ADOPTED RULES

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

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

13 TAC §§13.1 - 13.3, 13.6, 13.7

The Texas Historical Commission (Commission) adopts amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 13, §§13.1 - 13.3, 13.6, and 13.7 related to the Texas Historic Tax Credit Program. The rules are adopted without changes as published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1392) and will not be republished.

The adopted amendments to §§13.1 - 13.3, 13.6, and 13.7 clarify rules to better align the Texas Historic Preservation Tax Credit Program (THPTC) with the Federal Rehabilitation Tax Credit, which the Commission administers in Texas in conjunction with the National Park Service; reflect changes in legislation to the originating statute Texas Tax Code Chapter 171, Subchapter S; and delete processes that are unnecessary or in inappropriate sections of §13.3.

Section 13.1: Definitions is amended to add one phrase to better align the state tax credit program with the Federal Rehabilitation Tax Credit administered in part by the Commission. Clarifying language is added to other existing terms and phrases.

Section 13.2: Qualification Requirements is amended to reflect changes in legislation.

Section 13.3: Evaluation of Significance is amended to edit several subsections to bring them into better alignment with the Federal Rehabilitation Tax Credit and to reduce an application paperwork requirement.

Section 13.6: Application Review Process is amended to bring the THPTC into better alignment with the Federal Rehabilitation Tax Credit, clarify existing operations, and combine information from other sections in an improved manner.

Section 13.7: Inspection is amended to delete a section of text that was moved to §13.6.

No comments pertaining to these rule revisions were received during the thirty-day period following publication on March 10, 2023, in the *Texas Register* (48 TexReg 1392).

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably effect the purposes of the Commission, including the Commission's oversight authority regarding the Texas Historic Preservation Tax Credit Program and under Texas Tax Code §171.909 which authorizes the Commission to adopt rules necessary to implement the Tax Credit for Certified Rehabilitation of Certified Historic Structures under the Texas Franchise Tax. The Commission interprets this authority as allowing for the revision of application procedures and formats.

The Commission hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

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

Filed with the Office of the Secretary of State on April 10, 2023.

TRD-202301331
Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: April 30, 2023
Proposal publication date: March 10, 2023
For further information, please call: (512) 463-6100

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §25.30, adopts repeals of §§25.105, 25.107, and 25.109, adopts new §§25.105, 25.107 and 25.109, and adopts amendments to §25.485 and §25.495. The commission adopts the repeals with no changes and the new rules and amendments with changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6717). The new and amended rules will be republished.

Amended §§25.30, 25.485, and 25.495 change the time period for entities to respond to complaints from 21 days to 15 days. New §§25.105, 25.107, and 25.109 ensure the commission has necessary and current information on power marketers, REPs, and power generation companies (PGCs). New §25.105 and §25.109 respectively create annual registration requirements for power marketers and biennial registration requirements for PGCs. New §25.107 and §25.109 clarify the requirements and

associated processes for certification as a REP or registration as a PGC with the commission. Specifically, new §25.107 clarifies which persons are prohibited from serving as a principal of a REP or controlling the REP, updates the financial requirements to obtain a REP certificate, clarifies the processes for suspension of a REP certificate and suspension of a REP's ability to acquire new customers. It also expands the commission's authority for drawing on financial instruments that are required for certification. The commission also adopts amended certification and registration forms and other documents associated with the §§25.105, 25.107, and 25.109. Further, the commission also adopts implementation deadlines for power marketers, REPs, and PGCs to come into compliance with the amended rules, including a compliance update form specifically for REPs certified with the commission at the time new §25.107 is adopted. The commission makes other changes to the proposed rules and associated forms to clarify its intent.

The commission received comments on the proposed rule from the Alliance for Retail Markets (ARM) and the Texas Energy Association for Marketers (TEAM), individually and collectively (the REP Coalition); CenterPoint Energy Houston Electric, LLC (CenterPoint Energy); the Coalition of Competitive Retail Electric Providers (CCR); the Electric Reliability Council of Texas, Inc. (ERCOT); Enel North America, Inc. (Enel); Entergy Texas, Inc. (ETI) and Southwestern Public Service Company (SPS), individually and collectively (Joint Utilities); Good Company Associates (Good Company); Octopus Energy (Octopus); the Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company LLC (Oncor); South Texas Electric Cooperative, Inc. (STEC); Southwestern Electric Power Company (SWEPCO); Texas Competitive Power Advocates (TCPA); and Texas Industrial Energy Consumers (TIEC).

§§25.30, 25.485, and 25.495 - Customer Complaints

Section 25.30, relating to Complaints, enumerates the rights of a customer to file a complaint with the customer's electric utility and with the commission. Section 25.485, relating to Customer Access and Complaint Handling, establishes customer access and complaint handling standards for REPs and aggregators and delineates the commission's customer complaint process. Section 25.495, relating to Unauthorized Change of Retail Electric Provider, establishes the procedure, including the customer complaint process, that a REP, the registration agent, and a transmission and distribution utility (TDU) must follow if a REP serves a customer without proper authorization in accordance with the requirements of §25.474, relating to Selection of Retail Electric Provider.

Emergency Complaints

OPUC recommended the commission distinguish between "emergency" and "non-emergency" complaints in §§25.30, 25.485, and 25.495. OPUC indicated that certain complaints related to electrical outages for any customer, billing issues for low-income customers, and billing and service issues for critical care consumers should be classified as "emergency" complaints and placed on an expedited timeline.

Joint Utilities, SWEPCO, CCR, and the REP Coalition opposed OPUC's recommendation as burdensome and unnecessary. Joint Utilities, SWEPCO, and CCR commented that such a distinction would lead to inconsistent application by the commission and cause confusion as to what constitutes an emergency complaint. Joint Utilities and CCR explained that the current process used by the commission's Customer Protection Division (CPD) to prioritize certain complaints is preferable, because it permits proactive cooperation among all parties and is less confusing to customers. SWEPCO noted that existing commission rules offer additional protection for customers who submit complaints, such as continuation of service during complaint processing under §22.242(h), relating to Complaints, and supervisory review of the complaint under §25.30(b)(2). The REP Coalition commented that all complaints are important and that artificially distinguishing among complaints based on OPUC's proposed classification system may inefficiently allocate resources and impede the timely resolution of disputes. The REP Coalition emphasized that each complaint received by a REP is fact-dependent and CPD should retain discretion to prioritize complaints accordingly.

Commission Response

The commission declines to establish "emergency" and "non-emergency" complaint categories by rule. This distinction is unnecessary and would limit CPD's flexibility in addressing complaints on a fact-specific basis.

Deadline to respond to a customer complaint

Amended §§25.30, 25.485, and 25.495 revise the deadline for electric utilities, retail electric providers, and aggregators to respond to CPD regarding a customer complaint from 21 to 15 days.

OPUC expressed support for the reduction of customer complaint response deadlines, while the REP Coalition, CenterPoint, Octopus, ETI, Oncor, SPS, CCR, and Joint Utilities opposed the proposed change.

The REP Coalition indicated that a 15-day response deadline is insufficient to adequately respond to a "significant percentage" of customer complaints. Specifically, the REP Coalition explained that due to the extensive internal and external processes a REP undertakes when processing a customer complaint, the proposed change would negatively impact REPs by increasing complaint-related staffing costs or customers due to reductions in complaint response quality.

CCR commented that no basis or justification has been provided for the reduction in complaint response times by REPs. CCR also commented that, if the deadlines are reduced as proposed, then the commission should similarly reduce the amount of time commission staff takes to process those complaints. CCR asserted that complaint time periods are dependent on commission staff rather than REPs. CCR included a table of response times demonstrating that the average time for a REP to respond has remained at or below 15 days for calendar years 2017-2021, and that calendar year 2022 is trending in the same manner. CCR commented that the provided data supports its claim that REPs respond quickly when possible, but when more time is required, REPs utilize that time to ensure the complaint response is thorough.

Commission Response

The commission declines to change the proposed deadline of 15 days for response to a customer complaint submitted to the commission. Changing the response deadline from 21 to 15 days will assist commission staff in expediting complaint resolution for electricity consumers, and consistency across complaint deadlines will increase the efficiency of CPD's processing of customer complaints. This will provide a clear benefit to customers. Further, CPD's own data, as well as the data provided in CCR's comments, indicates that complaint responses are, in fact, sub-

mitted within an average of 15 days, supporting the viability of this response timeline.

The REP Coalition and ETI recommended the commission delay implementation of the reduction of complaint response deadlines from 21 to 15 days due to the burden it would place on respondents. The REP Coalition stated that reducing the deadline for a REP to respond to a customer complaint would cause the REP to incur significant costs, such as those associated with hiring additional investigators. The REP Coalition concluded that without investments by REPs to increase staffing, customers would experience a reduction in quality responses to their complaints. The REP Coalition emphasized this outcome "could in turn lead to a higher volume of subsequent [informal] complaints to the REP and to the Commission" and could even lead to an increased number of informal complaints being escalated to formal complaints. The REP Coalition accordingly requested that the rule amendments become effective six months after the rule's adoption so that REPs can hire additional staff and alter internal systems and processes to conform to the new standard. Similar to the REP Coalition, ETI commented that reducing the amount of time an electric utility has to respond to a complaint would result in rushed or prematurely closed investigations on customer complaints. ETI noted that such an outcome is contrary to the intention behind the change, which is to expedite the resolution of customer complaints.

Commission Response

The commission acknowledges that the change in complaint response deadlines from 21 to 15 days will require changes to internal processes and systems maintained by REPs, aggregators, and electric utilities. Therefore, the adopted rules set the effective date of the 15-day deadline as September 1, 2023. This date is the first day of fiscal year 2024 for the State of Texas, which will assist with data continuity reviews in the future (i.e., all of fiscal year 2023 had the 21-day deadline and for all of fiscal year 2024 and subsequent years, the 15-day deadline will be in effect). The September implementation also allows REPs and electric utilities more than five months to make any necessary adjustments to internal processes.

The REP Coalition recommended that, for informal complaints regarding usage, CPD should be required to contact both the TDU and the REP serving the customer. The REP Coalition explained that the transmission and distribution utility (TDU) may not respond in time for the REP to meet the revised 15-day deadline.

Commission Response

As a matter of process, CPD typically contacts a TDU for customer complaints related to electricity usage. However, the commission declines to codify this informal process as a rule requirement. Such a requirement is unnecessary and would limit CPD's flexibility in addressing complaints on a fact-specific basis.

Calendar days vs. working days

CenterPoint, SPS, and Octopus Energy requested the commission clarify that the proposed 15-day deadline for respondents to respond to a customer's complaint in §§25.30, 25.485, and 25.495 refers to "business days" and not "calendar days."

Commission Response

The usage of "day" in the rules is intentional and reflects the definition of "day" as provided by §22.2(18), relating to Definitions. Under §22.2(18), "day" is defined as "[c]alendar days, not working days, unless otherwise specified by this chapter or the commission's substantive rules." Therefore, no clarification is necessary.

"Complex" complaints

CCR, Oncor, CenterPoint, the REP Coalition, and SPS noted that some customer complaint investigations are more complex than others and will necessarily take longer than 15 days. However, Oncor acknowledged that in most cases, complaint investigations by electric utilities can be completed within 15 days.

Oncor and CenterPoint proposed an alternative response deadline to account for complex complaints that may take longer to investigate than 15 days. CenterPoint recommended that if an investigation is unable to be completed within a "15 business day" period, the responding party must, within that period, advise the complainant of that fact and indicate a reasonable deadline for conclusion of the investigation. Oncor's proposal mirrored CenterPoint's with the exception that Oncor additionally recommended that the initial response also include all substantive progress made on the complaint up to the date of the initial response and did not reference "business" days.

The REP Coalition generally agreed with Oncor's and CenterPoint's recommendations for alternative response deadlines for complex complaints. However, the REP Coalition indicated a preference for CenterPoint's proposed version on the basis that providing even a preliminary substantive response before an investigation is completed could frustrate the complainant if, after the full investigation is completed, the results are not exactly in line with the information provided in the initial response. The REP Coalition emphasized that in such a situation, the inclusion of substantive information in an initial response places an additional burden on the responding party to explain why the initial response differed from the final result of the investigation.

Commission Response

The commission declines to implement a "two-step" process for complaints as proposed by CenterPoint and Oncor. The commission acknowledges that some complaints require more investment of time and resources by respondents to investigate or that follow up communications between the respondent and CPD may be necessary. This is addressed by CPD on a complaint-by-complaint basis. A change in the response deadline will not change that process. Formally bifurcating the process by rule unnecessarily introduces delay into the complaint process because respondents would be required to draft an "initial" response in addition to the "final" response. As noted by the REP Coalition, the contents of the "initial" response may be different from the final response, which may introduce confusion. Furthermore, implementation of this proposal would require the commission to unnecessarily expend additional resources establishing a procedure for reviewing "initial" and "final" responses to customer complaints. This is ultimately not conducive to the resolution of the complaint itself. Finally, regarding CenterPoint's reference to "15 business day" deadline, the commission notes that the deadline is to be calculated using calendar days.

Extension of response time for complaints

Joint Utilities recommended that if the commission retains the 15-day deadline for electric utilities to respond to complaints in §25.30, then the rule should also provide an electric utility the option to administratively request an extension from the commission to adequately investigate and resolve the complaint. SPS similarly requested §25.30(b)(2) be revised to include a formal

method for an electric utility to request, from the commission, an extension of 10 business days for any complaint that requires the electric utility to physically visit the site. SPS explained that customer complaints that most frequently need additional time to resolve are those that require physical site visits by SPS personnel because SPS's service area is so extensive.

Commission Response

The commission declines to implement Joint Utilities' recommended change to permit extension of response time for complaints. This proposal has the same effect as distinguishing between "complex" and "non-complex" complaints, discussed above. Such a requirement is inappropriate for the reasons discussed previously and would limit CPD's flexibility in addressing complaints on a fact-specific basis.

Presentation of informal complaint to respondent

In conjunction with its recommendations to retain the 21-day deadline, the REP Coalition recommended, and Octopus Energy agreed, that §25.485(e)(1)(A)(i) and §25.495(b)(2) be amended to require a customer to submit a complaint to the respondent before filing an informal complaint with the commission. The REP Coalition emphasized that complaints may require more than 15 days to perform an investigation and prepare a written response. The REP Coalition noted this is particularly true when responding to an informal complaint that was not presented to the REP before being submitted to the commission, or when the complaint includes questions about the amount of usage billed. The REP Coalition provided draft language consistent with its recommendations.

Commission Response

The commission acknowledges that a customer's complaint may be most efficiently resolved by direct interaction between the customer and the REP. CPD routinely suggests that customers contact their service provider before filing a complaint with the commission. The same recommendation is also made on the commission's online complaint form. Despite such options being presented, many customers elect to file an informal complaint with the commission rather than their service provider. Customers are not regulated entities and there are a number of reasons why a customer may prefer to file directly with the commission. Accordingly, the commission establishes a standard for sufficiency of information a customer must submit that is necessary for a respondent to investigate a complaint but does not impose further requirements on customers. Accordingly, the revision proposed by the REP Coalition and Octopus is inappropriate.

The REP Coalition recommended that, if the commission implements the reduction of complaint deadlines as proposed, the 15-day deadline only apply to informal complaints filed with the commission. Specifically, the REP Coalition recommended the preservation of the existing 21-day deadline for a REP to respond to customer complaints filed with the REP under proposed §25.485(e)(1)(A)(iii) and proposed §25.495(b)(2)(A). The REP Coalition also recommended that 15-day response deadline, if adopted, apply only to complaints for which the customer has first submitted a complaint directly to the REP. Octopus agreed with the REP Coalition's alternative proposal for §25.485(e)(1)(A)(i) and §25.495(b)(2)(A) and further recommended §25.485(c) be revised on the same basis, to which the REP Coalition agreed. The REP Coalition and Octopus provided draft language consistent with their recommendation.

Commission Response

As previously stated, the commission acknowledges that a customer's complaint may be most efficiently resolved by direct interaction between the customer and the respondent. It is therefore appropriate to retain the existing 21-day deadline for complaints submitted directly to respondents. Doing so will likely also support a more expeditious resolution of any such complaint that is subsequently submitted to the commission. The commission revises §25.30(a) and §25.485(d) accordingly.

However, the commission declines to modify the proposed rule to also extend the deadline to 21 days for complaints that are submitted to the commission without being previously submitted to the respondent as requested by the REP Coalition and Octopus. As noted previously, consistency across complaints will assist CPD in efficiently processing customer complaints. Bifurcating the complaint process based on whether a complaint is first submitted to a REP will have the same effect as distinguishing between complex and non-complex complaints, and is unnecessary, because it would limit CPD's flexibility in addressing complaints on a fact-specific basis.

§25.107. Certification and Obligations of Retail Electric Providers (REPs).

Proposed §25.107 details the requirements, processes, and ongoing obligations associated with certification and maintenance of a REP certificate with the commission.

"External storage for digital media"

Proposed §25.107(d)(2)(E)(i)-(iii), (e)(2)(A), and (i)(3)(D)-(F) each specify certain information that a REP must include as part of its application or annual and semi-annual reports be provided to the commission via "external storage for digital media."

The REP Coalition and Octopus opposed the requirements to submit certain information "via external storage for digital media," such as a physical USB, because it is contrary to the commission's initiative to transition to digital filings. The REP Coalition commented that digital filings are significantly simpler and less resource intensive for both market participants and the commission. The REP Coalition also noted that, because the commission Interchange is capable of receiving Microsoft Excel file types via zip files, such a requirement is unnecessary and should be deleted from the rule. The REP Coalition provided draft language consistent with its recommendation.

Commission response

The commission agrees with the recommendation to delete the phrase "via external storage for digital media." Such a requirement is unnecessary given that the commission Interchange is capable of accepting Microsoft Excel file types and storing them in a compressed format.

For the specific provisions in §25.107 that require certain documentation to be in Microsoft Excel format, such documents must be filed in their native format, such as .xls, .xlsx, or .xlsm, and be capable of basic functions, such as permitting the copying and pasting of data. The commission adds new §25.107(c)(6) to reflect the above requirements.

Proposed §25.107(a)(1)(A) - Applicability; REP certificate required

Proposed §25.107(a)(1)(A) requires a person to obtain a REP certificate under §25.107 before purchasing, taking title to, or reselling electricity to provide retail electric service. Proposed

§25.107(a)(1)(A) further requires certification to be maintained on an ongoing basis by timely reporting and updating the certification information.

The commission revises §25.107(a)(1)(A) to conform with the REP Registration Form published with the proposed rule. Specifically, the revised provision clarifies that a person may certify as an Option 1 REP, Option 2 REP, or Option 3 REP under §25.107 and adds specific cross-references to the reporting and update provisions under §25.107(i) and (h).

Proposed §25.107(a)(1)(C) - Applicability; electric-vehicle charging station

Proposed §25.107(a)(1)(C) states that a person operating an electric vehicle charging station is not, for that reason, required to be certified as a REP.

The REP Coalition commented that the term "electric-vehicle" as used in §25.107(a)(1)(C) likely refers to the definition of "alternatively fueled vehicle" under Texas Transportation Code §502.004, as referenced by [the exception to] the definition of "retail electric provider" under §25.5(114), relating to Definitions, and PURA §31.002(17). The REP Coalition requested the commission clarify in its responses to comments that the term "electric-vehicle" means "alternatively fueled vehicle" as defined by Texas Transportation Code to substantively align with the exemption.

Commission Response

The commission agrees with the REP Coalition's interpretation of the term "electric-vehicle" in §25.107(a)(1)(C). The commission revises §25.107(a)(1)(C) to align with the definition of retail electric provider under §25.5(114), which excludes a person who is not otherwise a REP and who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Transportation Code, Section 502.004 from being considered a REP. The commission modifies §25.107(a)(1)(C) to clarify that such a person is also not required to register as a REP.

Proposed §25.107(a)(3) and §25.107(a)(3)(A) and (B) - Applicability; Certified Option 1 REPs compliance update form

Proposed §25.107(a)(3) requires all Option 1 REPs to use the commission's approved compliance update form to submit up-to-date information related to key contacts, affiliates, financial instruments and other information used to comply with the requirements of the adopted rule. Proposed §25.107(a)(3)(A) establishes a compliance deadline of on or before August 15, 2023, and proposed §25.107(a)(3)(B) describes penalties for not complying with the proposed rule.

The REP Coalition recommended the commission clarify in proposed §25.107(a)(3) that REPs already registered with the commission are not required to file and obtain approval of an amendment to its REP certificate to come into compliance. The REP Coalition requested that REPs only be required to submit a semi-annual report or the compliance update form to demonstrate compliance with the requirements of the amended rule.

Commission Response

A REP certified by the commission before the effective date of the rule must submit the compliance update form prescribed by the commission and is not required to amend its REP certificate to come into compliance. Submission of the compliance update form is procedurally less burdensome than amending a REP's certificate. The commission disagrees with the REP Coalition's proposal that the compliance update form should be a substitute for the REP's semi-annual report. However, the commission acknowledges that already certificated REPs may need more time to implement the changes under the proposed rule. Accordingly, the commission extends the deadline to submit the compliance update form to March 5, 2024. In response to the REP Coalition's original recommendation, the commission notes that the information required by the compliance update form is broader than the information covered in either the annual or semi-annual report. Further, exempting a certified REP from filing its annual or semi-annual report would create a gap in the commission's documented information.

Proposed §25.107(b)(13) - Definition of "Principal"

Proposed §25.107(b)(13)(A)-(E) lists the individuals who are considered principals for purposes of the rule, such as a shareholder with over ten percent equity of the REP or an executive of a company. Proposed §25.107(b)(13)(F) specifically defines "principal" as a person that has apparent or actual authority to exercise control over the REP or exercises control over a principal. A consultant or third-party provider is also considered a principal if they exercise control over the REP or its principals.

The REP Coalition opposed the reference to "consultant" in proposed §25.107(b)(13)(F), which states that consultants can be principals if they have "apparent or actual authority." The REP Coalition explained that consultants should "not have control over entities for whom they are consulting" and if a consultant were to have control over a REP or principal, then the consultant would qualify as one of the other forms of principal listed under §25.107(b)(13). The REP Coalition also commented that the concept of "apparent or actual authority" introduces ambiguity to the definition of "principal" and recommended the phrase be omitted for clarity. The REP Coalition provided draft language consistent with its comments.

OPUC recommended the commission further refine the definition of "principal" under §25.107(b)(13) to ensure that reporting requirements are not overly burdensome and properly tailored to the issues at hand.

Commission Response

The commission disagrees with the REP Coalition's recommendations that references to "consultants" and "apparent or actual authority" should be removed from the definition of "principal." The primary consideration governing whether an entity is a principal is whether it exercises control over the REP or another principal of the REP. However, the commission has experience with instances where this distinction needed further clarification. The plain meaning and ordinary understanding of the word "consultant" refers to a person that does not have control over an entity for which that person is providing consulting services. However, this does not prevent an individual from adopting the title of "consultant" while actually exercising a degree of control over the REP's activities. Accordingly, the commission retains the language specifying that a consultant is a principal when it exercises such control.

Similarly, the commission retains the proposed language stating that a principal's ability to exert control may be based upon "actual or apparent authority". This provision will address scenarios where it may be difficult to determine what explicit authority has been granted to an individual or entity, but the individual or entity is, nonetheless, exercising control over the REP or a principal of the REP. Consistent with well-established agency law, an individual has "apparent authority" when that person makes

representations to third parties that the person has authority to act on behalf of or otherwise exercise control over the REP and the third party reasonably believes such representations. More specifically, there may be instances where a person without actual authority conducts themselves in a manner that a third party may reasonably infer that the person has authority to act on behalf of, or otherwise exercise control over, the REP or its principals. Just as, under agency law, an entity can be held liable for the actions of one of its agents that only has apparent authority, and not specifically granted actual authority, an entity that is exercising control with apparent authority - i.e., exerting direct or indirect binding authority - is considered a principal.

The modifications to the definition of §25.107(b)(13)(F) will minimize the opportunity to circumvent the rule's limitations on who is allowed to exercise control over a REP. A REP may not know at the time it is applying for certification which consultants or other entities may end up exercising control, especially through the use of apparent authority. If the REP becomes aware that a consultant or other entity is exercising apparent authority on its behalf, the REP must either take the necessary actions to prevent the entity from exercising such authority or amend its certificate to recognize that entity as a principal - particularly in instances when the restrictions of subsection (g) are implicated. This is, strictly speaking, not a material change from existing law, which already defines "a person that controls the person in question" as a principal. The commission does, however, modify the definition of principal such that a person must exercise control and have actual or apparent authority, so that it is clear that control remains the critical consideration.

Lastly, with regards to OPUC's request that the definition be revised for clarity, the commission notes that the term "principal" was selected to mirror ERCOT Protocol 16.1.2 Principal of a Market Participant and that the definitions are substantially similar. As discussed above, generally the same entities should be considered principals as were considered such under the existing rule, with the modifications intended to prevent attempts to circumvent commission requirements. The commission does, however, revise §25.107(b)(13)(B) to state "[a] partner of a partnership" to more generally encompass the different types of legal partnerships and varying capacities in which a partner may participate as a principal in the partnership. The commission also revises §25.107(b)(13)(F) to state "A consultant, third-party provider, or fiduciary of a company such as the board of directors, can be a principal . . . " to provide more examples of potential principals and to reintroduce a direct reference to board members from the existing rule.

Proposed §25.107(b)(16) - Definition of "third-party provider"

Proposed §25.107(b)(16) defines "third-party provider" as "an entity to which a REP outsources or plans to outsource any retail or wholesale electric functions, including a contractor, consultant, agent, or any other person not directly employed by the REP." The definition also specifies that a third-party provider can be a principal to the extent it exercises control over the REP or its principals.

Similar to its recommendations for the term "principal" under §25.107(b)(13), the REP Coalition opposed the definition of "third-party provider" under proposed §25.107(b)(16). Specifically, the REP Coalition commented that the inclusion of the term "consultant" in the definition of "third-party provider" is overbroad and may result in overly expansive reporting requirements. The REP Coalition explained that requiring a REP to report its "consultants" would be overbroad as "consultants" traditionally occupy "purely advisory" roles and are not entities to which a REP outsources functions.

Commission Response

The commission disagrees with the REP Coalition and declines to implement its proposed language. As stated previously, a person or entity can be a "consultant" in name only and yet still act in a more substantial capacity for the REP than would be expected for a "purely advisory" role. Therefore, the inclusion of the term "consultant" in the definition of "third-party provider" is appropriate.

The REP Coalition also recommended adding the word "core" to describe the retail and wholesale functions that a person would perform that would qualify the person as a "third-party provider."

Commission Response

The commission disagrees with the REP Coalition and declines to implement its proposed language. The phrase "outsources or plans to outsource any retail or wholesale electric functions" sufficiently qualifies the intent. The insertion of the word "core" is therefore unnecessary. Furthermore, what constitutes "core" retail or wholesale electric functions introduces ambiguity as to which retail or wholesale functions are, or are not, "core" functions.

The REP Coalition recommended the phrase "[a] third party provider can be a principal to the extent it exercises control over the REP or its principals" be deleted because it is duplicative of the same phrase included in definition of "principal" under §25.107(b)(13). The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to remove the language that clarifies that a third-party provider can be a principal from the definition of third-party provider, as recommended by the REP Coalition. The commission agrees with the REP Coalition the phrase is duplicative of language that is included in the definition of principal, but because the concepts of principal and third-party provider are not intuitively connected, the commission retains the duplicative language for clarity. The commission also modifies the definition for consistency with the definition of principal and for clarity.

Proposed §25.107(d)(1)(B) - Basic ongoing requirements; five assumed names

Proposed §25.107(d)(1)(B) prohibits a REP from using more than five assumed names.

OPUC and Octopus recommended inserting additional language that would prevent a REP from allowing its affiliates to obtain REP certificates and therefore be allowed to use additional assumed names. OPUC and Octopus commented that it is potentially misleading to consumers and does not further competition when REP affiliates utilize many assumed names. Under OPUC and Octopus' proposal, a parent company would have access to only one REP certificate, and by extension a maximum of five assumed names. Consequently, a REP affiliate would be limited to the five assumed names allowed under the parent company's certificate.

The REP Coalition opposed OPUC's and Octopus's recommendation and explained that each REP is a distinct legal entity, regardless of whether the REP has affiliates. The inclusion of a different legal entity's name among the assumed names of a REP would create confusion where none currently exists and is con-

trary to current corporate law practices. Specifically, the REP Coalition stated that a REP cannot conduct business under the legal or assumed name of a separate legal entity and that there is consequently no reason to list an affiliated REP under another REP's assumed names because the affiliated REP is not providing service to that other REP's customers.

The REP Coalition commented that, if the concern raised by OPUC and Octopus is related to duplicative names, the existing version of §25.107 already prohibits names that are "duplicative of a name previously approved for use by a REP certificate holder." The REP Coalition further commented that such a limitation on assumed names would limit a REP's marketing efforts because it would inhibit the REP's ability to choose the names under which it conducts business. The REP Coalition explained that for brand recognition or marketing purposes, the flexibility in choosing multiple assumed names is desirable because it permits a REP to target specific customer classes, such as industrial customers, or subgroups of a class, such as multi-family properties. The REP Coalition questioned whether OPUC's and Octopus's proposal would genuinely benefit customers, commenting that assumed names adopted by a REP generally consist of more common, recognizable, and customer-friendly names rather than the full formal name of the legal entity holding the REP certificate. The REP Coalition stated that the existing requirement in commission rules for a REP to include its certificate number on information provided to customers, such as on advertising and billing materials, is sufficient to inform the customer of all assumed names associated with the certificate.

Lastly, the REP Coalition stated that limiting the ability of REPs to use multiple names with customer-friendly branding on the sole basis that the REPs are under the same corporate umbrella will not provide additional information to customers regarding affiliated REPs. The REP Coalition explained that the limitation could instead confuse customers by preventing the use of names that are shorter and easier to remember.

Commission Response

The commission agrees with REP Coalition and declines to prohibit a REP's affiliates from seeking REP certificates. More investigation would be required to understand the benefits and harms of such a proposal, which is beyond the scope of this rulemaking project.

Proposed §25.107(d)(1)(D)(i)-(vii) - Basic applicant requirements; current and accurate contact information

Proposed §25.107(d)(1)(D)(i)-(vii) requires a REP to maintain current and accurate contact information. The commission revises §25.107(d)(1)(D)(i)-(vii) to conform with the REP Registration Form published with the proposed rule. The commission also revises the REP compliance update form, which was also published with the proposed rule, to the extent such information covered by this provision must also be disclosed.

Specifically, the revised provision requires disclosure of the title of each specified representative and a web address wherever an e-mail address is required. A requirement to include a street and mailing address was added for all representatives except for the emergency contact required under §25.107(d)(1)(D)(v). New §25.107(d)(1)(D)(ii) was added to require contact information for the authorized representative for the application or amendment itself. Lastly, new §25.107(d)(1)(D)(vi) was added to require disclosure of the contact information for an applicant's registered agent.

Proposed §25.107(d)(1)(E), and §25.107(d)(1)(E)(i) and (ii) - Basic ongoing requirements; current and accurate office information

Proposed §25.107(d)(1)(E) requires a REP to maintain certain current and accurate office information. Proposed §25.107(d)(1)(E)(i) and (ii) details the current office information that a REP must disclose which consists of a Texas office for customer service and compliance purposes, and a Texas office for receiving service of process.

The commission revises §25.107(d)(1)(E) to conform with the REP Registration Form published with the proposed rule. The commission also revises the REP compliance update form, which was also published with the proposed rule, to the extent such information covered by this provision must be disclosed. Specifically, the commission adds a requirement to provide a business web address and a mailing address, if different from the applicant's Texas office address or primary business office address.

The commission also adds requirements inadvertently omitted from the published rule, to conform with prior commission requirements and current practice. These include the requirement that the REP's Texas office be the same as the office for service of process in §25.107(d)(1)(E)(i), and that the mailing address not be a post office box in amended §25.107(d)(1)(E)(i)(III).

Finally, the commission adds the requirement that the applicant provide the applicant's state of formation or incorporation and the address of the applicant's primary business office.

Proposed §25.107(d)(1)(I) - Basic application requirements; deadline to respond to commission staff request for information

Proposed §25.107(d)(1)(I) requires a REP to respond within five working days to any commission staff request for information.

Octopus recommended that proposed §25.107(d)(1)(I) be revised to allow a REP to request an extension of time in responding to commission staff's request for information, provided that commission staff agrees to the REP's request for an extension. Octopus provided draft language consistent with its recommendation.

Commission Response

The commission revises §25.107(d)(1)(I) to require REPs to respond within five working days to any commission or commission staff request for information unless otherwise provided by the commission, commission staff, or other applicable law. The addition of this language will address Octopus's concerns by clarifying that the requesting party can establish deadlines other than five days for responding to the request.

Proposed §25.107(d)(2)(B) - Basic applicant requirements; Secretary of State registration

Proposed §25.107(d)(2)(B) requires an applicant seeking certification as a REP to provide the commission with a copy of the applicant's Texas Secretary of State registration. The provision also prohibits a REP from using a business name that is deceptive, misleading, vague, otherwise contrary to §25.272, relating to Code of Conduct for Electric Utilities and Their Affiliates, or duplicative of a previously approved business name used by another REP certificate holder.

Octopus recommended proposed §25.107(d)(2)(B) be revised to include electricity broker names to avoid the potential for customer confusion or deceptive practices by a REP. Specifically,

Octopus recommended prohibiting a REP from using the name of a broker as the primary name on a REP's certificate or as one of a REP's assumed names. Octopus provided draft language consistent with its recommendation. The REP Coalition opposed Octopus's recommendation to revise §25.107(d)(2)(B) and explained that this issue was raised by ARM in comments filed in the broker registration rulemaking for §25.112, relating to Registration of Brokers, which was undertaken in Project No. 49794, Rulemaking for Broker Registrations. The REP Coalition commented that the commission declined to implement such a provision at that time. The REP Coalition further noted that misleading branding is already prohibited under §25.486, relating to Customer Protections for Brokerage Services, therefore such a revision in §25.107 is out of scope and unnecessary. The REP Coalition recommended Octopus' proposal be inserted into §25.112 as part of a separate rulemaking, as §25.112 is more appropriate for such a provision.

Commission Response

The commission declines to modify the proposed rule to prohibit a REP from using a broker name as primary name on its certificate as recommended by Octopus, because the requirement for all communications to be "clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive" in §25.475, relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers, is sufficient to allow the commission to intervene to prevent confusion between registered REPs and brokers.

The commission also does not agree with the recommendation that §25.112 is the appropriate location for Octopus' recommended branding restriction as that rule does not address REP branding. For clarity, the commission notes that §25.112 and §25.486 both involve the regulation of electric brokers, not REPs, and that the commission did not take a stance on REP branding restrictions in Project No. 47974, the project in which those rules were adopted, as suggested by commenters.

The commission also revises §25.107(d)(2)(B)(i) and (ii) to conform with the REP Registration Form published with the proposed rule.

Proposed §25.107(d)(2)(E) - Basic applicant requirements; information on controlling persons

Proposed §25.107(d)(2)(E) requires a person seeking certification as a REP to provide information to the commission related to the applicant's controlling persons. Specifically, it requires the registrant to provide an ownership and corporate structure chart that includes the share percentage each controlling person holds and to provide a list the applicant and corporate parent's affiliates, identified by name and type of commission registration.

The REP Coalition recommended that instead of requiring share ownership percentages on the ownership and corporate structure chart, the commission should only require a REP to identify majority owners. The REP Coalition elaborated that requiring ownership percentages would necessitate frequent updates by a REP. The REP Coalition explained that such updates would be burdensome and resource-intensive for REPs to comply with, as well as for the commission to review and approve, while not providing a commensurate benefit. The REP Coalition provided draft language consistent with its recommendation.

The REP Coalition also recommended clarifying the requirements of the list of affiliates, because it is unclear which affiliates must be disclosed. The REP Coalition explained that the phrase "type of commission registration" suggests only affiliates that are market participants registered with the [c]ommission are required to be provided. The REP Coalition accordingly requested the commission clarify whether the commission intended that result. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

A REP is only required to update its certification when there is a material change under §25.107(h)(2), not when there is a change in ownership percentage. The commission modifies §25.107(h)(2) to clarify that a change in ownership percentage is not, by itself, a material change.

The commission also modifies §25.107(d)(2)(E) to clarify the requirements of this section. Specifically, an applicant must submit a list of its subsidiaries and parent companies, up to the ultimate corporate parent. It must also report any of its sister companies - i.e., any of the subsidiaries of the ultimate corporate parent - that are registered or certified with the commission.

The applicant must also include an ownership and corporate structure chart that includes ownership percentages. The chart must be as detailed as practicable, but must contain, at minimum, the entities listed above and any entities with more than ten percent ownership of the REP or any of the REP's parent companies with a controlling interest in the REP.

Proposed §25.107(d)(2)(F) - Basic applicant requirements; general affirmation

Proposed §25.107(d)(2)(F) requires an applicant to provide a statement affirming compliance with §25.107(d)(1)(F)-(H) and include a short summary describing how the applicant has complied with each subparagraph.

The commission revises this subparagraph to also require the applicant to affirm that it will respond within five working days to any commission staff request for information, as required by §25.107(d)(1)(I) and provide a summary of how it will comply with that requirement.

Proposed §25.107(d)(2)(I) - Basic applicant requirements for Option 2 REPs; affidavits

Proposed §25.107(d)(2)(I) requires an applicant seeking certification as an Option 2 REP to provide an affidavit stating that it will only contract with customers to provide one megawatt or more of energy. Within 30 days of an applicant obtaining its Option 2 REP certificate, the REP is also required to submit signed, notarized affidavits from its customers affirming that the customers understand and accept the applicant's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.

The REP Coalition commented that the 30-day post-certification requirement for signed, notarized customer affidavits should be removed from the rule. The REP Coalition explained that the 30-day deadline could result in errors such as an Option 2 REP missing the deadline for customer affidavit submissions and result in the revocation of the REP's certificate, which would harm the REP's customers. The REP Coalition explained that the timing for such affidavits being required should instead be based on the timing of ERCOT's flight test schedule and the dates the REP signs power purchase agreements.

The REP Coalition alternatively recommended that affidavits only be required prior to serving the customer and not tied to a specific time period such as the proposed 30 days. The REP

Coalition provided draft language consistent with its recommendation.

Commission Response

The commission agrees with the REP Coalition that the 30-day deadline for Option 2 REP affidavits should be changed. Under the existing rule, Option 2 REP affidavits must be filed with the application, and if a REP is concerned that the 30-day deadline may result in errors, it may file its affidavits with its application. The additional 30 days is added to provide a slight buffer to allow REPs to complete executing contracts or other necessary preparatory activities prior to obtaining customer affidavits. It is not intended to allow a REP to fulfill all of its advanced obligations, such as completing ERCOT flight tests. Allowing additional time or not requiring the affidavits until the REP begins providing service, as requested by commenters, would be put a burden on staff to track and could result in commission staff being unaware of an Option 2 REP's failure to provide the necessary affidavits prior to serving a customer. The commission revises §25.107(c)(5) to account for conditional approval of the Option 2 REP certification where a REP submits all or some of the required affidavits.

Proposed §25.107(e)(1)(A) - Technical and managerial resource requirements; combined experience of executive officers or managers

Proposed §25.107(e)(1)(A) requires an Option 1 REP to maintain one or more executive officers or employees in managerial positions whose combined experience in the competitive electric or gas industry equals or exceeds 15 years. Proposed §25.107(e)(1)(A) specifically prohibits the experience of a third-party provider from being used to meet the requirement.

The REP Coalition requested proposed §25.107(e)(1)(A) be revised to permit the experience of a registrant's principals be used to contribute to the 15-year experience requirement because the proposed requirement may "significantly increase payroll costs at a time when controlling costs is of significant importance." The REP Coalition stated that if the commission prefers to limit the ability of principals to contribute experience, then the rule should alternatively permit a REP to rely on a principal for only five of the 15 years of required experience. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission acknowledges REP Coalition's concerns and revises the provision to permit the experience from all principals, not just executive officers, to count toward the 15-year experience requirement.

Proposed §25.107(e)(1)(C) - Technical and managerial resource requirements; primary point of contact and outage reports

Proposed §25.107(e)(1)(C) requires a REP to demonstrate the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis.

The commission revises §25.107(e)(1)(C) to conform with the REP Registration Form published with the proposed rule. The revisions expand §25.107(e)(1)(C) to include all applicable ERCOT requirements a REP must comply with to provide retail electric service in the ERCOT region.

Proposed §25.107(e)(2)(D) - Technical and managerial documentation requirements; complaint history

Proposed §25.107(e)(2)(D) requires an applicant to submit to the commission any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application that involve the applicant, the applicant's affiliates, any of the applicant's corporate parent's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service, the applicant's principals, and any person that merged with any of the listed persons.

OPUC recommended the addition of broadband and internet service to the list of utility-like-services an applicant is required to report in its complaint history. The REP Coalition opposed OPUC's recommendation and noted that such services are encompassed within the reference to "telecommunications" under proposed §25.107(e)(2)(D).

Commission Response

The commission agrees with the REP Coalition that the addition of internet and broadband to the list of utility-like services is not strictly necessary. However, to eliminate any perceived ambiguity in this requirement, the commission, modifies the list of utility-like services to include internet and broadband.

The commission also revises §25.107(e)(2)(D) to conform with the REP Registration Form published with the proposed rule. Specifically, the amended provision expands the list of persons that must be disclosed under §25.107(e)(2)(D) to include the applicant, the applicant's corporate parent, all sister companies and subsidiaries of the applicant and the applicant's corporate parent, and affiliates of the foregoing that provide utility-like services, as well as the applicant's principals and any person that merged with any of the preceding persons.

Proposed §25.107(e)(2)(E)(iv) - Technical and managerial documentation requirements; affidavit identifying relationships

Proposed §25.107(e)(2)(E)(iv) requires an applicant to submit to the commission a notarized statement indicating an applicant's relationship to specific persons that meet any of the criteria listed under proposed §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-). Under proposed §25.107(e)(2)(E)(iv)(I), such specific persons include the applicant's principals, executive officers, employees, third-party providers, and third-party provider's employees that exercised direct or indirect control over a market participant in certain situations, such as a REP that experience a mass transition of customers.

CCR and the REP Coalition opposed the list of persons a REP must identify on the basis that it would be burdensome to comply with, because the list is overly broad, ambiguous, and that a REP will likely not be able to sufficiently provide such information. CCR explained that "only executive officers, principals, or third-party risk management consultants possess sufficient authority over a REP's operations so as to be responsible for the identified scenarios" listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-). The REP Coalition specifically opposed the requirement for an applicant to identify all third-party providers and related employees that exercised control over a market participant that meet the criteria listed under proposed §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-).

Commission Response

The commission agrees with CCR and the REP Coalition that disclosure of a third-party provider's employees would be burdensome and revises the rule accordingly. However, the disclosure of the applicant's principals, executive officers, employees, and third-party providers that have been involved in one or more

of the circumstances listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-) are essential disclosures to ensure compliance with §25.107. The applicant is in the best position to know the individuals and entities that it employs and contracts with. Accordingly, it is the applicant's responsibility to be aware, and to make the commission aware, of any persons described by this section.

CCR also commented that the proposed rule does not sufficiently define "direct or indirect control" and that the inclusion of employees and consultants under §25.107(e)(2)(E)(iv)(I) as persons that must be disclosed is not appropriate. The REP Coalition commented that removing "consultant" from the definitions of "principal" and "third-party provider" and then adding "consultant" to the list of persons a REP must disclose under §25.107(e)(2)(E)(iv)(I) would address CCR's concerns.

Commission Response

The commission disagrees with CCR's contention that "direct or indirect control" is insufficiently defined. The term "control" is a defined term under §25.107(b)(4). The commission has also previously addressed comments relating to "authority" and "control" in its response to comments related to the defined term "principal" that address CCR's concerns related to ambiguity. The commission declines to implement the REP Coalition's proposed revision to omit the term "consultant" from the definitions of "principal and "third-party provider" for the reasons stated in the commission's response to comments related to those definitions.

CCR stated the listed scenarios under §25.107(e)(2)(E)(iv)(I) are vaguely defined, making disclosure impractical for applicants. CCR further commented that many applicants are unaware of the identities of market participants that have experienced the triggering scenarios because such information is not typically available publicly. CCR accordingly recommended that if §25.107(e)(2)(E)(iv) is adopted, the commission should commit to publishing information identifying which market participants have experienced one or more of the triggering events under §25.107(e)(2)(E)(iv)(I) so that applicants can disclose such information to the commission accurately. The REP Coalition explained in response to CCR that the commission does not need to publish a list of market participants that were involved in the scenarios under §25.107(e)(2)(E)(iv)(I) because this information is already provided by ERCOT in market notices.

Commission Response

The commission disagrees with CCR and maintains that the scenarios listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-) are sufficiently detailed because each circumstance is self-contained and provides specific criteria that must be met.

The commission also declines to publish a list of which market participants have experienced one of the triggering events, as requested by CCR. It is the responsibility of each REP to inquire into and investigate its employees and contractors for compliance with this section.

With regard to the REP Coalition's comment that ERCOT publishes market notices containing the necessary information, the commission notes that ERCOT market notices do not contain all of the information listed under §25.107(e)(2)(E)(iv)(I)(-a-)-(-d-), such as details related to a commission order that bar participation. Accordingly, applicants should not rely exclusively on these notices to ensure compliance with this requirement.

New §25.107(e)(2)(E)(v) - Technical and managerial documentation requirements; affirmation relating to prohibited persons.

The commission adds new §25.107(e)(2)(E)(v) to conform with the REP Registration Form published with the proposed rule. The new provision requires a statement affirming that the persons listed under §25.107(g)(1) do not control the applicant and are not relied upon to meet the requirements of §25.107(e)(1)(A) and (B).

New §25.107(e)(2)(F) - Technical and managerial documentation requirements; ERCOT requirements

The commission adds new §25.107(e)(2)(F) to conform with the REP Registration Form published with the proposed rule. The new provision specifies the information required to document compliance with the ERCOT-related requirements under §25.107(e)(1)(C) for applicants that provide or will provide retail electric service in the ERCOT region. Specifically, new §25.107(e)(2)(F)(i) requires disclosure of all relevant information related to each service agreement executed with a Qualified Scheduling Entity (QSE). New §25.107(e)(2)(F)(ii) requires an applicant to confirm it has the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis. New §25.107(e)(2)(F)(iii) requires an applicant to provide a confirmation that applicant will provide outage notifications in accordance with §25.53. Lastly, new §25.107(e)(2)(F)(iv) requires an applicant to provide a confirmation that applicant has or will soon complete ERCOT's flight test obligation.

Proposed §25.107(f)(1)(A)(ii)(II) - Access to capital; requirements of guarantor; tangible net worth and current ratio

Proposed §25.107(f)(1)(A)(ii)(II) requires a guarantor to have a tangible net worth greater than or equal to $100 million, a minimum current ratio of 1.0, and a debt to total capitalization ratio not greater than 0.60.

OPUC recommended amending proposed §25.107(f)(1)(A)(ii)(II) to require the "net worth ratio" be required to be maintained at a minimum of 1.0 rather than just needing it to be 1.0 at the time the REP is certified. OPUC commented that a "current net worth ratio" of 1.0 is insufficient to cover the additional risk associated with guaranteeing the amount listed in the irrevocable guaranty agreement. OPUC explained that after the guaranty agreement is executed the guarantor's liability will increase. Therefore, a guarantor's increased liability could change the outcome of the "current net worth ratio" because this calculation is based on the value of a guarantor's liability. The REP Coalition opposed OPUC's recommendation because the REP Coalition is neither aware of data indicating that the current guarantor capitalization requirements are insufficient, nor did OPUC provide such data in its comments.

Commission Response

The commission declines to implement OPUC's request regarding the "net worth ratio" because it is unnecessary. The proposed language requires a guarantor to maintain "tangible net worth" greater than and equal to $100 million and a minimum current ratio of 1.0, on an ongoing basis. Commission staff reviews the guarantor's financial statements biannually through the REP's annual and semi-annual reports to ensure guarantors continue to maintain the requirement.

Proposed §25.107(f)(1)(B) and §25.107(f)(1)(B)(i) - Access to capital; irrevocable stand-by letter of credit tiers

Proposed §25.107(f)(1)(B) permits a REP to maintain an irrevocable stand-by letter of credit with a face value based on the number of electric service identifiers (ESI IDs) it serves. The proposed subparagraph also requires a REP to maintain not less than one million dollars in shareholder's equity for the first 24 months a REP is serving load. Proposed §25.107(f)(1)(B)(i), specifies four tiers of total number of ESI IDs ranging from less than 20,000 ESI IDs to greater than and equal to 300,000 and corresponding required value of letters of credit ranging from $500,000 to $3 million.

CCR and TEAM recommended preserving the uniform letter of credit requirement of $500,000 in existing §25.107(f)(1)(B). CCR stated the commission has not provided any rationale for the proposed revisions and requested the commission disclose any data it possesses that supports the changes. CCR also speculated that the commission is increasing the value of letters of credit because of REP defaults that occurred during Winter Storm Uri. CRR noted that if this is the case and the commission is seeking to cover a REP's risk at ERCOT, then this would be a "fundamental shift in how ERCOT is reimbursed" because the market already has an established process to ensure a REP can pay its obligations at ERCOT.

CCR and TEAM commented that the commission has already implemented many changes to address the underlying issues brought about by Winter Storm Uri, rendering the proposed changes to letter of credit unnecessary. CCR and TEAM explained that other commission actions, including weatherization and customer protection initiatives, such as those related to wholesale indexed products, render the need for higher amounts for letters of credit unnecessary.

CCR and TEAM cautioned the commission from making further changes to the ERCOT market structure that may further burden market participants financially or otherwise interfere with market prices. TEAM noted that requiring higher amounts for letters of credit would inhibit competition and create additional barriers to entry to the market as the requirement would compound with a REP's other financial regulatory obligations. Specifically, TEAM stated that the letter of credit required by the commission is additional to other obligations required by ERCOT.

The REP Coalition and TEAM individually also commented that under the proposed tiers, a REP would inadvertently disclose confidential market share information by filing a letter of credit with the commission. The REP Coalition explained that tiering the letter of credit as proposed would enable other market participants to monitor the growth of a newly certified REP based on when it files new letters of credit.

ARM commented that there is no meaningful distinction between the proposed four tiers and accordingly recommended a two-tiered structure would be more appropriate. ARM commented that it does not oppose raising the lowest tier from $500,000 to $1 million because the increase is a reasonable capital requirement for REPs that reduces risk to consumers and other market participants. ARM provided draft language consistent with its recommendation.

Octopus opposed collapsing the tiers and raising the minimum letter of credit amount to $1 million as detailed by ARM. TEAM commented that, if the commission adopts a tiered approach as proposed, then the lowest tier should remain at $500,000.

Commission Response

The commission agrees with ARM that a two-tiered structure is appropriate for letters of credit and revises §25.107(f)(1)(B) accordingly. However, in acknowledgement of the concerns raised by other commenters about barriers to entry and the financial burden represented by increasing letter of credit amounts, the commission declines to increase the lowest tier of letter of credit amount to $1 million. The commission instead revises the minimum letter of credit amount to $750,000 for REPs that have enrolled fewer than 50,000 ESI IDs. The second tier is correspondingly revised to require a minimum letter of credit amount of $1.5 million if a REP has enrolled 50,000 ESI IDs or more.

The market exits and defaults among REPs after Winter Storm Uri demonstrated that a $500,000 letter of credit is not always sufficient to cover the defaulting REP's financial obligations. A higher barrier to entry is appropriate if that barrier is required to ensure that each REP has sufficient financial resources to fulfill its financial obligations. Further, the two-tiered system will ensure that REPs that serve the largest number of customers have sufficient financial resources to meet their correspondingly greater financial obligations. obligations that correspond to the number of customers they serve.

The commission also disagrees with the REP Coalition and TEAM that a tiered structure for letters of credit would disclose a REP's market share information. Market share information would be difficult to ascertain for other REPs, because letters of credit are filed confidentially, and updates are made frequently and for many reasons other than to increase or decrease the value of a letter of credit. Also, the reduction from four to two tiers further minimizes this risk.

The REP Coalition noted that under existing §25.107(f) "REP's have the option for their guarantor to maintain the letter of credit rather than the REP itself," however the proposed version of §25.107 does not retain this language. The REP Coalition recommended the rule be revised to reinstate this option as it provides flexibility for a REP in financing its letter of credit.

Commission Response

The commission disagrees with the REP Coalition that it is necessary to state a guarantor can provide a letter of credit on behalf of a REP. The letter of credit template continues to maintain the option for a REP to procure the letter of credit or for the letter of credit to be procured by an "applicant" on behalf of the REP. Accordingly, the "applicant" in the letter of credit template can maintain a letter of credit on a REP's behalf. Using "guarantor" in the rule as recommended by the REP Coalition would require the REP and guarantor to provide an irrevocable guaranty agreement because "guarantor" is defined under §25.107(b)(7) as a person that provides an irrevocable guaranty agreement to the commission. A REP electing to maintain an irrevocable guaranty agreement under §25.107(f)(1)(A) requires the use of a guarantor, while a REP electing to maintain a stand-by irrevocable guaranty agreement under §25.107(f)(1)(B) does not require a REP to use a guarantor to meet the REP's access to capital requirements.

Octopus recommended that the proposed tiered structure for letters of credit under §25.107(f)(1)(B) be based on MWhs for the prior year to properly allocate more financial risk to REPs that serve commercial and industrial customers. Octopus further recommended for REPs that have less than 12 months of sales history, the face value of the irrevocable standby letter of credit should be the minimum amount and adjusted later as needed.

ARM opposed Octopus' recommendation to base letter of credit amounts on the amount of MWh the REP served in the prior year because the number of ESI IDs more accurately estimates a REP's risk profile. ARM explained that MWhs served do not reasonably represent a REP's risk profile, are more complicated to track, and that both MWhs served and number ESI IDs served by a REP are commercially sensitive pieces of information that should be treated confidentially. Specifically, ARM stated that a MWh-based letter of credit framework would result in REPs that serve large commercial and industrial customers to maintain a letter of credit with a higher face value than REPs that serve residential customers, despite the different risk profiles represented by each customer class.

Commission Response

The commission declines to implement Octopus' proposal for the reasons stated by ARM. Further, implementing Octopus' proposal would be more complicated and administratively burdensome for commission staff and REPs to track.

Proposed §25.107(f)(2)(A) - Customer deposits and prepayments

Proposed §25.107(f)(2)(A) requires a REP to maintain customer deposits in an escrow account, segregated cash account, or provide an irrevocable stand-by letter of credit. The proposed subparagraph also requires a REP to maintain customer prepayments in an escrow account or provide an irrevocable stand-by letter of credit.

The REP Coalition and CCR opposed the removal of "segregated cash accounts" as a method available to a REP to maintain customer prepayments and recommended the language be reinstated. The REP Coalition commented that it is not aware of any concerns with using segregated cash accounts and that using segregated cash accounts for customer prepayments provides greater flexibility to REPs. The REP Coalition provided draft language consistent with its recommendation. CCR emphasized that this change would be burdensome on a REP's operations and that the commission has not provided a justification for this change.

Commission Response

The commission agrees with the REP Coalition and CCR that it is appropriate to allow REPs to maintain customer prepayments in a segregated cash account and revises the provision accordingly. As noted by commenters, this change allows a REP multiple options for protecting customer deposits and prepayments.

Proposed §25.107(f)(4) - Financial documentation requirements

Proposed §25.107(f)(4) requires an applicant to demonstrate compliance with the financial requirements under proposed §25.107(f)(1)-(3) by providing, among other things, a summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 calendar months immediately preceding the filing of the application.

OPUC recommended removing the 60-calendar month time limitation on disclosure of bankruptcy or other pertinent financial disclosures included in existing §25.107(f)(4). OPUC asserted that such events are significant enough that an applicant should be required to report all history and the disclosure period should not be limited to the 60-calendar months prior to the application.

CCR opposed OPUC's recommendation and explained that bankruptcy may not always result in negative outcomes for the market and that bankruptcy is a legal protection for the entity that should not permanently bar an otherwise qualified applicant from the Texas retail electricity market. The REP Coalition generally agreed with OPUC that bankruptcy or other financial disclosures are relevant to certification but opposed eliminating the timeframe limitation altogether and instead recommended that the disclosure period could instead be increased to 120 months.

Commission Response

The commission declines to implement OPUC's recommendation to remove the 60-calendar month disclosure timeframe for the reasons stated by CCR. The 60 months, or five years, prior to the application is a sufficient amount of time to cover relevant disclosures under §25.107(f)(4).

The commission also revises §25.107(f)(4) to conform with the REP Registration Form published with the proposed rule. Specifically, the amended provision requires an applicant to provide the date of the applicant's reporting fiscal year or, if the applicant has a guarantor, the guarantor's reporting fiscal year.

Proposed §25.107(f)(4)(B)(ii) and §25.107(f)(4)(C)(ii) - Documentation to substantiate Unaudited financial statements submitted by a guarantor and a REP respectively

Proposed §25.107(f)(4)(B)(ii) and §25.107(f)(4)(C)(ii) provide the manner in which unaudited financial statements must be substantiated by a guarantor and a REP respectively.

The commission revises §25.107(f)(4)(B)(ii) and §25.07(f)(4)(C)(ii) to conform with the REP Registration Form published with the proposed rule. Specifically, the commission revises §25.107(f)(4)(B) and (C) so that the requirement for audited or unaudited financial statements may be satisfied by either providing three consecutive months of monthly statements if quarterly statements are not available, or by providing a copy of the guarantor's most recent financial statements filed with any agency of the federal government.

Proposed §25.107(f)(4)(D) Documentation for -segregated cash accounts

Proposed §25.107(f)(4)(D) specifies that segregated cash accounts are to be documented by a current account statement and an executed agreement with a person that controls the segregated cash account. The subparagraph further provides details that must be clearly specified on the account statement and the executed agreement.

The commission revises §25.107(f)(4)(D)(i)(III) to align with amended §25.107(f)(2)(A) which permits customer prepayments, in addition to customer deposits, to be maintained in an escrow account, segregated cash account, or otherwise covered by an irrevocable stand-by letter of credit provided to the commission.

Section 25.107(f)(4)(D) and §25.107(f)(4)(D)(iii) are also revised to clarify that a segregated cash account must be documented by the executed agreement with an unaffiliated person that controls the segregated cash account.

Proposed §25.107(f)(4)(E),- Documentation for Escrow accounts

Proposed §25.107(f)(4)(E) requires escrow accounts to be documented by a current account statement and the escrow account agreement.

The commission revises §25.107(f)(4)(E) and §25.107(f)(4)(E)(iii) to mirror the requirement for an executed agreement under amended §25.107(f)(4)(D)(iii). Additionally, new §25.107(f)(4)(E)(i)(III) is added to align with amended §25.107(f)(2)(A) which permits customer prepayments, in addition to customer deposits, to be maintained in an escrow account, segregated cash account, or otherwise covered by an irrevocable stand-by letter of credit provided to the commission.

New §25.107(f)(4)(F)(ii)(II) - Irrevocable standby letter of credit; renewal and expiration

Proposed §25.107(f)(4)(F)(ii)(II) which requires letters of credit to automatically renew and only expire if prior notice is provided to the commission at least 90 days before the expiration.

The commission revises this language to also require commission staff to sign the notice of non-renewable to acknowledge that it was received 90 days prior to the expiration, mirroring an equivalent requirement for guaranty agreements. This harmonization will ensure that the commission is fully aware of the expiration of any financial instrument before the expiration takes effect.

Proposed §25.107(f)(4)(F)(ii)(V) - Irrevocable standby letter of credit; original or photocopy

Proposed §25.107(f)(4)(F)(ii)(V) requires an irrevocable standby letter of credit filed with the commission to permit a draw to be made using the original document or a photocopy.

The REP Coalition noted that some financial institutions may not permit a draw on a letter of credit via a photocopy. Accordingly, the REP Coalition recommended the commission investigate the proposed language further before adoption.

Commission Response

The commission declines to revise §24.107(f)(4)(F)(ii)(V) and emphasizes that a letter of credit must permit a draw to be made with either the original letter of credit or a photocopy of the letter of credit. Existing §25.107(f)(4)(F) requires a REP to use the commission's standard form template which includes language stating that the commission can draw on the irrevocable standby letter of credit with an original document or a photocopy. Accordingly, this is not a new requirement and should not impose any additional compliance burden.

Proposed §25.107(f)(4)(G) and §25.107(f)(4)(G)(ii) - Irrevocable guaranty agreements

Proposed §25.107(f)(4)(G) requires irrevocable guaranty agreements to be executed on the commission approved standard form irrevocable guaranty agreement and to obligate the guarantor to meet commission demands on behalf of the applicant. Proposed §25.107(f)(4)(G)(ii) requires irrevocable guaranty agreements to not have an expiration date and prescribes the process and requirements for termination of an irrevocable guaranty agreement after 90 days advance notice to the commission.

The commission revises §25.107(f)(4)(G) to conform with the REP Registration Form published with the proposed rule. Specifically, §25.107(f)(4)(G) is modified to require a copy of the irrevocable guaranty agreement executed by an applicant and the guarantor to be provided in the manner established by the commission. Section 25.107(f)(4)(G)(ii) is modified to replace the prohibition on the irrevocable guaranty agreement from having an expiration date with the requirement that the irrevocable guaranty agreement must automatically renew. The provision is also modified to provide that an irrevocable guaranty agreement can only expire if prior notice is provided to the commission at least 90 days before the expiration and commission staff acknowledges the notice.

Proposed §25.107(f)(5) - Commission draw on financial instruments

Proposed §25.107(f)(5) lists the circumstances under which a REP's financial instrument may be drawn upon. Such conditions consist of a mass transition of the REP's customers being initiated by the independent organization, a commission order revoking the REP certificate, the termination of a REP's Standard Form Market Participation Agreement (SFA) by ERCOT or similar agreement by an applicable organization, or a finding by the commission's executive director that the REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols.

Octopus, the REP Coalition, and CCR opposed allowing a financial instrument to be drawn upon based on the termination of the REP's SFA or a determination by the executive director. The REP Coalition noted that, under the existing rule, the circumstances in which the commission may draw upon a REP's financial instruments are limited to a mass transition or the revocation of the REP's certificate. The REP Coalition explained that the new conditions are unnecessary, because a mass transition will be ordered if a REP has failed to maintain its financial obligations at ERCOT. The REP Coalition further commented that authorizing the executive director to unilaterally draw upon a customer's letter of credit could harm customers because doing so could impede the ability of a REP "to honor existing customer contracts and to address any allegations of concerns regarding financial stability."

CCR opposed the expansion of scenarios that would authorize the commission to draw upon a REP's irrevocable letter of credit on the basis that such a draw would be unjustified, such as when a REP has no customers or outstanding financial commitments. CCR also stated that the manner of draw on a letter of credit by the commission in some of the proposed scenarios would deprive a REP of due process under the Texas Administrative Procedure Act (APA), such as when ERCOT terminates a REP's SFA under §25.107(f)(5)(C), which would in turn deny a REP the ability to dispute ERCOT's action before the commission.

Commenters recommended the commission revise the provision to require a commission order finding that the REP failed to comply with PURA, commission rules, or the ERCOT Protocols, rather than a decision from the executive director. Octopus and REP Coalition provided draft language consistent with their recommendations.

Commission Response

The commission declines to remove the added triggers for a draw upon a REP's financial instrument and declines to require notice and an opportunity for a hearing before a draw is permissible. Requiring such a hearing would be impractical and contrary to the purpose of these financial instruments to serve as guarantees of immediate payment. Furthermore, because financial instruments can be cancelled with 90 days' notice from the expiration date, commission staff must have a means of quickly accessing proceeds from the instrument to make the funds available for distribution. The additional triggers for a draw upon a financial instrument are necessary customer protections, based on commission staff experience with these instruments. How-

ever, the commission revises the rule to only allow a draw based on the termination of a REP's SFA or based on a finding by the executive director when the instrument will expire within 30 days. This ensures that these added triggers are only utilized when waiting on formal commission action would risk the expiration of the instrument.

The commission disagrees with CCR that a draw upon a REP's financial instrument as proposed would deprive a REP of due process under the APA. By executing the letter of credit or guaranty agreement and filing it with the commission, the REP is aware of the circumstances in which the commission may draw upon the letter of credit and has consented to those circumstances. The APA is not implicated by this process. Further, because the financial instrument specifically authorizes the commission to draw down in certain circumstances, there is no lack of due process. Moreover, the REP has consented to the draw in those circumstances, and the commission is not taking any action that it is not already specifically authorized to take.

The commission does not agree with CCR's concern that the commission will be authorized to draw on a financial instrument unnecessarily, such as when the REP does not have any customers or outstanding financial obligations. The commission will not arbitrarily draw on a REP's financial instrument. Given the fact that a draw upon a financial instrument is a last resort to ensure payment, a REP will have had opportunities with the commission, ERCOT, or other parties to address concerns relating to its financial solvency and ability to honor its existing commitments before such action is taken, including assessing whether there is actual need to draw upon the instrument. Importantly, if the expiration of an instrument is imminent, it may be appropriate for the commission to immediately draw upon a financial instrument to ensure these funds are available, even if it does not immediately distribute the funds. Therefore, if the commission were to draw upon funds prematurely, the proceeds would simply be returned to the REP, consistent with the provisions of this section.

To the extent CCR's due process concerns regarding §25.107(f)(5)(C) relate to ERCOT, the commission notes that the ERCOT-approved SFA provides such recourse for market participants and therefore no due process concerns exist. Section 22: Attachment A of the ERCOT Protocols contains the ERCOT-approved SFA. The SFA exhaustively details the circumstances, procedures, and remedies related to a market participant's performance under the SFA. Termination of the SFA can either occur at the election of the market participant or due to the default of the market participant. If the termination is due to default, the SFA prescribes an opportunity to cure the default if the ERCOT Protocols specify a remedy. The commission also notes that the termination of a REP's SFA allows the commission to draw upon the REP's financial instruments, but it does not require it. If the REP is actively working to remedy a default at ERCOT or contest the decision at the commission, it may not be necessary for the commission to draw upon the instrument before the relevant proceedings have concluded. This is a situational decision that will, by necessity, be made based on the facts and circumstances surrounding the termination of the SFA.

Proposed §25.107(f)(6)(A) - Proceeds from financial instruments; order of priority

Proposed §25.107(f)(6)(A) lists the order of priority in which proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement may be used to satisfy the obligations of a REP. In the proposed rule, the first priority for use of these proceeds was to return outstanding customer deposits and prepayments if not credited by or transferred to each customer's new REP of record or otherwise returned to the customer.

The REP Coalition argued that the addition of returning customer deposits and prepayments to the first item on the list could disincentivize outgoing REPs from returning customer deposits and prepayments in a timely manner, and as a result delay the disbursement of funds. The REP Coalition noted that such an outcome would reduce the funds available for the commission to pay Provider of Last Resort (POLR's) low-income customer's deposits.

Commission Response

In the event of a mass transition, it is important to prioritize continuity of service for all electric customers. This issue is particularly acute for low-income customers who may be unable to provide a deposit for a new provider. The commission agrees with the REP Coalition that the proposed order of priority would reduce the funds available for the commission to pay Provider of Last Resort (POLR's) low-income customer's deposits. Accordingly, the commission reverts the order of priority under §25.107(f)(6)(A) to the order established in the existing rule.

Proposed §25.107(g)(2) - Persons prohibited from exercising control; duty to report

Proposed §25.107(g)(2) requires an independent organization or TDU to alert the commission's enforcement division when it becomes aware of a person controlling a REP that is otherwise barred from exercising direct or indirect control over a REP.

ERCOT noted that it currently only collects limited information on principals submitted by QSEs and congestion revenue right account holders but indicated it can revise the ERCOT Protocols to comply with §25.107(g)(2) if the commission deems it to be necessary.

Commission Response

Adopted §25.107(g)(2) only requires ERCOT, as the independent organization, or a TDU to notify the commission upon becoming aware of a violation. Accordingly, ERCOT is not required to collect additional information to comply with the rule. The commission adds new §25.107(e)(2)(E)(v), which requires a REP to provide a statement affirming that the persons listed under §25.107(g)(1) do not control the REP and are not relied upon to meet the requirements of §25.107(e)(1)(A) and (B).

Proposed §25.107(h) and §25.107(h)(2) - Update or relinquishment of certificate; certificate amendment because of a material change

Proposed §25.107(h) requires a REP to maintain and update applicable information required by §25.107(d)-(f). Proposed §25.107(h)(2) requires a REP to apply to amend its certification within ten working days of a material change to its certification or before the material change is anticipated to occur. It also details what constitutes a material change.

The REP Coalition recommended that the documentation under proposed §25.107(e)(2) for updates related to a REP's technical and managerial capabilities under proposed §25.107(e)(1) should be provided as part of a REP's annual or semi-annual reports under proposed §25.107(i) rather than requiring an amendment application to revise the REP's certificate under proposed §25.107(h) and (h)(2). Octopus supported the REP Coalition's recommendation. The REP Coalition stated that the current pro-

posal could be administratively burdensome for a REP and for the commission because amendment applications require more time to review and process than REP's annual and semi-annual reports. The REP Coalition explained that certain disclosures, such as those relating to third-party providers and disclosures of executive officer experience, do not necessitate an immediate update to a REP's certificate and instead could be more periodically provided to the commission every six months via a REP's annual and semi-annual reports.

Commission Response

The commission declines to implement the REP Coalition's recommendation. Material changes must be documented through amendment applications because each material change affects a REP's ongoing compliance with the requirements of §25.107. Conversely, annual and semi-annual reports are periodic filings that allow the commission to ensure that each REP is maintaining the ongoing requirements of its certificate. However, the commission does revise the rule to clarify what changes in information required under §25.107(e) constitutes a material change, as detailed below.

The REP Coalition alternatively recommended that updates to a REP registration be permitted via notice filings in a master project designated for that purpose. If the commission declines the REP Coalition's alternative recommendation, the REP Coalition recommended the 10-working day deadline for material changes be extended to 20 working days to provide REPs sufficient time to prepare the amendment.

Commission Response

The commission declines to adopt the REP Coalition's alternative recommendation to create a master project for notice filings to report updates to a REP certificate for the reasons stated above. The REP Coalition's second alternative recommendation of 20 working days is an unnecessarily long period for a REP to file because that time period could exceed a calendar month, during which the commission will remain unaware that the REP's certificate is no longer completely accurate. The commission maintains that 10 working days sufficiently balances the administrative burden on REPs to file a certificate amendment with the commission's interest in receiving updated information from REPs.

The REP Coalition also recommend out-of-state complaints involving affiliates under proposed §25.107(e)(2)(D) not be required past the initial application and therefore neither be required in either an amendment application nor the REP's annual or semi-annual reports. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission agrees with the REP Coalition's recommendation and implements the proposed change. The commission revises §25.107(h)(2)(D) to exclude the complaint disclosure requirement under §25.107(e)(2)(D) as such information is more appropriate to disclose only for an initial REP certificate application.

Proposed §25.107(h)(2)(A) and (B) - Update or relinquishment of certificate; changes in ownership and assumed name

Proposed §25.107(h)(2)(A) specifies that a change in ownership, control, corporate restructuring, or transfer of a REP certificate constitutes a material change requiring disclosure. Proposed §25.107(h)(2)(B) specifies that a name change, including an addition of assumed names, constitutes a material change requiring disclosure.

The commission revises §25.107(h)(2)(A) for clarity and §25.107(h)(2)(B) to conform with the REP Registration Form published with the proposed rule. Specifically, §25.107(h)(2)(A) is amended to clarify that a change in control of the REP including a change in controlling owner, a corporate restructuring that involves the REP, a transfer of a REP certificate, or a change in the persons that have a minimum of ten percent ownership of the REP or a controlling parent of the REP each constitute a material change requiring disclosure and amendment of the REP certificate, but that a change in the ownership percentages of individual owners does not. Section 25.107(h)(2)(B) is revised to include deletions of assumed names as material changes requiring disclosure and amendment of the REP certificate.

Proposed §25.107(h)(2)(D) - Update or relinquishment of certificate; material changes

Proposed §25.107(h)(2)(D) specifies that, for Option 1 REPs, a change in technical or managerial qualifications constitutes a material change. Proposed §25.107(h)(2)(D)(i)-(iii) delineates instances that constitute a material change in technical and managerial qualifications and would require a REP to amend its certification. The commission revises §25.107(h)(2)(D) and §25.107(h)(2)(D)(i)-(iii) to conform with the REP Registration Form published with the proposed rule. Specifically, §25.107(h)(2)(D)(i) is merged into §25.107(h)(2)(D) and the cross references to the technical and managerial requirements of §25.107(e)(1)(A) and (B) and the corresponding documentation requirements of §25.107(e)(2)(B)-(C) and §25.107(e)(2)(E)(iv) and (v) are corrected. New §25.107(h)(2)(D)(iii) is added to indicate a change in identification of any of the applicant's principals, executive officers, employees, and third-party providers that meet the criteria under §25.107(e)(2)(E)(iv)(I), or a change in the applicant's relationship with such persons under §25.107 (e)(2)(E)(iv)(II)., if such a relationship exists, constitute material changes requiring disclosure and amendment of the REP certificate. Lastly, new §25.107(h)(2)(D)(iv) is added that requires a REP to amend its certificate if there is a change that requires an updated statement affirming that the persons identified under §25.107(g)(1) do not control the REP and are not relied upon to meet the requirements of §25.107(e)(1)(A) and (B) constitute a material change requiring disclosure and amendment of the REP certificate.

New §25.107(h)(2)(F) - Update or relinquishment of certificate; change in type of certificate

The commission adds new §25.107(h)(2)(F) to conform with the REP Registration Form published with the proposed rule. Specifically, new §25.107(h)(2)(F) specifies that a change in a REP's type of certification as an Option 1, Option 2, or Option 3 REP is a material change requiring disclosure and amendment of a REP certification.

Proposed §25.107(h)(3) - Relinquishment of certificate; required notice

Proposed §25.107(h)(3) authorizes a REP that no longer serves customers to relinquish its certificate and requires a REP that does not serve customers for two consecutive years to relinquish its certificate. Proposed §25.107(h)(3) also lists actions a REP must take if it plans to cease operations or relinquish its certificate.

The commission revises §25.107(h)(3) to conform with the REP Registration Form published with the proposed rule. Specifically, the provision is revised by expanding the list of persons who must be notified 45 days prior to a REP's cessation of operations under §25.107(h)(3) to include the Low Income Discount Administrator. The provision is also revised for clarity to indicate that a REP relinquishing its certificate must only provide notice to the TDUs and providers of last resort in the service territories in which a REP serves customers. Lastly, §25.107(h)(3) is revised to qualify that, as applicable, the notice to municipalities and electric cooperatives is limited to those entities in whose service territory the REP serves customers.

New §25.107(h)(4) and §25.107(h)(4)(A) and (B) - Requirements for application to amend REP certificate

The commission adds new §25.107(h)(4) and §25.107(h)(4)(A) and (B) to conform with the REP Registration Form published with the proposed rule. Proposed §25.107(h)(4) specifies additional information that must be disclosed by a REP applying to amend its certificate

Proposed §25.107(i)(3) and (4) - Reporting requirements; contents of semi-annual and annual report

Proposed §25.107(i)(3) specifies information that must be included both in a REP's annual and semi-annual report to the commission and proposed §25.107(i)(4) specifies additional information that only a REP's annual report must include.

The REP Coalition recommended combining proposed §25.107(i)(3) and (4) and adding new §25.107(i)(4) which would require disclosure only if such information differed from when the REP last updated the information. This would allow a REP to only report about principals, executive management, third-party providers, Load Serving Entity (LSE) and QSE registration information if there is a change from the last time the REP provided the information to the commission. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to revise §25.107(i)(3) and (4) in the manner recommended by the REP Coalition. If no information has changed between the annual and semi-annual report it should not be burdensome for the REP to re-submit this information. Further, requiring REPs to submit the actual information will assure REPs are reviewing this information comprehensively and allow commission staff to verify that the information has not changed.

Proposed §25.107(i)(3)(G) - Reporting requirements; contact information of REP's LSE and QSE

Proposed §25.107(i)(3)(G) requires a REP report any changes to its current LSE contact information kept on file with ERCOT and a copy of all Notices of Change of Information submitted to ERCOT since the REP's last annual or semi-annual report was filed. Additionally, if the REP's designated QSE is the same entity as the REP or an affiliate of the REP or REP's corporate parent, proposed §25.107(i)(3)(G) requires the REP to also include a copy of the current QSE and counter party contact information kept on file with ERCOT, including a copy of all Notices of Change of Information submitted to ERCOT in the time since the REP's last annual or semi-annual report was filed.

The REP Coalition opposed the requirement that a REP disclose QSE and counter party information. The REP Coalition explained that the commission can already access this information through ERCOT and that any benefit from such disclosure is unclear. The REP Coalition further commented that whether a REP, a REP's affiliate, or REP's corporate parent is a QSE should not affect a REP's reporting requirements. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission disagrees with the REP Coalition and maintains the requirement as proposed. Requiring REPs to attach a copy of a form the REP is also required to submit with ERCOT is not unduly burdensome. The disclosure creates greater transparency for the commission regarding the identity of the individuals who have decision-making authority over a REP's operations. The commission revises §25.107(i)(3)(G) to clarify that the requirement to disclose a REP's LSE and, as applicable, a REP's QSE and counter party contact information, only applies to REPs providing retail electric service in the ERCOT region.

New §25.107(i)(4)(C) - Reporting requirements; other disclosures required by commission rules

New §25.107(i)(4)(C) requires an annual report to disclose the information required by §25.491, relating to Record Retention and Reporting Requirements, and other commission rules, as applicable. The commission adds new §25.107(i)(4)(C) to conform with the REP Registration Form published with the proposed rule. Specifically, new §25.107(i)(4)(C) is added to reflect the required disclosures for annual and semi-annual reports under §25.491, relating to Record Retention and Reporting Requirements, which prescribes additional information that must be included in a REP's annual report to the commission, as well as any other applicable commission rules.

Proposed §25.107(l) - Suspension of a REP's ability to acquire new customers

Proposed §25.107(l) authorizes the commission or presiding officer to suspend a REP's ability to acquire new customers. A suspended REP is barred from seeking to acquire new customers. The commission can suspend a REP for a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization. Proposed §25.107(l) also authorizes a suspension to be limited to specific customer classes and for the commission to impose administrative penalties or other conditions on a REP in addition to the suspension. Further, proposed §25.107(1)(1)(E) authorizes the presiding officer to issue an emergency order directing ERCOT to stop processing move-in requests for the REP if the presiding officer determines such action to be in the public interest.

CCR opposed the inclusion of proposed §25.107(l) that authorizes the commission to suspend a REP from acquiring new customers because it would deprive a REP of due process. CCR noted that existing rule language already exists for a party to bring a formal complaint to suspend or revoke a REP's certificate. CCR further noted that the commission already possesses the authority to seek injunctive relief if a REP violates commission rules. CCR commented that such broad commission authority to impact a REP's business activities should not be part of what is otherwise an administrative approval process. Specifically, CCR contended that a suspension from acquiring new customers should comply with the Texas APA, and therefore a contested case proceeding is more appropriate. CCR also commented that a state of default to another market participant is an insufficient basis for the commission to suspend a REP from acquiring new customers.

CCR further contended that the dispute resolution processes maintained by TDUs and ERCOT should be required to occur prior to any action by the commission. CCR stated that the proposed suspension provision would punish a REP who avails itself of such an alternative dispute resolution process or enters into a payment plan, as such action could be a basis for suspension without due process.

The REP Coalition disagreed with CCR that proposed §25.107(l) deprives a REP of due process as it provides notice and an opportunity for a hearing to a REP via the filing of a petition by commission staff to suspend a REP's ability to acquire new customers. The REP Coalition also noted that the circumstances for an emergency suspension without a hearing are provided in the rule. To address CCR's concerns, the REP Coalition recommended new §25.107(l)(2) which would classify a suspension of a REP's ability to acquire new customers as a contested case under Tex. Gov't Code, Chapter 2001. Specifically, the new provision would authorize the commission to hold a hearing on a petition for suspension or refer the case to be heard by the State Office of Administrative Hearings. Additionally, a REP's timely submission of a request for a hearing would delay the suspension until the issuance of a commission order, except in cases where an emergency order is already issued under §25.107(l)(1)(E). Such an order must identify the violations underlying the suspension and any conditions for reinstatement. REP Coalition commented that its proposed language would clarify the intent of the subsection to afford a REP due process and ensure a REP has all information required for reinstatement, with clear deadlines for such information.

The REP Coalition also recommended that, if the intent of the rule is to allow for an immediate suspension once staff files a petition, to amend §25.107(l) to allow for an expedited hearing process similar to the process applicable to cease and desist orders under §25.54(d)(2)(C). The REP Coalition explained that such a process would require the commission to set a hearing date no later than the 10th day after the date a hearing request is received unless an agreement is reached on an alternative date and would allow for a REP to request a stay of the suspension pending the outcome of the hearing.

OPUC supported the inclusion of proposed §25.107(l).

Commission Response

The commission disagrees with CCR that §25.107(l) violates due process and declines to remove the provision. Suspending a REP is an action the commission has historically performed and is authorized to do under PURA Chapter 17. The revisions to §25.107(l) merely flesh out a process for the use of the commission's statutory authority already codified in existing §25.107 to suspend a REP from acquiring new customers. Therefore, the change is beneficial to REPs because the provision serves to provide insight into the considerations that guide the use of this authority and explains the details of the suspension process.

The commission also disagrees with CCR that a REP's certificate should not be suspended until after the completion of a formal complaint or alternative dispute resolution process at ERCOT. The commission agrees that it is often appropriate to let these processes play out before a suspension is concerned, but this is not uniformly the case the commission will not, by rule, limit its ability to take this statutorily authorized action when necessary. The commission's enforcement division and the executive director have reasonable discretion over when to pursue such a suspension and will exercise such discretion prudently.

With regard to emergency suspensions of a REP's ability to acquire new customers, the commission agrees with REP Coalition that such a process should mirror the cease and desist order procedure specified by §25.54. Accordingly, the commission modifies the rule to remove §25.107(l)(1)(E) and replaces it with new §25.107(l)(2). This new paragraph delegates authority to the executive director to suspend a REP's ability to acquire new customers via a cease and desist order, provided the criteria for the issuance of such an order under PURA §15.104 are met. The commission also revises the rule to provide interpretive guidance for PURA §15.104 by explicitly indicating that the statutory phrase "continuous and adequate electric service" is inclusive of the definition of "continuous and reliable electric service" as defined under §25.107(b)(3). Specifically, §25.107(b)(3) defines "continuous and reliable electric service" as "retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by the unlawful or unjustified action or inaction of the REP."

Additionally, the commission emphasizes that, to ensure due process and to align with statutory provisions on the use of cease and desist orders, the executive director may only act under §25.107(l)(2) when prior notice and an opportunity for a hearing is impracticable. To aid the executive director in making the practicability determination, the rule specifies that the executive director may consider, among other relevant factors, whether immediate action is necessary to ensure the REP is able to provide continuous and reliable service to its current or potential customers, reduce the risk of the REP exposing its current or potential customers to a mass transition event, or otherwise ensure the REP is able to meet its financial obligations.

Lastly, §25.107(l)(2) is modified to specify that the procedural provisions for a cease and desist without a hearing from §25.54(d)(2) apply, which include the right to request an expedited hearing on the cease and desist order.

Proposed §25.107(l) - Implementing suspension of a REP's ability to acquire new customers; Action by independent organization

Proposed §25.107(l)(1)(D) states that, upon approval of the petition for suspension by the presiding officer, ERCOT will be directed to stop processing move-in requests for the REP.

ERCOT noted that its current systems are not set up to permit ERCOT to block individual REPs from adding customers. Due to the technical infeasibility of the proposed language, ERCOT proposed an alternative. ERCOT can produce a report similar to an inadvertent gains report and provide that report to the commission. ERCOT provided draft language consistent with its recommendation. The REP Coalition supported ERCOT's recommended language for proposed §25.107(f)(1)(D) and (E) but noted that a REP will need time to implement a commission order to cease soliciting or enrolling new customers. The REP Coalition recommended ERCOT's suggested language for proposed §25.107(l)(1)(D) be amended to allow five business days from the date of the issued order for a REP to implement the suspension. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission agrees with ERCOT and implements its proposed language with minor revisions to account for instances where a REP must "initiate" service due to events outside the REP's control, the REP is obligated to serve the new customer, to the terms of a contract or a mass transition resulting from a

POLR event. The commission also agrees with the REP Coalition and revises §25.107(l)(1)(D) to provide a REP with time to implement a suspension. However, to ensure that the suspension order is implemented efficiently, the commission provides REPs with three working days instead of the requested five.

Proposed §25.107(l)(2) - Suspension of a REP's ability to acquire new customers; lifting of suspension

Under proposed §25.107(l)(2), the presiding officer may lift a suspension of a REP's ability to acquire new customers if all the conditions for reinstatement are met, if the REP is in compliance with all technical, managerial, and financial requirements of this section, and commission staff recommends that the suspension be lifted.

The REP Coalition recommended revising §25.107(l)(2) to state that a REP suspension "must" be lifted by the presiding officer when all violations that led to a REP's suspension are resolved or settled. The REP Coalition opposed usage of the permissive "may" as it provides discretion to the presiding officer on whether to lift the suspension despite such resolution or settlement.

The REP Coalition further recommended proposed §25.107(l)(2)(C) be removed as it conditions the lifting of the suspension upon a recommendation by commission staff. The REP Coalition explained that, in its view, if a REP has fulfilled the conditions for reinstatement, the lifting of the suspension should be mandatory, not discretionary, regardless of whether commission staff files a recommendation. The REP Coalition noted that requiring a commission staff recommendation may delay a reinstatement and that if such a recommendation is necessary, the presiding officer has the discretion to require commission staff to file one. The REP Coalition provided draft language consistent with its recommendation.

Commission Response

The commission declines to implement the REP Coalition's recommendation to automatically lift the REP's suspension from acquiring new customers when all violations that led to the suspension are resolved or settled. The resolution or settlement of violations may require verification and additional circumstances may exist that merit preserving the suspension. However, in acknowledgement of REP Coalition's concerns regarding quick resolutions and to provide maximum flexibility for lifting the suspension, the commission modifies the provision to bifurcate the reinstatement process.

Under the first option, a REP may file a petition for reinstatement that is eligible for informal resolution. In determining whether to lift the suspension, the presiding officer may consider whether the REP has resolved all violations underlying the suspension, fulfilled all conditions for reinstatement, and is in compliance with the technical, managerial, and financial requirements of §25.107. The commission also modifies the rule to clarify that the presiding officer may consider all of the requirements of §25.107, or just a subset of those requirements, as appropriate to the situation. Additionally, the presiding officer may consider any additional grounds relevant to maintaining the suspension to prevent the need for redundant suspension proceedings. Lastly, as requested by the REP Coalition, the commission removes the requirement that commission staff must file a recommendation in support of lifting the suspension, because the presiding officer has discretion to require a recommendation from staff, if needed.

Under the second option, the commission has added a new expedited method for lifting the suspension under §25.107(l)(4) that would authorize commission staff to lift the suspension without any further action required by the commission. Under this option, the suspension order would contain specific, verifiable conditions for expedited reinstatement. However, to ensure that the REP has fulfilled each required condition as intended, the suspension order may condition expedited reinstatement upon staff approval. This strikes an appropriate balance between commenters' due process concerns and desire for expediency, because the suspended REP has the option of working with staff for expedited reinstatement, while still having the option of filing a petition for reinstatement if the REP and commission staff disagree as to whether the conditions have been met.

The commission also emphasizes that expedited reinstatement of a REP's ability to acquire new customers is only appropriate in certain circumstances. Specifically, §25.107(l)(4) provides that "[e]xpedited reinstatement is not appropriate if the basis for the suspension cannot be redressed by the fulfillment of specific, predetermined remedial actions, if the pattern of conduct giving rise to the suspension supports a general concern about the REP's ability to comply with applicable law or provide customers with continuous and reliable service, or if there is evidence that may support additional grounds for suspension" Lastly, the commission authorizes the creation and use of a compliance docket for expedited reinstatements, if required.

§25.109. Registration of Power Generation Companies and Self-Generators

Intent to sell at wholesale and definition of "self-generator"

The proposed repeal and replace of §25.109 included a new definition of "self-generator" to provide clarity on the applicability of PGC and self-generator registration requirements.

The commission received comments from TIEC, Enel, Good Company, STEC, and TCPA on the proposed provisions. TIEC, Good Company, and Enel recommended the commission take up the issue of defining "self-generator" and addressing the applicability issues in a separate rulemaking.

Commission Response

The commission agrees with commenters that the definition of "self-generator" and the registration applicability issues should be considered in a separate rulemaking. Accordingly, the commission revises the proposed rule to remove language related to these changes. Specifically, the commission deletes the definition of "self-generator" under §25.109(b)(3) and revises §25.109(e) to require attestations by persons registering as self-generators affirming only that the registrant is not a power generation company and does not intend to generate electricity intended to be sold at wholesale. Further, if the registrant is a Qualifying Facility (QF) and registering as a self-generator, then the registrant either does not sell electricity or provides electricity only to the purchaser of the facility's thermal output. The commission deletes the reference in the existing rule to electric energy storage equipment or facilities to which PURA, Chapter 35, Subchapter E applies as the definition of "power generation company" includes this reference in the definition. The commission further omits the proposed requirement that Exempt Wholesale Generators (EWGs) must register under §25.107 as a PGC. The requirement that QFs must register as PGCs has been retained in the adopted rule as that requirement is present in the existing rule. The commission also makes revisions to the rule for clarity.

§25.109(b)(2) - Definition of "principal"

Proposed §25.109(b)(2)(A)-(F) defines "principal" with specific reference to a variety of persons that traditionally exert authority or control across different legal business organizations.

Commission Response

The commission revises the definition of "principal" to conform with the same definition included in the adopted version of §25.107(b)(13) to the extent the definitions overlap, including the clarification that "a fiduciary of a company such as the board of directors, is a principal" provided they possess apparent or actual authority to exercise control over a PGC or its principals, and actually exercise such control. The commission also similarly revises §25.109(b)(2)(B) to state "a partner of a partnership."

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.30

The amended rules are adopted under the following provisions of PURA: §14.002 which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §15.104 which authorizes the commission or executive director to issue a cease and desist order with or without notice or opportunity for a hearing. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §17.052 which authorizes the commission to adopt and enforce rules related to certification or registration including suspension or revocation for repeated violations of Chapter 17 of PURA or commission rules. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the requirements to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 15.051, 15.104 17.001, 17.003, 17.004, 17.052 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

§25.30. Complaints.

(a) Complaints to the electric utility. A customer or applicant may file a complaint in person, by letter, or by telephone with the electric utility. The electric utility must promptly investigate and advise the complainant of the results within 21 days.

(b) Supervisory review by the electric utility. Any electric utility customer or applicant has the right to request a supervisory review if they are not satisfied with the electric utility's response to their complaint.

(1) If the electric utility is unable to provide a supervisory review immediately following the customer's request, then arrangements for the review must be made for the earliest possible date.

(2) Service must not be disconnected before completion of the review. If the customer chooses not to participate in a review, then the company may disconnect service, providing proper notice has been issued under the disconnect procedures in §25.29 of this title (relating to Disconnection of Service).

(3) The results of the supervisory review must be provided in writing to the customer within ten days of the review, if requested.

(4) Customers who are dissatisfied with the electric utility's supervisory review must be informed of their right to file a complaint with the commission.

(c) Complaints to the commission.

(1) If the complainant is dissatisfied with the results of the electric utility's complaint investigation or supervisory review, the electric utility must advise the complainant of the commission's informal complaint resolution process. The electric utility must also provide the customer the following contact information for the commission: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512)936-7003, e-mail address: customer@puc.texas.gov, internet address: www.puc.texas.gov, and Relay Texas (toll-free) 1-800-735-2989.

(2) The electric utility must investigate all complaints and advise the commission in writing of the results of the investigation within 15 days after the complaint is forwarded to the electric utility. For complaints filed with the commission before September 1, 2023, the deadline is 21 days after the complaint is forwarded.

(3) The electric utility must keep a record for two years after determination by the commission of all complaints forwarded to it by the commission. This record must show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or charges must require no further action by the electric utility need not be recorded.

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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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §§25.105, 25.107, 25.109

The repealed rules are adopted under the following provisions of PURA: §14.002 which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §15.104 which authorizes the commission or executive director to issue a cease and desist order with or without notice or opportunity for a hearing. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA

§17.052 which authorizes the commission to adopt and enforce rules related to certification or registration including suspension or revocation for repeated violations of Chapter 17 of PURA or commission rules. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the requirements to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 15.051, 15.104 17.001, 17.003, 17.004, 17.052 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

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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16 TAC §§25.105, 25.107, 25.109

The new rules are adopted under the following provisions of PURA: §14.002 which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §15.104 which authorizes the commission or executive director to issue a cease and desist order with or without notice or opportunity for a hearing. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §17.052 which authorizes the commission to adopt and enforce rules related to certification or registration including suspension or revocation for repeated violations of Chapter 17 of PURA or commission rules. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the requirements to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 15.051, 15.104 17.001, 17.003, 17.004, 17.052 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

§25.105. Registration by Power Marketers.

(a) Applicability. This section contains the registration and renewal of registration requirements for a power marketer. A person must be registered as a power marketer with the commission in order to participate in the Texas wholesale market as a power marketer. The registration of a person already registered as a power marketer as of the effective date of this section expires on January 1, 2024 unless the person files a new registration in compliance with the requirements of this section.

(b) Registration information. To register as a power marketer, a person must submit the following information in the manner established by the commission.

(1) The registrant's contact information, including the registrant's:

(A) physical and business mailing address;

(B) business telephone number; and

(C) business e-mail address.

(2) The name of the current regulatory contact, and the contact's e-mail address and telephone number.

(3) The addresses of any facilities used by the registrant in Texas.

(4) A description of the activities the registrant will participate in, and services provided.

(5) As applicable, copies of all information filed with the Federal Energy Regulatory Commission (FERC) relating to the registrant's FERC registration to sell electric energy at market-based rates.

(6) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant affirming that the registrant qualifies as a power marketer. The affidavit must also include the following information:

(A) the business name of any affiliated entity registered with the commission and the type of commission registration associated with each affiliated entity;

(B) whether each affiliate buys or sells electricity at wholesale in Texas; sells electricity at retail in Texas; or is an electric cooperative or municipally owned utility in Texas; and

(C) the business name of any affiliated qualified scheduling entity.

(c) Update of registration. A power marketer must update, in a manner established by the commission, its registration within 30 days of a change to information listed under subsection (b) of this section.

(d) Renewal of registration. A power marketer must renew its registration on or before November 1 of each calendar year by submitting, in a manner established by the commission, the information required by subsection (b) of this section or by submitting a statement that the power marketer's registration information on file with the commission is current.

(1) Commission staff will send one notice to the regulatory contact listed for a power marketer that has not submitted its registration renewal by November 1st. Commission staff's failure to send this notice does not excuse a power marketer from complying with any of the requirements of this section.

(2) A power marketer registration that is not renewed by December 31st of each calendar year expires.

(3) Commission staff will notify Electric Reliability Council of Texas of a power marketer whose registration has expired.

(4) A person may not continue to operate as a power marketer in Texas after its registration has expired.

(5) A person whose power marketer registration is expired may apply for a new registration at any time.

(e) Commission list of power marketers. The commission will maintain a list of power marketers registered in Texas on the commission's website. A power marketer that fails to renew its registration under subsection (d) of this section may be listed as "Expired" on the commission's list of power marketers.

§25.107. Certification and Obligations of Retail Electric Providers (REPs).

(a) Applicability.

(1) This section contains the certification and reporting requirements applicable to a retail electric provider (REP).

(A) A person must obtain a REP certificate under this section before purchasing, taking title to, or reselling electricity to provide retail electric service. A person may certify as an Option 1 REP, Option 2 REP, or Option 3 REP under this section. Certification must be maintained on an ongoing basis by timely reporting and updating the certification information in accordance with subsections (i) and (h) of this section.

(B) A person that does not purchase, take title to, or resell electricity to provide electric service to a retail customer is not a REP and must not act as a REP without obtaining a certificate under this section. A REP that outsources retail electric service functions is responsible for those functions in accordance with all applicable laws and commission rules for all activities conducted on its behalf by any third-party provider.

(C) A person who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Transportation Code, Section 502.004, is not, for that reason, required to be certified as a REP.

(2) This section also applies, where specifically stated, to an independent system operator or transmission and distribution utility (TDU).

(3) A person certified as an Option 1 REP via an application submitted prior to the effective date of this section must come into compliance with the requirements of this section by March 5, 2024. Prior to March 5, 2024, a person certified as an Option 1 REP via an application submitted prior to the effective date of this section must meet the requirements of this section as it was in effect on April 1, 2023.

(A) A REP must complete and file a commission approved compliance update form that demonstrates the REP is in compliance with this section on or before March 5, 2024.

(B) A REP who does not demonstrate compliance with this section on or before March 5, 2024, may be subject to a suspension of acquiring new customers under subsection (l) of this section.

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

(1) Affiliate--As defined in §25.5 of this title (relating to Definitions).

(2) Assumed name--Has the meaning assigned in Chapter 71 of the Texas Business and Commerce Code.

(3) Continuous and reliable electric service--Retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by the unlawful or unjustified action or inaction of the REP.

(4) Control--The term control (including the terms controlling, controlled by and under common control with) means the direct or indirect possession of binding authority to direct or cause the direction of the management, policies, operations, or decision-making of a person, whether through ownership of voting securities, by contract, formation documents, or otherwise. A principal is a controlling person. A third-party provider may be a controlling person.

(5) Default--As defined in a TDU tariff for retail delivery service, Electric Reliability Council of Texas (ERCOT) qualified scheduling entity (QSE) agreement, or ERCOT load serving entity (LSE) agreement, ERCOT standard form market participant agreement (SFA), or any similar agreement with an applicable independent organization other than ERCOT.

(6) Executive officer--An entity's president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions. Executive officers of subsidiaries may be deemed executive officers of the entity if they perform such policy making functions for the entity.

(7) Guarantor--A person that provides an irrevocable guaranty agreement using the standard form approved by the commission under this section.

(8) Investment-grade credit rating--A long-term unsecured credit rating issued by the bond credit rating companies Moody's Investors' Service (Moody's), Standard & Poor (S&P), or Fitch of at least "Baa3" from Moody's or "BBB-" from S&P or Fitch.

(9) Option 1 REP--A REP that provides its service offerings to any customer class based on geographic service area.

(10) Option 2 REP--A REP that limits its service offerings to specifically identified customers, each of whom contracts for one megawatt or more of capacity.

(11) Option 3 REP--A REP that sells electricity exclusively to a retail customer, other than a small commercial or residential customer, from a distributed generation facility owned by a power generation company (PGC) that has registered in accordance with §25.109 of this title (relating to Registration of Power Generation Companies and Self-Generators) located on the same geographic site as the customer.

(12) Person--An individual or any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation. Person does not include an electric cooperative or a municipal corporation.

(13) Principal--Includes:

(A) A sole proprietor;

(B) A partner of a partnership;

(C) An executive of a company (e.g., a president, chief executive officer, chief operating officer, chief financial officer, general counsel, or equivalent position);

(D) A manager, managing member, or a member vested with the management authority of a limited liability company or limited liability partnership;

(E) A shareholder with more than 10% equity of the REP, if a public company; or

(F) A person who exercises control and has apparent or actual authority to exercise such control over either the REP or a principal that is otherwise described by this subsection. A consultant, third-party provider, or fiduciary of a company such as the board of directors, is a principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.

(14) Shareholder--The legal or beneficial owner of any of the equity of any business entity as the context and applicable business entity requires, including, stockholders of corporations, members of limited liability companies and equity partners of partnerships.

(15) Tangible net worth--Total shareholders' equity, determined in accordance with generally accepted accounting principles, less intangible assets other than goodwill.

(16) Third-party provider--An entity to which a REP outsources or plans to outsource any retail or wholesale electric functions. A contractor, consultant, agent, or any other person not directly employed by the REP can be a third-party provider. A third-party provider is a principal if it has apparent or actual authority to exercise control over the REP or principals of the REP, and exercises such control.

(c) Application processing.

(1) A person can apply to certify as a REP or amend a REP certification by submitting a complete application on a form approved by the commission. Commission staff will review each application for sufficiency and submit a recommendation to the presiding officer within 20 days after the application is filed. The presiding officer will make a determination of sufficiency of the application within ten days of receipt of commission staff's recommendation. If the presiding officer finds that the application is deficient, the presiding officer must notify the applicant. The applicant will have ten days from the issuance of the notice to cure the deficiencies. If the deficiencies are not cured within ten days, the presiding officer may notify the applicant that the certification request is rejected without prejudice.

(2) While an application for certification or amendment is pending, an applicant must notify the commission of any material change to the information provided in the application within ten days of any such change in accordance with subsection (h)(2) of this section.

(3) Except where good cause exists to extend the time for review, the presiding officer will issue an order approving, rejecting, or approving with modifications, an application within 90 days of finding an application sufficient.

(4) For applications to certify as an Option 1 REP, the presiding officer will deny an application if the configuration of the proposed geographic area would unduly discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; because the customer is located in an economically distressed geographic area or qualifies for low income affordability or energy efficiency services; or because of any other reason prohibited by law.

(5) An Option 2 REP application for certification that meets all other requirements of this section except for the provision of customer affidavits under subparagraph (d)(2)(I) may be conditionally granted by the presiding officer. If such an application is conditionally granted, the applicant must, within 30 days from the date the application is granted, file in the docket the affidavit or affidavits required by subsection (d)(2)(I). The application will be withdrawn and the application denied with respect to each customer for whom the applicant fails to timely file the required affidavit. Within 45 days after the application is conditionally granted, commission staff must file a status report indicating whether each of the required affidavits were timely filed. The presiding officer will then issue a follow-up order confirming the approval of the application as to each customer for whom the required affidavit was filed and denying the application as to each customer for whom the required affidavit was not filed.

(6) Document format. If a provision of this subsection specifies a certain format for a document that must be filed with or submitted to the commission, an applicant must file or submit that document in the native format specified. A document filed in its native format must permit basic data manipulation functions, such as copying and pasting of data.

(d) Basic requirements.

(1) A REP must maintain its certification by complying with the following subparagraphs on an ongoing basis.

(A) Only provide retail electric service under the name or names set forth in an approved application for certification or subsequent amendment application. A REP's certificate must contain the REP's legal business name and all assumed names under which it proposes to provide service.

(B) Not use more than five assumed names in the REP's regular course of business.

(C) Maintain an active business registration with the Texas Secretary of State.

(D) Maintain current and accurate contact information including:

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

(ii) for the pendency of the application or amendment, the authorized representative's name, title, street and mailing address, telephone number, e-mail address, and web address;

(iii) regulatory contact name, title, street and mailing address, telephone number, e-mail address and web address;

(iv) customer complaint contact name, title, street and mailing address, telephone number including a toll-free number, e-mail address and web address;

(v) emergency contact's name, title, telephone number, and e-mail address, and web address; and

(E) Maintain current and accurate office information including:

(i) An office that has street address located within Texas that is open during normal business hours for the purpose of providing customer service and making available to commission staff books and records sufficient to establish the REP's compliance with Public Utility Regulatory Act (PURA) and commission rules; the office must have the following contact information where the REP's staff can be directly reached:

(I) a business telephone number and toll-free number,

(II) a business e-mail address and web address, and

(III) a business postal address that is not a post office box.

(ii) The applicant's state of formation or incorporation, and the address of the applicant's primary business office; and

(iii) A mailing address, if different from the applicant's Texas office address or primary business office address; and

(iv) The name and address of the applicant's registered agent for the purpose of receiving service of process.

(F) Comply with all applicable scheduling, operating, planning, reliability, customer registration, and settlement policies, protocols, guidelines, procedures, and other protocols established by the applicable independent organization including any independent organization requirements for 24-hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation.

(G) Comply with the registration and certification requirements of the applicable independent organization and its system rules and protocols, or each contract for services with a third-party provider that is required to be registered with or certified by the applicable independent organization.

(H) Maintain adequate staffing and employee training to meet all service level commitments.

(I) Respond within five working days to any commission or commission staff request for information, unless otherwise provided by the commission, commission staff, or other applicable law.

(2) An applicant must provide the following information to the commission to certify as a REP under this section.

(A) An application for certification or amendment to a certificate must be made on a form approved by the commission, specify whether the applicant seeks to obtain or amend a REP certificate, and be accompanied by a signed, notarized affidavit attesting that all material provided in the application is true, correct, and complete. The affidavit must be signed by an executive officer of the applicant.

(B) Information related to the applicant's status as a legal entity, including information related to its tax status and authority to do business in Texas to verify the information required under paragraphs (1)(A)-(C) of this subsection. The following information must be provided:

(i) A copy of the applicant's Texas Secretary of State registration and filing numbers associated with the registration. A business name must not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by a REP certificate holder.

(ii) The applicant's Texas Comptroller of Public Accounts tax identification number, and all other relevant or other applicable certification or file numbers.

(C) The applicant's current contact information required under paragraph (1)(D) of this subsection.

(D) The applicant's current office information required under paragraph (1)(E) of this subsection.

(E) Information on the applicant, including:

(i) a list of the applicant's subsidiaries and parent companies up to the ultimate corporate parent, and any sister companies that are registered or certified with the commission. Each company must be identified by name and, if applicable, type of commission registration or certification.

(ii) an ownership and corporate structure chart that includes ownership percentages. The chart must be as detailed as practicable, but must contain, at minimum, the entities listed under clause (i) of this subparagraph and any entities with more than ten percent ownership of the REP or any of the REP's parent companies with a controlling interest in the REP.

(iii) a list of all principals, provided in Microsoft Excel format;

(iv) a list of all executive officers, provided in Microsoft Excel format.

(F) A statement affirming compliance with paragraphs (1)(F) - (I) of this subsection and a short summary describing how the applicant has complied, or for paragraph (1)(I) of this subsection how the applicant will comply, with each subparagraph.

(G) The control number and item number where the applicant has filed its Emergency Operations Plan as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).

(H) An applicant for an Option 1 REP certificate must designate one of the following categories as its geographic service area:

(i) The geographic area of the entire state of Texas;

(ii) A specific geographic area (indicating the zip codes applicable to that area);

(iii) The service area of one or more specific TDUs, municipal utilities, or electric cooperatives in which competition is offered; or

(iv) The geographic area of ERCOT or other independent organization to the extent it is within Texas.

(I) An applicant for an Option 2 REP certificate must include a signed, notarized affidavit stating that it will only contract with customers to provide one megawatt or more of energy. Within 30 days of conditional commission approval of the application and before an Option 2 REP begins serving a customer, the Option 2 REP must file with the commission a signed, notarized affidavit from each customer with which it has contracted to provide one megawatt or more of energy. The affidavit may be submitted by the applicant while the application for an Option 2 REP certificate is pending. Each customer affidavit must state that the customer understands and accepts the REP's ability to provide continuous and reliable electric service based on the applicant's financial, managerial, and technical resources.

(J) An applicant for an Option 3 REP certificate must:

(i) identify the name of the PGC that owns the distributed generation facilities and affirm that the PGC is registered under §25.109 of this title; and

(ii) provide a signed, notarized affidavit from an executive officer of the PGC confirming:

(I) the PGC operating the distributed generation facility conforms to the requirements of §25.211 of this title (relating to Interconnection of On-Site Distributed Generation (DG)) and §25.212 of this title (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation);

(II) the distributed generation facility is installed by a licensed electrician, consistent with the requirements of the Texas Department of Licensing and Regulation; and

(III) the distributed generation facility is installed in accordance with the National Electric Safety Code as adopted

by the Texas Department of Licensing and Regulation and otherwise complies with all applicable local and regional building codes.

(e) Technical and managerial requirements. An Option 1 REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, applicable independent organization protocols, and other applicable laws. This subsection does not apply to an Option 2 or Option 3 REP.

(1) Technical and managerial resource requirements. The following are technical and managerial resource requirements a REP must maintain on an ongoing basis.

(A) One or more principals or employees in managerial positions whose combined experience in the competitive electric industry or competitive gas industry equals or exceeds 15 years. A third-party provider's experience may not be used to meet this requirement.

(B) One executive officer or employee in a managerial position who has five years of experience in energy commodity risk management of a substantial energy portfolio. Alternatively, the REP may enter into a contract for a term not less than two years with a third-party provider of commodity risk management services that has been providing such services for a substantial energy portfolio for at least five years. A substantial energy portfolio means managing electricity or gas market risks with a minimum value of at least $10,000,000.

(C) If providing retail electric service in the ERCOT region, compliance with all applicable ERCOT requirements, including:

(i) execution of a service agreement with a QSE;

(ii) maintaining the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis;

(iii) providing outage notifications in accordance with § 25.53 of this title; and

(iv) completing ERCOT flight test obligations.

(D) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.

(2) Technical and managerial documentation requirements. The following information must be provided by an applicant to demonstrate compliance with the technical and managerial requirements under paragraph (1) of this subsection.

(A) A list of all third-party providers accompanied by a description of each third-party provider's responsibilities and delegation of authority, provided in Microsoft Excel format.

(B) Resumes showing prior experience of one or more of the applicant's principals or managerial employees in the competitive retail electric industry or competitive gas industry to demonstrate at least 15 years of experience and, if applicable, a resume showing one of the applicant's executive officers or managerial employees possess at least five years' experience in commodity risk management.

(C) If relying upon a third-party provider for commodity risk management services to satisfy the requirement for paragraph (1)(B) of this subsection, a copy of the executed contract is required.

(D) Any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application regarding the applicant, the applicant's corporate parents, all sister companies and subsidiaries of the applicant, and affiliates of the foregoing that provide utility-like services such as telecommunications, internet, broadband, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons.

(i) The complaint history, disciplinary record, and compliance record must include information from any federal agency including the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission; any self-regulatory organization relating to the sales of securities, financial instruments, physical or financial transactions in commodities, or other financial transactions; state public utility commissions, state attorney general offices, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information must include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the complaint history of the applicant's principals and affiliates, disciplinary record, and compliance record.

(iii) Any complaint information on file at the commission may also be considered when reviewing the application.

(E) The following statements must be supported by a signed notarized affidavit made by an executive officer of the applicant.

(i) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations.

(ii) A statement that identifies whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(iii) A statement that the applicant will register with or be certified by the applicable independent organization and that the applicant will comply with the technical and managerial requirements of this subsection; and that third-party providers with whom the applicant has a contractual relationship are registered with or certified by the independent organization, as appropriate, and will comply with all system rules and protocols established by the applicable independent organization.

(iv) A statement that identifies and, if applicable, describes the applicant's relationship with any of the following persons.

(I) Identification of all of the applicant's principals, executive officers, employees, and third-party providers that:

(-a-) exercised direct or indirect control over a REP that experienced a mass transition of the REP's customers under §25.43 of this title (relating to Provider of Last Resort (POLR)) at any time within the six months prior to the mass transition;

(-b-) exercised direct or indirect control over a market participant at any time within the six months prior to a market participant having had its ERCOT SFA terminated or a similar agreement for an applicable independent organization other than ERCOT terminated;

(-c-) exercised direct or indirect control of a market participant within the prior six months of a market participant

having exited an electricity or gas market with outstanding payment obligations that remain outstanding; or

(-d-) have been barred, in any way, participation by commission order.

(II) If a relationship exists as described in subclause (I) of this clause, the applicant must include in the affidavit for each such relationship:

(-a-) the name of the person;

(-b-) the name of the REP that experienced a mass transition of its customers under §25.43 of this title or market participant whose ERCOT SFA or similar agreement for an applicable independent organization was terminated or exited a market with outstanding payment obligations;

(-c-) details about the person's relationship with the REP or market participant;

(-d-) factual statements about the events that necessitated this response, including, if applicable, whether and, if so, how the REP that experienced a mass transition of its customers under §25.43 of this title settled all outstanding payment obligations;

(-e-) the person's current relationship or position with the applicant; and

(-f-) the extent of the person's apparent or actual authority to act in such a way that may be perceived as having direct or indirect control over the applicant.

(v) A statement affirming that the persons listed under paragraph (g)(1) of this section do not control the applicant and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section.

(F) To document compliance with subsection (e)(1)(C) of this section, an applicant must provide:

(i) all relevant information related to each service agreement executed with a QSE, including:

(I) the term of the service agreement and date the service agreement began;

(II) the name of the QSE;

(III) the QSE's contact name and title;

(IV) the QSE's physical address;

(V) the QSE's e-mail address and web address; and

(VI) the QSE's business telephone number and toll-free number;

(ii) a confirmation that applicant has the capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis;

(iii) a confirmation that applicant will provide outage notifications in accordance with §25.53 of this title; and

(iv) a confirmation that applicant has or will soon complete ERCOT's flight test obligation.

(f) Financial requirements. An Option 1 REP must, on an ongoing basis, maintain compliance with paragraph (1) of this subsection and, as applicable, paragraph (2) and (3) of this subsection. This subsection does not apply to an Option 2 or Option 3 REP.

(1) Access to capital. A REP must maintain the requirements of subparagraph (A) or (B) of this paragraph on an ongoing basis.

(A) A REP may maintain an executed version of the commission approved standard form irrevocable guaranty agreement.

(i) The guarantor must be:

(I) One or more affiliates of the REP;

(II) A financial institution with an investment-grade credit rating; or

(III) A provider of wholesale power supply for the REP, or one of such power provider's affiliates, with whom the REP has executed a power purchase agreement.

(ii) The guarantor must have:

(I) An investment-grade credit rating; or

(II) Tangible net worth greater than or equal to $100 million, a minimum current ratio (defined as current assets divided by current liabilities) of 1.0, and a debt to total capitalization ratio not greater than 0.60, where all calculations exclude unrealized gains and losses resulting from valuing to market the power contracts and financial instruments used as supply hedges to serve load.

(B) A REP may maintain an irrevocable stand-by letter of credit with a face value as determined in clause (i) of this subparagraph, based on the number of electronic service identifiers (ESI IDs) the REP serves in the manner prescribed by clauses (ii) and (iii) of this subparagraph. Additionally, for the first 24 months a REP is serving load it must maintain not less than one million dollars in shareholders' equity in accordance with clauses (iv) and (v) of this subparagraph.

(i) Figure: 16 TAC §25.107(f)(1)(B)

(ii) The number of ESI IDs includes all customer classes to which a REP provides retail electric service.

(iii) As the number of ESI IDs served by the REP increases, the irrevocable stand-by letter of credit must be adjusted to reflect the required value as determined in clause (i) of this subparagraph. As the number of ESI IDs served by the REP decreases, the irrevocable stand-by letter of credit may be adjusted to reflect the required value as determined in clause (i) of this subparagraph.

(iv) For the first 24 months a REP is serving load, a REP must not make any distribution or other payment to any shareholders, affiliates, or corporate parent's affiliates if, after giving effect to the distribution or other payment, the REP's shareholders' equity is less than one million dollars. Distributions or other payments include dividend distributions, redemptions and repurchases of equity securities, and loans to shareholders or affiliates.

(v) After a REP has continuously served load for 24 months, a prescribed amount of maintained shareholders' equity is no longer required.

(2) Customer deposits and prepayments. A REP certified to collect customer deposits must comply with this paragraph and the requirements of §25.478 of this title (relating to Credit Requirements and Deposits). A REP certified to collect customer prepayments must comply with this paragraph and the requirements of §25.498 of this title (relating to Prepaid Service).

(A) A REP must maintain customer deposits and prepayments in an escrow account, segregated cash account, or provide an irrevocable stand-by letter of credit.

(i) If a REP is certified to collect both customer deposits and prepayments then the REP must use and maintain either an escrow account, segregated cash account, or irrevocable stand-by letter of credit to protect customer deposits and prepayments. If a REP

uses an escrow account or segregated cash account, the same account must be used for customer deposits and prepayments. More than one irrevocable stand-by letter of credit can be provided to protect customer deposits and prepayments.

(ii) For customer deposits, the escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of the REP's outstanding customer deposits held at the close of each calendar month.

(iii) For customer prepayments, a REP must maintain, at minimum, protection for all customer prepayments that equals or exceeds $50. The balance of an escrow account, segregated cash account, or an irrevocable stand-by letter of credit must be adjusted, as necessary, to maintain a minimum of 100% coverage of customer prepayment funds equal to or exceeding $50 held at the close of each calendar month.

(B) Any irrevocable stand-by letter of credit provided under this paragraph must be in addition to the irrevocable stand-by letter of credit required by paragraph (1)(B) of this subsection.

(3) Bankruptcy disclosure. If a REP files a petition for bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, including being in default with the applicable independent organization or with a TDU:

(A) The REP must notify the commission within three working days of this event and must file with the commission a summary of the nature of the event; and

(B) The notification must be filed in the commission control number established for notices prescribed under this paragraph. If the REP has filed a petition for bankruptcy, then the REP must include in its filing the petition that initiated the bankruptcy.

(4) Financial documentation requirements. The following must be provided by an applicant to demonstrate compliance with the financial requirements under paragraphs (1), (2), and (3) of this subsection, as applicable. Additionally, the applicant must provide the month and last day of the applicant's reporting fiscal year or, if the applicant has a guarantor, the guarantor's reporting fiscal year. The applicant must also provide a summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 calendar months immediately preceding the filing of the application.

(A) Investment-grade credit ratings must be documented by reports from a credit reporting agency. The report the applicant provides must be the most recently released report by the credit reporting agency.

(B) Tangible net worth, current ratio, and debt to capitalization ratio calculations must be supported by a signed, notarized affidavit from an executive officer of the guarantor that attests to the accuracy of the calculations and be documented by audited or unaudited financial statements of the guarantor for the most recently completed quarter.

(i) Audited financial statements must include the independent auditor's report and accompanying notes.

(ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the guarantor's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.

(C) Shareholders' equity must be documented by the audited or unaudited financial statements of the applicant for the most recently completed quarter.

(i) Audited financial statements must include the independent auditor's report and accompanying notes.

(ii) Unaudited financial statements must include a signed, notarized affidavit, in addition to any other provided affidavits, which attests to the accuracy, in all material respects, of the information provided in the unaudited financial statements.

(iii) Three consecutive months of monthly statements may be submitted in lieu of quarterly statements, if quarterly statements are not available.

(iv) The requirement for financial statements may be satisfied by filing a copy of, or providing an electronic link, to the REP's most recent financial statements filed with any agency of the federal government, including the U.S. Securities and Exchange Commission.

(D) Segregated cash accounts must be documented by a current account statement and the executed agreement with an unaffiliated person that controls the segregated cash account.

(i) The account statement must clearly identify:

(I) the name of the financial institution where the applicant has established the account;

(II) the account number; and

(III) the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(iii) A REP must provide an executed agreement with a provider of credit that governs the control and management of the account. The provider of credit must not be affiliated with the applicant or the applicant's corporate parent. If the segregated cash account contains customer deposits, the agreement must specify that the customer deposits are not the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts.

(E) Escrow accounts must be documented by a current account statement and the executed escrow account agreement.

(i) The account statement must clearly identify:

(I) the name of the financial institution where the applicant has established the account;

(II) the account number; and

(III) the account name, which must clearly indicate the account is designated for containing only customer deposits, prepayments, or both.

(ii) The account must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(iii) The escrow account agreement must provide that the account holds only customer deposits, prepayments, or both, and that the customer deposits will be held in trust by the escrow agent and will not be the property of the REP or in the REP's control, unless, if allowed by the REP's terms of service, the customer deposits are applied to a final bill or to satisfy unpaid amounts.

(F) Irrevocable stand-by letters of credit provided under paragraphs (1) and (2) of this subsection must use the standard form irrevocable stand-by letter of credit template approved by the commission. The original document of the irrevocable stand-by letter of credit must be provided in a manner established by the commission.

(i) The irrevocable stand-by letter of credit must be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or a state banking department and is a:

(I) U.S. domestic bank; or

(II) a domestic office of a foreign bank with an investment-grade credit rating.

(ii) The irrevocable stand-by letter of credit must:

(I) be irrevocable for a period not less than twelve months;

(II) automatically renew, and only expire if prior notice is provided to the commission at least 90 days before the expiration and commission staff signs the notice of non-renewal to acknowledge that the notice was received 90 days before the expiration;

(III) be payable to the commission;

(IV) permit a draw to be made in part or in full;

(V) permit a draw to be made with the return of the original document or a photocopy;

(VI) permit a draw to be made, among other ways, through over-night mail;

(VII) permit the commission's executive director or the executive director's designee to draw on the irrevocable stand-by letter of credit; and

(VIII) require commission staff approve all amendment requests to decrease the value of the irrevocable stand-by letter of credit prior the value of the irrevocable stand-by letter of credit decreasing. Amendments to decrease the value of the irrevocable stand-by letter of credit must be accompanied by a notarized affidavit signed by an executive officer of the REP and include, as applicable, the current number of ESI IDs the REP serves, the value of customer deposits and prepayments the REP is liable for.

(G) Irrevocable guaranty agreements must be executed on the commission approved standard form irrevocable guaranty agreement and must obligate the guarantor to meet commission's demands on behalf of the applicant. A copy of the executed irrevocable guaranty agreement must be provided in the manner established by the commission.

(i) The guarantor's obligation to satisfy a commission demand for payment must be in an amount not less than $1,500,000 and must be absolute, and the guarantor may not avoid its obligation for any reason.

(ii) The irrevocable guaranty agreement must automatically renew and only expire if prior notice is provided to the commission at least 90 days before expiration. Commission staff must sign a notice of non-renewal to acknowledge that the notice was received at least 90 days prior to the date of expiration. Any notices or amendments must be provided to the commission in a commission approved method. Until the 90 days advance notice has elapsed or until an amendment to the REP's financial qualifications is approved, whichever occurs first, the guarantor must remain completely and absolutely liable to the extent provided by the terms of the agreement.

(H) A power purchase agreement must be documented by providing a copy of the executed agreement between the applicant and the guarantor.

(5) Commission draw on financial instruments. The commission may seek full or partial funds from a REP's financial resources in any of the following circumstances:

(A) An applicable independent organization performs a mass transition of a REP's customers under §25.43 of this title;

(B) The commission issues an order revoking a REP's certificate;

(C) ERCOT terminates a REP's SFA or the applicable independent organization terminates a similar agreement and the REP's financial resource expires in 30 days less; or

(D) The commission's executive director determines that a REP has failed to satisfy its financial obligations under PURA, the commission's substantive rules, or the applicable independent organization's protocols; and the financial resource expires in 30 days or less.

(6) Proceeds from financial instruments.

(A) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection may be used to satisfy the following obligations of a REP, in the following order of priority:

(i) first, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator under §25.45 of this title (relating to Low-Income List Administrator);

(ii) second, if available, to assist in the payment of residential customer deposits to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator under §25.45 of this title;

(iii) third, if available, to assist in the payment of residential customer deposits to retail electric providers that volunteer to provider service in a mass transition event under §25.43 of this title, and to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title;

(iv) fourth, for services provided by the independent organization related to serving customer load;

(v) fifth, for services provided by a TDU; and

(vi) sixth, for administrative penalties assessed under Chapter 15 of PURA or commission rules.

(B) Proceeds from an irrevocable stand-by letter of credit or irrevocable guaranty agreement provided under this subsection must, to the extent that the proceeds are not needed to satisfy an obligation set out in subparagraph (A) of this paragraph, be paid to the applicable entity identified as the Applicant on the irrevocable stand-by letter of credit or the Guarantor on the irrevocable guaranty agreement.

(g) Persons prohibited from exercising control. An Option 1 REP must maintain compliance with this subsection at all times. This subsection does not apply to an Option 2 or Option 3 REP.

(1) In no instance may any of the following persons control the REP or be relied upon to meet the requirements of subsections (d) and (e) of this section:

(A) A person who was a principal of a market participant, at any time within the six months prior to the market participant:

(i) experiencing a mass transition of the REP's customers under §25.43 of this title;

(ii) having their ERCOT SFA, or similar agreement for an independent organization other than ERCOT terminated; or

(iii) exiting an electricity or gas market with outstanding payment obligations that, at the time of the application or amendment, remain outstanding; or

(B) A person who, by commission order, is prohibited from serving as a principal for any commission-regulated entity.

(2) If an independent organization or TDU is aware that a person who is otherwise barred from exercising direct or indirect control over a REP is acting in violation of this section or other commission substantive rules, the independent organization or TDU has an affirmative duty to report this information to the division of the commission charged with enforcement of the commission's substantive rules.

(h) Update or relinquishment of certification. A REP must maintain and update the information required by subsections (d), (e), and (f) of this section, as applicable, on an ongoing basis.

(1) A REP must electronically submit updated information in the manner established by the commission within five working days of any change to its contact information as identified in subsection (d)(1)(D) or this section.

(2) A REP must apply to amend its certification within ten working days from the occurrence of a material change to its certification. A REP may apply for the commission to approve a material change by filing an application to amend its certification before the material change is anticipated to occur. A material change includes:

(A) a change in control of the REP including a change in the controlling owner, a corporate restructuring that involves the REP, a transfer of a REP certificate, or a change in the persons that have a minimum of ten percent ownership of the REP or a controlling parent of the REP, but not including a change in the ownership percentages of individual owners;

(B) a name change (including addition or deletion of assumed names);

(C) for Option 1 REPs, a change in service area;

(D) for Option 1 REPs, a change in technical or managerial qualifications, including

(i) any information previously provided or attested to under the technical and managerial requirements of subsection (e)(1)(A) and (B) of this section that correspond with the documentation requirements under subsection (e)(2)(B) and (C), and (E)(iv) and (v) of this section. Such information includes:

(ii) personnel relied upon for experience, and

(iii) changes, termination, or expiration of a contract to provide commodity risk management services;

(iv) a change in identification of any of the applicant's principals, executive officers, employees, and third-party providers that meet the criteria under subsection (e)(2)(E)(iv)(I) of this section, or a change in the applicant's relationship with such persons under subsection(e)(2)(E)(iv)(II) of this section, if such a relationship exists; and

(v) a change necessitating an updated statement affirming that the persons identified under subsection (g)(1) of this section do not control the REP and are not relied upon to meet the requirements of subsection (e)(1)(A) and (B) of this section; and

(E) for Option 1 REPs, a change in financial qualifications, including:

(i) the REP's certificated method for maintaining its access to capital requirement of subsection (f)(1) of this section, including terminations made to the irrevocable guaranty agreement or power purchase agreement;

(ii) the certificated method for protecting its customer deposits and prepayments, and

(iii) the approved account for protecting customer deposits and prepayments;

(F) a change in REP's type of certification as an Option 1, Option 2, or Option 3 REP; and

(G) for Option 2 REPs, the addition or removal of customers served by the Option 2 REP.

(3) A REP that no longer serves customers may relinquish its REP certificate by filing an application for relinquishment on a form prescribed by the commission. A REP that does not serve customers for two consecutive years must relinquish its certificate. Prior to relinquishing its certificate, the REP must no longer serve any customers. At least 45 days prior to ceasing operations, a REP that intends to cease operations as a REP and is not seeking to relinquish its REP certificate must file a notice in the commission control number established under this paragraph to notify the commission of a REP ceasing operations. A REP must not cease operations as a REP without prior notice of at least 45 days to each of the REP's customers to whom the REP is providing service on the planned date of cessation of operations. The REP must also notify, the Low Income Discount Administrator, the applicable independent organization, and all TDUs and the providers of last resort for service territories in which the REP serves customers. As applicable, a REP must also notify all electric cooperatives and municipally owned utilities in whose service territory the REP serves customers. If a REP improperly transfers customers without providing adequate notice, under §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another) then the REP may be subject to enforcement proceedings even after relinquishment of its certificate. Within the application to relinquish its certificate a REP must include a statement explaining whether customers' deposits were refunded to the customers or transferred to an alternative REP.

The statement must be supported by a signed, notarized affidavit from an executive officer of the REP.

(4) A REP that applies to amend its certification must:

(A) state the effective date of each material change that prompted the amendment application; and

(B) identify whether it is currently providing service to customers in Texas.

(i) Reporting requirements. An Option 1 REP must file with the commission an annual and a semi-annual report each year. Option 2 and Option 3 REPs do not have reporting obligations under this section.

(1) The annual report is due on March 5, or

(A) 65 days after the end of the REP's fiscal year; or

(B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 65 days after the end of the guarantor's fiscal year.

(2) The semi-annual report is due on August 15, or

(A) 225 days after the end of the REP's fiscal year; or

(B) if the REP elects to maintain an executed version of the commission approved standard form irrevocable guaranty agreement as its access to capital requirement under subsection (f)(1)(A) of this section, then 225 days after the end of the guarantor's fiscal year.

(3) The annual and semi-annual report must include the following information.

(A) A signed, notarized affidavit from an executive officer affirming that the certificate holder is not in material violation of any of the requirements of its certificate under this section and that the information reported in the entire report is true and correct.

(B) Any changes in ownership, control, corporate restructuring, or transfer of a REP certificate.

(C) Any changes in management, experience, and persons relied on for certification in subsection (e) of this section including the person or third-party provider acting as the REP's risk manager.

(D) A list of all principals, provided in Microsoft Excel format.

(E) A list of all executive officers, provided in Microsoft Excel format.

(F) A list of all third-party providers and a description of their responsibilities and delegation of authority, provided in Microsoft Excel format.

(G) For a REP providing retail electric service in the ERCOT region, a copy of the REP's current LSE contact information kept on file with ERCOT, including a copy of each Notice of Change of Information submitted to ERCOT since the REP's last annual or semi-annual report was filed. If the REP's designated QSE is the same entity as the REP or an affiliate of the REP or REP's corporate parent, the REP must also include a copy of the current QSE and counter party contact information kept on file with ERCOT, including a copy of all notices of change of information submitted to ERCOT in the time since the REP's last annual or semi-annual report was filed.

(H) Demonstration of ongoing compliance with the financial requirements of subsection (f) of this section.

(i) This can include:

(I) calculations demonstrating a guarantor's adequate tangible net worth and financial ratios,

(II) proof that a REP maintains adequate shareholders' equity,

(III) a statement of the value of customer deposits and prepayments the REP is currently liable for, and

(IV) a current account statement demonstrating that the balance of the account in which customer deposits and prepayments are held 100% covers the value of customer deposits and prepayments the REP is liable for.

(ii) A REP must submit relevant documentation as required by subsection (f)(4) of this section to demonstrate its ongoing compliance with the financial requirements of subsection (f)(1) and (2) of this section.

(iii) Financial statements provided as part of the annual and semi-annual report must be as of the end of the most recent fiscal quarter.

(4) In addition to the information required in paragraph (3) of this subsection, the annual report must also include the following information.

(A) Any changes in a REP's contact information identified in subsection (d)(1)(D) of this section.

(B) A list of aggregators with whom the REP has conducted business in the reporting period, and the commission registration number for each aggregator.

(C) The information required by §25.491 of this title (relating to Record Retention and Reporting Requirements) and other commission rules, as applicable.

(5) Reporting under this subsection does not change the requirement for a REP to amend its certification to reflect the change in accordance with subsection (h) of this section.

(j) Protection of TDU financial integrity.

(1) A TDU must not require a deposit from a REP except to secure the payment of transition charges as provided in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding Billing and Collection of Transition Charges), or if the REP has defaulted on one or more payments to the TDU. A TDU may impose credit conditions on a REP that has defaulted to the extent specified in its statewide standardized tariff for retail delivery service and as allowed by commission substantive rules.

(2) A TDU must create a regulatory asset for bad debt expenses, net of collateral posted under paragraph (1) of this subsection and bad debt already included in its rates, resulting from a REP's default on its obligation to pay delivery charges to the TDU. Upon a review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset will be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.

(k) Revocation of a REP certificate. A certificate granted under this section may be revoked for a significant violation of PURA, commission substantive rules, or protocols adopted by the applicable independent organization. The revocation of a REP's certificate requires the cessation of all REP activities in the state of Texas, in accordance with commission order. The commission may impose an administrative penalty on a person for a violation of PURA, commission substantive rules, or protocols adopted by an independent organization. Significant violations include, but are not limited to:

(1) Providing false or misleading information to the commission, including a failure to disclose any information required by this section;

(2) Engaging in fraudulent, unfair, misleading, deceptive, or anticompetitive practices, or unlawful discrimination;

(3) Switching, or causing to be switched, the REP for a customer without first obtaining the customer's permission;

(4) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's retail electric service bill;

(5) Failure to maintain continuous and reliable electric service to a customer or customers under this section;

(6) Failure to maintain financial resources in accordance with subsection (f) of this section;

(7) The inability to meet financial obligations on a reasonable and timely basis;

(8) Failure to timely remit payment for invoiced charges to an independent organization;

(9) Failure to observe any applicable scheduling, operating, planning, reliability, and settlement policies, protocols, guidelines, procedures, and other protocols established by an applicable independent organization;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Termination of the REP's SFA with ERCOT or similar agreements with an applicable independent organization other than ERCOT;

(13) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving fraud, theft, or deceit related to the certificate holder's service;

(14) Failure to provide retail electric service to a customer or customers within 24 months of the certificate being granted by the commission or ceasing to provide retail electric service for a period of 24 months;

(15) Failure to serve as a POLR if required to do so by the commission under §25.43 of this title;

(16) Failure to timely remit payment for invoiced charges to a TDU under §25.214, of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities);

(17) Erroneously imposing switch-holds or failing to remove switch-holds within the timeline described in §25.480 of this title (relating to Bill Payment and Adjustments);

(18) Failure to comply with the terms of a suspension under subsection (l) of this section;

(19) Failure to comply with §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates); and

(20) Other significant violations or a pattern of failures to meet the requirements of PURA, commissions rules or orders, or protocols adopted by the applicable independent organization.

(l) Suspension of a REP's ability to acquire new customers. The commission may suspend a REP's ability to acquire new customers for a significant violation, as described by subsection (k) of this section. A suspension of a REP's ability to acquire new customers may be limited to specific customer classes. The suspension order may also impose administrative penalties or other conditions for reinstatement on a REP whose ability to acquire new customers has been suspended.

(1) Commission staff may initiate a proceeding for suspension of a REP's ability to acquire new customers under this subsection by filing a petition for suspension.

(A) Commission staff must provide reasonable notice of a petition for suspension to the affected REP in accordance with §22.54 of this title (relating to Notice to Be Provided by the Commission).

(B) The REP may submit a request for hearing on the petition for suspension within 20 days after the date the REP receives notice of the petition. Notice is deemed to have been received upon the earlier of receipt of actual notice or three days after the order is mailed. A request for hearing received more than 20 days after the date the petition is received by the REP will be denied by the presiding officer.

(C) If the REP does not submit a request for hearing within 20 days after receiving notice of the petition for suspension, the presiding officer may administratively approve the petition for suspension under §22.35 of this title (relating to Informal Disposition). The commission delegates authority to the presiding officer to approve a petition for suspension under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title.

(2) The executive director may suspend a REP's ability to acquire new customers without prior notice or opportunity for a hearing in the form of a cease and desist order if the executive director determines that providing notice and an opportunity for a hearing is impracticable and that the conduct of the REP meets the criteria for issuing such an order under PURA §15.104(a)(2). In determining the practicability of providing notice and an opportunity for hearing, the executive director may consider, among other relevant factors, whether immediate action is necessary to ensure the REP is able to provide continuous and reliable service to its current or potential customers, reduce the risk of the REP exposing its current or potential customers to a mass transition event, or otherwise ensure the REP is able to meet its financial obligations. For purposes of determining whether the criteria of PURA §15.104(a)(2) are met, the statutory term continuous and adequate electric service includes continuous and reliable electric service as defined in this section. If the executive director issues a cease and desist order suspending a REP's ability to acquire new customers without prior notice or opportunity for a hearing, the procedural provisions of §25.54(d)(2) of this title (relating to Cease and Desist Orders) apply.

(3) In addition to any other applicable requirements, an order suspending a REP's ability to acquire new customers must describe the conduct of the of the REP and the significant violations that support the issuance of the order. The order must also describe any conditions the REP must meet for reinstatement.

(4) If appropriate, an order suspending a REP's ability to acquire new customers may also include specific, verifiable conditions for expedited reinstatement. The conditions for expedited reinstatement may require actions beyond those required to come into compliance with applicable law and may include verification from commission staff that the conditions for expedited reinstatement have been met, verification that commission staff has not identified any reasons the suspension should remain in effect, or a deadline for meeting one or more of the conditions. Expedited reinstatement is not appropriate if the basis for the suspension cannot be redressed by the fulfillment of specific, predetermined remedial actions, if the pattern of conduct giving rise to the suspension supports a general concern about the REP's

ability to comply with applicable law or provide customers with continuous and reliable service, or if there is evidence that may support additional grounds for suspension. If appropriate, a compliance docket will be opened for filings relevant to this paragraph. If the REP fulfills the conditions for expedited reinstatement and files all required supporting documentation, commission staff must lift the suspension, notify ERCOT of the reinstatement, and file a notice of reinstatement as soon as practicable. If commission staff verification is required and commission staff does not agree that expedited reinstatement is appropriate under the terms of the suspension order, the REP may seek reinstatement under paragraph (6) of this subsection.

(5) A REP that has its ability to acquire new customers suspended must cease, within three working days, the solicitation or enrollment of new customers and the applicable independent organization will be directed to report to commission staff, on a weekly basis, any new customers that have been added by the REP. In this subparagraph, the term "enrollment" means the act of executing a contract with an applicant for the provision of electric service but does not include renewing the contract of an existing customer.

(6) A REP may request reinstatement by filing a petition for reinstatement. The commission delegates authority to the presiding officer to approve a petition for reinstatement under this subsection with a notice of approval in accordance with §22.35(b)(1) of this title. In determining whether to lift the suspension, the presiding officer may consider, as appropriate, whether:

(A) the REP has resolved all violations underlying the suspension and fulfilled all conditions for reinstatement;

(B) the REP is in compliance with all or specific individual technical, managerial, and financial requirements in this section; and

(C) there exist any additional grounds that would support the suspension of the REPs ability to acquire new customers under this subsection.

(7) A REP subject to suspension of acquiring new customers under this section must continue to serve existing customers and maintain compliance with PURA, commission substantive rules, and protocols adopted by the applicable independent organization. Suspension of the ability to acquire new customers does not impact a REP's obligation to timely initiate service to a customer that completed enrollment with the REP prior to the effective date of the suspension, even if the scheduled service initiation date falls within the suspension period.

(8) Nothing in this subsection limits the commission's ability to revoke a REP's certificate, proceed with a draw on a REP's financial instruments, or impose administrative penalties. Commission staff retains the discretion to seek to revoke the certificate of a REP subject to suspension.

§25.109. Registration by Power Generation Companies and Self-Generators.

(a) Applicability. This section contains the registration and renewal of registration requirements for a power generation company (PGC) as defined by §25.5 of this title (relating to Definitions) and a self-generator.

(1) A person that owns an electric generating facility, including a Qualifying Facility (QF) as defined by §25.5 of this title, must register under this section as a PGC before the first day it generates electricity.

(2) A person that owns an electric generating facility rated at one megawatt (MW) or more, but is not a PGC, must register as a self-generator before the first day it generates electricity. A QF that does not sell electricity or provides electricity only to the purchaser of the facility's thermal output must register as a self-generator.

(3) A person already certified as a PGC or self-generator as of the effective date of this section must come into compliance with the requirements of this section no later than June 1, 2023.

(A) A PGC or self-generator must complete and file a commission approved form that demonstrates the PGC or self-generator is in compliance with this section on or before June 1, 2023.

(B) A PGC or self-generator who does not demonstrate compliance with this section on or before June 1, 2023, may be subject to revocation of the PGC's or self-generator's commission registration under subsection (i) of this section.

(b) Definitions. In this section, the following definitions apply unless the context indicates otherwise.

(1) Generating facility--all generating units located at, or providing power to, the electricity-consuming equipment at an entire facility or location.

(2) Principal--includes:

(A) A sole proprietor of a sole proprietorship;

(B) A partner of a partnership;

(C) An executive of a company (e.g., a president, chief executive officer, chief operating officer, chief financial officer, general counsel, or equivalent position);

(D) A manager, managing member, or a member vested with the management authority of a limited liability company or limited liability partnership;

(E) A shareholder with more than 10% equity of the person, if a public company; or

(F) A person who exercises control and has apparent or actual authority to exercise such control over either the person or a principal that is otherwise described by this subsection. A fiduciary of a company, such as the board of directors, is a principal if it has apparent or actual authority to exercise control over the person or a principal of the person, and exercises such control.

(c) Initial registration information. To register as a PGC or a self-generator a person must use the registration form prescribed by the commission. A person registering as a PGC or a self-generator must provide the following information.

(1) Contact information of the registrant and the registrant's primary and secondary emergency contacts, which includes:

(A) a legal business name;

(B) a physical and business mailing address;

(C) a business telephone number; and

(D) a business e-mail address.

(2) The name of the current regulatory contact, the contact's e-mail address and telephone number, and if the regulatory contact is an internal staff member of the registrant.

(3) For each generating facility operated by the registrant:

(A) the name, address, county and power region of operation of each generating facility;

(B) whether the generating facility is an electric storage facility;

(C) the name of the transmission service providers interconnecting the generating facility; and

(D) the capacity rating for each generating unit following the rating method established in §25.91(f) of this title (relating to Generating Capacity Reports).

(4) A description of the types of services provided by the registrant that relate to the generation of electricity.

(5) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting that none of the registrant's principals:

(A) were principals of a commission-regulated person whose license was revoked by commission order within the prior six months of when they were a principal;

(B) were principals of any person registered with the Electric Reliability Council of Texas (ERCOT) whose standard form market participant agreement was terminated by ERCOT for misconduct within the prior six months of when they were a principal; or

(C) are otherwise prohibited by commission order from acting as a principal of a commission-regulated entity.

(d) Additional information required for PGC registration. In addition to the information required under subsection (c) of this section, a person registering as a PGC must also submit the following information to the commission.

(1) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting that the registrant:

(A) generates electricity that is intended to be sold at wholesale;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under §25.5 of this title (related to Definitions); and

(C) does not have a certified service area.

(2) The name of the registrant's corporate parent.

(3) A list of affiliates of the registrant's and the registrant's corporate parent identified by name that buy and sell electricity at wholesale in Texas, sell electricity at retail in Texas, or is an electric cooperative or municipally owned utility in Texas.

(4) The applicable control number and item number that the registrant has filed its initial Emergency Operations Plan in as required under §25.53 of this title (relating to Electric Service Emergency Operations Plans).

(5) As applicable, copies of the registrant's Federal Energy Regulatory Commission registration as a QF or an EWG.

(e) Additional information required for self-generator registration. In addition to the information required under subsection (c) of this section, a person registering as a self-generator must also submit an affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant attesting:

(1) that the registrant is not a power generation company and does not intend to generate electricity intended to be sold at wholesale; or

(2) if the registrant is a QF, the registrant either does not sell electricity or provides electricity only to the purchaser of the facility's thermal output.

(f) Update or relinquishment of registration. A PGC or self-generator may update or relinquish its registration.

(1) A PGC must complete the commission form to amend its registration within 30 days of a change to any information reported in response to subsections (c)(2) - (4) and (d)(2) of this section.

(2) A self-generator must complete the commission form to amend its registration within in 30 days of a change to any of the information reported in response to subsection (c)(2) - (4) of this section.

(3) A PGC and self-generator must update, in a manner established by the commission, its contact information listed in subsection (c)(1) of this section within 30 days of a change.

(g) Review of registration of PGC or self-generator. Commission staff will review the submitted or updated registration form for sufficiency and submit a written recommendation to the presiding officer within 30 days from the date the registration was filed.

(1) If commission staff recommends the registration form be found insufficient, commission staff will file a statement indicating the deficiencies as part of its recommendation. If the presiding officer finds the registration form to be insufficient, the presiding officer will notify the registrant in writing of the finding and the specific deficiencies. The registrant will have 20 days from the issuance of the notice to cure the deficiencies. Commission staff will have 15 days to review the supplemental information submitted by the registrant and file a statement indicating whether any deficiencies remain. If the presiding officer determines that the deficiencies have not been cured within 20 days of the issuance of the notice, the presiding officer will reject the registration request without prejudice and notify the registrant of the rejection.

(2) Upon finding the registration sufficient, the presiding officer will approve the registration and issue a registration number to the PGC or self-generator.

(h) Renewal of registration. A PGC or self-generator must renew its registration on or before February 28 of every other calendar year by submitting the information required by subsection (c) and, as applicable, (d) and (e) of this section by submitting a statement that the PGC or self-generator's registration information on file with the commission is current and correct.

(1) A PGC or self-generator whose commission registration number is an even number must submit its registration renewal on all even number years.

(2) A PGC or self-generator whose commission registration number is an odd number must submit its registration renewal on all odd number years.

(i) Revocation of registration and administrative penalty. Registration of a PGC under this section is subject to revocation for a significant violation of statute or commission rules. The commission may impose an administrative penalty on a person for a violation of PURA, commission rules, or rules adopted by an independent organization, including:

(1) failure to comply with the reliability standards and operational criteria duly established by the independent organization certified under PURA §39.151 for the ERCOT power region;

(2) failure to observe any scheduling, operating, planning, reliability, or settlement policy, rule, guideline, or procedure established by ERCOT;

(3) providing false or misleading information to the commission, commission staff, or ERCOT;

(4) engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;

(5) a pattern of failure to meet the requirements of statute, this section, or other commission rules, regulations or orders;

(6) suspension or revocation of a registration, certification, or license by any state or federal authority;

(7) failure to operate within the applicable legal parameters established by PURA §39.351, or other applicable provisions of PURA, commission rules, or ERCOT Protocols; and

(8) failure to timely respond to commission or commission staff inquiries or customer complaints.

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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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE PROVIDERS

16 TAC §25.485, §25.495

The amended rules are adopted under the following provisions of PURA: §14.002 which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. PURA §15.051 which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction. PURA §15.104 which authorizes the commission or executive director to issue a cease and desist order with or without notice or opportunity for a hearing. PURA §§17.001, 17.003, and 17.004 which collectively authorize the commission to impose customer protection standards in the electric market. PURA §17.052 which authorizes the commission to adopt and enforce rules related to certification or registration including suspension or revocation for repeated violations of Chapter 17 of PURA or commission rules. PURA §39.351, which stipulates the requirements to register with the commission as a power generation company. PURA §39.352, which stipulates the requirements to certify with the commission as a REP. PURA §39.356 which authorizes the commission to suspend, revoke, or amend a REP certification for significant violations of PURA and PURA §39.357 which authorizes the commission to impose administrative penalties for significant violations of PURA by REPs. PURA §35.032 and §39.355, which require registration with the commission prior to serving as a power marketer.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 15.051, 15.104 17.001, 17.003, 17.004, 17.052 35.032, 39.351, 39.352, 39.355, 39.356, and 39.357.

§25.485. Customer Access and Complaint Handling.

(a) Applicability. This section contains a customer's entitlement to reasonable access to a retail electric provider's (REP) or aggregator's representatives and identifies a customer's ability make a complaint against a REP or aggregator. REPs and aggregators are subject to processes of this section to ensure that retail electric customers have the opportunity for impartial and prompt resolution of disputes with REPs or aggregators.

(b) Customer access.

(1) A retail electric provider (REP) or aggregator must ensure that customers have reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer's bills, terminate competitive service, and transact any other pertinent business.

(2) Telephone access must be toll-free and must afford customers a prompt answer during normal business hours.

(3) A REP must provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.

(4) A REP or aggregator must employ 24-hour capability for accepting a customer's rescission of the terms of service by telephone, under rights of cancellation in §25.474(j) of this title (relating to Selection of Retail Electric Provider).

(c) Complaint handling. A residential or small commercial customer has the right to make a formal or informal complaint to the commission, and a terms of service agreement cannot impair this right. A REP or aggregator must not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer from filing an informal or formal complaint with the commission if dissatisfied with the results of the alternative dispute resolution.

(d) Complaints to REPs or aggregators. A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to a REP or aggregator. The REP or aggregator must promptly investigate and advise the complainant of the results within 21 days. A customer who is dissatisfied with the REP's or aggregator's review must be informed of the right to file a complaint with the REP's or aggregator's supervisory review process, if available, and, if not available, with the commission and the Office of Attorney General, Consumer Protection Division. Any supervisory review conducted by the REP or aggregator must result in a decision communicated to the complainant within ten business days of the request. If the REP or aggregator does not respond to the customer's complaint in writing, the REP or aggregator must orally inform the customer of the ability to obtain the REP's or aggregator's response in writing upon request.

(e) Complaints to the commission.

(1) Informal complaints. If a complainant is dissatisfied with the results of a REP's or aggregator's complaint investigation or supervisory review, the REP or aggregator must advise the com-

plainant of the commission's informal complaint resolution process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, and Relay Texas (toll-free) 1-800-735-2989.

(A) Requirements applicable to informal complaints.

(i) A complaint must include sufficient information to identify the complainant and the company for which the complaint is made and describe the issue specifically. The following information must be included in the complaint:

(I) The account holder's name, billing and service addresses, and telephone number;

(II) The name of the REP or aggregator;

(III) The customer account number or electric service identifier (ESI-ID);

(IV) An explanation of the facts relevant to the complaint;

(V) The complainant's requested resolution; and

(VI) Any documentation that supports the complaint, including copies of bills or terms of service documents.

(ii) All REPs and aggregators must provide the commission an email address to receive notification of customer complaints from the commission.

(iii) The REP or aggregator must investigate all informal complaints and advise the commission in writing of the results of the investigation within 15 days after the complaint is forwarded to the REP or aggregator. For complaints filed with the commission before September 1, 2023, the deadline is 21 days after the complaint is forwarded.

(iv) The commission must review the complaint information and the REP or aggregator's response and notify the complainant of the results of the commission's investigation.

(B) Prohibited activities during pendency of informal complaint. While an informal complaint process is pending:

(i) The REP or aggregator must not initiate collection activities, including disconnection of service or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.

(ii) A customer must pay any undisputed portion of the bill and the REP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice.

(C) Informal complaint record retention. The REP or aggregator must keep a record for two years after closure by the commission of all informal complaints forwarded to it by the commission. This record must show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or rates and charges that are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.

(2) Formal complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).

§25.495. Unauthorized Change of Retail Electric Provider.

(a) Process for resolving unauthorized change of retail electric provider (REP). If a REP is serving a customer without proper authorization under §25.474 of this title (relating to Selection of Retail Electric Provider), the REP, registration agent, and transmission and distribution utility (TDU) must follow the procedures set forth in this subsection.

(1) Either the original REP or switching REP must notify the registration agent of the unauthorized change of REP as promptly as possible, using the process approved by the registration agent.

(2) As promptly as possible following receipt of notice by the REP, the registration agent must facilitate the prompt return of the customer to the original REP, or REP of choice in the case of a move-in.

(3) The affected REPs, the registration agent, and the TDU must take all actions necessary to return the customer to the customer's original REP, or REP of choice in the case of a move-in, as quickly as possible. The original REP does not need to obtain an additional authorization from the customer under§25.474 of this title in order to effectuate the provision of this section.

(4) The affected REPs, the registration agent, and the TDU must take all actions necessary to bill correctly all charges, so that the end result is that:

(A) the REP that served the customer without proper authorization must pay all transmission and distribution charges associated with returning the customer to its original REP, or REP of choice in the case of a move-in;

(B) the original REP has the right to bill the customer under §25.480 of this title (relating to Bill Payment and Adjustments) at the price disclosed in its terms of service from either:

(i) the date the customer is returned to the original REP; or

(ii) any prior date chosen by the original REP for which the original REP had the authorization to serve the customer.

(C) the REP that served the customer without proper authorization must refund all charges paid by the customer for the time period for which the original REP ultimately bills the customer within five business days after the customer is returned to the original REP, or REP of choice in the case of a move-in;

(D) the customer will pay no more than the price at which the customer would have been billed had the unauthorized switch or move-in not occurred;

(E) the TDU has the right to seek collection of non-bypassable charges from the REP that ultimately bills the customer under subparagraph (B) of this paragraph; and

(F) the REP that ultimately bills the customer under subparagraph (B) of this paragraph is responsible for non-bypassable charges and wholesale consumption for the customer.

(5) The original REP must provide the customer all benefits or gifts associated with the service that would have been awarded had the unauthorized switch or move-in not occurred, upon receiving payment for service provided during the unauthorized change.

(6) The affected REPs must communicate with the customer as appropriate throughout the process of returning the customer to the original REP or REP of choice and resolving any associated billing issues.

(7) In a circumstance where paragraph (4) of this subsection is not applicable or its requirements cannot be effectuated, the market participants involved must work together in good faith to rectify the unauthorized switch or move-in in a manner that affords the customer and market participants involved a level of protection comparable to that required in this subsection.

(b) Customer complaints, record retention and enforcement.

(1) A customer may file a complaint with the commission, under §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for an alleged failure to comply with the provisions of this section.

(2) Upon receipt of a customer complaint, a REP must:

(A) respond to the commission within 15 calendar days after receiving the complaint from the commission. For complaints submitted to the commission before September 1, 2023, the deadline is 21 days after the complaint is received from the commission. The response to the complaint must provide to the commission all documentation relied upon by the REP and related to the:

(i) authorization and verification to switch the customer's service; and

(ii) corrective actions taken to date, if any.

(B) cease any collection activity related to the alleged unauthorized switch or move-in until the complaint has been resolved by the commission.

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

Filed with the Office of the Secretary of State on April 6, 2023.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC Chapter 127, Subchapter A §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25; the title of Subchapter B; Subchapter B §§127.100, 127.120, 127.130, and 127.140; and Subchapter C §§127.200, 127.210, and 127.220; and the repeal of 28 TAC §127.110. The amended sections concern how the designated doctor program operates. The repealed section, §127.110, has been incorporated into amended §127.100. The amendments and repeal implement Texas Labor Code §§408.0041, 408.023, and 408.1225, which direct DWC on the operation of the designated doctor program.

The amendments to Subchapter A §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25; the title of Subchapter B; Subchapter B §§127.100, 127.120, and 127.140; Subchapter C §§127.200, 127.210, and 127.220; and the repeal of §127.110 are adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8495), with minor corrections to §§127.5, 127.20, and 127.200 published in the January 13, 2023, issue of the *Texas Register* (48 TexReg 169). The rules will not be republished.

The amendments to §127.130 are adopted with changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8495). In response to a public comment, DWC revised §127.130(f) by adding a reference to the designated doctor's duty in §127.200(a)(12) to notify DWC if continuing to participate on a claim would exceed their scope of practice, to note that DWC's assignment of a designated doctor examination does not alter the scope of practice authorized by the designated doctor's professional license, and to make editorial adjustments for readability. The rule will be republished.

REASONED JUSTIFICATION. The amendments are necessary to maintain and increase participation in the designated doctor program and to allow better access to certain types of specialized examinations. DWC evaluated the program and identified several possible areas of improvement, including changes to address training and testing requirements; designated doctor qualifications, certification, and renewals; multiple certifications; and administrative burdens. DWC's evaluation process included multiple stakeholder meetings and two informal draft proposals to gather information and comments on possible changes to the text before writing and posting the formal proposal. DWC considered the comments and information received through the lengthy informal process, as well as the comments received in response to the formal proposal, when drafting the amendments.

The amendments move the substance of the repealed section into another section to reduce duplication and streamline and clarify the process involved, make changes to revise training and testing requirements, reduce administrative burdens, and update designated doctor qualifications to enable better access to traumatic brain injury and multiple fracture examinations for injured employees.

The amendments add new subsection headers throughout the chapter that enable readers to identify and navigate subsections more easily. They remove unnecessary and obsolete section-specific applicability and effective dates to avoid confusion and streamline rule language. They make editorial changes that clarify the rule language and organization by removing unnecessary words, simplifying sentence structure, adding references, and breaking long paragraphs into shorter paragraphs and lists. The amendments also correct typographic, grammar, and punctuation errors in the current rule text; make changes to update obsolete references; and make updates for plain language and agency style. Some examples of these amendments include changing "shall" to "must," "facsimile" to "fax," and adding "insurance" before "carrier."

Section 127.1 concerns requesting designated doctor examinations. The amendments remove language related to the multiple certification requirement to harmonize with amendments to the multiple certification process in §127.10. The amendments also update and simplify DWC's website and physical addresses, and

clarify DWC's requirements for a case-specific good cause determination for scheduling an examination within 60 days. The amendments remove the provision that formerly required the requester to list all compensable injuries, because the designated doctor will be determining what injuries are compensable when performing an extent-of-injury examination, rather than relying on information from the requester.

Section 127.5 concerns scheduling designated doctor appointments. The amendments relocate existing rule language about designated doctor certification from §127.130 for better placement in the chapter.

Section 127.10 concerns general procedures for designated doctor examinations. The amendments add a reference to Labor Code §408.0041(c), clarify that testing and referral doctors for designated doctor examinations do not have to be in the same workers' compensation network for health care as the injured employee, and clarify that the insurance carrier must pay benefits on the condition to which the designated doctor determines the compensable injury extends.

The amendments also divide subsection (d) into two subsections, remove the requirement for a designated doctor to provide multiple certifications, and add language that specifies that, for examinations conducted under subsection (d) on or after June 5, 2023, a designated doctor may provide multiple certifications of maximum medical improvement (MMI) and impairment ratings only when DWC directs.

DWC analyzed data about designated doctor examinations, benefit review conferences, and contested case hearings involving the issues of MMI, impairment rating, and extent of injury in 2019, and determined that only about 20% of designated doctor reports with multiple certifications were involved in DWC dispute resolution processes. In addition, of the 20% of claims where the parties disputed MMI, impairment rating, and extent of injury in a DWC contested case hearing, DWC administrative law judges requested new certifications from designated doctors about 50% of the time, since the multiple certifications the designated doctor previously produced did not represent the compensable injury determined during the proceeding. DWC concluded that, where multiple certifications are appropriate, DWC administrative law judges are already directing designated doctors to provide them. As a result, the amendment that specifies that designated doctors may provide multiple certifications of MMI and impairment ratings only when directed by DWC will reduce the number of unnecessary multiple certifications that consume time and resources, while continuing to allow for necessary multiple certifications without causing unnecessary delay.

Section 127.15 concerns undue influence on a designated doctor. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.20 concerns requesting a letter of clarification regarding designated doctor reports. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.25 concerns failure to attend a designated doctor examination. The amendments clarify that the requirement applies to a designated doctor examination or a referral examination under §127.10(c).

Subchapter B concerns designated doctor certification, renewal, and qualifications. The amendments change the title of the subchapter by changing "recertification," which referred to the section being repealed, to "renewal" to describe the procedure more accurately.

Section 127.100 concerns designated doctor certification. The amendments merge the language in §127.110, which is being repealed, with §127.100 to eliminate redundancy, reduce confusion and inconsistencies, update terminology, and clarify the process for certification and renewal.

The amendments specify that the requirements for certification and renewal are now combined into §127.100, and modify the requirement for certification testing by requiring that a designated doctor complete certification on or after May 13, 2013. Designated doctors that pass or have previously passed the certification test on or after May 13, 2013, are no longer required to retest every two years when they renew their certification. However, the amendments also add §127.100(d), which allows DWC to require testing of all designated doctors on renewal of their certification if needed. Examples of when testing might be required include, but are not limited to, individual need for retesting based on substandard performance, changes in the duties of a designated doctor, updates to the guidelines, and legislative changes.

The amendments clarify that the disclosure questions on the certification application require detailed explanations, add suspension and revocation to the certification actions that require DWC to send the designated doctor written notice, and relocate existing rule requirements for certification effective and expiration dates.

The amendments add §127.100(g), which relocates existing rule requirements from §127.110. Subsection (g) explains that a designated doctor seeking to renew their certification immediately after their current term expires, without interruption, must apply for certification no later than 45 days before the end of the term. Subsection (g) also explains that DWC will not assign examinations to the designated doctor during the last 45 days of an expiring term if it does not receive an application 45 days before the end of the term, but that designated doctors may still provide services on claims DWC had previously assigned to them during this 45-day period.

The amendments add §127.100(h), which allows DWC to approve a designated doctor certification but restrict some or all appointments until the designated doctor completes additional training, testing, or other requirements. This is necessary for DWC to ensure that designated doctors are adequately trained and able to perform their duties as the Labor Code and DWC rules and guidelines require. Subsection (h) also provides a way for the designated doctor to dispute the restriction.

The amendments reletter existing subsection (f) as subsection (i). They clarify the range of possible actions that, under existing statutes, the commissioner may take on a designated doctor's certification to ensure the quality of the designated doctor's decisions and reviews. The amendments also add failure to comply with the requirements of §180.24 (relating to Financial Disclosure) as a ground for action under the subsection.

The amendments add §127.100(k), which relocates existing rule requirements for certification renewal from §127.110, to ensure consistency in the restructured process. The amendments change "informal hearing" to "informal conference" to clarify the informal nature of the discussion about a denial, suspension, or revocation of a designated doctor certification or application for certification or renewal. Subsection (k) details the procedure for designated doctors to request an informal conference.

The amendments remove existing §127.100(h) because this subsection was added in 2012 when designated doctors were transitioning to the then-new rules for examination qualification criteria. Only one doctor used that process during that transition, and there is no longer a need for it.

The amendments remove existing §127.100(i) because DWC transitioned all designated doctor certification terms to a two-year cycle in 2012. There is no longer a need for this provision in the rules.

Section 127.110 is repealed. Certification and renewal requirements are now combined in amended §127.100 to reduce redundancy and inconsistency, and to make the requirements easier to understand and follow.

Section 127.120 concerns exception to certification as a designated doctor for out-of-state doctors. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.130 concerns qualification standards for designated doctor examinations. The amendments specify an applicability date for the section for designated doctor examination assignments made on or after June 5, 2023, to clarify which standards apply to a given assignment.

The amendments to §127.130(b)(9)(A) also update the qualification requirements for physicians examining traumatic brain injuries, including concussion and post-concussion syndrome, by adding to the list of qualifying American Board of Medical Specialties and American Osteopathic Association Bureau of Osteopathic Specialists board certifications. These amendments are necessary to ensure that injured employees with traumatic brain injuries can continue to access designated doctor examinations.

Over the past several years, DWC has experienced a marked decrease in the number of qualified board-certified physicians to examine injured employees with traumatic brain injuries. Current §127.130(d) allows DWC to exempt a designated doctor from the applicable qualification standard if no other designated doctor is qualified and available to perform the examination. Physicians are trained and tested to be able to handle designated doctor assignments for non-musculoskeletal injuries, and to recognize when an injured employee needs to be referred for ancillary testing. Due to lack of availability, within a seven-month period, DWC selected a physician with a board certification other than those currently listed in §127.130(b)(9)(A) to examine an injured employee with a traumatic brain injury 26% of the time. These designated doctors coordinated testing and referral examinations with other health care practitioners to complete their reports. Their reports were comparable to reports submitted by qualified, board-certified physicians.

As a result, DWC acknowledges the need for the rule to increase the number of board-certified physicians available to examine injured employees with traumatic brain injuries, as well as to improve the ability of physicians with a broader range of board certifications to use testing and referral resources to produce reports that meet the requirements of the designated doctor program. Board-certified physicians are all capable of coordinating referrals of injured employees to other specialists, when necessary, regardless of the types of patients the physicians may see in their medical practice. Should a situation arise where any designated doctor does not believe they have the knowledge or training to address a specific issue in an exam, designated doctors may return the examination to DWC for reassignment.

To support those doctors, DWC will provide additional training, focused on coordinating additional testing and referrals necessary when examining injured employees, and techniques for incorporating the results of the testing and referral examinations into the overall report effectively. This will preserve the quality of the reports on traumatic brain injuries while expanding the pool of doctors able to conduct those examinations.

The amendments to §127.130(b)(9)(B) also update the qualification requirements for physicians examining injured employees with spinal cord injuries and diagnoses, a spinal fracture with documented neurological deficit, or cauda equina syndrome. The amendments change the phrase "documented neurological deficit" to "documented neurological injury, or vascular injury," to clarify what types of conditions require a designated doctor examination by a qualified, board-certified specialist. The amendments also clarify that an injured employee with more than one spinal fracture must be examined by a qualified, board-certified specialist to harmonize with the amendments to the types of multiple fractures, joint dislocation, and pelvis or hip fractures in §127.130(b)(9)(E).

The amendments to §127.130(b)(9)(E) clarify the certifications required for complex fractures. They no longer require a board-certified specialist for multiple fractures unless they are accompanied by vascular injury or are more than one spinal fracture. Currently, a board-certified physician must examine an injured employee with multiple fractures (more than one fracture). That can create unnecessary administrative problems and delays. Sometimes, a chiropractor or physician without a board specialty listed in §127.130(b)(9)(E) is selected as a designated doctor to examine an injured employee with a single fracture. But when the designated doctor gets the medical records, they may show more than one simple, resolved fracture, which means that the designated doctor must return the examination for reassignment.

As a result, the amendments to §127.130(b)(9)(E) are necessary to clarify that an injured employee with one or more fractures with vascular injury, including crush injuries to bones, must be examined by a physician qualified under §127.130(b)(9)(E). An injured employee with more than one simple, resolved fracture (without vascular injury) may be examined by a chiropractor or a physician with a different board certification or no board certification. This amendment will reduce wasted time and resources, and increase efficiency in assigning and conducting designated doctor examinations.

The amendments also allow a chiropractor or a physician with a different board certification or no board certification to examine an injured employee with a hip fracture without vascular injury; and add multiple rib fractures, with or without vascular injury, to the types of injuries that require examination by a physician qualified under §127.130(b)(9)(E). Because multiple rib fractures may be accompanied by damage to internal organs, clarifying that their examination requires a board-certified physician is necessary.

The amendments to §127.130(c) remove language related to disqualification of a designated doctor under Labor Code §408.0041(b-1) for clarity.

The amendments to §127.130(d) clarify that the exemption from qualification standards applies to a medical doctor or doctor of osteopathy when a designated doctor is not available with the qualifications listed in subsections (b)(9)(A)-(I).

DWC has adjusted §127.130(f) in response to a comment on the proposal by adding a reference to the designated doctor's duty in §127.200(a)(12) to notify DWC if continuing to participate on a claim would exceed their scope of practice, to note that DWC's assignment of a designated doctor examination does not alter the scope of practice authorized by the designated doctor's professional license, and to make editorial adjustments for readability.

The amendments to §127.130(g) remove a reference to §127.110(b) that the repeal of §127.110 makes obsolete.

Section 127.140 concerns disqualifying associations. The amendments make editorial changes.

Section 127.200 concerns duties of a designated doctor. The amendments add the requirement for a designated doctor to complete required training or pass required testing detailed in the designated doctor's approval of certification to harmonize with the amended language in §127.100(h) that allows DWC to approve a designated doctor certification but restrict some or all appointments for a designated doctor until the designated doctor completes additional training, testing, or other requirements. The amendments are necessary to enhance and preserve the integrity of the program.

Section 127.210 concerns designated doctor administrative violations. The amendments clarify that a designated doctor's failure to attend an examination or comply with rescheduling requirements may be grounds for revoking or suspending a certification or sanctioning a designated doctor. The amendments are necessary to ensure the quality and efficiency of the designated doctor program.

Section 127.220 concerns designated doctor reports. The amendments add the requirements for a designated doctor to specify the date the additional testing or referral examination was completed, and to provide the total amount of time required for the designated doctor to review the medical records. They are necessary for DWC to administer the designated doctor program effectively by ensuring a more complete and descriptive record that provides the required information and better reflects the amount of work involved in producing the report.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received three written comments on the proposal by the January 30, 2023, deadline, and no oral comments at the January 18, 2023, hearing. DWC will address any remarks about associated forms and non-rule matters outside of the rulemaking process. Commenters in support of the proposal with changes were: Gary W. Floyd, M.D., Texas Medical Association; and Barbara K. Salyers, Texas Mutual Insurance Company. A commenter against the proposal was: Benjamin de Leon, Office of Injured Employee Counsel (OIEC).

Comment on §127.1. A commenter stated that DWC should not remove the requirement to list injuries determined to be compensable because it may create confusion and mistakes, increase the administrative burden in the system, negatively impact the dispute resolution process, and potentially delay medical and income benefits for injured employees. The commenter also disagreed with the change to replace "parties" with "insurance carrier, the claimant, or the claimant's representative" because it does not account for OIEC assistance, and suggested that DWC add language to include OIEC in the rule.

Agency Response to Comment on §127.1. DWC appreciates the comment but declines to make the suggested changes. On the list of compensable injuries, DWC disagrees that removing the requirement would create confusion and mistakes because §130.1 of this title, concerning certification of maximum medical improvement and evaluation of permanent impairment, already states that the certifying doctor--which can be a treating doctor, a designated doctor, or a required medical examination doctor--certifies maximum medical improvement, determines whether there is permanent impairment, and assigns an impairment rating. Designated doctors are trained to define the compensable injury, taking into consideration the injured employee's history, examination, and medical records. The designated doctor takes into account the information on the examination request but is not limited to this information in evaluating the injured employee. In addition, the treating doctor and the insurance carrier can still provide an analysis letter to the designated doctor, and the injured employee can talk directly to the designated doctor at the examination if clarification is needed.

Although DWC does not believe that a change to the rule to retain the list of compensable injuries is necessary or advisable, DWC may adjust the associated form, DWC Form-032, *Request for Designated Doctor Examination,* to include a question about whether there has been an approved DWC Form-024, *Benefit Dispute Agreement,* final decision, or final court order to determine the compensable injury. That adjustment would allow DWC, on receiving the form, to investigate the documents indicated on the form and provide that information to the assigned designated doctor.

DWC also disagrees that the changes will increase the overall administrative burden in the system, negatively impact dispute resolution, or delay medical and income benefits. While it is true that requiring a Presiding Officer's Directive (POD) for multiple certifications will result in more PODs, it doesn't necessarily follow that more PODs increases inefficiency and confusion. Instead, PODs that are focused on the specific injury and that direct designated doctors to perform multiple certifications only when needed should reduce confusion and duplication, which is a problem in the current system. DWC is also working to streamline the POD process for multiple certifications to ensure that they are processed as efficiently as possible and minimize delays.

On the word "parties," DWC disagrees that the clarification to replace it with "insurance carrier, the claimant, or the claimant's representative" excludes OIEC. Section 150.3(a)(3) of this title (Representatives: Written Authorization Required) allows a representative, as defined in the Texas Workers' Compensation Act (recodified at Labor Code §401.011(37)) to provide unpaid services in workers' compensation matters if the person who is not either an adjuster or attorney files with DWC a written power of attorney, or written authorization from the claimant, allowing that person access to confidential records. Labor Code §401.011(37) defines "representative" as a person, including an attorney, authorized by the commissioner to assist or represent an employee, a person claiming a death benefit, or an insurance carrier in a matter arising under this subtitle that relates to the payment of compensation. Labor Code §404.101 requires OIEC to provide assistance to workers' compensation claimants and assist injured employees through the ombudsman program in DWC's dispute resolution system and with resolving complaints.

Comments on §127.10. A commenter stated that DWC should add language like the language in §127.200(a)(10) to §127.10(c)(3) to clarify that reimbursement for additional testing and examinations performed by referral doctors is subject to

Chapters 133 and 134 to make it clear that DWC's medical billing requirements and reimbursement rates still apply to any testing or referral services a designated doctor orders in the same way as designated doctor examinations.

The commenter stated that the proposed change to §127.10(d), which provides that only DWC may direct a designated doctor to provide multiple MMI/impairment rating certifications, would reduce opportunities for the parties to resolve disputes regarding extent of injury, MMI, and impairment rating without the need for dispute resolution. The commenter asked that, if DWC adopts the change, DWC add language to §127.10(d) to allow adequate time for parties to seek their own opinions through the treating doctor, referral doctor, or required medical examination doctor before initiating the dispute resolution process. The commenter stated that providing alternate certifications does not require additional examination time, as the designated doctor has already evaluated the extent of the compensable injury; and that providing multiple certifications requires adding or subtracting diagnoses and their corresponding percentage of impairment from the whole person impairment rating calculations.

Another commenter stated that DWC should not eliminate multiple certifications when a designated doctor is requested to address issues of MMI, impairment rating, and extent of injury in the same examination because they are helpful and save time, and because injured employees rely on them.

Agency Response to Comments on §127.10. DWC appreciates the comment but declines to make the requested changes. The fee rules and guidelines in Chapters 133 and 134 of this title already apply to testing and referral services that are ordered by a designated doctor, so an additional mandate would be unnecessary and could cause confusion.

Based on DWC's data, of the designated doctor reports with multiple certifications that go to a contested case hearing, DWC administrative law judges had to request new certifications from designated doctors about half the time because the multiple certifications that the designated doctor had produced previously did not represent the compensable injury during the proceeding. As a result, DWC administrative law judges are already directing designated doctors to provide multiple certifications when appropriate, so avoiding producing multiple certifications that will not ultimately be useful in resolving the dispute should make the process more efficient. DWC recognizes that for the cases that do end up in a contested case hearing, having the administrative law judge direct a designated doctor to provide multiple certifications may add some time. Because of that, DWC is adjusting its process to mitigate the time loss by adding benefit review officers to work with the parties to get a POD for multiple certifications, when needed, before the first benefit review conference.

Comment on §127.20. A commenter stated that DWC should amend §127.20(a) to require DWC to request clarification of a designated doctor opinion if both parties agree that clarification of an issue or issues is needed. The commenter stated that, too often, DWC automatically rejects such requests, only for the parties to re-urge the request during the dispute resolution process, which requires the administrative law judge to seek clarification.

Agency Response to Comment on §127.20. DWC appreciates the comment but declines to make the requested change. Because of the fact-specific nature of the matter, and the analysis involved, it is important that DWC have the discretion to determine when a letter of clarification is an appropriate and efficient use of system resources. Requests cannot be leading or inflammatory, and clarification must be necessary and appropriate to resolve a future or pending dispute. Those are qualitative determinations that require careful consideration, which a mandatory rubber stamp would remove.

Comment on §127.100. A commenter stated that DWC should not eliminate the requirement for a designated doctor to test every two years. The commenter agreed with requiring additional certification testing for substandard performance but requests that DWC keep a testing requirement to prevent substandard performance.

Agency Response to Comment on §127.100. DWC appreciates the comment but declines to make the requested change. The education and performance review requirements to ensure consistent designated doctor training and to maintain performance standards remain. The amendments to §127.100(d) allow DWC to require testing at renewal of a designated doctor's certification, when indicated. Examples of when testing might be required include not only identified performance issues, but also changes in the duties of a designated doctor in general, updates to the guidelines, and legislative changes. DWC expects that the additional testing on an as-needed basis will be sufficient to ensure that designated doctors are trained and able to perform their duties to the standard DWC sets.

Comment on §127.120. A commenter stated that, for an out-of-state doctor in §127.120, there are no express restrictions or parameters on the out-of-state doctor's qualifications. The commenter recommended changes to §127.120(a) to require the out-of-state doctor to have equivalent applicable qualifications to the standards in §127.130.

Agency Response to Comment on §127.120. DWC appreciates the comment but declines to make this change. DWC has the discretion to evaluate which requirements to waive, and does so on a case-by-case basis to ensure that an out-of-state examination is conducted timely and to the required standard. Restricting DWC's discretion to assign out-of-state examinations to qualified doctors could make it difficult to find a doctor willing to do the examination and create unnecessary delays and costs.

Comments on §127.130. A commenter expressed appreciation for DWC's inclusion of previously holding a board certification in the definition of "board certified," as consistent with other laws that prohibit differentiation between physicians on the basis of maintenance of certification for paying, reimbursing, or contracting with a physician to provide services.

Another commenter disagreed with allowing doctors not board-certified in neurological surgery, neurology, physical medicine and rehabilitation, or psychiatry to evaluate and rate a traumatic brain injury. The commenter recommended that DWC continue using only the doctors currently listed in §127.130(b)(9)(A) to evaluate traumatic brain injuries. The commenter also recommended that DWC add a testing requirement to increase the number of doctors that can examine traumatic brain injuries and maintain injury examination quality standards. The commenter agreed with DWC's clarification of who may examine spinal cord injuries and complex fractures because it benefits injured employees to have board-certified specialists examining those medically complex injuries.

Agency Response to Comments on §127.130. DWC appreciates the comments. DWC agrees with the commenter's observation that the act of initially getting board-certified is what demonstrates qualification in the field. DWC disagrees with the recommendation to not expand the list of doctors that may examine

traumatic brain injuries. DWC may exempt a designated doctor from the applicable qualification standard if no other doctor is qualified and available to perform the examination. In the past, when a designated doctor with one of the listed board specialties has not been available, DWC has assigned traumatic brain injury evaluations to physicians with other specialty certifications and informed them that they can refer the injured employee to another doctor if needed as part of the designated doctor evaluation. DWC has found that in this situation, the appropriate referrals and tests are conducted, and the reports produced are of comparable quality to reports produced by the listed specialties.

DWC has worked to recruit new designated doctors, especially those with board certifications that are more specific to examine traumatic brain injuries, and hopes that program improvements will increase physician participation of neurologists, neurosurgeons, physical medicine and rehabilitation doctors, and psychiatrists, but assigning examinations for traumatic brain injuries only to those specialties would result in unacceptable and unreasonable delays for those injured employees' examinations for no real benefit. DWC expects that the board-certified doctors qualified to perform traumatic brain injury examinations under the amended rule will coordinate testing and referral doctors in the same way that the doctors that DWC exempted from the qualification standard out of necessity, and will produce reports of comparable quality. To further ensure this, DWC will require additional training for designated doctors with board certifications, focusing on coordinating additional testing and referrals that are needed when examining injured employees with brain injuries, as well as techniques for effectively incorporating the results of the testing and referrals into the overall report.

Comment on §§127.130 and 127.200. A commenter stated that there are places in Chapter 127 where the terminology for the services that a designated doctor provides and the underlying standards may unintentionally be confused with expanding the scope of a person's practice as established by the Texas Legislature. The commenter recommended changes to §§127.130 and 127.200 to prevent unintended consequences.

Agency Response to Comment on §§127.130 and 127.200. DWC appreciates the comment. DWC does not have the authority to expand or decrease a persons' scope of practice, so any attempt to do so in this rule would be ineffective. However, in response to the comment, DWC revised §127.130(f) by adding a reference to the designated doctor's duty in §127.200(a)(12) to notify DWC if continuing to participate on a claim would exceed their scope of practice, to note that DWC's assignment of a designated doctor examination does not alter the scope of practice authorized by the designated doctor's professional license, and to make editorial adjustments for readability.

Comment on §127.210(b). A commenter stated that the liability language in §127.210(b) is broadly drafted and not tailored to DWC's authority and suggested alternative language. The commenter stated that the lack of qualifying language on liability that limits it to DWC's sanction powers could be misconstrued as grounds for civil liability or an administrative enforcement action by another agency, that the provision is also not properly limited to an act committed at the direction of the designated doctor, and that sanctioning a doctor for an unknown action by his or her agent is unfair and may deter an individual from registering as a designated doctor.

Agency Response to Comment on §127.210(b). DWC appreciates the comment but declines to make this change. Modifying the liability language as the commenter suggests would essentially absolve health care providers of misconduct for the actions of their lawful agents. Many designated doctors employ staff and other agents, such as scheduling companies, under employment relationships or general contracts that delegate to the agent the designated doctor's duties to perform services in the Texas workers' compensation system that are not within the specific knowledge or direction of the designated doctor. The suggested language would create ambiguity in situations where designated doctors have such agency relationships. This would, in turn, interfere with DWC's ability to monitor and enforce compliance with Texas laws and DWC rules.

SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS

28 TAC §§127.1, 127.5, 127.10, 127.15, 127.20, 127.25

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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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Kara Mace
Deputy Commissioner for Legal Services
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL, AND QUALIFICATIONS

28 TAC §§127.100, 127.120, 127.130, 127.140

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to the title of 28 TAC Chapter 127, Subchapter B and §§127.100, 127.120, 127.130, and 127.140 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§127.130. Qualification Standards for Designated Doctor Examinations.

(a) Applicability. This section applies to designated doctor assignments made on or after June 5, 2023.

(b) Qualification standards by type of injury or diagnosis. A designated doctor is qualified to perform a designated doctor examination on an injured employee if the designated doctor meets the appropriate qualification standard for the area of the body affected by the injury and the injured employee's diagnosis and has no disqualifying associations under §127.140 of this title (relating to Disqualifying Associations). A designated doctor's qualification standards are as follows:

(1) To examine injuries and diagnoses relating to the hand and upper extremities, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.

(2) To examine injuries and diagnoses relating to the lower extremities excluding feet, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.

(3) To examine injuries and diagnoses relating to the spine and musculoskeletal structures of the torso, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.

(4) To examine injuries and diagnoses relating to feet, including toes and heel, a designated doctor must be a licensed medical doctor, doctor of osteopathy, doctor of chiropractic, or doctor of podiatric medicine.

(5) To examine injuries and diagnoses relating to the teeth and jaw, including a temporomandibular joint, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of dental surgery.

(6) To examine injuries and diagnoses relating to the eyes, including the eye and adnexal structures of the eye, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of optometry.

(7) To examine injuries and diagnoses relating to mental and behavioral disorders, a designated doctor must be a licensed medical doctor or doctor of osteopathy.

(8) A designated doctor must be a licensed medical doctor or doctor of osteopathy to examine injuries and diagnoses relating to other body areas or systems, including, but not limited to:

(A) internal systems;

(B) ear, nose, and throat;

(C) head and face;

(D) skin;

(E) cuts to skin involving underlying structures;

(F) non-musculoskeletal structures of the torso;

(G) hernia;

(H) respiratory;

(I) endocrine;

(J) hematopoietic; and

(K) urologic.

(9) Notwithstanding paragraphs (1) - (8) of this subsection, a designated doctor must be a licensed medical doctor or doctor of osteopathy with the required board certification to examine any of the following diagnoses.

(A) For purposes of this section, a designated doctor is "board-certified" in a required specialty or subspecialty, as applicable, if they hold or previously held:

(i) a general certificate in the required specialty or a subspecialty certificate in the required subspecialty from the American Board of Medical Specialties (ABMS); or

(ii) a primary certificate in the required specialty and a certificate of special qualifications or certificate of added qualifications in the required subspecialty from the American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS).

(B) To examine traumatic brain injuries, including concussion and post-concussion syndrome, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) psychiatry;

(V) orthopaedic surgery;

(VI) occupational medicine;

(VII) dermatology;

(VIII) plastic surgery;

(IX) surgery;

(X) anesthesiology with a subspecialty in pain medicine;

(XI) emergency medicine;

(XII) internal medicine;

(XIII) thoracic and cardiac surgery; or

(XIV) family medicine.

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) psychiatry;

(V) orthopedic surgery;

(VI) preventive medicine/occupational-environmental medicine;

(VII) preventive medicine/occupational;

(VIII) dermatology;

(IX) plastic and reconstructive surgery;

(X) surgery (general);

(XI) anesthesiology with certificate of added qualifications in pain management;

(XII) emergency medicine;

(XIII) internal medicine;

(XIV) thoracic and cardiovascular surgery; or

(XV) family practice and osteopathic manipulative treatment.

(C) To examine spinal cord injuries and diagnoses, including a spinal fracture with documented neurological injury, or vascular injury, more than one spinal fracture, or cauda equina syndrome, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) orthopaedic surgery; or

(V) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) orthopedic surgery;

(V) preventive medicine/occupational-environmental medicine; or

(VI) preventive medicine/occupational.

(D) To examine severe burns, including chemical burns defined as deep partial or full thickness burns, also known as second, third, or fourth-degree burns, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) dermatology;

(II) physical medicine and rehabilitation;

(III) plastic surgery;

(IV) orthopaedic surgery;

(V) surgery; or

(VI) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) dermatology;

(II) physical medicine and rehabilitation;

(III) plastic and reconstructive surgery;

(IV) orthopedic surgery;

(V) surgery (general);

(VI) preventive medicine/occupational-environmental medicine; or

(VII) preventive medicine/occupational.

(E) To examine complex regional pain syndrome (reflex sympathetic dystrophy), a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) neurological surgery;

(II) neurology;

(III) orthopaedic surgery;

(IV) plastic surgery;

(V) anesthesiology with a subspecialty in pain medicine;

(VI) occupational medicine; or

(VII) physical medicine and rehabilitation.

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;

(II) neurology;

(III) orthopedic surgery;

(IV) plastic surgery;

(V) preventive medicine/occupational-environmental medicine;

(VI) preventive medicine/occupational;

(VII) anesthesiology with certificate of added qualifications in pain management; or

(VIII) physical medicine and rehabilitation.

(F) To examine any joint dislocation, one or more fractures with vascular injury, one or more pelvis fractures, or multiple rib fractures, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) emergency medicine;

(II) orthopaedic surgery;

(III) plastic surgery;

(IV) physical medicine and rehabilitation; or

(V) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) emergency medicine;

(II) orthopedic surgery;

(III) plastic surgery;

(IV) physical medicine and rehabilitation;

(V) preventive medicine/occupational-environmental medicine; or

(VI) preventive medicine/occupational.

(G) To examine complicated infectious diseases requiring hospitalization or prolonged intravenous antibiotics, including blood borne pathogens, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) internal medicine; or

(II) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) internal medicine;

(II) preventive medicine/occupational-environmental medicine; or

(III) preventive medicine/occupational.

(H) To examine chemical exposure, excluding chemical burns, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) internal medicine;

(II) emergency medicine; or

(III) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) internal medicine;

(II) emergency medicine;

(III) preventive medicine/occupational-environmental medicine; or

(IV) preventive medicine/occupational.

(I) To examine heart or cardiovascular conditions, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) internal medicine;

(II) emergency medicine;

(III) occupational medicine;

(IV) thoracic and cardiac surgery; or

(V) family medicine.

(ii) Qualifying AOABOS certifications are:

(I) internal medicine;

(II) emergency medicine;

(III) preventive medicine/occupational-environmental medicine;

(IV) preventive medicine/occupational;

(V) thoracic and cardiovascular surgery; or

(VI) family practice and osteopathic manipulative treatment.

(c) Qualification to perform initial examination. To be qualified to perform an initial examination on an injured employee, a designated doctor, other than a chiropractor, must be qualified under Labor Code §408.0043. A designated doctor who is a chiropractor must be qualified to perform an initial designated doctor examination under Labor Code §408.0045.

(d) Exemption from qualification standards. If a designated doctor is not available with the qualifications listed in subsections (b)(9)(A) - (I), the division may exempt a medical doctor or doctor of osteopathy from any of the qualification standards specified in this chapter to serve as a designated doctor to help timely resolve a dispute or perform a particular examination.

(e) Continuity of examinations. A designated doctor who performs an initial designated doctor examination of an injured employee and meets the appropriate qualification standard to perform that examination under subsection (b) of this section will remain assigned to that claim and perform all subsequent examinations of that injured employee unless the division authorizes or requires the designated doctor to discontinue providing services on that claim.

(f) Removal of designated doctor from a claim. The division may authorize a designated doctor to stop providing services on a claim if the doctor does any of the following:

(1) decides to stop practicing in the workers' compensation system.

(2) decides to stop practicing as a designated doctor in the workers' compensation system.

(3) relocates their residence or practice.

(4) asks the division to indefinitely defer the doctor's availability on the designated doctor list.

(5) determines that examining the injured employee would exceed the scope of practice authorized by their license. The division's assignment of a designated doctor exam does not alter the scope of practice authorized by the designated doctor's professional license. Section 127.200(a)(12) of this title requires a designated doctor to notify the division if continuing to participate on a claim would exceed their scope of practice.

(6) can otherwise demonstrate to the division that their continued service on the claim would be impracticable or could impair the quality of examinations performed on the claim.

(g) Prohibition. The division will prohibit a designated doctor from providing services on a claim if:

(1) the doctor has failed to become certified as a designated doctor;

(2) the doctor no longer meets the appropriate qualification standard under subsection (b) of this section to perform examinations on the claim;

(3) the doctor has a disqualifying association specified in §127.140 of this title that is relevant to the claim;

(4) the doctor has repeatedly failed to respond to division appointment, clarification, or document requests or other division inquiries about the claim;

(5) the doctor's continued service on the claim could endanger the health, safety, or welfare of either the injured employee or doctor; or

(6) the division has revoked or suspended the designated doctor's certification.

(h) License revoked or suspended. The division will prohibit a designated doctor from performing examinations on all new or existing claims if the designated doctor's license has been revoked or suspended, and the suspension has not been probated by an appropriate licensing authority.

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

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Kara Mace
Deputy Commissioner for Legal Services
Texas Department of Insurance, Division of Workers' Compensation
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Proposal publication date: December 23, 2022
For further information, please call: (512) 804-4703

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SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RECERTIFICATION, AND QUALIFICATIONS

28 TAC §127.110

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeal of 28 TAC §127.110 under Labor Code §§408.0041, 408.023 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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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Kara Mace
Deputy Commissioner for Legal Services
Texas Department of Insurance, Division of Workers' Compensation
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SUBCHAPTER C. DESIGNATED DOCTOR DUTIES AND RESPONSIBILITIES

28 TAC §§127.200, 127.210, 127.220

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §§127.200, 127.210, and 127.220 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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 180. MONITORING AND ENFORCEMENT
SUBCHAPTER B. MEDICAL BENEFIT REGULATION

28 TAC §180.23

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 Texas Administrative Code (TAC) §180.23, concerning division-required training for doctors. Section 180.23 implements Labor Code §§408.023 and 408.1225, concerning doctor certification and training. DWC adopts the amendments without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8516). The rule will not be republished.

REASONED JUSTIFICATION. The amendments make editorial changes, updates for plain language and agency style, and updates to conform the rule to related rules in 28 TAC Chapter 127. The amendments also make the rule easier to navigate by adding subsection headers. The purpose of the amendments is to attract and retain doctors in the maximum medical improvement (MMI) and impairment rating (IR) certification program by revising testing frequency, which reduces confusion and administrative burdens.

Amending §180.23 is necessary to remove references to recertification training requirements under 28 TAC Chapter 127 because DWC's recent amendments to Chapter 127 include a combined process for certification and renewal under §127.100. As a result, any references to recertification under §127.110 are obsolete. The amendments to §180.23 also align the testing requirements for MMI and IR certifications with the updated procedure in Chapter 127.

SUMMARY OF COMMENTS. DWC did not receive any comments on the proposed amendments to §180.23, either orally at the January 18, 2023, hearing or in writing by the January 30, 2023, deadline.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §180.23 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health

care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

The Texas Water Development Board (TWDB) adopts amendments to 31 Texas Administrative Code (TAC) §§353.4, 353.12, 353.41, 353.103, 353.122, and 353.140. The proposal is adopted without changes as published in the February 3, 2023, issue of the *Texas Register* (48 TexReg 464). The rules will not be republished.

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

These amendments are being made pursuant to the TWDB's periodic rule review of Chapter 353. In assessing the reasons for initially adopting the rules and assessing any necessary updates, the TWDB identified some necessary changes.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

SUBCHAPTER A. GENERAL PROVISIONS.

§353.4. Public Participation.

Section 353.4 is revised to conform with current agency practice. While the rule states that members of the public must sign a registration form at the Board Meeting, the agency currently allows members of the public to submit a form via email in anticipation of Board Meetings.

§353.12. Applications Filing and Notice.

Section 353.12 is revised to provide transparency to the public on applications received by the TWDB. While current rule requires publishing a list of certain applications received in the *Texas Register* each month, the TWDB adopts amendments to post the list on the agency's website instead. The statute requiring reporting of certain applications received does not require publication in the *Texas Register* and those individuals interested in TWDB applications are more likely to check the agency website than the *Texas Register.*

SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM.

§353.41. Adoption of Comptroller Rules.

Section 353.41 is revised to update citations and cross references. The former General Services Commission duties and rules were transferred to the Comptroller of Public Accounts.

SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS).

§353.103. State Agency Geographic Information Standards.

Section 353.103 is revised to update an outdated statutory reference and correct grammar.

SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS.

§353.122. Procedures For Collecting A Delinquent Obligation.

Section 353.122 is revised to change an updated United States Postal Service term from "address service requested" to "address correction requested."

SUBCHAPTER J. ENHANCED CONTRACT MONITORING.

§353.140. Enhanced Contract Monitoring Procedure.

Section 353.140 is revised to simplify the enhanced contract monitoring procedures that the TWDB uses for analyzing contracts. The simplified language will align more closely with statutory requirements for applicable types of contracts. The simplified list of attributes and risk factors to be considered by staff will aid staff in tailoring risk reviews to specific types of contracts. The key risk factors that apply to typical TWDB contracts will remain in the procedures.

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

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the adopted rulemaking. For the first five years these rules are in effect, there is no expected additional

cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs because the rules update non-substantive references and terminology or only impact internal agency procedures. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

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

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

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

Ms. Rebecca Trevino also has determined that for each year of the first five years the adopted rulemaking is in effect, the public will benefit from the rulemaking as it simplifies and clarifies TWDB processes and updates outdated terminology and references. Ms. Rebecca Trevino also has determined that for each year of the first five years the adopted rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as it generally only impacts internal TWDB procedures.

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

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

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

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

Even if the adopted rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §6.195 and Texas Government Code §§2001.039, 2107.002, 2161.003, and 2261.253. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify and simplify TWDB procedures. The adopted rule would substantially advance this stated purpose by updating outdated terminology and references and by clarifying agency practice and procedure related to general administrative functions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill obligations mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is a state agency in the executive branch that is required to adopt certain general state agency requirements in rule.

Nevertheless, the TWDB further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule establishes internal agency practices without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

No public comments were received during the comment period, which ended on March 6, 2023. No changes were made to the rulemaking as proposed.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §353.4, §353.12

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

The amendments are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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 April 6, 2023.

TRD-202301307
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESSES PROGRAM

31 TAC §353.41

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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-202301308
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM (TNRIS)

31 TAC §353.103

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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-202301310
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER H. COLLECTING DELINQUENT OBLIGATIONS

31 TAC §353.122

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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 April 6, 2023.

TRD-202301311
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
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Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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SUBCHAPTER J. ENHANCED CONTRACT MONITORING

31 TAC §353.140

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §6.195 and Texas Government Code §2001.039, §2107.002, §2161.003, and §2261.253.

This rulemaking affects Water Code, Chapters 6 and 16 and Government Code, Chapters 2001, 2107, 2161, and 2261.

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-202301312
Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
Effective date: April 26, 2023
Proposal publication date: February 3, 2023
For further information, please call: (512) 463-8676

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CHAPTER 380. ALTERNATIVE DISPUTE RESOLUTION

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §380.2, §380.3

The Texas Water Development Board (TWDB) adopts amendments to 31 Texas Administrative Code (TAC) §380.2, Applicability, and §380.3 Definitions. The proposal is adopted without changes as published in the February 3, 2023, issue of the *Texas Register,* (48 TexReg 474). The rules will not be republished.

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

The TWDB adopts amendments to 31 TAC Chapter 380, Alternative Dispute Resolution, Subchapter A, General Provisions. These amendments are adopted to make the rules consistent with statute in Chapter 2260, Texas Government Code.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

31 TAC §380.2, Applicability

Section 380.2 Applicability, is revised to add new paragraph (4). New paragraph (4) allows a claim for breach of contract to which Chapter 114, Civil Practices and Remedies Code to proceed against the TWDB, consistent with applicable statute in Chapter 2260, Texas Government Code.

31 TAC §380.3, Definitions

Section 380.3 Definitions, is revised to provide that certain attorney's fees may be recoverable in an action against the TWDB, consistent with applicable statute in Chapter 2260, Texas Government Code.

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

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

These rules are not expected to result in reductions in costs to either state or local governments and there will be no change in costs for either state or local governments as these changes are necessary to comply with the resolution of certain contract claims against the state in Chapter 2260 of the Texas Government Code. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

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

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

Ms. Rebecca Trevino also has determined that for each year of the first five years the adopted rulemaking is in effect, the public will benefit from the rulemaking as it clarifies the resolution process between the TWDB and contractors regarding certain contract claims against the state. Ms. Rebecca Trevino also has determined that for each year of the first five years the adopted rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as these requirements are imposed by statute in Chapter 2260 of the Texas Government Code.

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

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

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

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

Even if the adopted rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1)

exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather under Chapter 2260 of the Texas Government Code. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

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

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify the resolution process between the TWDB and contractors regarding certain contract claims against the state. The adopted rule would substantially advance this stated purpose by aligning currently adopted TWDB rules with statutory changes regarding the kinds of contract claims subject to TWDB rule and the recovery of certain attorney's fees in the resolution of a contract dispute with the TWDB.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code

§2007.003(b)(4). The TWDB is the agency primarily charged with the responsibility for water planning and for administering water financing for the state.

Nevertheless, the TWDB further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with existing state law related to the resolution of contract claims against the state by contractor in accordance with Texas Government Code, Chapter 2260. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

No public comments were received during the comment period, which ended on March 6, 2023.

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

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Government Code, Chapter 2260. This rulemaking affects Water Code, Chapter 6 of the and Government Code, Chapter 2260.

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 April 6, 2023.

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Amanda Lavin
Assistant Executive Administrator
Texas Water Development Board
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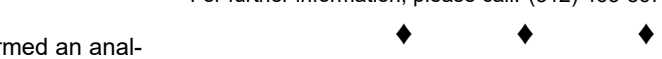
For further information, please call: (512) 463-8676



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 467. FIRE MARSHAL

The Texas Commission on Fire Protection (Commission) adopts new 37 Texas Administrative Code Chapter 467, Fire Marshal, with Subchapter A, §§467.1, 467.3, 467.5; Subchapter B, §467.201; Subchapter C, §467.301; and Subchapter D, §467.401. The purpose of the proposed new rule Chapter 467, Fire Marshal, outlines the requirements for becoming a certified Fire Marshal in Texas.

Chapter 467, Fire Marshal §§467.5, 467.201 and 467.301 are adopted without changes to the text as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1271). These rules will not be republished. Sections 467.1, 467.3 and 467.401 are adopted with changes and will be republished.

No comments were received from the public regarding the adoption of the new rules.

SUBCHAPTER A. MINIMUM STANDARDS FOR BASIC FIRE MARSHAL CERTIFICATION

37 TAC §§467.1, 467.3, 467.5

The rules are adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

§467.1. Basic Fire Marshal Certification.

(a) A Fire Marshal is defined as an individual designated to provide delivery, management, and/or administration of fire protection- and life safety-related codes and standards, investigations, education, and/or prevention services.

(b) All individuals holding a Fire Marshal certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) Special temporary provision. Individuals are eligible to take the commission examination for Basic Fire Marshal by:

(1) holding as a minimum, Instructor I certification through the commission; and

(2) holding as a minimum, Fire Investigator certification through the commission; and

(3) holding as a minimum, Fire Inspector certification through the commission.

(d) All applications for testing during the special temporary provision period must be received no earlier than August 1, 2023, and no later than August 1, 2024.

(e) Subsections (c) and (d) of this section will expire on August 30, 2024.

§467.3. Minimum Standards for Basic Fire Marshal Certification.

In order to be certified as a Basic Fire Marshal, an individual must:

(1) hold Basic Fire Inspector certification through the commission; and

(2) hold Basic Fire Investigator or Basic Arson Investigator certification through the commission; and

(3) hold Fire and Life Safety Educator I; and

(4) complete a commission-approved Fire Marshal program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification); and

(5) An approved Fire Marshal program must consist of the completion of a commission-approved Fire Marshal Curriculum as specified in Chapter 15 of the commission's Certification Curriculum Manual.

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 April 3, 2023.

TRD-202301265
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: April 23, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 936-3841

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SUBCHAPTER B. MINIMUM STANDARD FOR INTERMEDIATE FIRE MARSHAL CERTIFICATION

37 TAC §467.201

The amendments are adopted under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission

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

Filed with the Office of the Secretary of State on April 3, 2023.

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Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: April 23, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 936-3841

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SUBCHAPTER C. MINIMUM STANDARDS FOR ADVANCED FIRE MARSHAL CERTIFICATION

37 TAC §467.301

The amendments are adopted under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

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

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TRD-202301268
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: April 23, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 936-3841

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SUBCHAPTER D. MINIMUM STANDARDS FOR MASTER FIRE MARSHAL CERTIFICATION

37 TAC §467.401

The amendments are adopted under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission.

§467.401. Master Fire Marshal Certification.

Applicants for Master Fire Marshal certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Marshal certification as defined in §467.5 of this title (relating to Minimum Standards for Advanced Fire Marshal Certification); and

(2) hold Master Fire Inspector certification through the commission; and

(3) hold Master Fire Investigator or Master Arson Investigator through the commission; and

(4) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in any combination of Fire Science and/or Criminal Justice. College-level courses from both the upper and lower division may be used to satisfy the education requirements for Master Fire Marshal Certification.

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 April 3, 2023.

TRD-202301269
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: April 23, 2023
Proposal publication date: March 3, 2023
For further information, please call: (512) 936-3841

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING

40 TAC §175.17

The Texas Veterans Land Board (VLB) adopts an amendment to §175.17, that amended the fees for the preparation or approval of any documents including a deed issued when a loan is paid in full, without changes to the proposed text as published in the December 9, 2022, issue of the *Texas Register* (47 TexReg 8108) and the text will not be republished.

Introduction and Background

The transfer processing fee for documents is currently $75.00 and has been for many years. This fee amount is $25.00 below the standard processing fee for standard assumptions. To get in line with the industry standard the VLB has proposed an increase of the fee from $75.00 to $150.00. Currently, this deficient amount is being debited from the client remittance at loan level, so that the vendor's invoice can be paid each month. To prevent further need for absorption of losses by the fund, an increase in the amount that third party vendors may charge for services related to partial releases and severances must be approved.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

Adopted amendment §175.17 is proposed under Texas Natural Resources Code §161.070, which provides the VLB the authority to set and collect, for the use of the state, reasonable fees in the amount determined by the VLB.

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 April 3, 2023.

TRD-202301270
Mark Havens
Chief Clerk, Deputy Land Commissioner
Texas Veterans Land Board
Effective date: April 23, 2023
Proposal publication date: December 9, 2022
For further information, please call: (512) 475-1859

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