pursuant to Tax Code, §171.0001(10-a), (10-b), and (11-b). Subsequent paragraphs are renumbered accordingly.

Implementing House Bill 500, the comptroller adds new paragraph (22) to define "vaccine" pursuant to Tax Code, §171.1011(p)(8).

The comptroller amends subsection (c)(3) titled "federal consolidated group" to remove the information related to a federal disregarded entity from the paragraph and add it, with changes, as new paragraph (10).

The comptroller amends subsections (c)(5) and (6) to replace the current titles with more appropriate titles.

The comptroller amends subsection (c)(8) to delete reference to "discounts" as House Bill 500 repealed Tax Code, §171.0021 (Discounts from Tax Liability for Small Businesses).

The comptroller retitles subsection (c)(9) "nontaxable revenue" and amends the paragraph to be consistent with Tax Code, §171.001(b) which provides that the franchise tax extends to the limits of the United States Constitution. Revenue that Texas cannot tax under the United States Constitution is not included in total revenue.

The comptroller adds subsection (c)(10), titled "federal disregarded entity," to include the information related to a federal disregarded entity the comptroller removed from subsection (c)(3). The amendment requires an entity that is disregarded for federal tax purposes to compute revenue for franchise tax as if it reported as a corporation for federal tax purposes. Under Treasury Regulation, §301.7701-3 (Classification of certain business entities) if an entity is disregarded for federal tax purposes, the only other option available for that entity's federal reporting is to report as an association, and therefore as a corporation.

The comptroller prospectively amends subsection (d), relating to computing total revenue. Pursuant to Tax Code, §171.0001(9), new subsection (b)(5) in defines the term "Internal Revenue Code" by reference to the code in effect for the federal tax year beginning January 1, 2007. The existing language of subsection (d) reflects the comptroller's previous interpretation that the line items must be recomputed to reflect the 2007 version of the Internal Revenue Code. After reexamining the language, the comptroller concludes that the statutory definition of "Internal Revenue Code" only applies to computing the franchise tax where specifically stated in the statute. Because the Internal Revenue Code is not referenced in relation to the line items on the mentioned Internal Revenue Service forms when determining total revenue under Tax Code, §171.1011, the amendments use the line items as they are reported under the then-current federal income tax laws. The former rule, tied to the Internal Revenue Code as defined in new subsection (b)(5), is retained for prior report years.

Ms. Rabb comments that the new interpretation could result in a disconnect between the gain derived from the sale of a depreciable asset that is reported on the federal form and consequently included in total revenue, and the cost basis recorded for that asset based on the amount of depreciation subtracted in cost of goods sold (COGS) when computing taxable margin. Ms. Rabb asks whether the comptroller will allow a reduction to the gain by the basis differential, if any, or a one-time, catch-up depreciation deduction on the 2026 franchise tax report.

To address Ms. Rabb's concern, the comptroller will propose an amendment to §3.588 that will allow on the 2026 franchise tax report a one-time net depreciation adjustment in COGS under Tax Code, §171.1012(c)(6) (Determination of Cost of Goods Sold). The one-time net depreciation adjustment will apply to qualifying assets placed in service before the beginning date of the accounting period on which the 2026 franchise tax report is based and that have not been disposed of prior to this date. To qualify for the one-time net depreciation adjustment, all eligibility requirements under Tax Code, §171.1012(c)(6) must be met.

Ms. Rabb also requests guidance that all foreign royalties, foreign dividends, and amounts determined under §78 or §§951-964 of the current Internal Revenue Code, to the extent included, are excluded from total revenue. Ms. Rabb's comment relates to Tax Code, §171.1011(c)(1)(B)(ii), which provides an exclusion from total revenue for foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951-964.

Internal Revenue Code, §§951-964, address income from sources outside the United States in relation to controlled foreign corporations. Because of post-2007 amendments to the Internal Revenue Code, amounts determined under §§951-964 now include additional categories of foreign source income, e.g., global intangible low-tax income (GILTI) and foreign-derived intangible income (FDII), renamed by the One Big Beautiful Bill Act to net controlled foreign corporation tested income (NCTI) and foreign-derived deduction eligible income (FDDEI) respectively. These additional categories of foreign source income are not dividends or royalties.

For Texas franchise tax, when determining the amounts under Internal Revenue Code, §78 or §§951- 964, a taxable entity must utilize the 2007 Internal Revenue Code because of the specific reference to the Internal Revenue Code in Tax Code, §171.1011(c)(1)(B)(ii). The fact that these amounts are mentioned in the same clause as foreign royalties and dividends does not convert the nature of the income associated with these amounts. Therefore, the exclusion for amounts determined under Internal Revenue Code, §78 or §§951- 964 remain tied to the 2007 Internal Revenue Code. This is consistent with the comptroller's conclusion that the 2007 Internal Revenue Code applies to computing the franchise tax where specifically stated and referenced in the statute. The comptroller adds language to subsection (d)(1)(B)(ii) -(5)(B)(ii) to address the treatment of GILTI and FDII.

The comptroller adds language to subsection (d)(1)(B)(iv) to address the treatment of GILTI and FDII under Tax Code, §171.1011(c)(1)(B)(iv) for allowable Schedule C deductions. GILTI and FDII are both calculated and reported on Form 8993 and used to determine the amount of GILTI and FDII deductions reported on Schedule C, Dividends, Inclusions, and Special Deductions, of Internal Revenue Service Form 1120. Schedule C deductions are allowed to the extent the relating dividend income is included in total revenue. Neither GILTI nor FDII is dividend income. This is evidenced by the changes to the description for Line 4 of Internal Revenue Service Form 1120 from "Dividends" to "Dividends and Inclusions" when GILTI and FDII were added to the Internal Revenue Code. Line 4 is determined on Schedule C, which does not use the term "dividend" in the line for GILTI. FDII is neither a dividend nor an inclusion and is not reported on Schedule C. Therefore,

GILTI and FDII deductions, as well as their successors NCTI and FDDEI deductions, are not allowable deductions under Tax Code, §171.1011(c)(1)(B)(iv).

Ms. Rabb further observes that §3.591(b)(3) (relating to Margin: Apportionment) defines "gross receipts" to mean revenue as determined under §3.587 (relating to Margin: Total Revenue) with certain exceptions and asks for confirmation that a taxable entity will be allowed to compute their apportionment factor based on its current federal income tax return without adjustments to the 2007 IRC. In response to Ms. Rabb's request, the comptroller confirms that, beginning with reports due on or after January 1, 2026, a taxable entity will calculate gross receipts and the apportionment factor based on total revenue determined under the current federal tax law, except where the IRC is specifically referenced, as provided in subsection (d).

Subsection (e) addresses exclusions from total revenue. The comptroller amends subsection (e)(1), regarding the exclusion of flow-through funds mandated by law or fiduciary duty, to add new subparagraph (D) to give examples of flow-through funds that are mandated by law.

Implementing House Bill 2766, the comptroller amends paragraph (2) regarding the exclusion of flow-through funds mandated by contract. The comptroller adds "subcontract" to the mandate and "remediation" to the list of real property activities for which subcontracting payments are allowed as flow-through funds pursuant to Tax Code, §171.1011(g).The comptroller adds new subparagraph (C)(i)-(iii) to provide guidance from Titan Transp., LP v. Combs, 433 S.W.3d 625 (Tex. App. Austin 2014, pet. denied) and Hegar v. Gulf Copper & Mfg. Corp., 601 S.W.3d (Tex. 2020) in determining which payments are flow-through funds and what activities are included by the phrase - in connection with. The comptroller adds language in clause (iii) so that the terms are consistent with §3.588, concerning Margin: Cost of Goods Sold.

The comptroller amends paragraph (5)(A) to add "or persons" to "other entities" to make clear that qualifying payments distributed to individuals are also excluded from total revenue. The comptroller amends subparagraph (B), regarding the exclusion of reimbursements of certain expenses incurred in providing legal services, to provide guidance on what costs are general operating expenses and not excludable.

Implementing House Bill 500, the comptroller amends paragraph (6) to add a provision allowing an exclusion from total revenue for pharmacy networks pursuant to Tax Code, §171.1011(g-4).

Implementing Senate Bill 1286, the comptroller amends paragraph (7) to refer to a "professional employer organization" instead of a "staff leasing services company" pursuant to Tax Code, §171.1011(k).

The comptroller amends paragraph (10)(A)(i) to allow health care providers an exclusion from total revenue for capitation awards from the Centers for Medicare & Medicaid Services transferred to the taxable entity from an entity within the health care provider's corporate structure pursuant to STAR Accession No. 201207010L (July 13, 2012).

The comptroller amends paragraph (13) to make clear that the qualifications for excluding revenue from a low-producing oil well or low-producing gas well are determined independently.

The comptroller amends the definition of "qualified destination management company" in paragraph (14) to improve readability and deletes references to statutory definitions that are incorporated into this section through the amendment.

Implementing Senate Bill 1, the comptroller adds new paragraph (15) to provide guidance on the exclusion from total revenue allowed to qualified live event promotion companies pursuant to Tax Code, §171.1011(g-5).

Also implementing Senate Bill 636, the comptroller adds new paragraph (16) to provide guidance on the exclusion from total revenue allowed to qualified courier and logistics companies pursuant to Tax Code, §171.1011(g-7).

Implementing House Bill 500, the comptroller adds new paragraph (17) to provide guidance on the exclusion from total revenue allowed to aggregate transportation companies pursuant to Tax Code, §171.1011(g-8).

Implementing House Bill 500, the comptroller adds new paragraph (18) to provide guidance on the exclusion from total revenue allowed to barite transportation companies pursuant to Tax Code, §171.1011(g-10).

Implementing House Bill 500, the comptroller adds new paragraph (19) to provide guidance on the exclusion from total revenue allowed to landman services companies pursuant to Tax Code, §171.1011(g-11).

Implementing House Bill 500, the comptroller adds new paragraph (20) to provide guidance on the exclusion from total revenue for the cost paid for a vaccine pursuant to Tax Code, §171.1011(u).

Implementing House Bill 500, the comptroller adds new paragraph (21) to provide guidance on the exclusion from total revenue allowed to waterway transportation companies pursuant to Tax Code, §171.1011(v).

Implementing House Bill 2451, the comptroller adds new paragraph (22) to provide guidance on the exclusion from total revenue allowed to agricultural aircraft operation companies pursuant to Tax Code, §171.1011(w-1).

Implementing House Bill 500, the comptroller adds new paragraph (23) to provide guidance on the exclusion from total revenue allowed to motor carrier companies pursuant to Tax Code, §171.1011(x).

Implementing Senate Bill 1824, the comptroller adds new paragraph (24) to provide guidance on the exclusion from total revenue allowed to performing rights societies pursuant to Tax Code, §171.1011(g-12).

Implementing House Bill 1195, the comptroller adds new paragraph (25) to allow an exclusion from total revenue for qualifying loan and grant proceeds received for COVID-19 relief pursuant to Tax Code, §171.10131.

Implementing Senate Bill 1243, the comptroller adds new paragraph (26) to allow an exclusion from total revenue for qualifying grant proceeds received for broadband deployment in Texas pursuant to Tax Code, §171.10132.

Implementing House Bill 1520, House Bill 4492, and Senate Bill 1580, the comptroller adds subsection (f), exempting certain transactions and receipts related to the financing of the extraordinary costs incurred by gas and electric providers during Winter Storm Uri.

These amendments are 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 amendments implement Tax Code, §§171.0001 (General Definitions), 171.1011 (Determination of Total Revenue from Entire Business), 171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief), and 171.10132 (Provisions Related to Certain Grants Received for Broadband Deployment in Texas); Utilities Code, §§39.607 (Tax Exemption), 39.658 (Tax Exemption), 41.161 (Tax Exemption), and 104.375 (Tax Exemption); and Government Code, §1232.1072 (Issuance of Obligations for Financing Customer Rate Relief Property).

§3.587. Margin: Total Revenue.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

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

(1) Actual cost of uncompensated care--The amount determined by multiplying Operating Expenses by the Uncompensated Care Ratio where:

(A) operating expenses are the amounts reported on line 2 (cost of goods sold) and line 21 (total deductions), Internal Revenue Service Form 1065; the amounts reported on line 2 (cost of goods sold) and line 20 (total deductions), Internal Revenue Service Form 1120S; or the corresponding line items from any other federal form filed, less any items that have already been subtracted from total revenue (e.g., bad debts);

(B) uncompensated care ratio means uncompensated care charges less partial payments divided by total charges;

(C) uncompensated care charges are the charges for health care services where the provider has not received any payment or where the provider has received partial payment that does not cover the cost of the health care provided to the patient. Uncompensated care charges do not include any portion of a charge that the health care provider has no right to collect under a private health care plan, under an agreement with an individual for a specific amount, or under the charge limitations imposed by the programs described in subsection (e)(10)(A)(i) - (iii) of this section;

(D) charges must be comparable to the charges applied to services provided to all patients of the health care provider;

(E) partial payment is an amount that has been received toward uncompensated care charges that does not cover the cost of the services provided;

(F) total charges are charges for all health care services, including uncompensated care;

(G) records that clearly identify each patient, the procedure performed, and the charge for such a service, as well as payments received from each patient must be maintained by the health care provider for all uncompensated care;

(H) a corresponding adjustment must be made to reduce the cost of goods sold deduction calculated under §3.588 of this title (relating to Margin: Cost of Goods Sold) or the compensation deduction calculated under §3.589 of this title (relating to Margin: Compensation) for the portion of the cost of goods sold or compensation that has been excluded from total revenue.

(i) For a single taxable entity,

(I) the cost of goods sold adjustment is equal to the cost of goods sold deduction multiplied by the uncompensated care ratio; and

(II) the compensation adjustment is equal to the compensation deduction multiplied by the uncompensated care ratio.

(ii) For a combined group,

(I) the cost of goods sold adjustment, as described in clause (i)(I) of this subparagraph, is only calculated for and applied to the costs of goods sold deduction for each member of the combined group claiming the exclusion from total revenue for the actual cost of uncompensated care; and

(II) the compensation adjustment, as described in clause (i)(II) of this subparagraph, is only calculated for and applied to the compensation deduction for each member of the combined group claiming the exclusion from total revenue for the actual cost of uncompensated care.

(III) If an employee is paid by more than one member of a combined group, the compensation adjustment calculated in subclause (II) of this clause is subject to reduction based on the combined group's limitation on wages and cash compensation under §3.589(c)(1) of this title. The compensation adjustment for a member is reduced by the member's pro-rata share of the employee's wages and cash compensation that exceeds the combined group's wages and cash compensation limitation, multiplied by the uncompensated care ratio.

(2) Federal obligations--

(A) stocks and other direct obligations of, and obligations unconditionally guaranteed by, the United States government and United States government agencies; and

(B) direct obligations of a United States government-sponsored agency.

(3) Health care institution--An ambulatory surgical center; an assisted living facility licensed under Health and Safety Code, Chapter 247 (Assisted Living Facilities); an emergency medical services provider; a home and community support services agency; a hospice; a hospital; a hospital system; an intermediate care facility for individuals with an intellectual disability or a home and community-based services waiver program for persons with intellectual disabilities adopted in accordance with the federal Social Security Act, §1915(c) (42 U.S.C. §1396n) (Compliance with State plan and payment); a birthing center; a nursing home; an end stage renal disease facility licensed under Health and Safety Code, §251.011 (License Required); or a pharmacy.

(4) Health care provider--Any taxable entity that participates in the Medicaid program, Medicare program, Children's Health Insurance Program (CHIP), state workers' compensation program, or TRICARE military health system as a provider of health care services.

(5) Internal Revenue Code--The Internal Revenue Code of 1986 in effect for the federal tax year beginning on January 1, 2007, not including any changes made by federal law after that date, and any regulations adopted under that code applicable to that period.

(6) Landman services--

(A) performing title searches for the purpose of determining ownership of or curing title defects related to oil, gas, other energy sources, or other related mineral or petroleum interests;

(B) negotiating the acquisition or divestiture of mineral rights for the purposes of the exploration, development, or production of oil, gas, other energy sources, or other related mineral or petroleum interests; or

(C) negotiating or managing the negotiation of contracts or other agreements related to the ownership of mineral interests for the exploration, exploitation, disposition, development, or production of oil, gas, other energy sources, or other related mineral or petroleum interests.

(7) Lending institution--An entity that makes loans; and

(A) is regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, the Office of Thrift Supervision, the Texas Department of Banking, the Office of Consumer Credit Commissioner, the Credit Union Department, or any comparable regulatory body;

(B) is licensed by, registered with, or otherwise regulated by the Department of Savings and Mortgage Lending;

(C) is a "broker" or "dealer" as defined by the Securities Exchange Act of 1934 at 15 U.S.C. §78c (Definitions and application); or

(D) provides financing to unrelated parties solely for agricultural production.

(8) Management company--A corporation, limited liability company, or other limited liability entity that conducts all or part of the active trade or business of another entity ("the managed entity") in exchange for a management fee and reimbursement of specified costs incurred in the conduct of the active trade or business of the managed entity, including wages and cash compensation as determined under Tax Code, §171.1013(a) and (b) (Determination of Compensation). To qualify as a management company:

(A) the entity must perform active and substantial management and operational functions, control and direct the daily operations and provide services such as accounting, general administration, legal, financial or similar services; or

(B) if the entity does not conduct all of the active trade or business of an entity, the entity must conduct all operations, as provided in subparagraph (A) of this paragraph, for a distinct revenue-producing component of the entity.

(9) Net distributive income--The net amount of income, gain, deduction, or loss relating to a pass-through entity or disregarded entity reportable to the owners for the tax year of the entity.

(10) Obligation--Any bond, debenture, security, mortgage-backed security, pass-through certificate, or other evidence of indebtedness of the issuing entity. The term does not include a deposit, a repurchase agreement, a loan, a lease, a participation in a loan or pool of loans, a loan collateralized by an obligation of a United States government agency, or a loan guaranteed by a United States government agency.

(11) Pro bono services--The direct provision of legal services to the poor, without an expectation of compensation.

(12) Professional employer organization--A business entity that offers professional employer services or temporary employment services. For the purposes of this paragraph:

(A) "Professional employer services" means the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. "Professional employer services" does not include temporary help, an independent contractor, the provision of services that otherwise meet the definition of professional employer services by one person solely to other persons who are related to the service provider by common ownership, or a temporary common worker employer.

(B) "Temporary employment services" means a person who employs individuals for the purpose of assigning those individuals to the clients of the service to support or supplement the client's workforce in a special work situation, including an employee absence, a temporary skill shortage, a seasonal workload, or a special assignment or project.

(13) Qualified courier and logistics company--A taxable entity that:

(A) receives at least 80% of the taxable entity's annual total revenue from its entire business from a combination of at least two of the following courier and logistics services:

(i) expedited same-day delivery of an envelope, package, parcel, roll of architectural drawings, box or pallet. "Same-day delivery" means the service provider must pick up and deliver an item on the same calendar day;

(ii) temporary storage and delivery of the property of another entity, including an envelope, package, parcel, roll of architectural drawings, box, or pallet; and

(iii) brokerage of same-day or expedited courier and logistics services to be completed by a person or entity under a contract that includes a contractual obligation by the taxable entity to make payments to the person or entity for those services;

(B) during the period on which margin is based, is registered as a motor carrier under Transportation Code, Chapter 643 (Motor Carrier Registration), and if the taxable entity operates on an interstate basis, is registered as a motor carrier or broker under the motor vehicle registration system established under 49 U.S.C. §14504a (Unified Carrier Registration System plan and agreement) or a similar federal registration program that replaces that system, during that period;

(C) maintains an automobile liability insurance policy covering individuals operating vehicles owned, hired, or otherwise used in the taxable entity's business, with a combined single limit for each occurrence of at least $1 million;

(D) maintains at least $25,000 of cargo insurance;

(E) maintains a permanent nonresidential office from which the courier and logistics services are provided or arranged;

(F) has at least five full-time employees during the period on which margin is based;

(G) is not doing business as a livery service, floral delivery service, motor coach service, taxicab service, building supply delivery service, water supply service, fuel or energy supply service, restaurant supply service, commercial moving and storage company, or overnight delivery service; and

(H) is not delivering items that the taxable entity or an affiliated entity sold.

(14) Qualified destination management company--A taxable entity that:

(A) is incorporated or is a limited liability company;

(B) receives at least 80% of the entity's annual total revenue from providing or arranging for the provision of a combination of at least six destination management services. "Destination management services" means transportation vehicle management; booking and managing entertainers; coordination of tours or recreational activities; meeting, conference, or event registration; meeting, confer-

ence, transportation, or event staffing; event management; meal coordination; shuttle system services, including vehicle staging, radio communications, signage, and routing services; and airport meet-and-greet services, including the provision of airport permits, manifest management services, porterage, and passenger greeting services;

(C) maintains a permanent nonresidential office from which the destination management services are provided or arranged;

(D) has at least three full-time employees;

(E) maintains a general liability insurance policy with a limit of at least $1 million;

(F) during the preceding tax year, had at least 80% of the entity's client contracts for:

(i) clients from outside Texas who were determined by a contracting entity outside this state; or

(ii) clients from outside this state who were program attendees staying in a hotel in this state;

(G) other than office equipment used in the conduct of the entity's business, does not own equipment used to directly provide destination management services, including motor coaches, limousines, sedans, dance floors, decorative props, lighting, podiums, sound or video equipment, or equipment for catered meals;

(H) does not prepare or serve beverages, meals, or other food products, but may procure catering services on behalf of the entity's clients;

(I) does not provide services for weddings;

(J) does not own or operate a venue at which events or activities for which destination management services are provided occur; and

(K) is not a member of an affiliated group, as that term is defined by Tax Code, §171.0001, (General Definitions), another member of which:

(i) prepares or serves beverages, meals, or other food products; or

(ii) owns or operates a venue described by subparagraph (J) of this paragraph.

(15) Qualified live event promotion company--

(A) A taxable entity that:

(i) receives at least 50% of the entity's annual total revenue from the provision or arrangement for the provision of three or more live event promotion services;

(ii) maintains a permanent nonresidential office from which the live event promotion services are provided or arranged;

(iii) employs 10 or more full-time employees during all or part of the period for which taxable margin is calculated;

(iv) does not provide services for a wedding or carnival; and

(v) is not a movie theater.

(B) For the purposes of this section:

(i) "live event promotion services" means services related to the promotion, coordination, operation, or management of a live entertainment event. The term includes services related to the provision of the staff for the live entertainment event or the scheduling and promotion of an artist performing or entertaining at the live entertainment event;

(ii) "live entertainment event" means an event that occurs on a specific date to which tickets are sold in advance by a third-party vendor and at which: a natural person or a group of natural persons, physically present at the venue, performs for the purpose of entertaining a ticket holder who is present at the event; a traveling circus or animal show performs for the purpose of entertaining a ticket holder who is present at the event; or a historical, museum-quality artifact is on display in an exhibition; and

(iii) "artist" means a natural person or an entity that contracts to perform or entertain at a live entertainment event.

(16) Sales commission--

(A) any form of compensation paid to a person for engaging in an act for which a license is required by Occupations Code, Chapter 1101 (Real Estate Brokers and Sales Agent); or

(B) compensation paid to a sales representative by a principal in an amount that is based on the amount or level of certain orders for or sales of the principal's product and that the principal is required to report on Internal Revenue Service Form 1099-MISC (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement).

(C) For purposes of this paragraph:

(i) a "principal" is a person who manufactures, produces, imports, distributes, or acts as an independent agent for the distribution of a product for sale; uses a sales representative to solicit orders for the product; and compensates the sales representative wholly or partly by sales commission.

(ii) A "product" means services, tangible personal property, and intangible property.

(17) Security--The meaning assigned by Internal Revenue Code, §475(c)(2) (Security defined), and includes instruments described by Internal Revenue Code, §475(e)(2)(B), (C), and (D) (Commodity).

(18) Tiered partnership arrangement--An ownership structure in which any of the interests in one taxable entity treated as a partnership or an S corporation for federal income tax purposes (a "lower tier entity") are owned by one or more other taxable entities (an "upper tier entity").

(19) United States government--Any department or ministry of the federal government, including a federal reserve bank. The term does not include a state or local government, a commercial enterprise owned wholly or partly by the United States government, or a local governmental entity or commercial enterprise whose obligations are guaranteed by the United States government.

(20) United States government agency--An instrumentality of the United States government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States government. The term includes the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, the Small Business Administration, and any successor agency.

(21) United States government-sponsored agency--An agency originally established or chartered by the United States government to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith

and credit of the United States government. The term includes the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, and any successor agency.

(22) Vaccine--A preparation or suspension of dead, live attenuated, or live fully virulent viruses or bacteria, or of antigenic proteins derived from them, used to prevent, ameliorate, or treat an infectious disease.

(c) General rules for reporting total revenue.

(1) Variant of form. Any reference to an Internal Revenue Service form includes a variant of the form. For example, a reference to Form 1120 includes Forms 1120-A, 1120-S, and other variants of Form 1120. A reference to an Internal Revenue Service form also includes any subsequent form with a different number or designation that substantially provides the same information as the original form.

(2) Amount reportable. Any reference to an amount reportable as income on a line number on an Internal Revenue Service form is the amount entered to the extent the amount entered complies with federal income tax law and includes the corresponding amount entered on a variant of the form, or a subsequent form, with a different line number to the extent the amount entered complies with federal income tax law.

(3) Federal consolidated group. A taxable entity that is part of a federal consolidated group computes its total revenue as if it had filed a separate return for federal income tax purposes. Information on combined reporting can be found in §3.590 of this title (relating to Margin: Combined Reporting).

(4) Passive entity. A taxable entity shall include its share of net distributive income from a passive entity, but only to the extent the net income of the passive entity was not generated by any other taxable entity.

(5) Treatment of total revenue exclusions for cost of goods sold and compensation.

(A) Any expense excluded from total revenue (e.g., flow-through funds or the cost of uncompensated care allowed under subsection (e) of this section) may not be included in the determination of cost of goods sold (see §3.588 of this title) or the determination of compensation (see §3.589 of this title).

(B) Net distributive income that is subtracted from total revenue may not be included in the determination of compensation.

(6) Ordinary contract for services. Except as provided by subsection (e)(2) of this section, a payment received under an ordinary contract for the provision of services in the ordinary course of business may not be excluded from the calculation of total revenue.

(7) Payment to affiliated group members. If the taxable entity belongs to an affiliated group, the taxable entity may not exclude from the calculation of total revenue any payments described by subsection (e)(1) - (6) of this section that are made to entities that are members of the affiliated group.

(8) Tiered partnership provision. This provision is not mandatory. Subject to the following subparagraphs, a lower tier entity in a tiered partnership arrangement may exclude from total revenue the amount of total revenue reported to an upper tier entity. If a lower tier entity chooses to file under the tiered partnership provision, the lower tier entity may report total revenue to any or all of its upper tier entities. The total revenue reported to an upper tier entity must equal the upper tier entity's ownership percentage of the lower tier entity's entire total revenue.

(A) Reporting requirements. The lower tier entity must submit a report to the comptroller showing the amount of total revenue that each upper tier entity must include with the upper tier entity's own total revenue. Each upper tier entity must submit a report to the comptroller showing the amount of the lower tier entity's total revenue that was passed to the upper tier entity and is included in the total revenue of the upper tier entity.

(B) Nontaxable upper tier entity. This paragraph does not apply to that percentage of the total revenue attributable to an upper tier entity by a lower tier entity if the upper tier entity is not subject to the tax under this chapter. In this case, the lower tier entity cannot report total revenue to the nontaxable upper tier entity and the lower tier entity cannot exclude this total revenue from its franchise tax report.

(C) Eligibility for no tax due and the E-Z Computation. The no tax due thresholds and the E-Z Computation do not apply to an upper or lower tier entity if, before the attribution of any total revenue by a lower tier entity to upper tier entities under this section, the lower tier entity does not meet the criteria. See §3.584(d)(7) of this title (relating to Margin: Reports and Payments).

(D) Not a partnership distribution. Total revenue reported from a lower tier entity to an upper tier entity under the provisions of Tax Code, §171.1015(b) (Reporting for Certain Partnerships in Tiered Partnership Arrangement), is not a distribution from a partnership.

(E) Combined reporting. The tiered partnership provision is not an alternative to combined reporting. Combined reporting is mandatory for taxable entities that meet the ownership and unitary criteria. See §3.590 of this title. Therefore, the tiered partnership provision is not allowed if the lower tier entity is included in a combined group.

(F) Accounting period. If the lower tier entity and an upper tier entity have different accounting periods, the upper tier entity must allocate the revenue reported from the lower tier entity to the accounting period that the upper tier entity's report is based on.

(G) Lower tier entity no tax due. For reports originally due on or after January 1, 2010, if the lower tier entity owes no tax before the attribution of total revenue to the upper tier entities, filing under the tiered partnership provision is not allowed.

(9) Nontaxable revenue. Revenue that Texas cannot tax under the United States Constitution is not included in total revenue.

(10) Federal disregarded entity. A taxable entity that is disregarded for federal income tax purposes computes its total revenue as if it had filed a separate return as a corporation for federal income tax purposes. The federal disregarded entity may, however, choose to combine its revenue, cost of goods sold, compensation and gross revenue with its parent as provided by §3.590(d)(6) of this title. Further information on combined reporting can be found in §3.590 of this title.

(d) Total revenue. The line items in this subsection refer to line items on the 2006 Internal Revenue Service forms. A reference to a line item on the 2006 Internal Revenue Service forms includes any line item on a subsequent form with a different number or designation that substantially provides the same information as the line item on the 2006 Internal Revenue Service forms. For reports originally due prior to January 1, 2026, total revenue is based on the equivalent line numbers from the corresponding federal return, the amounts of which are computed based on the Internal Revenue Code. For reports originally

due on or after January 1, 2026, total revenue is based on the equivalent line numbers from the corresponding federal return.

(1) Corporations. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as a corporation for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1120;

(ii) the amounts reportable as income on lines 4 through 10, Internal Revenue Service Form 1120; and

(iii) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 (Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit) or §§951 - 964 (Controlled Foreign Corporations). Subtractions under this clause do not include foreign-derived intangible income (FDII) or global intangible low-taxed income (GILTI), as defined by the Tax Cuts and Jobs Act of 2017, or foreign-derived deduction eligible income (FDDEI) or net controlled foreign corporation tested income (NCTI), as defined by the One Big Beautiful Bill Act of 2025;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) allowable deductions from Internal Revenue Service Form 1120, Schedule C, to the extent the relating dividend income is included in total revenue. Subtractions under this clause do not include FDII or GILTI deductions, as defined by the Tax Cuts and Jobs Act of 2017, or FDDEI or NCTI deductions, as defined by the One Big Beautiful Bill Act of 2025;

(v) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(vi) other amounts authorized by subsection (e) of this section.

(2) S corporations. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as an S corporation for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1120S;

(ii) the amounts reportable as income on lines 4 and 5, Internal Revenue Service Form 1120S;

(iii) the amounts reportable as income on lines 3a and 4 through 10, Internal Revenue Service Form 1120S, Schedule K;

(iv) the amounts reportable as income on lines 17 and 19, Internal Revenue Service Form 8825; and

(v) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964. Subtractions under this clause do not include FDII or GILTI, as defined by the Tax Cuts and Jobs Act of 2017, or FDDEI or NCTI, as defined by the One Big Beautiful Bill Act of 2025;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(3) Partnerships. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as a partnership for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1065;

(ii) the amounts reportable as income on lines 4, 6, and 7, Internal Revenue Service Form 1065;

(iii) the amounts reportable as income on lines 3a and 5 through 11, Internal Revenue Service Form 1065, Schedule K;

(iv) the amounts reportable as income on line 17, Internal Revenue Service Form 8825;

(v) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F; and

(vi) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964. Subtractions under this clause do not include FDII or GILTI, as defined by the Tax Cuts and Jobs Act of 2017, or FDDEI or NCTI, as defined by the One Big Beautiful Bill Act of 2025;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(4) Trusts. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as a trust for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on lines 1, 2a, 3, 4, 7, and 8 of Internal Revenue Service Form 1041;

(ii) the amount reportable as income on lines 3, 4, 32, and 37 of Internal Revenue Service Form 1040, Schedule E;

(iii) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F; and

(iv) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964. Subtractions under this clause do not include FDII or GILTI, as defined by the Tax Cuts and Jobs Act of 2017, or FDDEI or NCTI, as defined by the One Big Beautiful Bill Act of 2025;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(5) Single member limited liability company (SMLLC) filing as a sole proprietorship. For the purpose of computing its taxable margin, the total revenue of a taxable entity registered as a single member limited liability company and filing as a sole proprietorship for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 3 of Internal Revenue Service, Form 1040, Schedule C;

(ii) the amount reportable as income on line 17, Internal Revenue Service Form 4797, to the extent that it relates to the (SMLLC);

(iii) ordinary income or loss from partnerships, S corporations, estates and trusts, Internal Revenue Service Form 1040, Schedule E, to the extent that it relates to the (SMLLC);

(iv) the amount reportable as income on line 16 of Internal Revenue Service Form 1040, Schedule D, to the extent that it relates to the (SMLLC);

(v) the amounts reportable as income on lines 3 and 4, Internal Revenue Service Form 1040, Schedule E, to the extent that it relates to the (SMLLC);

(vi) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F, to the extent that it relates to the (SMLLC);

(vii) the amount reportable as income on line 6 of Internal Revenue Service Form 1040, Schedule C, that has not already been included in this subparagraph; and

(viii) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964. Subtractions under this clause do not include FDII or GILTI, as defined by the Tax Cuts and Jobs Act of 2017, or FDDEI or NCTI, as defined by the One Big Beautiful Bill Act of 2025;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(6) Other taxable entities. For a taxable entity other than a taxable entity treated for federal income tax purposes as a corporation, S corporation, partnership, trust, or single member limited liability company filing as a sole proprietorship, the total revenue shall be an amount determined in a manner substantially equivalent to the amount calculated for the entities listed in this subsection.

(e) Exclusions from total revenue. Except as otherwise provided in this section and only to the extent included in the calculation of total revenue under subsection (d)(1) - (6) of this section, the following items shall be excluded from total revenue:

(1) Flow-through funds mandated by law or fiduciary duty. Flow-through funds that are mandated by law or fiduciary duty to be distributed to other entities or persons, including taxes collected from a third party by the taxable entity and remitted by the taxable entity to a taxing authority.

(A) Allowed exclusions include, but are not limited to, taxes imposed by law on a third party but collected by the taxable entity and remitted by it to a taxing authority. Examples include, but are not limited to, state sales tax and the Texas hotel occupancy tax.

(B) For excise taxes, only those entities that collect and remit the tax to the taxing authority may exclude the tax from total revenue. Excise taxes include, but are not limited to, motor fuels taxes and tobacco taxes.

(C) Taxes imposed by law on the taxable entity itself are not allowed as flow-through funds and cannot be excluded from total revenue. Examples include, but are not limited to, the Texas mixed beverage gross receipts tax and the Texas franchise tax.

(D) Payments of monetary awards in judgments and administrative orders are flow-through funds mandated by law if the judgments or orders are based on a statutory directive to distribute revenue to another entity or person. An example of a flow-through fund mandated by law is the public performance royalty based on a percentage of licensee gross revenues, which is mandated by a Copyright Royalty Board order pursuant to 17 U.S.C., §112 (Limitation on execu-

tive rights: Ephemeral recordings) and §114 (Scope of exclusive rights and sound recordings). Examples of flow-through funds that are not mandated by law are payments of judgments awarding contract or tort damages, agreed payments pursuant to antitrust consent decrees, and agreed payments to obtain permit approvals.

(2) Flow-through funds mandated by contract or subcontract. Flow-through funds that are mandated by contract or subcontract to be distributed to other entities or persons are limited to:

(A) sales commissions, as that term is defined by subsection (b)(16) of this section, to non-employees, including split-fee real estate commissions;

(B) the tax basis as determined under the Internal Revenue Code of securities underwritten; and

(C) subcontracting payments made under a contract or subcontract entered into by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, remediation, or repair of improvements on real property or the location of the boundaries of real property. For the purpose of this paragraph, a payment is a subcontracting payment when the following requirements are met:

(i) The payment is made for services, labor, or material that the taxpayer is obligated and compensated by its customer to provide;

(ii) the taxpayer has a contractual obligation to compensate its subcontractor; and

(iii) the connection between the payment and the actual or proposed design, construction, remodeling, or repair of improvements on real property or the location of the boundaries of real property is more than tangential. However, the taxpayer's subcontractor is not required to effect a material or physical change to the real property.

(3) Principal repayments. A taxable entity that is a lending institution shall exclude the principal repayment of loans.

(4) Tax basis of securities and loans. A taxable entity shall exclude the tax basis, as determined under the Internal Revenue Code, of securities and loans sold.

(5) Legal services. A taxable entity that provides legal services shall exclude:

(A) the following flow-through funds that are mandated by law, contract, or fiduciary duty to be distributed to the claimant by the claimant's attorney or to other entities or persons on behalf of a claimant by the claimant's attorney:

(i) damages due the claimant;

(ii) funds subject to a lien or other contractual obligation arising out of the representation, other than fees owed to the attorney;

(iii) funds subject to a subrogation interest or other third-party contractual claim; and

(iv) fees paid an attorney in the matter who is not a member, partner, shareholder, or employee of the taxable entity;

(B) reimbursement of the taxable entity's expenses incurred in prosecuting a claimant's matter that are specific to the matter, are reimbursed on a dollar-for-dollar basis, and are not estimated amounts, such as general operating expenses; and

(C) regardless of whether it was included in the calculation of total revenue under subsection (d) of this section, $500 per pro bono services case handled by the attorney, but only if the attorney maintains records of the pro bono services for auditing purposes in accordance with the manner in which those services are reported to the State Bar of Texas.

(6) Pharmacy cooperative or network. A taxable entity that is a pharmacy cooperative shall exclude flow-through funds from rebates from pharmacy wholesalers that are distributed to the pharmacy cooperative's shareholders. A taxable entity that provides a pharmacy network shall exclude reimbursements, pursuant to contractual agreements, for payments to pharmacies in the pharmacy network.

(7) Professional employer organization. A taxable entity that is a professional employer organization shall exclude payments received from a client for wages, payroll taxes on those wages, employee benefits, and workers' compensation benefits for the covered employees of the client. A professional employer organization cannot exclude payments received from a client for payments made to independent contractors assigned to the client and reportable on Internal Revenue Service Form 1099.

(8) Dividends and interest from federal obligations. A taxable entity shall exclude dividends and interest received from federal obligations.

(9) Management company. A taxable entity that is a management company shall exclude reimbursements of specified costs incurred in its conduct of the active trade or business of a managed entity, including wages and cash compensation as determined under Tax Code, §171.1013(a) and (b).

(10) Health care provider. A taxable entity that is a health care provider shall exclude:

(A) the total amount of payments, including co-payments and deductibles from the patient or supplemental insurance, received:

(i) under the Medicaid program, Medicare program, Indigent Health Care and Treatment Act (Health and Safety Code, Chapter 61), and Children's Health Insurance Program (CHIP), including any plans under these programs and capitation awards from the Centers for Medicare & Medicaid Services transferred from another entity in the health care provider's corporate structure;

(ii) for professional services provided in relation to a workers' compensation claim under Labor Code, Title 5 (Texas Workers' Compensation Act);

(iii) for professional services provided to a beneficiary rendered under the TRICARE military health system, including any plans under this program;

(iv) from a third-party agent or administrator for revenue earned under clauses (i) - (iii) of this subparagraph; and

(B) the actual costs, regardless of whether it was included in the calculation of total revenue under subsection (d)(1) - (6) of this section, of uncompensated care provided, but only if the provider maintains records of the uncompensated care for auditing purposes and, if the provider later receives payment for all or part of that care, the provider adjusts the amount excluded for the tax year in which the payment is received.

(11) Health care institution. A health care provider that is a health care institution shall exclude 50% of the exclusion described in paragraph (10) of this subsection.

(12) Federal government and armed forces. A taxable entity shall exclude all revenue received that is directly derived from the operation of a facility that is:

(A) located on property owned or leased by the federal government; and

(B) managed or operated primarily to house members of the armed forces of the United States.

(13) Oil and gas revenue from low-producing wells.

(A) During the dates certified by the comptroller in which the monthly average closing price of West Texas Intermediate crude oil is below $40 per barrel, as recorded on the New York Mercantile Exchange, a taxable entity shall exclude revenue received from the sale of oil produced from an oil well designated by the Railroad Commission of Texas or similar authority of another state whose production averages less than 10 barrels a day over a 90-day period.

(B) During the dates certified by the comptroller in which the average closing price of gas is below $5 per MMBtu, as recorded on the New York Mercantile Exchange, a taxable entity shall exclude revenue received from the sale of gas produced from a gas well designated by the Railroad Commission of Texas or similar authority of another state whose production averages less than 250 mcf a day over a 90-day period.

(14) Qualified destination management company. Effective for reports originally due on or after January 1, 2010, a taxable entity that is a qualified destination management company shall exclude payments made to other entities or persons to provide services, labor, or materials in connection with the provision of destination management services.

(15) Qualified live event promotion company. Effective for reports originally due on or after January 1, 2012, a taxable entity that is a qualified live event promotion company shall exclude payments made to artists in connection with the provision of a live entertainment event or live event promotion services.

(16) Qualified courier and logistics company. Effective for reports originally due on or after January 1, 2012, a taxable entity that is a qualified courier and logistics company shall exclude subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services.

(17) Aggregate transportation company. Effective for reports originally due on or after January 1, 2014, a taxable entity that is primarily engaged in the business of transporting aggregates shall exclude subcontracting payments made to nonemployee agents for the performance of delivery services. "Aggregates" means any commonly recognized construction material removed or extracted from the earth, including dimension stone, crushed and broken limestone, crushed and broken granite, other crushed and broken stone, construction sand and gravel, industrial sand, dirt, soil, cementitious material, and caliche.

(18) Barite transportation company. Effective for reports originally due on or after January 1, 2014, a taxable entity that is primarily engaged in the business of transporting barite shall exclude subcontracting payments to nonemployee agents for the performance of transportation services. "Barite" means barium sulfate (BaSO4), a mineral used as a weighing agent in oil and gas exploration.

(19) Landman services company. Effective for reports originally due on or after January 1, 2014, a taxable entity that is primarily engaged in the business of performing landman services shall exclude subcontracting payments made to nonemployees for the performance of landman services.

(20) Vaccine. Effective for reports originally due on or after January 1, 2014, a taxable entity shall exclude the actual cost paid for a vaccine.

(21) Waterway transportation company. Effective for reports originally due on or after January 1, 2014, a taxable entity primarily engaged in the business of transporting goods by waterway that does not subtract cost of goods sold in computing taxable margin shall exclude direct costs of providing transportation services by intrastate or interstate waterways to the same extent that a taxable entity that sells in the ordinary course of business real or tangible personal property would be authorized by Tax Code, §171.1012 (Determination of Cost of Goods Sold), to subtract those costs as costs of goods sold in computing its taxable margin, notwithstanding Tax Code, §171.1012(e)(3).

(22) Agricultural aircraft operation company. Effective for reports originally due on or after January 1, 2014, a taxable entity primarily engaged in the business of providing services as an agricultural aircraft operation, as defined by 14 C.F.R. §137.3 (Definitions), shall exclude the cost of labor, equipment, fuel, and materials used in providing those services.

(23) Motor carrier company. Effective for reports originally due on or after January 1, 2014, a taxable entity that is registered as a motor carrier under Transportation Code, Chapter 643, shall exclude flow-through revenue derived from taxes and fees.

(24) Performing rights society. Effective for payments received on or after June 4, 2019, a taxable entity that is a performing rights society that licenses the public performance of nondramatic musical works on behalf of a copyright owner shall exclude payments made to the public performance rights holder and the copyright owner for whom the taxable entity licenses the public performance.

(25) Qualifying loan or grant proceeds related to COVID-19 relief. Effective for reports originally due on or after January 1, 2021, a taxable entity shall exclude qualifying loan or grant proceeds, as defined under Tax Code, §171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief).

(26) Qualifying grant proceeds related to broadband deployment. Effective for reports originally due on or after January 1, 2023, a taxable entity shall exclude qualifying grant proceeds, as defined under Tax Code, §171.10132 (Provisions Related to Certain Grants Received for Broadband Deployment in Texas).

(f) Exemptions. Effective June 16, 2021, the following items related to Winter Storm Uri are exempt from the franchise tax and are not included in total revenue:

(1) Gas utilities:

(A) any interest on customer rate relief bonds, as defined by Utilities Code, §104.362;

(B) the sale or purchase of customer rate relief bonds issued under Utilities Code, Subchapter I (Customer Rate Relief Bonds);

(C) revenue derived from services performed in the issuance or transfer of customer rate relief bonds issued under Utilities Code, Subchapter I; and

(D) a gas utility's receipt of customer rate relief charges, as defined under Utilities Code, §104.362 (Definitions);

(2) Electric markets:

(A) the transfer and receipt of default charges, as defined under Utilities Code, §39.602 (Definitions);

(B) transactions involving the transfer and ownership of uplift property, as described by Utilities Code, §39.662 (Property rights); and

(C) the receipt of uplift charges, as defined under Utilities Code, §39.652 (Definitions);

(3) Electric Cooperatives:

(A) transactions involving the transfer and ownership of securitized property, as defined under Utilities Code, §41.152 (Definitions); and

(B) the receipt of securitized charges, as defined under Utilities Code, §41.152.

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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