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

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

The Public Utility Commission of Texas (commission) proposes amendments to 19 Chapter 22 procedural rules. The scope of this rulemaking proceeding is limited to consideration of the proposed rule amendments, additional modifications to these rules that are reasonably related to the proposed changes, and other minor and nonsubstantive amendments. Substantive amendments to these rules not related to the proposed changes are not within the scope of this proceeding.

The proposed amendments are listed in order as follows for (Subchapters A through F): Subchapter A, §22.2, relating to Definitions, §22.3, relating to Standards of Conduct, §22.4, relating to Computation of Time; Subchapter B, §22.21, relating to Meetings, §22.23 relating to Delegation of Authority to Request Representation by the Attorney General; Subchapter C, §22.31, relating to Classification in General; Subchapter D, §22.52, relating to Notice in Licensing Proceedings, §22.53, relating to Notice of Regional Hearings, §22.56, relating to Notice of Unclaimed Funds; Subchapter E, §22.74, relating to Service of Pleadings and Documents, §22.75, relating to Examination and Correction of Pleadings and Documents, §22.76, relating to Amended Pleadings, §22.77, relating to Motions, §22.78, relating to Responsive Pleadings and Emergency Action, §22.79, relating to Continuances, §22.80, relating to Commission Prescribed Forms; Subchapter F, §22.101, relating to Representative Appearances, §22.103, relating to Standing to Intervene, and §22.104, relating to Motions to Intervene.

Rule Review Stakeholder Recommendations

On May 3, 2025, commission staff filed a preliminary notice and request for comments which was published in the *Texas Register* on May 17, 2024, at (49 TexReg 3635). Comments were received from the Alliance for Retail Markets (ARM) and the Texas Energy Association for Marketers (TEAM), collectively (REP Coalition); Entergy Texas, Inc. (Entergy); the Lower Colorado River Authority and LCRA Transmission Services Corporation (LCRA); the Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company, LLC (Oncor); the Steering Committee of Cities Served by Oncor (OCSC); Texas Association of Water Companies, Inc. (TAWC); the Texas Rural Water Association (TRWA); Texas-New Mexico Power Company (TNMP); and Vistra Corporation (Vistra). Based upon filed comments and an internal review by commission staff, the commission proposes the following rule changes.

The proposed changes would amend §22.2, relating to Definitions, by revising the definition of "contested case" to directly refer to the definition provided by the Texas Administrative Procedure Act (APA) codified in Texas Government Code, Chapter 2001; revising the definition of "Retail Public Utility" to directly refer to the definition provided by Chapter 13 of the Texas Water Code, add the definition of "commission filing system," add PURA §36.112 to the definition of "major rate proceeding" correct the citation to the Federal Telecommunications Act of 1996 in the definition of "FT96," delete the definitions of "docket", "hearing day," "PWS" which stood for Public Water System, and "WQ" which stood for a Water Quality discharge permit, and make clerical and grammatical changes to several definitions.

The proposed changes would amend §22.3, relating to Standards of Conduct, to clarify prohibited ex parte communications, elaborate upon the procedure for motions for disqualification or recusal of an administrative law judge, and more appropriately differentiate between the standards of recusal for administrative law judges and the standards for recusal for commissioners.

The proposed changes would amend §22.52, relating to Notice in Licensing Proceedings to replace the requirement for notice by newspaper of electric and telephone licensing proceedings with a requirement to provide notice through the applicant's website and an appropriate medium of communication such as social media, that is general available in the county or counties where a certificate of convenience and necessity (CCN) is being requested. For electric licensing proceedings, the proposed changes further require proof of notice to be provided in the form of an affidavit identifying the webpage where the notice can be viewed, the date of publication, and a copy of the notice. The proposed changes also require proof of notice of any modifications to an electric CCN prior to final approval to be established by an affidavit affirming notice was issued by first-class mail to each landowner directly affected by the modification as listed on the current county tax rolls.

The proposed changes would amend §22.74, relating to Service of Pleadings and Documents to make e-mail the default method of service for contested case matters under the commission's jurisdiction while providing for alternative methods of service such as by mail, agent, or courier.

The proposed changes would amend §22.75, relating to Examination and Correction of Pleadings and Documents by replacing the requirement for the filing clerk to not accept documents that do not comply with the form requirements of §22.72 with an authorization for the presiding officer to require the re-filing documents that do not comply with the form requirements of §22.72. The revisions further specify that motions for rehearing or replies to a motion for rehearing that are required to be re-filed will retain the original filing date. The proposed changes also remove the automatic determination of sufficiency if the presiding officer has

not issued a written order concluding that material deficiencies exist in an application within 35 days of filing of a rate change or CCN application.

The proposed changes would amend §22.77, relating to Motions, to require written motions to include a certificate of conference that substantially complies with one of the two examples provided.

The proposed changes would amend §22.79, relating to Continuances to streamline the requirements and process for filing continuances agreed to by all parties.

The proposed changes would amend §22.80, relating to Commission Prescribed Forms to eliminate the general requirement for certain reports and applications be submitted on standard forms, the requirement for the commission filing clerk to maintain an index and set of all commission forms, and the requirement for documents subject to an official form to contain all matters designated in the form and to conform substantially to the official form. The proposed changes also eliminate certain procedural requirements for commission forms and clarify that, in the event a form conflicts with the underlying statute or rule associated with that form, the statute or rule prevails.

The proposed changes would amend §22.104, relating to Motions to Intervene to require motions to intervene to include the email address of the person requesting to intervene unless the motion is accompanied by a statement of no access under §22.106. The proposed change would also delete the deadline for the commission to rule on a motion to intervene.

The proposed changes would make minor and conforming changes to the aforementioned rules and to §22.4, relating to Computation of Time; §22.21, relating to Meetings; §22.23 relating to Delegation of Authority to Request Representation by the Attorney General; §22.31, relating to Classification in General; §22.53, relating to Notice of Regional Hearings, §22.56, relating to Notice of Unclaimed Funds; §22.78, relating to Responsive Pleadings and Emergency Action; §22.101, relating to Representative Appearances; and §22.103, relating to Standing to Intervene.

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rules will expand, limit, or repeal an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Davida Dwyer, Deputy Director, Office of Policy and Docket Management, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Dwyer has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient and clear rules of practice and procedure for matters before the commission. There will be probable economic costs to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by Wednesday, September 10, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by Wednesday, September 10, 2025. Comments must be organized by rule section in sequential order, and each comment must clearly designate which section is being commented on. The commission invites specific comments regarding the effects of the proposed rules, including the costs associated with, and benefits that will be gained by the proposed amendments. The commission also requests any data, research, or analysis from any person required to comply with the proposed rules or any

other interested person. The commission will consider the information submitted by commenters and the costs and benefits of implementation in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 58400.

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

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

16 TAC §§22.2 - 22.4

Statutory Authority

The proposed amendments are proposed for publication under PURA §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002 and PURA §14.052 and Texas Water Code §13.041(b), which provide the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.004, 12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.2. Definitions.

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

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

(2) APA--The Texas Administrative Procedure Act, codified at Chapter [~~chapter~~] 2001, Texas Government Code[~~, as it may be amended from time to time~~].

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

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

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

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

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

(8) Arbitration hearing--The hearing conducted by an arbitrator to resolve any issue submitted to the arbitrator. An arbitration hearing is not a contested case under the APA [~~Administrative Procedure Act, Texas Government Code §§2001.001, et. seq~~].

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

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

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

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

(13) Commission filing system--The electronic filing system maintained for the archiving and organization of items and materials received by the commission.

(14) [~~(13)~~] Commissioner--One of the appointed members of the Public Utility Commission of Texas.

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

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

(17) [~~(16)~~] Contested case--A proceeding as defined by APA §2001.003(1)[~~, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing~~].

(18) [~~(17)~~] Control number--The number [~~Number~~] assigned by Central Records to a docket, project, or tariff control proceeding.

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

[~~(19) Docket--A proceeding handled as a contested case under APA.~~]

(20) FTA96--The federal Telecommunications Act of 1996, codified under Title 47, United States Code §§151 et seq [~~Public Law Number 104-104, 110 Stat. 56 (1996), (to be codified at 47 U.S.C. §§151 et seq.)~~].

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

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

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

[~~(24) Hearing day--A day of hearing when the merits of a proceeding are considered at the hearing on the merits, a final order meeting, or a regional hearing.~~]

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

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

(26) [~~(27)~~] Major rate proceeding--Any proceeding filed under PURA[~~,~~] §§36.101 - 36.112 [~~36.111~~], 36.201 - 36.203, [~~and~~] 36.205, [~~or §§~~]51.009, 53.101 - 53.113, 53.201, or [~~and~~] 53.202 involving an increase in rates which would increase the aggregate revenues of the applicant more than the greater of $100,000 or 2.5%. In addition, a major rate proceeding is any rate proceeding initiated under PURA[~~,~~] §§36.151 - 36.156, [~~or §~~]53.151, or [~~and §~~]53.152 in which the respondent utility is directed to file a rate filing package. For water and sewer utilities, a rate filing package filed under TWC §13.187 is a major rate proceeding.

(27) [~~(28)~~] Mediation--A voluntary form of dispute resolution in which an impartial person facilitates communication between parties to promote negotiation and settlement of disputed issues.

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

(29) [~~(30)~~] Party--A party under subchapter F of this chapter (relating to Parties).

(30) [~~(31)~~] Person--An individual, partnership, corporation, association, governmental subdivision, entity, or public or private organization.

(31) [~~(32)~~] Pleading--A written document submitted by a party, or a person seeking to intervene [~~participate~~] in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

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

(33) [~~(34)~~] Presiding officer--The commission, any commissioner, or any hearings examiner or administrative law judge presiding over a proceeding or any portion thereof.

(34) [~~(35)~~] Proceeding--Any hearing, investigation, inquiry or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint, conducted by the commission or the utility division of SOAH.

(35) [~~(36)~~] Project--A rulemaking or other proceeding that is not a docket or a tariff control proceeding.

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

(37) [~~(38)~~] PURA--The Public Utility Regulatory Act, Texas Utilities Code, Title 2, as amended [~~it may be amended from time to time~~].

[~~(39) PWS--Public Water System.~~]

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

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

(40) [~~(42)~~] Retail Public Utility--has the meaning as defined by Texas Water Code §13.002(19) [~~Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation~~].

(41) [~~(43)~~] Rulemaking--A proceeding under the APA, Texas Government Code, Chapter [~~chapter~~] 2001, subchapter B, conducted to adopt, amend, or repeal a commission rule.

(42) [~~(44)~~] SOAH--The State Office of Administrative Hearings.

(43) [~~(45)~~] TCEQ--The Texas Commission on Environmental Quality.

(44) [~~(46)~~] TWC--The Texas Water Code, as amended [~~it may be amended from time to time~~].

[~~(47) WQ -- A Water Quality discharge permit.~~]

(45) [~~(48)~~] Working day--A day on which the commission is open for the conduct of business.

§22.3. Standards of Conduct.

(a) Standards of Conduct [~~for Parties~~].

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

(2) (No change.)

(b) Ex parte communications.

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

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

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

[(b) Communications.]

[(1) Personal Communications. Communications in person by public utilities, their affiliates or representatives, or any person with the commission or any employee of the commission shall be governed by the APA, §2001.061. Records shall be kept of all such communications and shall be available to the public on a monthly basis. The records of communications shall contain the following information:]

[(A) name and address of the person contacting the commission;]

[(B) name and address of the party or business entity represented;]

[(C) case, proceeding, or application, if available;]

[(D) subject matter of communication;]

[(E) the date of the communication;]

[(F) the action, if any, requested of the commission; and,]

[(G) whether the person has received, or expects to receive, a financial benefit in return for making the communication.]

[(2) Ex parte communications. Unless required for the disposition of ex parte matters authorized by law, members of the commission or administrative law judges assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of law or fact with any agency, person, party, or their representative, except on notice and opportunity for all parties to participate. Members of the commission or administrative law judges assigned to render a decision or to make findings of fact or conclusions of law in a contested case may communicate ex parte with employees of the commission who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence.]

[(3) Communications with SOAH administrative law judges. Communications between SOAH administrative law judges and employees of the commission who have not participated in any hearing in the case shall be in writing or be recorded. Written communication should be the primary and preferred format. All oral communications shall be recorded, and a table of contents maintained for each recording. All such communication submitted to or considered by the administrative law judge shall be made available as public records when the proposal for decision is issued. Number running procedures conducted pursuant to written commission policy by employees of the commission who have participated in any hearing in the case do not constitute impermissible ex parte communications, provided memoranda memorializing such procedures are preserved and made available to all parties of record in the proceeding to which the number running procedures relate.]

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

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

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

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

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

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

(1) Any party may move for disqualification or recusal of an administrative law judge stating with particularity the grounds why the administrative law judge should not sit. [The grounds may include any disability or matter, not limited to those set forth in subsection (c) of this section.] The motion must: [shall]

(A) be made on personal knowledge;[,]

(B) [shall] set forth such facts as would be admissible in evidence;[,] and

(C) [shall] be verified by affidavit.

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

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

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

(A) If the administrative law judge who is the subject of the motion disqualifies or recuses himself or herself, the director of the Office of Policy and Docket Management (OPDM) will assign a different administrative law judge to the case.

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

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

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

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

(6) - (7) (No change.)

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

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

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

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

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

(f) Motion for [~~Disqualification or~~] Recusal of a Commissioner.

(1) Any party may move for [~~disqualification or~~] recusal of a commissioner stating with particularity grounds why the commissioner should not sit. Such a motion must be filed prior to the date the commission is scheduled to consider the matter unless the information upon which the motion is based was not known or discoverable with reasonable effort prior to that time. [~~The grounds may include any disability or matter not limited to those set forth in subsection (d) of this section.~~] The motion must: [~~shall~~]

(A) be made on personal knowledge,

(B) [~~shall~~] set forth such facts as would be admissible in evidence, and

(C) [~~shall~~] be verified by affidavit.

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

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

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

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

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

§22.4. Computation of Time.

(a) Counting Days. In computing any period of time prescribed or allowed by this chapter, by order of the commission or any administrative law judge, or by any applicable statute, the period begins [~~shall begin~~] on the day after the act, event, or default in question. The period concludes [~~shall conclude~~] on the last day of the designated period unless that day is not a working day [~~a day the commission is not open for business~~], in which event the designated period runs until the end of the next working day [~~on which the commission is open for business~~].

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

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

Filed with the Office of the Secretary of State on July 31, 2025.

TRD-202502706
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 936-7322

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SUBCHAPTER B. THE ORGANIZATION OF THE COMMISSION

16 TAC §22.21, §22.23

Statutory Authority

The proposed amendments are proposed for publication under PURA §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002 and PURA §14.052 and Texas Water Code §13.041(b), which provide the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

§22.23 relating to Delegation of Authority to Request Representation by the Attorney General

Amended §22.23 is proposed under PURA §12.004 which requires the Texas Office of the Attorney General to represent the

commission in a matter before a state court, a court of the United States, or a federal public utility regulatory commission.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.004, 12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.21. Meetings.

(a) The commission will [~~shall~~] meet at times and places to be determined either by the chairman of the commission or by agreement of a majority [~~any two~~] of the commissioners.

(b) The chairman of the commission will [~~shall~~] preside over any proceeding or meeting of the commission, unless some other commissioner is designated by the chairman to preside.

(c) Notice of all commission meetings will [~~shall~~] be provided in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, as amended, and the APA [~~Administrative Procedure Act~~].

§22.23. Delegation of Authority to Request Representation by the Attorney General.

(a) (No change.)

(b) In the event the chairman is unavailable, the commission delegates the authority granted in subsection (a) of this section to any other commissioner. If no commissioner is available, the commission delegates the authority granted in subsection (a) of this section to the executive director or his or her authorized representative.

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

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

16 TAC §22.31

Statutory Authority

The proposed amendment is proposed for publication under PURA §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002 and PURA §14.052 and Texas Water Code §13.041(b), which provide the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.004, 12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.31. Classification in General.

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

(b) Control numbering system. Central Records will [~~shall~~] establish and maintain a control numbering system.

(c) Control number log. Central Records will [~~shall~~] maintain a record or log of all applications or other documents assigned a control number, which will [~~shall~~] include the style, the date the application or other document was filed or the proceeding initiated, the nature of the proceeding, and the presiding officer assigned to the proceeding, if any. The log will [~~shall~~] be accessible to the public.

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

(e) Closing unused control numbers. Any control number assigned [~~to a docket~~] before the filing of an application may [~~will~~] be closed by the presiding officer if the application is not filed within 25 days of assignment of the control number [~~unless otherwise directed by the director of the Commission Advising and Docket Management Division or the director's designee~~].

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

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SUBCHAPTER D. NOTICE

16 TAC §§22.52, 22.53, 22.56

Statutory Authority

The proposed amendments are proposed for publication under PURA §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002 and PURA §14.052 and Texas Water Code §13.041(b), which provide the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

For rules relating to Notice under Subchapter D, §§22.51-22.56

Amended §§22.52, 22.53, and 22.56 are proposed under Texas Government Code §2001.051 which entitles each party in a contested case to a hearing and an opportunity to respond and to present evidence and argument on each issue involved in the case; and Texas Government Code §2001.052 which specifies the requirements for the contents of a notice of a hearing in a contested case.

§22.52, relating to Notice in Licensing Proceedings

Amended §22.52 is proposed under PURA §37.054 which requires the commission to provide notice of an application for a certificate to interested parties and to the Office of Public Utility Counsel and set a time and place for a hearing and give notice of the hearing; and PURA §37.057 which requires the commission to approve or deny an application for a certificate for a new transmission facility not later than the 180th day after the date the application is filed.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.004, 12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.52. Notice in Licensing Proceedings.

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

(1) On the day the application is filed with the commission, the applicant [~~Applicant~~] must publish notice [~~once of~~] the applicant's intent to secure or amend a certificate of convenience and necessity on the applicant's website and through an appropriate medium of communication, such as social media, that is generally available [~~in a newspaper having general circulation~~] in the county or counties where a certificate of convenience and necessity is being requested[~~, no later than the week after the application is filed with the commission~~]. The notice published on the applicant's website must be easily locatable from the homepage of the applicant's website and published for the duration of the proceeding. This notice must identify the commission's docket number and the style assigned to the case by Central Records. In electric transmission line cases, the applicant must obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice must identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice must describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) (No change.)

(B) The notice must describe in clear, precise language the geographic area for which the certificate is being requested and the location of any [~~all~~] alternative routes of the proposed facility. This description must refer to area landmarks, including [~~but not limited to~~] geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. In addition, the notice must include a map that identifies any [~~all~~] of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.

(C) The notice must state a location where a detailed routing map may be reviewed. The map must clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, and must reflect area landmarks, including [~~but not limited to~~] geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

(D) Proof of publication of notice must be in the form of an [~~a publisher's~~] affidavit which must specify each medium of communication [~~newspaper~~] in which the notice was published, the county or counties in which each medium of communication is generally available [~~newspaper is of general circulation~~], the dates upon which the notice was published, and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available. Proof of notice on a utility's website must be in the form of an affidavit that includes the hyperlink identifying the webpage on which the notice can be viewed, the date upon which the notice was first published. and a copy of the notice as published.

(E) (No change.)

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

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

(A) - (C) (No change.)

(D) Issuance of notice prior to final approval. Before final approval of any modification in the applicant's proposed route, applicant must provide notice as required under subparagraphs (A) through (C) of this paragraph to all [~~directly affected~~] landowners directly affected by the modification who have not already received [~~such~~] notice. Proof of notice of the modification may be established

by an affidavit affirming that the applicant sent notice by first-class mail to each landowner directly affected by the modification as listed on the current county tax rolls.

(E) - (F) (No change.)

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

(5) - (7) (No change.)

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

(1) On the day the application is filed with the commission, the applicant must publish notice the applicant's intent to secure or amend a certificate of convenience and necessity on the applicant's website and through an appropriate medium of communication, such as social media, that is generally available in the county or counties where a certificate of convenience and necessity is being requested. The notice published on the applicant's website must be easily locatable from the homepage of the applicant's website and published for the duration of the proceeding. This notice must identify the commission's docket number and the style assigned to the case by Central Records. [~~Applicants must publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity.~~] This notice must identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. The notice must [~~Whenever possible, the notice should~~] state the established intervention deadline. The notice must also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice must be in the form of a publisher's affidavit, which must specify the medium of communication by [~~newspaper or newspapers in~~] which the notice was published; the county or counties in which the medium of communication is generally available [~~newspaper or newspapers is or are of general circulation~~]; the dates upon which the notice was published and a copy of the notice as published. Proof of publication must be submitted to the commission as soon as available.

(2) - (3) (No change.)

§22.53. Notice of Regional Hearings.

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

§22.56. Notice of Unclaimed Funds.

The applicant must [~~shall~~] notify the Comptroller of Public Accounts of proceedings in which there may be a specific amount of money to be refunded to ratepayers who may need to be located. This rule does [~~shall~~] not apply in fuel refund proceedings.

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SUBCHAPTER E. PLEADINGS AND OTHER DOCUMENTS

16 TAC §§22.74 - 22.80

Statutory Authority

The proposed amendments are proposed for publication under PURA §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002 and PURA §14.052 and Texas Water Code §13.041(b), which provide the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.004, 12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.74. Service of Pleadings and Documents.

(a) Pleadings and Documents submitted to a presiding officer. At or before the time any document or pleading regarding a proceeding is submitted by a party to a presiding officer, a copy of such document or pleading must [~~shall~~] be filed in accordance with §22.71 of this title (relating to Commission Filing Requirements and Procedures) [~~with~~

the commission filing clerk] and served on all parties. These requirements do not apply to documents that [which] are offered into evidence during a hearing or that [which] are submitted to a presiding officer for in camera inspection; provided, however, that the party submitting documents for in camera inspection must [shall] file and serve notice of the submission upon the other parties to the proceeding. Pleadings and documents submitted to a presiding officer during a hearing, prehearing conference, or open meeting must [shall] be filed with Central Records [the commission filing clerk] as soon as is practicable. Service must be made on all parties. [These requirements apply to all documents and pleadings submitted in a proceeding under §22.33 of this title (relating to Tariff Filings); service shall be made on all persons who previously submitted a pleading or document to the presiding officer in that proceeding.]

(b) Methods of service. Except as otherwise expressly provided by order, rule, or other applicable law, service on a party may be made by delivery of a copy of the pleading or document to the party's authorized representative or attorney of record by email; in person [either in person]; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record[, or by facsimile transmission to the recipient's current facsimile machine].

(1) Service by email is complete upon sending an email message with the pleading or document attached to the message to the email address of record for the party that was provided [Service by mail shall be complete upon deposit of the document, enclosed in a wrapper properly addressed, stamped and sealed, in a post office or official depository of the United States Postal Service, except for state agencies. For state agencies, mailing shall be complete upon deposit of the document with the General Services Commission].

(2) Service by filing with notice is complete upon sending an email message that contains a link to the electronic copy of the pleading or document that is accessible through the interchange on the commission's website to the email address provided by the party being served [Service by agent or by courier receipted delivery shall be complete upon delivery to the agent or courier].

(3) Service by filing without notice is complete upon filing with Central Records. If this method of service is required, the presiding officer will encourage parties to sign up with the commission's Filings Notification System on its website to receive automatic notifications of filings in the docket [Service by facsimile transmission shall be complete upon actual receipt by the recipient's facsimile machine].

(c) Alternative methods of service. If a person has filed a statement of no access under §22.106 of this title (relating to Statement of No Access), service on such a person must be made by delivery of a copy of the pleading or document to the party or the party's authorized representative or attorney of record either by hand delivery; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record.

(1) Service by mail is complete upon deposit of the document, enclosed in a wrapper properly addressed, stamped and sealed, in a post office or official depository of the United States Postal Service, except for state agencies. For state agencies, mailing will be complete upon deposit of the document with the General Services Commission.

(2) Service by agent or by courier receipted delivery is complete upon delivery to the agent or courier. [On motion of a party or the presiding officer's own motion, the presiding officer may require service by email or service by filing with or without notice, or any combination of those methods and any method specified in subsection (b) of this section. On joint or separate motion of all parties to a proceeding, the presiding officer shall require service by email or service by filing with or without notice.]

[(1) If a person has filed a statement of no access under §22.106 of this title (relating to Statement of No Access), the presiding officer shall require service on such person(s) by a method specified in subsection (b) of this section.]

[(2) A party or representative of a party that has filed a statement of no access but that is required by §22.106(b) of this title to subsequently provide an email address will thereafter be subject to service by an alternative method if the presiding officer has required service by an alternative method.]

[(3) If the presiding officer has required service only by methods specific in subsection (c) of this section, the presiding officer may, upon motion and good cause shown, require service by a method specified in subsection (b) of this section for any party in a proceeding.]

[(4) Service by email shall be complete upon sending an email message with the pleading or document attached to the message to the email address provided by the party being served.]

[(5) Service by filing with notice shall be complete upon sending an email message that contains a link to the electronic copy of the pleading or document that is accessible through the interchange on the commission's website to the email address provided by the party being served.]

[(6) Service by filing without notice shall be complete upon filing with Central Records. If this method of service is required, the presiding officer shall encourage parties to sign up with the commission's Filings Notification System on its website to receive automatic notifications of filings in the docket.]

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

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

§22.75. Examination and Correction of Pleadings and Documents.

(a) Construction of pleadings and documents. All pleadings and documents will [shall be] construed so as to do substantial justice.

(b) Procedural sufficiency of pleadings and documents.

(1) The presiding officer may require a pleading or document that does not comply with the applicable requirements of §22.72 of this title (relating to Form Requirements for Documents Filed with the Commission) to be re-filed. A motion for rehearing or a reply to a motion for rehearing that is required to be re-filed will retain the original filing date. [Except for motions for rehearing and replies to motions for rehearing, the filing clerk shall not accept documents that do not comply with §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).]

(2) [All pleadings and documents that do not comply in all material respects with other sections of this chapter, shall be conditionally accepted for filing.] Upon notification by the presiding officer of a deficiency in a pleading or document, the responsible party must [shall] correct or complete the pleading or document in accordance with the

notification. If the responsible party fails to correct the deficiency, the pleading or document may be stricken from the record.

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

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

[~~(2) If within 35 days after filing of a rate change application, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.~~]

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

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

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

[~~(2) If, within 35 days after filing of an application for certificate of convenience and necessity for electric transmission line, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.~~]

(2) [~~(3)~~] If the presiding officer determines that a material deficiency exists in an application, the presiding officer will [~~shall~~] issue a written order [~~within 35 days of the filing of the application~~] specifying a time within which the applicant must [~~shall~~] amend its application and correct the deficiency. [~~Any statutory deadlines shall be calculated based on the date of filing the sufficient application.~~]

(3) [~~(4)~~] For an application for certificate of convenience and necessity filed under PURA §39.203(e), a pleading alleging a material deficiency in the application must [~~shall~~] be filed no later than 14 days after the application is filed, and must [~~shall~~] be served on the applicant in accordance with §22.74 [~~by hand delivery, facsimile transmission, or overnight courier delivery and on the other parties in conformance with §22.74(b)~~] of this title (relating to Service of Pleadings and Documents). The applicant must [~~shall~~] reply to a pleading alleging a material deficiency no later than seven days after it is received. If the presiding officer determines that a material deficiency exists in an application, the presiding officer will [~~shall~~] issue a written order [~~within 28 days of the filing of the application~~] ordering the applicant to amend its application and correct the deficiency within seven days. [~~This order shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery and on the other parties in conformance with §22.74(b) of this title. If the applicant does not timely amend its application and correct the deficiency, the presiding officer shall dismiss the application without prejudice.~~]

[~~(c) Additional requirements. Additional requirements as set forth in §22.76 of this title (relating to Amended Pleadings) apply.~~]

§22.76. Amended Pleadings.

(a) (No change.)

(b) Amendments to conform to issues [~~Amendments to conform to issues tried at hearing without objection~~]. When issues not raised by the pleadings are tried or otherwise heard or argued at hearing by express or implied consent of the parties, upon a determination by the presiding officer that no prejudice to any of the parties will occur, the issues will [~~shall~~] be treated in all respects as if they had been raised in the pleadings. Amendment of the pleadings to conform them to the evidence may be made with leave of the presiding officer upon any party's motion until the close of evidence, but failure to so amend does [~~shall~~] not affect whether the issues may be properly considered by the presiding officer.

§22.77. Motions.

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

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

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

(3) Written motions must include a certificate of conference that complies substantially with one of the following examples:

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

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

(b) (No change.)

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

§22.78. Responsive Pleadings and Emergency Action.

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

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

(c) Action by the Presiding Officer [~~Emergency action~~]. Unless otherwise precluded by law or this chapter, the presiding officer may take action on a pleading before the deadline for filing responsive pleadings [~~when necessary to prevent or mitigate imminent harm or injury to persons or to real or personal property. Harm or injury shall also include items affecting the ability of any provider to compete~~]. Action taken under this subsection may be [~~is~~] subject to modification based on a timely responsive pleading.

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

§22.79. Continuances.

(a) Requirements for motions for continuance.

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

(2) Motions for continuance must:

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

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

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

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

(c) Requirements for granting motions for continuance.

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

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

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

[~~Unless otherwise ordered by the presiding officer, motions for continuance of the hearing on the merits shall be in writing and shall be filed not less than five days prior to the hearing. Motions for continuance shall set forth the specific grounds for which the moving party seeks continuance and shall make reference to all other motions for continuance filed by the moving party in the proceeding. The moving party shall attempt to contact all other parties and shall state in the motion each party that was contacted and whether that party objects to the relief requested. The moving party shall have the burden of proof with respect to the need for the continuance at issue. Continuances will not be granted based on the need for discovery if the party seeking the continuance previously had the opportunity to obtain discovery from the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence which could not have been discovered previously through reasonably diligent effort by the moving party. The presiding officer shall grant continuances agreed to by all parties provided that any applicable statutory deadlines are extended as may be necessary. Motions for Continuances agreed to by all parties may be filed within five days of the hearing on the merits, and shall state suggested dates for rescheduling of the hearing.~~]

§22.80. Commission Prescribed Forms.

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

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

(2) Prior to the implementation of any new commission-prescribed form or significant change to an existing form, the change or new form will be referenced in the "In Addition" section of the *Texas Register* for public comment. For good cause, new forms or significant changes to existing forms may be implemented without publication on an interim basis for a period not to exceed 180 days.

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

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

[~~The commission may require that certain reports and applications be submitted on standard forms. The commission filing clerk shall maintain a complete index to and set of all commission forms. All documents that are the subject of an official form shall contain all matters designated in the official form and shall conform substantially to the official form. Prior to the implementation of any new form or significant change to an existing form, the change or new form shall be referenced in the "In Addition" section of the *Texas Register* for public comment. For good cause, new forms or significant changes to existing forms may be implemented without publication on an interim basis for a period not to exceed 180 days.~~]

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

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

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SUBCHAPTER F. PARTIES

16 TAC §§22.101, 22.103, 22.104

Statutory Authority

The proposed amendments are proposed for publication under PURA §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002 and PURA §14.052 and Texas Water Code §13.041(b), which provide the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

§22.101, relating to Representative Appearances

Amended §22.101 is proposed under PURA §14.153 which requires the regulatory authority to adopt rules governing communications, including records retention of such communications, with the regulatory authority or a member or employee of the regulatory authority by a public utility, an affiliate, or a representative of a public utility or affiliate.

§22.103, relating to Standing to Intervene and §22.104, relating to Motions to Intervene

Amended §22.103, and §22.104 are proposed under PURA §12.202 which requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§12.004, 12.202, 14.153, 37.054 and 37.057; and Texas Government Code §2001.051 and 2001.052.

§22.101. Representative Appearances.

(a) Generally. Any person may appear before the commission or in a hearing in person or by authorized representative. The presiding officer may require a representative to submit proof of his or her authority to appear on behalf of another person. The authorized representative of a party must [~~shall~~] specify the particular persons or classes of persons the representative is representing in the proceeding.

(b) Change in authorized representative. Any person appearing through an authorized representative must [~~shall~~] provide written notification to the commission and all parties to the proceeding of any change in that person's authorized representative. The notification must [~~required number of copies of the notification shall be filed in Central Records under the control number(s) for each affected proceeding and shall~~] include the authorized representative's name, address, telephone number, [~~facsimile number,~~] and, unless the authorized representative has filed a statement under §22.106 of this title (relating to Statement of No Access), an email address.

(c) (No change.)

(d) Change in information required for notification or service. Any person or authorized representative appearing before the commission in any proceeding must [~~shall~~] provide written notification to the commission and all parties to the proceeding of any change in their address, telephone number, or email address [~~facsimile number~~]. The notification must [~~required number of copies of the notification shall~~] be filed in Central Records under the control number [~~number(s)~~] for each affected proceeding.

§22.103. Standing to Intervene.

(a) Commission staff representing the public interest. Commission staff represents the public interest, has [~~The commission staff representing the public interest shall have~~] standing in all proceedings before the commission[~~,~~] and is not required to [~~need not~~] file a motion to intervene.

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

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

(2) has [~~or represents persons with~~] a justiciable interest which may be adversely affected by the outcome of the proceeding.

(c) (No change.)

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

§22.104. Motions to Intervene.

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

(b) Time for filing motion. Motions to intervene must be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding officer. For an application for a certificate of convenience and necessity (CCN) filed under PURA [~~Public Utility Regulatory Act~~] §39.203(e) or an application for a CCN for a [~~new~~] transmission facility subject to PURA §37.057, motions to intervene must be filed within 30 days from the date the application is filed with the commission. The motion must include the email address of the person requesting to intervene unless the motion is accompanied by a statement of no access under §22.106 of this title (relating to Statement of No Access) and be served upon all parties to the proceeding and upon all persons that have pending motions to intervene in accordance with §22.74 of this title (relating to Service of Pleadings and Documents).

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

(d) Late intervention.

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

(A) - (E) (No change.)

(2) - (4) (No change.)

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

(A) (No change.)

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

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

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Public Utility Commission of Texas
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CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.233

The Public Utility Commission of Texas (commission) proposes amendments to §24.233 relating to Contents of Certificate of Convenience and Necessity Applications. This proposed rule will implement Texas Water Code Chapter §13.245 as revised by HB 3476 during the Texas 87th Regular Legislative Session. The amended rule will require that for a certificate of public convenience and necessity to be granted for a service area within the extraterritorial jurisdiction of a municipality all water and sewer facilities must be designed and constructed in accordance with the applicable Texas Commission on Environmental Quality (TCEQ) standards.

Growth Impact Statement

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

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

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

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

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

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

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

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Iliana De La Fuente, Attorney, Rules and Projects Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. De La Fuente has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be consistency of commission rules with statute and ensuring that water and sewer utilities located with the boundaries of a municipality are built in compliance with Texas Commission on Environmental Quality standards. The economic cost to persons will vary by utility and will be determined by the cost to comply with the applicable TCEQ standards required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 4, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by September 4, 2025. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 58436.

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

Statutory Authority

Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.245, which requires that for a certificate of public convenience and necessity to be granted for a service area within the extraterritorial jurisdiction of a municipality all water and sewer facilities must be designed and constructed in accordance with the commission's standards for water and sewer facilities.

Cross Reference to Statute: Texas Water Code §13.041(a); §13.041(b); and §13.245.

§24.233. Contents of Certificate of Convenience and Necessity Applications.

(a) - (b) (No change.)

(c) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) (No change.)

(2) Except as provided by paragraphs (3) - (8) [~~(7)~~] of this subsection, the commission may not grant to a retail public utility a CCN for a requested area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent.

(3) - (5) (No change.)

(6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that for a service area within the boundaries of a municipality all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(7) The commission must include, as a condition of a CCN granted under this section for a service area within the extraterritorial jurisdiction of a municipality, that all water and sewer facilities be designed and constructed in accordance with:

(A) the TCEQ's standards for water and sewer facilities applicable to water systems that serve greater than 250 connections; or

(B) the TCEQ's standards for water and sewer facilities applicable to water systems that serve 250 or fewer connections, if the commission determines that:

(i) standards for water and sewer facilities applicable to water systems that serve 250 or fewer connections are appropriate for the service area; and

(ii) regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible under TWC §13.241(d).

(8) [~~(7)~~] Paragraphs (4) - (7) [~~(6)~~] of this subsection do not apply to Cameron, Hidalgo, or Willacy Counties, or to a county:

(A) with a population of more than 30,000 and less than 36,000 that borders the Red River;

(B) with a population of more than 100,000 and less than 200,000 that borders a county described by subparagraph (A) of this paragraph;

(C) with a population of 170,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(D) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio river.

(E) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this paragraph.

(9) [~~(8)~~] A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(10) [~~(9)~~] If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

(d) - (f) (No change.)

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

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TRD-202502698
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.56

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.56, relating to Temporary Emergency Electric Energy Facilities (TEEEF). This proposed rule will implement Public Utility Regulatory Act (PURA) §39.918, as revised by Senate Bill (S.B.) 231 during the 89th Regular Texas Legislative Session, by establishing additional guardrail standards for TEEEF units leased after September 1, 2025--including around mobility, boot-up time, and maximum generating capacity per unit--and providing that transmission and distribution utilities (TDUs) may enter into a lease for TEEEF without prior commission approval if the lease includes a provision that allows alteration of the lease based on commission order or rule.

The scope of this rulemaking is limited to amendments to 16 TAC §25.56 that are required to implement S.B. 231 and any related conforming changes. The commission notes that the provisions related to the competitive bidding requirements are relocated within the proposed rule but are otherwise unmodified. Modifications to these provisions are only within scope to the extent the modifications are related to the implementation of S.B. 231.

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rule will modify an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Zachary Dollar, Power Markets Analyst, Market Analysis Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the section.

Public Benefits

Mr. Dollar has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be providing greater reliability of electricity service to the distribution customers of TDUs operating in the ERCOT region in the event of significant power outages. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

Commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 12, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Initial comments must be filed by September 12, 2025. Reply comments must be filed by September 26, 2025. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 58392.

To further assist the commission in implementing the provisions of S.B. 231, the commission also requests comments on the following issues:

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

a. Should the commission further modify the proposed rule to account for PURA §39.918(f-1)(2)? If so, how?

b. Please provide your feedback on the following three approaches:

i. Should the proposed rule provide that PURA §39.918(f-1)(2) applies only to emergency TEEEF leases under 16 TAC §25.56(d)?

ii. Should the proposed rule provide that the commission can only require a TDU to alter a lease entered into under PURA §39.918(f-1)(2) when expenses are deemed imprudent in a ratemaking proceeding?

iii. Should the proposed rule provide that the commission can initiate an action at any time to require a TDU to alter a lease entered into under PURA §39.918(f-1)(2)? If yes:

1. Under what circumstances should the commission initiate a proceeding to order a TDU to alter a TEEEF lease? What types of alterations might the commission consider ordering in response to these circumstances? Does this include early termination of the lease?

2. What standard or criteria should the commission use to evaluate whether to order a TDU to alter a TEEEF lease?

3. Should the proposed rule include procedural language governing a contested case proceeding to evaluate whether a TDU should be ordered to alter its lease? What should that procedural language look like?

c. Should the proposed rule provide standard language for leases entered into under PURA §39.918(f-1)(2)? If so, what should that standard language include? (i.e., language that authorizes commission alteration of a TEEEF lease based on commission order or rule, commission-specific termination clause, etc.)

d. Should the proposed rule require TDUs to provide notice to the commission upon entering into a lease under PURA §39.918(f-1)(2)? If yes:

i. Should the notice be provided publicly?

ii. Should the notice include:

1. the lease itself;

2. a description of the leased TEEEF, including the size, quantity, and characteristics of the leased units, the functions the units were leased to perform, the length of the lease, the cost of the units, etc.; or

3. an attestation from the TDU that the lease includes alteration language as required by PURA §39.918(f-1)(2)?

iii. What, if any, action should the commission take in response to the notice?

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

3. What else should the commission consider in implementing the changes made to PURA §39.918 by S.B. 231?

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

Statutory Authority

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

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

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

(a) - (b) (No change.)

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

(1) A TDU may enter into, renew, or extend a lease involving TEEEF with prior authorization from the commission in accordance with subsection (d) of this section.

(2) A TDU may enter into, renew, or extend a lease involving TEEEF without prior authorization from the commission if the lease contains a provision that allows alteration of the lease based on commission order or rule.

(3) A TDU may enter into an emergency TEEEF lease in accordance with subsection (e) of this section.

(4) Beginning September 1, 2025, a TDU must not enter into, renew, or extend any lease involving a TEEEF, unless each TEEEF leased has a maximum generation capacity of not more than five megawatts and is:

(A) mobile;

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

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

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

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

(B) In any proceeding in which a TDU is requesting recovery of costs associated with TEEEF that was not leased using a competitive bidding process, the TDU must demonstrate that the TEEEF was leased under an emergency lease consistent with subsection (e) of this section.

(C) A TDU may not enter into a lease for TEEEF with a competitive affiliate of the TDU unless that lease was subject to a competitive bidding process.

(6) If requested by a commissioner or commission staff, a TDU must allow for the inspection of any lease entered into under this section. If the commissioner or commission staff retains a copy of the lease, the lease will be treated as a confidential document if so requested by the TDU.

(d) [~~(c)~~] Prior authorization to lease TEEEF. A TDU may apply for prior authorization from the commission to lease TEEEF. A TDU may enter into, renew, or extend one or more leases for TEEEF, simultaneously or consecutively, provided that the capacity and characteristics of the entire portion of the TDU's leased TEEEF fleet that is authorized under this subsection complies with the authorization provided under this subsection at all times. [~~Authorization to lease TEEEF. Except as authorized under subsection (d) of this section, a TDU must not enter into, renew, or extend any lease involving a TEEEF without receiving prior commission authorization. Authorization under this subsection applies to a TDU's TEEEF fleet. A TDU may enter into one or more leases for TEEEF, simultaneously or consecutively, provided that the capacity and characteristics of its leased TEEEF fleet complies with the authorization provided under this subsection at all times.~~]

(1) Contents of application. An application under this subsection must include the following:

(A) The TDU's history with TEEEF, including:

(i) Whether the TDU is currently or has previously been authorized by the commission to lease TEEEF, the details of existing or prior authorizations, and each docket number in which the authorization was granted;

(ii) A description of all TEEEF the TDU has under lease at the time of the application, including the total capacity the TDU has under lease, the length of the lease or leases, a description of the capacity, intended functions, and relevant characteristics of each leased unit, and whether each leased unit has been energized to aid in restoring power during a significant power outage;

(iii) A description of any previous emergency leases of TEEEF or prior use of another TDU's TEEEF under a mutual assistance agreement or program. A TDU must include an explanation for the necessity of each use of TEEEF under an emergency lease or mutual assistance agreement or program;

(iv) A copy of every after-action report submitted by the TDU to the commission under this section during the five years prior to the date on which the application was filed, including a cover page with summary statistics on significant power outages and TEEEF energizations in the TDU's service territory; and

(v) The interchange item number of the TDU's most recently filed emergency operations plan filed in project no. 53385.

(B) The total capacity of TEEEF the TDU is requesting authorization to lease, each function the requested TEEEF will serve (e.g. to restore power to individual facilities, to restore power to feeders to assist in load rotation, etc.) and how much of the requested capacity is requested for each function, and the length of time for which the TDU is requesting authorization. In support of its request, the TDU must include the following:

(i) A description of any necessary characteristics a TEEEF unit must have to perform each of the functions for which authorization is requested. These characteristics should be identified with enough specificity to allow the commission to evaluate, in a subsequent proceeding, whether the TDU's leased TEEEF fleet complies with the commission's authorization. These characteristics should include, as applicable, the capacity or range of capacities of individual units, the mobility of individual units, the types of connections the units must be compatible with, such as mid-span or point-of-use, fuel type, and whether the units can fulfill the function individually or with multiple units working in tandem;

(ii) An explanation with any necessary supporting documentation that the functions the TEEEF is being requested to perform are reasonable and necessary to aid in the restoration of power under this section. This supporting documentation must include, at minimum, historical data on significant power outages that occurred in the TDU's service territory and would have qualified for TEEEF deployment for the five-year period preceding the date of the application, including:

(I) the start and end date of the outage and information on how long customers were affected by the outage;

(II) a description of the events that caused the outage;

(III) the number of affected distribution customers and amount of load, in megawatts, that were affected by the outage; and

(IV) the number and type of critical load, critical care customers, or other critical infrastructure facilities as defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers) affected by the outage.

(iii) A description of any additional measures being implemented or scheduled for implementation that may mitigate the need for TEEEF, such as the TDU's implementation of a resiliency plan measure under §25.62 of this chapter, relating to Transmission and Distribution System Resiliency Plans.

(C) As appropriate, data provided under this section must be filed in a format native to Microsoft Excel and must permit basic data manipulation functions, such as copying and pasting of data.

(2) The application will be processed in a contested case proceeding as follows.

(A) Sufficiency. An application is sufficient if it includes the information required by paragraph (1) of this subsection and the TDU has filed proof that notice has been provided in accordance with this subsection.

(i) Within 30 calendar days of the TDU filing its application, commission staff must file a recommendation on sufficiency of the application. If commission staff recommends the application be found deficient, commission staff must identify the deficiencies in its recommendation. The TDU will have five working days to file a response, which may include an amendment to the application to attempt to cure the deficiency.

(ii) If the presiding officer determines the application is deficient, the presiding officer will file a notice of deficiency and cite the particular requirements with which the application does not comply. The presiding officer must provide the TDU an opportunity to amend its application. Commission staff must file a recommendation on sufficiency within 10 working days after the filing of an amended application, when the amendment is filed in response to a notice of deficiency.

(iii) If the presiding officer has not filed a written order concluding that the application is deficient within 10 working days

after a deadline for a recommendation on sufficiency, the application is deemed sufficient.

(B) Notice and intervention. Within one working day after the TDU files its application, the TDU must provide notice of its filed application, including the docket number assigned to the application and the deadline for intervention in accordance with this paragraph. The intervention deadline is 30 days from the date service of notice is complete. The notice must be provided using a reasonable method of notice to:

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

(ii) all parties in the TDU's last base-rate proceeding;

(iii) each retail electric provider that provides service in the TDU's service area; and

(iv) the Office of Public Utility Counsel.

(3) Commission evaluation and final determination. The commission will authorize a TDU to lease TEEEF under this subsection if it determines that leasing the requested TEEEF is reasonable and necessary to aid in restoring power to the TDU's distribution customers during a significant power outage that qualifies for TEEEF energization. The commission's final order will include the total TEEEF capacity the TDU is authorized to lease, the capacity of TEEEF the TDU is authorized to lease for each function the TEEEF fleet will perform, and the date or dates the authorization expires (i.e., TEEEF leases must not extend past this date). The commission may include additional requirements related to the characteristics the TEEEF the TDU is authorized to lease.

(e) [~~(d)~~] Emergency TEEEF lease.

(1) A TDU may enter into a lease for TEEEF [~~without prior commission approval~~] if the TDU lacks the leased TEEEF generating capacity necessary to aid in restoring power, consistent with subsection (f) of this section.

(2) The amount of TEEEF generating capacity leased by a TDU under this subsection must not exceed the amount of megawatts or length of time necessary to restore electric service to the TDU's distribution customers by more than a reasonable amount.

(3) The TDU must provide sufficient documentation to support the reasonableness, necessity, and prudence of any generating capacity and costs of TEEEF leased by a TDU under this subsection during the TDU's next base-rate proceeding.

[~~(e) Competitive bidding process. Except for an emergency lease under subsection (d) of this section, a TDU must use a competitive bidding process to lease TEEEF under this section.~~]

[~~(1) In any proceeding in which the commission is reviewing the reasonableness, necessity, or prudence of the costs associated with leasing a TEEEF under this section, the commission may also consider whether the contracts the TDU entered into to lease TEEEF were reasonable relative to other bids that were available to the TDU, if any.~~]

[~~(2) In any proceeding in which a TDU is requesting recovery of costs associated with TEEEF that was not leased using a competitive bidding process, the TDU must demonstrate that the TEEEF was leased under an emergency lease consistent with subsection (d).~~]

[~~(3) A TDU may not enter into a lease for TEEEF with a competitive affiliate of the TDU unless that lease was subject to a competitive bidding process.~~]

[~~(4) If requested by a commissioner or commission staff, a TDU must allow for the inspection of any lease entered into under this section. If the commissioner or commission staff retains a copy of the lease, the lease will be treated as a confidential document if so requested by the TDU.~~]

(f) Energization of TEEEF.

(1) - (9) (No change.)

(10) After-action report. After each significant power outage in a TDU's service territory that meets the criteria for TEEEF energization under paragraph (1) of this subsection, a TDU that has leased TEEEF must file an after-action report with the commission. The report must be filed within 30 days from the last day of the significant power outage. The report must include, as applicable:

(A) - (C) (No change.)

(D) The total nameplate generating capacity in megawatts and the total number of affected generators or load resources that were isolated from the bulk power system for TEEEF energization;[~~.~~]

(E) (No change.)

(F) A list of TEEEF that was not energized, including the capacity, fuel type, connection configuration, and mobile capability of each TEEEF unit that was not energized and a brief summary explaining why each TEEEF unit was not energized; and[~~.~~]

(G) A description of any TEEEF units that were leased under subsection (e) [~~(d)~~] of this section or utilized under a mutual assistance agreement or program. A TDU must include an explanation for the necessity of the emergency lease or utilization of the mutual assistance agreement or program.[~~;~~]

(g) - (j) (No change.)

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

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Adriana Gonzales
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Public Utility Commission of Texas
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16 TAC §25.65

The Public Utility Commission of Texas (commission) proposes new §25.65 relating to Firming Reliability Requirements for Electric Generating Facilities in the ERCOT Region. This proposed rule will implement Public Utility Regulatory Act (PURA) §39.1592 as enacted by House Bill (HB) 1500 during the Texas 88th Regular Legislative Session. The proposed rule will establish firming reliability requirements for electric generating facilities in the ERCOT Region. The rule will also establish a framework for ERCOT to impose financial penalties on electric generating facilities that fail to comply with the requirements and provide financial incentives to electric generating facilities that exceed the requirements.

Government Growth Impact Statement

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

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

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

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

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

(5) the proposed rule creates a new regulation in order to implement PURA §39.1592;

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

(7) the proposed rule will not change the number of individuals subject to the rule's applicability, because it is a new rule; and

(8) the proposed rule will positively affect this state's economy by increasing reliable electric service in the state through the requirement that an owner or operator of an electric generating facility be able to operate or be available to operate when called on for dispatch at or above the seasonal average generation capability during the times of highest reliability risk due to low operation reserves.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Jessie Horn, Senior Counsel, Rules and Projects Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state under Texas Government Code §2001.024(a)(4). Ms. Horn has determined that for the first five-year period the proposed rule is in effect there may be fiscal implications for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the section. A municipally owned utility that owns or operates an electric generating facility subject to the proposed rule may incur financial penalties and may be provided financial incentives based on the electric generating facility's ability to operate or availability to operate when called on for dispatch at or above the seasonal average generation capability during the times of highest reliability risk due to low operation reserves.

Public Benefits

Ms. Horn has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be increased reliability of the ERCOT power region during the times of highest reliability risk due to low operation reserves. The probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5) will vary based on an electric generating facility's ability to operate or availability to operate when called on for dispatch at or above the seasonal average generation capability during the times of highest reliability risk due to low operation reserves.

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 2, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by September 2, 2025. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 58198.

In addition to general comments on the text of the proposed rule, the commission invites interested persons to address the following specific questions:

1. What level of Physical Responsive Capability (PRC) should be used to define a low operation reserve hour?

2. Should the low operation reserve hour be tied to the deployment of or a shortage in aggregate real-time awards relative to the Ancillary Service Plan for ERCOT Contingency Reserve Service?

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

Statutory Authority

The new rule is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the

commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.151, which authorizes the commission to oversee ERCOT and adopt rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants; and §39.1592, which requires the commission to make certain determinations and require ERCOT to impose financial penalties and provide financial incentives.

Cross Reference to Statute: Public Utility Regulatory Act §14.001; §14.002; §39.151; and §39.1592.

§25.65. Firming Reliability Requirements for Electric Generating Facilities in ERCOT.

(a) Applicability. This section applies to an electric generating facility, other than a battery energy storage resource, settlement only generator, or self generator, in the ERCOT region:

(1) for which a standard generation interconnection agreement is signed on or after January 1, 2027, and that has been in operation for at least one year; or

(2) completes upgrades resulting in an increase of the nameplate capacity by 50 percent or more and requires a new or amended standard generation interconnection agreement after January 1, 2027.

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

(1) Electric generating facility--A generation resource, as defined in ERCOT protocols.

(2) High-risk hour--A daily hour encompassing all seasonal morning and evening ramp hours, as determined by ERCOT, and any hour where at least 5% of the highest decile of net load hours occurred during that season in the prior three years.

(3) In operation--The resource commissioning date, as defined in the ERCOT protocols.

(4) Low operation reserve hour--An hour when the physical responsive capability (PRC) falls below 3,000 megawatts (MW) for at least 15 minutes.

(5) Owner or operator--A resource entity that owns an electric generating facility represented by a qualified scheduling entity.

(6) Season--Winter (December 1 through February 29), Spring (March 1 through May 31), Summer (June 1 through September 30), and Fall (October 1 through November 30).

(7) Seasonal average generation capability--For each season, the average of the ratio of real-time telemetered high sustained limit (HSL) to the seasonal rated capacity of an electric generating facility across all intervals during the prior three years multiplied by the seasonal rated capacity of the electric generating facility at the beginning of the relevant season. For an electric generating facility that has been in operation for less than three years, ERCOT will use the operational data that is available for each season.

(c) Notice of seasonal average generation capability. Prior to each season, ERCOT will:

(1) notify an electric generating facility of its seasonal average generation capability; and

(2) release the high-risk hours for the upcoming season.

(d) Reliability requirement. Each season, an electric generating facility, must operate or be available to operate when called on for dispatch at or above the seasonal average generation capability during a low operation reserve hour that occurs within a high-risk hour.

(1) Firming. The owner or operator of an electric generating facility may meet the requirements under this subsection by supplementing its portfolio or contracting with:

(A) another electric generating facility that is either on-site or off-site; or

(B) an on-site or off-site battery energy storage resource.

(2) Disclosure to ERCOT. An owner or operator that meets the requirements under this subsection by supplementing from its portfolio or contracting with another electric generating facility or battery energy storage resource must disclose the arrangement to ERCOT and provide ERCOT with any additional information reasonably required for ERCOT to perform its duties under this section, including confirmation of the arrangement by both parties to a trade.

(e) Financial penalty and financial incentive.

(1) Financial penalty. ERCOT must impose a financial penalty on an electric generating facility if the electric generating facility fails to operate or is unavailable to operate when called on for dispatch at or above the seasonal average generation capability during a low operation reserve hour that occurs within a high-risk hour, as required under subsection (d) of this section, and did not supplement effectively from its portfolio or by contractual arrangement disclosed to ERCOT for any shortages. A financial penalty imposed must be 20 percent of the effective value of lost load used to determine the ancillary service demand curves for the day-ahead market and real-time market and applied to the shortage megawatt hours (MWh). In seasons where more than 15 low operation reserve hours occur during the seasonal high-risk hours, only the 15 low operation reserve hours with the lowest levels of PRC will be subject to this penalty.

(2) Financial penalty exemption. An electric generating facility is exempt from a financial penalty under this section if the electric generating facility is:

(A) unavailable during the applicable hour due to:

(i) a planned maintenance outage or derate that was approved by ERCOT, or

(ii) a transmission outage;

(B) a switchable generation resource that is committed to a neighboring independent system operator or regional transmission operator for the applicable season;

(C) awarded in the day ahead market rules for the duration of the applicable hour; or

(D) awarded an ancillary service or reliability service that has an associated penalty for failure to perform for the duration of the applicable hour.

(3) Financial incentive. ERCOT must provide a financial incentive to an electric generating facility if the electric generating facility operates or is available to operate when called on for dispatch above the seasonal average generation capability during a low operation reserve hour that occurs within a high-risk hour, as required under subsection (d) of this section.

(A) The total financial incentives provided under this subsection each season must not exceed the total financial penalties

imposed each season for low operation reserve hours occurring within high-risk hours.

(B) The financial incentives payable under this subsection must be equal to the total financial penalties imposed under this subsection divided by the total MWs that exceeded the seasonal average generation capability.

(C) A financial incentive provided to an eligible electric generating facility must be calculated based on the total financial penalties imposed divided by available MWh and allocated to an eligible electric generating facility based on the percentage of MWh that exceed the performance requirements.

(D) An electric generating facility that is not required to operate or be available to operate under subsection (d) of this section is not eligible to receive a financial incentive under this subsection.

(f) Settlement. After each season, ERCOT must:

(1) notify each electric generating facility if it was long or short net of trade arrangements disclosed to ERCOT during the low operation reserve hours that occurred within the high-risk hours in the prior season;

(2) impose financial penalties to those electric generating facilities that are net short; and

(3) provide financial incentives to those electric generating facilities that are net long.

(g) Protocols. ERCOT must develop protocols in consultation with commission staff to implement this rule by December 1, 2026.

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

Filed with the Office of the Secretary of State on July 31, 2025.

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Adriana Gonzales
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SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §25.75

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.75 relating to annual report on dispatchable and non-dispatchable generation facilities and corresponding form which is filed in Project 58393 as an attachment to this proposal. This proposed rule will implement PURA §39.1591 (1)(B) which was added by House Bill 1500, Section 23, during the 88th Texas Legislature regular session. The new rule would require transmission service providers (TSPs) to annually report costs incurred in the ERCOT market to interconnect generation facilities and transmission level loads in a format prescribed in a commission approved form.

Growth Impact Statement

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

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

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

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

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

(5) the proposed rule will create a new regulation;

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

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Rama Singh Rastogi, Program Manager, Rules and Projects Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Singh Rastogi has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be administrative efficiency and greater transparency about transmission interconnection costs. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

Commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by August 29, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be filed by August 29, 2025. All comments should refer to Project Number 58393.

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

Statutory Authority

The new rule is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §39.1591, which requires the commission to file a report on dispatchable and non-dispatchable generation facilities.

Cross Reference to Statute: Public Utility Regulatory Act §14.001; §14.002; and §39.1591.

§25.75. Annual Report on Dispatchable and Non-dispatchable Generation Facilities.

(a) Application. This rule applies to all transmission service providers (TSP) in the ERCOT region.

(b) Report. Each TSP must file with the commission annual costs to interconnect generation facilities and transmission level loads in a format prescribed in a commission approved form by October 15th of each calendar year.

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

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §229.1(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 15, 2025, issue of the Texas Register.)

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§229.1, 229.2, 229.4, 229.5, and 229.9, concerning the performance standards and procedures for educator preparation program (EPP) accountability. The proposed amendments would provide for adjustments to the Accountability System for Educator Preparation (ASEP) Manual; would clarify and streamline language and definitions; would provide an updated approach for the implementation of the student growth indicator; would provide additional flexibility for small programs; would clarify closure procedures; and would include technical updates.

BACKGROUND INFORMATION AND JUSTIFICATION: EPPs are entrusted to prepare educators for success in the classroom. The Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. The TEC, §21.045, also requires SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs to comply with these provisions of the TEC and to ensure the highest level of educator preparation, which is codified in the SBEC Mission Statement.

The following is a description of the proposed amendments to 19 TAC Chapter 229 and the ASEP Manual (Figure: 19 TAC §229.1(c)).

Subchapter A. Accountability System for Educator Preparation Program Procedures

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

Update of ASEP Manual:

The proposed amendment to Figure: 19 TAC §229.1(c) would update the ASEP manual to do the following:

Updates to the title page would reflect the updated table of contents.

Updates to the table of contents would provide consistent descriptive language for the Principal Survey and Teacher Survey throughout the manual.

Updates to Chapter 2 would add process language and a diagram explaining the modified small group aggregation procedure described in proposed new 19 TAC §229.4(c)(6) and simplify references to demographic categories to refer to the definitions in the rule chapter.

Updates to Chapter 3 would clarify the contents of the chapter, remove expired language, and add language to specify the inclusion of Texas Assessment of Sign Communication (TASC 072) and the Texas Assessment of Sign Communication - American Sign Language (TASC-ASL 073) in the calculations for certification category evaluation, along with clarifying the evaluation

procedure. Updates would also remove repetitive language and streamline the methodological language. The worked examples would be updated to remove repetitive language, point to the methods described elsewhere in the chapter, include broader examples of included tests, and match the description with the example.

Updates to Chapter 4 would streamline and remove repetitive information, add the enhanced standard certificate to the certificate list, more clearly align with practice and provide additional transparency for what individuals are included in the population, clarify the use of the certificate effective date when identifying individuals, and clarify the practice for when teachers are at multiple campuses. Updates to the worked example would add a step to further describe current practice, remove repetitive language, and correct a number to match the description with the example.

Updates to Chapter 5 would modify the individuals included section to align with practice and provide additional transparency to the field about the time span of data used, add a reference to existing definitions, and add the enhanced standard certificate to the list of certificates. Updates to the scoring approach section would provide additional clarity on the process when there are multiple subject areas for one teacher, better describe the individual standard aligned with the measurement definition of STAAR annual growth points, and correct for grammar and usage. Updates to the worked example would remove repetitive language.

Updates to Chapter 6 would add the residency experience as an evaluated field experience, clarify that, beginning in the 2025-2026 academic year, individuals completing clinical teaching would be identified using the clinical experience record, and add the enhanced standard certificate to the list of certificates. Updates would also point to existing definitions, add specificity to the observation frequency requirements used as the standard for the 2024-2025 academic year, generalize the reference to 19 TAC Chapter 228, Requirements for Educator Preparation Programs, Subchapter F, Support for Candidates During Required Clinical Experiences, to simplify future rulemaking, and use the language of reporting year. Updates would also move the description of the scoring approach from the worked example to the main section of the chapter without modifying the process and would align language about the small group aggregation throughout the manual. Updates to the worked example would remove repetitive language.

Updates to Chapter 7 would align the approach of providing the alternative name of the survey with the approach in Chapter 4, add the enhanced standard certificate to the certificate list, provide more aligned descriptions of practice and provide additional transparency for what individuals are included in the sample, clarify the use of the certificate effective date when identifying individuals, and clarify the practice for when teachers are at multiple campuses. Updates to the worked example would add a step to further describe current practice and remove repetitive language.

Updates to Chapter 8 would remove the EPP commendations. Commendations would be introduced in 19 TAC Chapter 228 related to the Continuing Approval Review. This provides clarity by removing potentially conflicting language.

Updates to Chapter 9 would modify the examples to data for Indicator 3, since it would no longer be report only. This would provide clarity to the field. The updates would also align language with the definitions section of 19 TAC Chapter 229.

Subchapter A. Accountability System for Educator Preparation Program Procedures

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

Update to Commendations

The proposed amendment to §229.1(d) would remove the language related to commendations. Commendations would be introduced in 19 TAC Chapter 228 related to the Continuing Approval Review. This update would provide clarity by removing potentially conflicting language.

§229.2. Definitions.

The proposed amendment to §229.2(2), (3), (20)-(23), and (28) would remove definitions of terms not included in the chapter. The remaining definitions would be renumbered accordingly.

The proposed amendment to §229.2(7) "Clinical experience" would provide a new definition that aligns with the definition in 19 TAC Chapter 228.

The proposed amendment to §229.2(23) "Reporting Year" would include a definition for the term of September 1-August 31.

The proposed amendment to §229.2(24) "Residency" would provide a new definition to align with the definition in 19 TAC Chapter 228.

Subchapter B. Accountability System for Educator Preparation Accreditation Statuses

§229.4. Determination of Accreditation Status.

The proposed amendment to §229.4(a)(3) would provide a timeline for the introduction of the performance standard. The amendment would allow for the 2024-2025 and 2025-2026 academic years to have a standard of 60%, the 2026-2027 academic year to have a standard of 65%, and the 2027-2028 academic year to have a standard of 70%. This rolled-in standard was recommended by EPP stakeholders to allow programs the opportunity to adjust to the implementation of the new standard and make programmatic improvements.

The proposed amendment to §229.4(a)(4) would add residencies to the list of evaluated field experiences in the observation indicator. This would include these similar experiences and ensure that they are included in the accountability system.

The proposed amendment to §229.4(a)(4)(i) would remove the specific reference to 19 TAC Chapter 228, Subchapter F, because the organization of 19 TAC Chapter 228 by subchapter was not in effect August 31, 2024. This would provide clarity to the field about which observation requirements are actionable for which evaluation year.

Proposed new §229.4(b)(2)(B) would provide an accreditation status of Accredited - Not Rated in any years when an EPP does not generate enough data for the recommendation of a status by the ASEP Index system. In cases where this status is assigned immediately following a year where the EPP had a status of Accredited - Probation, any associated sanctions would continue and the count of years on Accredited - Probation would not be reset. This would ensure alignment with statutory requirements.

The proposed amendment to §229.4(b)(5)(F) would provide clarification of the two-year revocation period. This is responsive to questions from the field.

The proposed amendment to §229.4(b)(5)(G) would require EPPs subject to closure due to revocation to submit a letter to TEA within 14 days after the revocation, identifying a closure date aligned with 19 TAC §228.21(a)(1). If the EPP fails to provide the letter, the closure date would be the last day of the current academic year. This would provide clarity to candidates about closure procedures and time frames.

Proposed new §229.4(b)(5)(H) would further provide specific alignment with closure procedures in 19 TAC Chapter 228. This amendment would provide a definitive closure date and fully cease preparation activities at the revoked EPP. EPPs closed as such would be able to reapply as specified, providing additional clarity for candidates and EPPs about revocation under ASEP.

The proposed amendment to §229.4(c)(5) would remove language about the process when there is no data for measurement. This case would be handled under proposed new §229.4(b)(2)(B). The updated language would allow for an alternative evaluation under the small group aggregation procedure. If the aggregated group fails to meet the standard, the current year group would also be evaluated against the standard. If the current year group met the standard, then the count of consecutive years would not advance, for the purposes of the ASEP index or the count of years of failing to meet the standard for a certification class or category. This would provide flexibility for small programs or certificate categories. This was recommended by stakeholders to provide additional time for small improving programs to continue their improvement without additional negative impacts on their index scores or certification category offerings.

Subchapter C. Accreditation Sanctions

§229.5. Accreditation Sanctions and Procedures.

The proposed amendment to §229.5(c) would remove the alternative closure procedure. This would allow for the language in proposed new subsection (c)(3) and (4) to be salient. Without removal this would be conflicting language in the rule.

Proposed new §229.5(c)(3) would align the closure procedures for an individual certification class or category with the closure procedures for the entire program and the closure procedures offered in 19 TAC Chapter 228. This amendment would allow EPPs subject to closure of a certification class or category to submit a letter identifying a closure date within a specific timeframe, aligned with the procedure in §228.21(a)(1). If the EPP were to fail to provide such a letter a default closure date of the last day of the current academic year would be specified. This would provide clarity to candidates about closure procedures and time frames.

Proposed new §229.5(c)(4) would further provide specific alignment with closure procedures in 19 TAC Chapter 228 with the closure of a certification class or category. Current rule allows for EPPs revoked under §229.5(c) to continue to teach out candidates indefinitely, misaligned with voluntary closure procedures in 19 TAC Chapter 228 that contain a specific end date. This amendment would provide a definitive closure date for the certification class or category and fully cease preparation activities for that certificate. Certificates closed as such would be able to be re-added as specified in 19 TAC Chapter 228. This would align the closure procedures and provide clarity for candidates and EPPs about certificate class or category revocation.

Subchapter F. Required Fees

§229.9. Fees for Educator Preparation Program Approval and Accountability.

The proposed amendment to §229.9(6) would add applications for the residency route to the existing fee schedule.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments. There are no additional costs to entities required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. McLoughlin has determined that for the first five years the proposal is in effect, the public benefit anticipated would be aligning the rules with statute and reflecting current procedures. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

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

PUBLIC COMMENTS: The public comment period on the proposal begins August 15, 2025, and ends September 15, 2025. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Ed-

ucator_Certification_Rules/. Comments on the proposal may also be submitted by calling (512) 475-1497. The SBEC will also take registered oral and written comments on the proposal during the September 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

SUBCHAPTER A. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAM PROCEDURES

19 TAC §229.1, §229.2

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through PEIMS that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

(a) The State Board for Educator Certification (SBEC) is responsible for establishing standards to govern the continuing accountability of all educator preparation programs (EPPs). The rules adopted by the SBEC in this chapter govern the accreditation of each EPP that prepares individuals for educator certification. No candidate shall be recommended for any Texas educator certification class or category except by an EPP that has been approved by the SBEC pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs) and is accredited as required by this chapter.

(b) The purpose of the accountability system for educator preparation is to assure that each EPP is held accountable for the readiness for certification of candidates completing the programs.

(c) The relevant criteria, formulas, calculations, and performance standards relevant to subsection (d) of this section and §229.4 of this title (relating to Determination of Accreditation Status) are prescribed in the *Texas Accountability System for Educator Preparation (ASEP) Manual* provided as a figure in this subsection.

Figure: 19 TAC §229.1(c)

[~~Figure: 19 TAC §229.1(c)~~]

[~~(d) An accredited EPP that is not under an active SBEC order or otherwise sanctioned by the SBEC may receive commendations for success as prescribed in the figure in subsection (c) of this section. Commendations will not be awarded for the 2023-2024 reporting year.~~]

§229.2. Definitions.

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

[~~(2) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.~~]

[~~(3) ACT®--The college entrance examination from ACT®.~~]

(2) [~~(4)~~] Administrator--For purposes of the surveys and information required by this chapter, an educator whose certification would entitle him or her to be assigned as a principal or assistant principal in Texas, whether or not he or she is currently working in such an assignment.

(3) [~~(5)~~] Beginning teacher--For purposes of the Texas Education Code, §21.045(a)(3), and its implementation in this chapter, a classroom teacher with fewer than three years of experience as a certified classroom teacher.

(4) [~~(6)~~] Candidate--An individual who has been formally or contingently admitted into an educator preparation program (EPP) who has not yet completed or exited the EPP.

(5) [~~(7)~~] Certification category--A certificate type within a certification class, as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(6) [~~(8)~~] Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; may contain one or more certification categories, as described in Chapter 233 of this title.

(7) Clinical experience--An assignment, as described in §228.2 of this title (relating to Definitions).

(8) [~~(9)~~] Clinical teaching--An assignment, as described in §228.2 of this title (relating to Definitions).

(9) [~~(10)~~] Completer--A person who has met all the requirements of an approved educator preparation program. In applying this definition, the fact that a person has or has not been recommended

for a standard certificate or passed a certification examination shall not be used as criteria for determining who is a completer.

(10) [~~(11)~~] Consecutively measured years--Consecutive years for which a group's performance is measured, excluding years in which the small group exception applies, in accordance with §229.4(c) of this title (relating to Determination of Accreditation Status).

(11) [~~(12)~~] Content Pedagogy Test--Examination listed in the column labeled "Required Content Pedagogy Test(s)" in Figure: 19 TAC §230.21(e).

(12) [~~(13)~~] Cooperating teacher--An individual, as described in §228.2 of this title (relating to Definitions), who supports a candidate during a candidate's clinical teaching experience.

(13) [~~(14)~~] Demographic group--Male and female, as to gender; and African American, Hispanic, White, and Other, as to race and ethnicity.

(14) [~~(15)~~] Educator preparation program--An entity approved by the State Board for Educator Certification to recommend candidates in one or more educator certification classes or categories.

(15) [~~(16)~~] Educator preparation program data--Data reported to meet requirements under the Texas Education Code, §21.045(b) and §21.0452.

(16) [~~(17)~~] Examination--An examination or other test required by statute, or any other State Board for Educator Certification rule codified in the Texas Administrative Code, Title 19, Part 7, that governs an individual's admission to an educator preparation program, certification as an educator, continuation as an educator, or advancement as an educator.

(17) [~~(18)~~] Field supervisor--An individual, as described in §228.2 of this title (relating to Definitions), who is hired by an educator preparation program to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators.

(18) [~~(19)~~] First-year teacher--For purposes of the Texas Education Code, §21.045(a)(2), and its implementation in this chapter, an individual in his or her first year of employment as a classroom teacher.

~~[(20) GPA--Grade point average.]~~

~~[(21) GRE®--Graduate Record Examinations®.]~~

~~[(22) Higher Education Act--Federal legislation consisting of the Higher Education Act of 1965 (20 United States Code, §1070 et seq.) and its subsequent amendments, which requires reports of educator preparation program performance data.]~~

~~[(23) Incoming class--Individuals contingently or formally admitted between September 1 and August 31 of each year by an educator preparation program.]~~

(19) [~~(24)~~] Internship--An assignment, as described in §228.2 of this title (relating to Definitions).

(20) [~~(25)~~] Mentor--An individual, as described in §228.2 of this title (relating to Definitions), who supports a candidate during a candidate's internship experience.

(21) [~~(26)~~] Pedagogy Test--Examination listed in the column labeled "Pedagogical Requirement(s)" in Figure: 19 TAC §230.21(e).

(22) [~~(27)~~] Practicum--An assignment, as described in §228.2 of this title (relating to Definitions).

~~[(28) SAT®--The college entrance examination from the College Board.]~~

(23) Reporting Year--September 1 through August 31.

(24) Residency--A supervised educator assignment, as described in §228.2 of this title (relating to Definitions).

(25) [~~(29)~~] Site supervisor--An individual, as described in §228.2 of this title (relating to Definitions), who supports a candidate during a candidate's practicum experience.

(26) [~~(30)~~] Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

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

Filed with the Office of the Secretary of State on August 4, 2025.

TRD-202502727
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 475-1497

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SUBCHAPTER B. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION ACCREDITATION STATUSES

19 TAC §229.4

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through PEIMS that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall

propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.4. Determination of Accreditation Status.

(a) Accountability performance indicators. The State Board for Educator Certification (SBEC) shall determine the accreditation status of an educator preparation program (EPP) at least annually, based on the following accountability performance indicators, disaggregated by demographic group and other requirements of this chapter and determined with the formulas and calculations included in the figure provided in §229.1(c) of this title (relating to General Provisions and Purpose of Accountability System for Educator Preparation Programs). Data will be used only if the following indicators were included in the accountability system for that academic year. Except for the 2019-2020 and 2020-2021 academic years, when the data described in paragraphs (1)-(5) of this subsection will be reported to EPPs and will not be used to determine accreditation statuses, EPP accreditation statuses shall be based on:

(1) the EPP candidates' performance on pedagogy tests and content pedagogy tests. The EPP candidates' performance on pedagogy tests and content pedagogy tests shall provide separate accountability performance indicators for EPPs;

(A) For both pedagogy tests and content pedagogy tests, the performance standard shall be the percent of individuals admitted after December 26, 2016, who passed an examination within the first two attempts, including those examinations attempted after the individual has completed the EPP or when the EPP has not recommended the individual for a standard certificate. The pass rate is based solely on the examinations approved by the EPP. Examinations taken before admission to the EPP or specific examinations taken for pilot purposes are not included in the pass rate.

(B) For pedagogy tests, the performance standard shall be a pass rate of 85%.

(C) For content pedagogy tests, the performance standard shall be a pass rate of 75%.

(2) the results of appraisals of first-year teachers by administrators, based on a survey in a form to be approved by the SBEC. The performance standard shall be 70% of first-year teachers from the EPP who are appraised as "sufficiently prepared" or "well prepared";

(3) the growth of students taught by beginning teachers as indicated by the STAAR Annual Growth Points, determined at the student level as described in Figure: 19 TAC §97.1001(b) of Part II of this title (relating to Accountability Rating System), and aggregated at the teacher level as described in Figure: 19 TAC §229.1(c) of this title. For the 2024-2025 and 2025-2026 academic years, the performance standard shall be 60% of beginning teachers from the EPP reaching the individual performance threshold. For the 2026-2027 academic year, the performance standard shall be 65% of beginning teachers from the EPP reaching the individual performance threshold. Beginning in the 2027-2028 academic year, the [~~The~~] performance standard shall be 70% of beginning teachers from the EPP reaching the individual performance threshold[~~. For the 2023-2024 academic year, this performance standard will be a reporting year only and will not be used to determine accreditation status~~];

(4) the results of data collections establishing EPP compliance with SBEC requirements regarding the frequency, duration, and quality of field supervision to candidates completing clinical teaching, residency, or an internship. The frequency and duration of field supervision shall provide one accountability performance indicator, and the quality of field supervision shall provide a separate accountability performance indicator;

(A) The performance standard as to the frequency, duration, and required documentation of field supervision shall be that the EPP meets the requirements for 95% of the EPP's candidates. EPPs that do not meet the standard of 95% for the aggregated group or for any disaggregated demographic group but have only one candidate not meet the requirement in the aggregated or any disaggregated group has met the standard for that group.

(i) For the 2023-2024 and 2024-2025 academic years, individuals will be evaluated against the frequency and duration requirements in Chapter 228, Requirements for Educator Preparation Programs, [~~Subchapter F, of this title (relating to Support for Candidates During Required Clinical Experiences)~~] that were effective August 31, 2024.

(ii) Beginning in the 2025-2026 academic year, individuals will be evaluated against the frequency and duration requirements in Chapter 228, Subchapter F, of this title that were effective beginning September 1, 2024.

(B) The performance standard for quality shall be 90% of candidates rating the field supervision as "frequently" or "always or almost always" providing the components of structural guidance and ongoing support; and

(5) the results from a teacher satisfaction survey, in a form approved by the SBEC, of first-year teachers administered at the end of the first year of teaching as a teacher of record. The performance standard shall be 70% of teachers responding that they were "sufficiently prepared" or "well prepared" by their EPP.

(b) Accreditation status assignment. All approved EPPs may be assigned an accreditation status based on their performance in the Accountability System for Educator Preparation Programs (ASEP) Index system, as described in Figure: 19 TAC §229.1(c) of this title.

(1) Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the standard of 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(2) Accredited-Not Rated status.

(A) An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(B) An EPP shall be assigned Accredited-Not Rated status in any reporting year in which the EPP candidate group, aggregated or disaggregated by demographic group, does not meet the necessary number of individuals needed to measure against performance standards for that year, for all indicators.

(i) Any sanction assigned as a result of an Accredited-Warned or Accredited-Probation status in the prior year shall continue unless the SBEC modifies the sanction as deemed necessary based on subsequent performance.

(ii) If the EPP is assigned a status of Accredited-Not Rated this shall not break a count of consecutively measured years for the purpose of paragraph (5)(A) of this subsection.

(3) Accredited-Warned status.

(A) An EPP shall be assigned Accredited-Warned status if the EPP accumulates 80% or greater but less than 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.

(B) An EPP may be assigned Accredited-Warned status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or Texas Education Code (TEC), Chapter 21.

(4) Accredited-Probation status.

(A) An EPP shall be assigned Accredited-Probation status if the EPP accumulates less than 80% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.

(B) An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(5) Not Accredited-Revoked status.

(A) An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured years.

(B) An EPP may be assigned Not Accredited-Revoked status if the EPP has been on Accredited-Probation status for one year, and the SBEC determines that revoking the EPP's approval is reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.

(C) An EPP may be assigned Not Accredited-Revoked status if the EPP fails to pay the required ASEP technology fee by the deadline set by TEA as prescribed in §229.9(7) of this title (relating to Fees for Educator Preparation Program Approval and Accountability).

(D) An EPP may be assigned Not Accredited-Revoked status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(E) An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.

(F) A revocation of an EPP approval shall be effective for a period of two years from the closure date, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(G) Upon revocation of EPP approval, the EPP shall submit a letter as described in §228.21(a)(1) of this title (relating to Program Consolidation or Closure) no later than 14 days after the revocation identifying a closure date. If a letter is not submitted within 14 days after the revocation, the closure date shall be the last day of the current academic year [~~may not admit new candidates for educator certification but may complete the training of candidates already admitted by the EPP and recommend them for certification. If necessary, TEA staff and other EPPs shall cooperate to assist the previously admitted candidates of the revoked EPP to complete their training~~].

(H) Upon revocation of EPP approval, the EPP shall adhere to the requirements for program closure contained in §228.21 of this title.

(c) Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated by demographic group, shall be measured against performance standards described in this chapter in any one year in which the number of individuals in the group exceeds 10. The small group exception does not apply to compliance with the frequency and duration of field supervisor observations.

(2) For an EPP candidate group, aggregated or disaggregated by demographic group, where the group contains 10 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(3) If the current year's EPP candidate group, aggregated or disaggregated by demographic group, contained between one and 10 individuals, that group performance shall be combined with the group performance from the next most recent prior year subsequent to the 2020-2021 academic year for which there was at least one individual, and if the two-year cumulated group contains more than 10 individuals, then the two-year cumulated group performance must be measured against the standards in the current year. The two-year cumulated group shall not include group performance from years prior to the 2021-2022 academic year.

(4) If the two-year cumulated EPP candidate group described in subsection (c)(3) of this section, aggregated or disaggregated by demographic group, contains between one and 10 individuals, then the two-year cumulated group performance shall be combined with the next most recent group performance subsequent to the 2020-2021 academic year for which there was at least one individual. The three-year cumulated group performance must be measured against the standards in the current year, regardless of how small the cumulated number of group members may be. When evaluating a three-year cumulated group of fewer than 10 individuals, the candidate group will be measured against the performance standard of the current year, or a performance standard of up to one candidate failing to meet the requirement, whichever is more favorable. The three-year cumulated group performance shall not include group performance from years prior to the 2021-2022 academic year.

(5) In any reporting year in which subsection (c)(3) or (4) of this section results in an evaluation against the standard and the evaluated cumulated group does not meet the performance standard, the current year candidate group is separately evaluated against the performance standard. If the current year candidate group meets the performance standard, then the failure does not count as an additional consecutively measured year for the purposes of the ASEP Index as described in Figure: 19 TAC §229.1(c) of this title or for §229.5(c) of this title (relating to Accreditation Sanctions and Procedures). If the current year candidate group does not meet the performance standard, then the failure does count as an additional consecutively measured year for the purposes of the ASEP Index and for §229.5(c) of this title.

~~[(5) In any reporting year in which the EPP candidate group, aggregated or disaggregated by demographic group, does not meet the necessary number of individuals needed to measure against performance standards for that year, for all indicators, the accreditation status will continue from the prior year. Any sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. If an EPP has a status of Accredited-Probation carried over as a result of this subsection, the year in which the EPP has the carried over status will not count as a consecutively measured year for the purpose of subsection (b)(5)(A) of this section. The SBEC may modify the sanction as the SBEC deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.]~~

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

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Cristina De La Fuente-Valadez
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State Board for Educator Certification
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For further information, please call: (512) 475-1497

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SUBCHAPTER C. ACCREDITATION SANCTIONS

19 TAC §229.5

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through PEIMS that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.5. Accreditation Sanctions and Procedures.

(a) The State Board for Educator Certification (SBEC) may assign an educator preparation program (EPP) Accredited-Warned or Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules and/or Texas Education Code (TEC), Chapter 21.

(b) If an EPP has been assigned Accredited-Warned or Accredited-Probation status, or if the SBEC determines that additional action is a necessary condition for the continuing approval of an EPP to recommend candidates for educator certification, the SBEC may take any one or more of the following actions, which shall be reviewed by the SBEC at least annually:

(1) require the EPP to obtain technical assistance approved by the Texas Education Agency (TEA) or SBEC;

(2) require the EPP to obtain professional services approved by the TEA or SBEC;

(3) require the EPP to provide TEA staff with verification of the EPP's compliance with SBEC rules and/or the TEC;

(4) require the EPP to post on its website:

(A) accreditation status;

(B) notice that the SBEC has instated conditions on the EPP's continuing approval;

(C) TEA's continuing approval review report; and/or

(D) official notification of recommended status;

(5) appoint a monitor to participate in the activities of the EPP and report the activities to the TEA or SBEC; and/or

(6) require the EPP to develop an action plan addressing the deficiencies and describing the steps the program will take to improve the performance of its candidates. TEA staff may prescribe the information that must be included in the action plan. The action plan must be sent to TEA staff no later than 45 calendar days following notification to the EPP that SBEC has ordered the action plan.

(c) Notwithstanding the accreditation status of an EPP, if the performance of candidates on an examination required for certification (as listed in Figure: 19 TAC §230.21(e) of this title (relating to Educator Assessment)) in an individual certification class or category offered by an EPP fails to meet the performance standard on the content pedagogy test as described in §229.4(a)(1)(D) of this title (relating to Determination of Accreditation Status) for three consecutive years, the approval to offer that certification class or category shall be revoked.

[~~Any candidates already admitted for preparation in that class or category may continue in the EPP and be recommended for certification after program completion, but no new candidates shall be admitted for preparation in that class or category unless and until the SBEC reinstates approval for the EPP to offer that certification class or category.~~]

(1) For purposes of determining compliance with subsection (c) of this section, candidate performance in individual certification classes or categories in only the 2016-2017 academic year and subsequent academic years will be considered.

(2) Performance indicators by demographic group shall not be counted for purposes of subsection (c) of this section pertaining to performance standards for individual certification classes or categories. If the aggregated number of individuals counted for a certification class or category is 10 or fewer, the performance on the standard shall be cumulated and counted in the same manner as provided in §229.4(c) of this title.

(3) Upon revocation of certification class or category, the EPP shall submit a letter as described in §228.21(a)(1) of this title (relating to Program Consolidation or Closure) no later than 14 days after the revocation identifying a closure date. If a letter is not submitted within 14 days after the revocation, the closure date shall be the last day of the current academic year.

[~~(3) For EPPs that failed to meet the standard described in subsection (c) of this section for a certification class or category in the 2018-2019 academic year that meet the requirements based on their 2020-2021 data, the 2020-2021 academic year shall represent a break in consecutively measured years for the purpose of subsection (c) of this section.~~]

(4) Upon revocation of the approval to offer the certification class or category, the EPP shall adhere to the requirements for program closure contained in §228.21 of this title.

(d) An EPP shall be notified in writing regarding any action proposed to be taken pursuant to this section, or proposed assignment of an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked. The notice shall state the basis on which the proposed action is to be taken or the proposed assignment of the accreditation status is to be made.

(e) All costs associated with providing or requiring technical assistance, professional services, or the appointment of a monitor pursuant to this section shall be paid by the EPP to which the services are provided or required, or its sponsor.

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

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SUBCHAPTER F. REQUIRED FEES

19 TAC §229.9

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through PEIMS that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.9. Fees for Educator Preparation Program Approval and Accountability.

An educator preparation program requesting approval and continuation of accreditation status shall pay the applicable fee from the following list.

(1) New educator preparation program application and approval (nonrefundable)--$9,000.

(2) Five-year continuing approval review visit pursuant to §228.13 of this title (relating to Continuing Educator Preparation Program Approval)--$4,500.

(3) Discretionary continuing approval review visit pursuant to §228.13 of this title--$4,500.

(4) Addition of new certification category or addition of clinical teaching--$500.

(5) Addition of each new class of certificate--$1,000.

(6) Applications for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, residency, and practicums--$500.

(7) Accountability System for Educator Preparation Programs technology fee--$35 per admitted candidate.

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

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §97.62, §97.64

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendment to §97.62, concerning Exclusions from Compliance and §97.64, concerning Required Vaccinations and Exclusions for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with Health and Safety Code §161.0041, as amended by House Bill (H.B.) 1586, 89th Legislature, Regular Session, which requires DSHS to develop a blank affidavit form to be used by a person claiming an exemption from a required immunization and make the affidavit form available on the DSHS website. DSHS will post a blank affidavit form on the website for a person to download and submit to their child-care facility, school, or institution of higher education, including students enrolled in health-related and veterinary courses.

The current process requires individuals to request an affidavit form from DSHS, which DSHS must print on security-sealed paper and mail to the requesting individual.

Individuals will print these documents themselves (or request that DSHS send them a blank affidavit, which does not need to be printed on this special paper), and thus DSHS anticipates the volume of requests to decrease to the point we will not need contractors. DSHS also anticipates envelope, postage, and printing costs to decrease.

To comply with H.B. 1586 implementation guidelines beginning with the 2025-2026 school year, a proposal was published in the July 4, 2025, issue of the *Texas Register* (50 TexReg 3854). DSHS withdrew that rule proposal to ensure the language from H.B. 1586 and related statutes are properly reflected in the Texas Administrative Code. The notice providing that the proposal was withdrawn is published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4411). DSHS now proposes these amendments.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.62 allows a person claiming exclusion for reasons of conscience, including a religious belief, from a required immunization to obtain an affidavit form by downloading it from the department's internet website or submitting the request to the department.

The proposed amendment to §97.64 adds new subsection (f) to allow exclusions from compliance for students in institutions of higher education, including students enrolled in health-related and veterinary courses, based on medical contraindications, reasons of conscience, including a religious belief, and active duty with the armed forces of the United States, as defined in §97.62.

The proposal also removes the requirement for the submitted request to include full name and date of birth of child or student. Submitting a request (via online, fax, mail or hand-delivery) will only require a mailing address and number of affidavit forms requested. Those downloading the affidavit will not need to submit any information.

H.B. 1586 changes begin with the 2025-2026 school year.

FISCAL NOTE

Christy Havel-Burton, CFO, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated reduction in cost to state government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated reduction in cost of $177,746 in fiscal year (FY) 2026, $177,746 in FY 2027, $177,746 in FY 2028, $177,746 in FY 2029, and $177,746 in FY 2030.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of DSHS employee positions;

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

(4) the proposed rules will not affect fees paid to DSHS;

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

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

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

(8) DSHS has insufficient information to determine the proposed rules' effect on the state's economy.

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

Christy Havel-Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no involvement with small business, micro-business or rural community impact to satisfy the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and to implement legislation that does not specifically state that Section 2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Joshua Hutchison, Deputy Commissioner, Infectious Disease Prevention Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be allowing individuals to download and print blank affidavit forms so they can submit to their child-care facility, school, or institution of higher education, including students enrolled in health-related and veterinary courses.

Christy Havel-Burton has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules would eliminate the need to hire contractors for the summer months between June-September. There would also be a reduction in cost due to reduced need for mailing supplies, including envelopes, postage and security paper.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 14 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R041" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code §161.004 and §161.0041, which authorize the executive commissioner to adopt rules necessary to administer statewide immunization of children and exceptions; and Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which authorize the executive commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

These amendments affect Texas Health and Safety Code §161.0041 and Chapter 1001, and Texas Government Code §524.0151.

§97.62. Exclusions from Compliance.

Exclusions from compliance are allowable on an individual basis for medical contraindications, reasons of conscience, including a religious belief, and active duty with the armed forces of the United States. Children and students seeking enrollment in schools, child-care facilities, or institutions of higher education, including students enrolled in health-related and veterinary courses, [~~in these categories~~] must submit evidence for exclusion from compliance as specified in the Health and Safety Code[~~,~~] §161.004(d), Health and Safety Code[~~,~~] §161.0041, Education Code[~~,~~] Chapter 38, Education Code §51.933(d), [~~Chapter 51, and the~~] Human Resources Code[~~,~~] Chapter 42, and §97.64 of this subchapter (relating to Required Vaccinations and Exclusions for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education).

(1) To claim an exclusion for medical reasons, the child or student must present an exemption statement to the school or child-care facility, dated and signed by a physician (M.D. or D.O.), properly licensed and in good standing in any state in the United States who has examined the child or student. The statement must state that, in the physician's opinion, the vaccine required is medically contraindicated or poses a significant risk to the health and well-being of the child or student or any member of the child's or student's household. Unless it is written in the statement that a lifelong condition exists, the exemption statement is valid for only one year from the date signed by the physician.

(2) To claim an exclusion for reasons of conscience, including a religious belief, the child's parent, legal guardian, or a student 18 years of age or older must present to the school or child-care facility a completed, signed, and notarized affidavit on a form provided by the department stating that the child's parent, legal guardian, or the student declines vaccinations for reasons of conscience, including because of the person's religious beliefs. The affidavit will be valid for a two-year period from the date of notarization. A child or student, who has not received the required immunizations for reasons of conscience, including religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of the department.

(A) A person claiming exclusion for reasons of conscience, including a religious belief, from a required immunization may only obtain the affidavit form from the department by:

(i) downloading the affidavit form from the department's internet website, or

(ii) submitting a request (via online, fax, mail, or hand-delivery) to the department.

(B) The request must include the following information:

~~*f(i)* full name of child or student;~~]

[(ii) ~~child's or student's date of birth (month/day/year);]~~

(i) [~~(iii)~~] complete mailing address, including name, address, and telephone number; and

(ii) [~~(iv)~~] number of requested affidavit forms [~~(not to exceed 5)~~].

(C) [~~(B)~~] Requests for mailed affidavit forms must be submitted to the department through one of the following methods:

(i) written request through the United States Postal Service (or other commercial carrier) to the department at: DSHS Immunization Branch, Mail Code [~~code~~] 1946, P.O. Box 149347, Austin, Texas 78714-9347;

(ii) by fax [~~facsimile~~] to (512) 776-7544;

(iii) by hand-delivery to the department's physical address at 1100 West 49th Street, Austin, Texas 78756; or

(iv) via the department's Immunization program website (at www.ImmunizeTexas.com).

(D) [~~(C)~~] The department will mail the requested affidavit forms [~~form(s) (not to exceed five forms per child or student)~~] to the specified mailing address.

(E) [~~(D)~~] The department may [~~shall~~] not maintain a record of the personally identifiable information [~~names~~] of individuals who request an affidavit and must [~~shall~~] return the original documents (when applicable) with the requested affidavit forms.

(3) To claim an exclusion for armed forces, persons who can prove [~~that they are serving on~~] active duty service with the armed forces of the United States are exempted from the requirements in these sections.

§97.64. Required Vaccinations and Exclusions for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education.

(a) Students enrolled in (non-veterinary) health-related courses. This section applies to all students enrolled in health-related higher education courses which will involve direct patient contact with potential exposure to blood or bodily fluids in educational, medical, or dental care facilities.

(b) Vaccines Required. Students must have all of the following vaccinations before they may engage in the course activities described in subsection (a) of this section:

(1) Tetanus-Diphtheria Vaccine. Students must show receipt of one dose of tetanus-diphtheria-pertussis vaccine (Tdap). In addition, one dose of a tetanus-containing vaccine must have been received within the last ten years. Td vaccine is an acceptable substitute, if Tdap vaccine is medically contraindicated.

(2) Measles, Mumps, and Rubella (MMR) Vaccines.

(A) Students born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of two doses of a measles-containing vaccine administered since January 1, 1968 (preferably MMR vaccine).

(B) Students born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of two doses of a mumps vaccine.

(C) Students must show, prior to patient contact, acceptable evidence of one dose of rubella vaccine.

(3) Hepatitis B Vaccine. Students are required to receive a complete series of hepatitis B vaccine prior to the start of direct patient care.

(4) Varicella Vaccine. Students are required to have received two doses of varicella (chickenpox) vaccine.

(c) Limited Exceptions:

(1) Notwithstanding the other requirements in this section, a student may be provisionally enrolled in these courses if the student has received at least one dose of each specified vaccine prior to enrollment and goes on to complete each vaccination series as rapid as medically feasible in accordance with the Centers for Disease Control and Prevention's Recommended Adult Immunization Schedule as approved by the Advisory Committee on Immunization Practices (ACIP). However, the provisionally enrolled student may not participate in coursework activities involving the contact described in subsections (a) and/or (d) of this section until the full vaccination series has been administered.

(2) Students, who claim to have had the complete series of a required vaccination, but have not properly documented them, cannot participate in coursework activities involving the contact described in subsections (a) and/or (d) of this section until such time as proper documentation has been submitted and accepted.

(3) The immunization requirements in subsections (b) and (d) of this section are not applicable to individuals who can properly demonstrate proof of laboratory confirmation of immunity or laboratory confirmation of disease. Vaccines for which this may be potentially demonstrated, and acceptable methods for demonstration, are found in §97.65 of this subchapter [~~title~~] (relating to Exceptions to Immunization Requirements (Verification of Immunity/History of Illness)). Such a student cannot participate in coursework activities involving the contact described in subsection (a) of this section until such time as proper documentation has been submitted and accepted.

(d) Students enrolled in schools of veterinary medicine.

(1) Rabies Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves direct contact with animals or animal remains shall receive a complete primary series of rabies vaccine prior to such contact. Serum antibody levels must be checked every two years, with a booster dose of rabies vaccine administered if the rabies virus-neutralizing antibody response is inadequate according to current Centers for Disease Control and Prevention guidelines.

(2) Hepatitis B Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves potential exposure to human or animal blood or bodily fluids shall receive a complete series of hepatitis B vaccine prior to such contact.

(3) Tetanus-Diphtheria Vaccine. One dose of a tetanus-diphtheria toxoid (Td) is required within the last ten years. The booster dose may be in the form of a tetanus-diphtheria-pertussis containing vaccine (Tdap).

(e) Requirements regarding acceptable evidence of vaccination are found at §97.68 of this subchapter [~~title~~] (relating to Acceptable Evidence of Vaccination(s)).

(f) Exclusions from compliance are allowable for students in institutions of higher education, including students enrolled in health-related and veterinary courses, on an individual basis for medical contraindications, reasons of conscience, including a religious belief, and active duty with the armed forces of the United States. Students in these categories must submit evidence for exclusion from compliance as specified in the Health and Safety Code §161.0041, Education Code

§51.933(d), and §97.62 of this subchapter (relating to Exclusions from Compliance).

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

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Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 776-6319

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§1.301, 1.302, 1.1101, 1.1901, and 1.1904, concerning various sections that reference the General Services Commission (GSC). The GSC was abolished in 2001 under Senate Bill 311, 77th Legislature, 2001, and its duties were transferred to other state agencies under SB 452, 79th Legislature, 2005; SB 727, 79th Legislature, 2005; and House Bill 3560, 80th Legislature, 2007. Amendments to §1.301 and §1.302 implement SB 452 and SB 727. Amendments to §§1.1101, 1.1901, and 1.1904 implement HB 3560.

EXPLANATION. Amending §§1.301, 1.302, 1.1101, 1.1901, and 1.1904 is necessary to remove references to the GSC and its rules because the GSC was abolished under SB 311. After the GSC was abolished, its authority to determine the cost for copies of public records was transferred to the Office of the Attorney General (OAG) under SB 452 and SB 727. Additionally, the GSC's authority to determine procedures for vendor protests of procurement and determine the assignment and use of agency vehicles was transferred to the Texas Comptroller of Public Accounts (CPA) under HB 3560. Because the GSC's authority was transferred to other agencies after its abolition, TDI proposes amending sections of 28 TAC Chapter 1 to accurately cite the proper agencies and their rules. The amended sections are otherwise consistent with OAG and CPA rules, so no updates are needed beyond the references to the agencies and their rules.

Descriptions of the sections' proposed amendments follow.

Section 1.301. Amendments to §1.301 replace a reference to the GSC and its rules with a reference to the OAG and its rules, add the abbreviation "TDI" for the Texas Department of Insurance, and replace the word "shall" with "will" for consistency with TDI plain language preferences.

Section 1.302. Amendments to §1.302 remove the $1 fee a custodian of records is entitled to under Civil Practices and Remedies Code §22.004, reducing the fee amount required by the section to $10. Amendments also update the section for plain language by replacing "shall be" with "is" and "inclusive of" with "including," and they add the title for Civil Practice and Remedies Code §22.004 for clarity.

Section 1.1101. An amendment to §1.1101 replaces a reference to the GSC with a reference to the CPA and adds the relevant CPA rules' titles for clarity.

Section 1.1901. Amendments to §1.1901 replace a reference to the GSC with a reference to the CPA and add the title of Government Code §2171.1045 for clarity. The citation to Government Code §2171.1045 is also updated for plain language.

Section 1.1904. Amendments to §1.1904 replace the reference to the GSC with a reference to the CPA and ensure the full title of the State Vehicle Fleet Management Plan is in the text.

In addition, the proposed amendments include nonsubstantive rule drafting and formatting changes for plain language and to conform the sections to TDI's current style and improve the sections' clarity. These changes include replacing "shall" with "must" or "will."

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Justin Beam, chief clerk, General Counsel Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Mr. Beam made this determination because the proposed amendments do not significantly add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Beam does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Beam expects that administering them will have the public benefit of ensuring that TDI's rules conform to current agency rules and practices under SB 452, SB 727, and HB 3560, as well as reducing fees for certification of records.

Mr. Beam expects that the proposed amendments will decrease the cost of compliance because they decrease an existing fee and do not impose new requirements or impose requirements beyond those in statute. The proposed amendments simply update rule sections to reflect changes concerning applicable agencies made by SB 452, SB 727, HB 3560.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. This is because the amendments decrease an existing fee and do not impose new requirements or impose requirements beyond those in statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will decrease fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 15, 2025. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 15, 2025. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER B. FEES, CHARGES, AND COSTS

28 TAC §1.301, §1.302

STATUTORY AUTHORITY. TDI proposes to amend §1.301 and §1.302 under Government Code §552.262 and Insurance Code §§202.003(a), 202.051(2), and 36.001.

Government Code §552.262 requires each state agency to use the rules adopted by the OAG in determining charges for providing copies of public information.

Insurance Code §202.003(a) directs TDI to set and collect a fee for copying any paper of record in an amount sufficient to reimburse the state for the actual expense.

Insurance Code §202.051(2) directs TDI to impose and receive from each authorized insurer writing insurance in Texas a fee for affixing the official seal and certifying to the seal in an amount not to exceed $20.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 1.301 and §1.302 implement Government Code §552.262 and Insurance Code §202.003(a) and §202.051(2).

§1.301. Charges for Copies of Public Records.

(a) The charge to any person requesting copies of any public record of the Texas Department of Insurance (TDI) will [~~shall~~] be the charge for such copy or copies as established by the Office of the Attorney General in 1 TAC Chapter 70 (relating to Cost of Copies of Public Information) [~~General Services Commission in 1 TAC §§111.61-111.70~~].

(b) TDI [~~The Texas Department of Insurance~~] may waive the charges addressed in subsection (a) of this section, at the discretion of the commissioner[~~,~~] or the commissioner's designee, if a public benefit would result from such waiver.

§1.302. Charges for Affixing the Official Seal and Certifying to the Seal.

The charge to any person or entity requesting the affixing of the official seal and certifying to the seal is $10 [~~shall be $11, inclusive of the $1.00 fee required by the Civil Practice and Remedies Code, §22.004~~].

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

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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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SUBCHAPTER J. PROCEDURES FOR VENDOR PROTESTS OF PROCUREMENTS

28 TAC §1.1101

STATUTORY AUTHORITY. TDI proposes to amend §1.1101 under Government Code §2155.076 and Insurance Code §36.001.

Government Code §2155.076 requires each state agency by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues that are consistent with the CPA's rules.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 1.1101 implements Government Code §2155.076.

§1.1101. Purpose.

The purpose of this subchapter is to provide a protest procedure to be used by any actual or prospective bidder, offeror, proposer, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract by the department. These procedures are consistent with rules adopted by the Texas Comptroller of Public Accounts in 34 TAC Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals) [~~General Services Commission~~].

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

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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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SUBCHAPTER Q. ASSIGNMENT AND USE OF AGENCY VEHICLES

28 TAC §1.1901, §1.904

STATUTORY AUTHORITY. TDI proposes to amend §1.1901 and §1.1904 under Government Code §2171.1045 and Insurance Code §36.001.

Government Code §2171.1045 requires each state agency to adopt rules consistent with the management plan adopted by the CPA under Government Code §2171.104.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 1.1901 and §1.1904 implement Government Code §2171.104 and §2171.1045.

§1.1901. Purpose.

This subchapter sets out the process for the assignment and use of the department's vehicles. This subchapter implements [~~the provisions of §2171.1045 of the Texas~~] Government Code §2171.1045, concerning Restrictions on Assignment of Vehicles, and is consistent with the State Vehicle Fleet Management Plan as adopted by the Office of Vehicle Fleet Management of the Texas Comptroller of Public Accounts [~~General Services Commission~~].

§1.1904. Waiver or Exemption.

The department will cooperate with the Texas Comptroller of Public Accounts [~~General Services Commission~~] to identify, request and, if appropriate, use any waiver or exemption provision in the State Vehicle Fleet Management Plan based on conditions specific to the department in the interest of promoting fiscal efficiency and good business practices.

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

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Jessica Barta
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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER H. CANCELLATION, DENIAL, AND NONRENEWAL OF CERTAIN PROPERTY AND CASUALTY INSURANCE COVERAGE

DIVISION 1. GENERAL PROVISIONS

28 TAC §5.7015

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.7015, concerning unearned premium refunds. The proposed amendments implement Insurance Code §558.002 and §558.003(2).

EXPLANATION. Amending §5.7015 is necessary to ensure compliance with Insurance Code §558.002 and §558.003(2). Under Insurance Code §558.002(d), insurers are required to refund the appropriate portion of any unearned premium to a policyholder whenever a personal automobile or residential property insurance policy is cancelled before the end of its term. Under Insurance Code §558.003(2), the commissioner must establish guidelines to determine the appropriate portion of unearned premium that must be refunded.

The amendments to §5.7015 establish that when a personal automobile or residential property policy is cancelled, the appropriate portion to be refunded is the full amount of any unearned premium, which must be calculated pro rata. In effect, the amendments prohibit insurers from using a "short rate" provision or otherwise retaining any unearned premium. A short rate provision allows an insurer to retain a portion of unearned premium, which means that an insured's refund is less than a pro rata amount of the policy premium. The amendments remove any uncertainty about the amount that insurers must return, and they align with policyholder expectations because most personal automobile and residential property policies already calculate unearned premium proportionately.

The proposed amendments do not prohibit insurers from having a minimum retained premium. For example, assume that a company issues a one-year personal automobile policy effective January 1 with an annual premium of $365 and the policy has a minimum retained premium of $25. If the insured cancels the policy effective February 19 (i.e., the 50th day of the policy), the pro rata refund amount would be $315. If the insured cancels effective January 10 (i.e., the 10th day of the policy), the refund amount would be $340 (i.e., $365 annual premium minus the $25 minimum retained premium). Any minimum retained premium or other earned amount that is retained for nonrefundable expenses incurred in writing a policy, as well as justification for the amount, must be included in a rate or rule filing required under 28 TAC Chapter 5, Subchapter M, Division 6.

To provide adequate time for insurers to comply with these changes, TDI proposes a 180-day delayed effective date. The delayed effective date gives any insurers that have short rate provisions ample time to update policy forms and determine whether to update rate filings. The delayed effective date also gives any insurers that plan to file other policy form updates or changes the opportunity to mitigate costs by making the changes at the same time.

Descriptions of the section's proposed amendments follow.

Section §5.7015. Subsection (a) is amended to remove the phrase "the appropriate portion of" to more clearly require personal automobile and residential property insurers to refund any unearned premium when a policy is cancelled or terminated before the end of its term. The amendments also specify that un-

earned premium must be calculated pro rata. The amendments also add the title of Insurance Code §558.002, for consistency with agency drafting style and plain language preferences.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Mr. Muckerheide made this determination because the amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Muckerheide expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code §558.002. In addition, the proposed amendments will benefit personal automobile and residential property policyholders by allowing consumers to shop and change policies or insurers without receiving less than a pro rata refund for cancelling a current policy before the end of its term. Because policyholders do not receive a policy contract until after the policy is purchased, it is especially important to remove potential financial impediments or disadvantages to shopping and changing policies. Policyholders will also benefit from receiving a refund amount that more likely corresponds with consumer expectations.

Mr. Muckerheide expects that the proposed amendments may increase the cost of compliance for the few insurers that currently have short rate provisions but that these costs may be mitigated by a delayed effective date for compliance.

Costs

TDI anticipates that requiring the changes described in §5.7015(a) will result in costs for insurers with short rate provisions because those insurers will need to revise policies to remove the short rate language and comply with the pro rata calculation requirement. The cost to comply will vary depending on insurers' current operations. While it is not feasible to determine the actual time required or the cost of employees needed to comply with the requirements, TDI estimates that drafting new policy language to reflect the mandatory changes to the amount of unearned premium refund owed to policyholders would take a range of one to two hours to complete and might require an attorney. According to the May 2024 Bureau of Labor Statistics Occupational Employment and Wage Statistics at www.bls.gov/oes/current/oes_nat.htm, the national mean hourly wage for the "Lawyers" classification is $87.86.

TDI anticipates that incorporating the updated language into insurers' existing policy form templates, filing those updated forms with TDI, and updating policy administration systems to program the calculation of the refund amount would take a range of five to 15 hours to complete and would likely require both software programming and clerical staff. According to the May 2024 Bureau of Labor Statistics Occupational Employment and Wage Statistics at www.bls.gov/oes/current/oes_nat.htm, the national mean hourly wage for the "Software and Web Developers, Programmers, and Testers" classification is $65.34, and the national mean hourly wage for the "Secretaries and Administrative Assistants, Except Legal, Medical, and Executive" classification is $25.03.

TDI anticipates there could be printing, copying, mailing, and transmitting costs associated with providing updated forms to policyholders at renewal and would likely require clerical staff. It is not possible for TDI to estimate the total increased printing, copying, mailing, and transmitting costs related to compliance with this proposal because there are many factors involved that TDI cannot quantify. For example, an insurer might conduct business with its policyholders electronically and would not incur printing, copying, mailing, or transmitting costs. Insurers are more capable of accurately estimating any costs they will incur to comply.

Opportunity to Eliminate or Mitigate Costs

With a 180-day delayed effective date, insurers that already plan to make and file other form updates or changes during that period would either not incur any costs resulting from this rule amendment or such costs would be significantly mitigated because the insurers would already be incurring those costs to make the other form updates and changes.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments may have an adverse economic effect on small or micro businesses if any of those businesses are personal automobile or residential property insurers that have short rate provisions. According to the definition of small or micro business, TDI estimates there are approximately 60 to 65 residential property insurers and 70 to 75 personal automobile insurers. TDI identified three potentially small or micro insurers that may be required to update policy forms containing short rate provisions. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses.

TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate effect on rural communities because the rules do not apply to rural communities.

TDI considered the following alternatives to minimize any adverse impact on small and micro businesses while accomplishing the proposal's objectives:

(1) not proposing amendments to §5.7015;

(2) proposing a different requirement for small and micro businesses; and

(3) extending the deadline for compliance under §5.7015.

Not proposing amendments to §5.7015. TDI declined this option because it would not accomplish the goal of ensuring that personal automobile and residential property policyholders are refunded any unearned premium under Insurance Code §558.002. There are a few insurers that currently retain some unearned premium and refund less than a pro rata amount of the policy premium. To address this, the proposal establishes uniform requirements for insurers that implement important consumer protections. This will allow policyholders to change policies or insurers without a refund penalty, and it aligns with ordinary policyholder expectations about the refund amount. Not proposing §5.7015 would allow some insurers to continue retaining some unearned premium that should be refunded to policyholders. In addition, not proposing the amendments to §5.7015 would keep policyholders in a financially disadvantageous position because

they could receive less than a pro rata refund of premium when changing policies. Policyholders do not receive a copy of the policy contract until after the policy is purchased, making it difficult to know about any short rate provision before they buy. For these reasons, TDI rejected this option.

Proposing a different requirement for small and micro businesses. TDI declined this option because it would not accomplish the goal of creating a uniform procedure to implement Insurance Code §558.002(d). Imposing different requirements would result in disparate treatment of policyholders who purchase a policy from a small or micro business. It would place policyholders who purchase a policy through small or micro businesses in a disadvantageous position compared to those who purchase a policy from larger insurers. Not requiring a uniform approach would likely leave policyholders unaware that some insurers could refund less than a pro rata amount of premium. Proposing different requirements for small and micro businesses would not provide consistency across insurers. All personal automobile and residential property policyholders should receive consistent, predictable, and appropriate calculation of premium refunds whenever a policy is cancelled, regardless of the size of the insurer. For these reasons, TDI rejected this option.

Extending the deadline for compliance under §5.7015. TDI decided to extend the deadline for compliance for all insurers because this option ensures consistent application of Insurance Code §558.002, protects all policyholders who purchase a personal automobile or residential property policy, and lessens confusion by having only one effective date that applies to all applicable Texas insurers. In addition, applying a 180-day delayed effective date will extend the deadline for compliance and help alleviate some of the possible economic impacts on any insurers that have short rate provisions, including any small and micro businesses. By giving 180 days to comply, insurers will have the opportunity to incorporate the new requirements under §5.7015 with other planned policy updates or changes during that period. For these reasons, TDI has decided to incorporate this option into the proposal.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §5.7015 are necessary to implement legislation. The proposed amendments implement Insurance Code §558.002 and §558.003.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 15, 2025. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on September 15, 2025. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the amendments to §5.7015 under Insurance Code §§558.002, 558.003 and 36.001.

Insurance Code §558.002 states that this chapter applies to an insurer that issues an insurance policy that requires the insurer to maintain an unearned premium reserve for the portion of the written policy premium applicable to the unexpired or unused part of the policy period for which the premium has been paid.

Insurance Code §558.003 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 558 and establish appropriate guidelines to determine the portion of unearned premium that must be refunded to a policyholder.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.7015 implements Insurance Code §558.002 and §558.003(2).

§5.7015. Refund of Unearned Premium.

(a) Insurers must refund [~~the appropriate portion of~~] any unearned premium to the policyholder not later than the 15th business day after the effective date of cancellation or termination of a personal automobile or residential property insurance policy, as required by Insurance Code §558.002(d), concerning Applicability of Chapter; Refund of Unearned Premium. Unearned premium must be calculated pro rata.

(b) For purposes of this section and Insurance Code §558.002(d), the "effective date of cancellation or termination" means the date the insurer receives notice of the cancellation or termination, or the date of the cancellation or termination, whichever is later. This does not change the actual date of cancellation or termination for calculating the amount of unearned premium or any other purpose.

(c) Insurers may refund unearned premium by applying it as a credit to other premium due on the same policy, unless the policyholder requests otherwise.

(d) This section applies to any unearned premium, including any that results from cancellation or termination of an entire policy or an endorsement.

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

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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6655

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CHAPTER 9. TITLE INSURANCE
SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.402

The Texas Department of Insurance (TDI) proposes new 28 TAC §9.402, concerning annual reporting of title insurance statistical data. Proposed new §9.402 implements Insurance Code §2703.153.

EXPLANATION. TDI is required by Insurance Code §2703.153 to promulgate title insurance rates based on data submitted annually from title insurance agents and companies. Insurance Code §2703.153 also requires title insurance agents and companies to report that data to TDI annually. TDI then publishes a compilation report about the data following its collection and review. New §9.402 is proposed to increase the efficiency of data collection by creating fixed annual reporting due dates for the industry with corresponding due dates for TDI to publish instructions for the data collection and compilation reports. This will allow the data collection to proceed at a consistent and predictable time every year without issuing a data call bulletin. This will aid both TDI and the industry.

A description of the new section follows.

Section 9.402. Proposed new subsection (a) restates the statutory requirement for annual data collection and establishes the annual dates for TDI to publish instructions for title insurance agents and underwriters. New subsections (b) and (c) establish the dates that the industry data is required to be reported to TDI. Subsection (d) establishes the dates that TDI will publish the compilation reports for agents and companies.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. J'ne Byckovski, chief actuary of the Property and Casualty Actuarial Office, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section other than that imposed by the statute. Ms. Byckovski made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. Byckovski does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Ms. Byckovski expects that administering the proposed section will have the public benefit of ensuring that TDI's rules conform to Insurance Code §2703.153 and that TDI receives the necessary data for setting title insurance rates on a consistent and predictable schedule.

Ms. Byckovski expects that the proposed new section will not increase the cost of compliance with Insurance Code §2703.153 because it does not impose requirements beyond those in the statute. Insurance Code §2703.153 requires that companies and agents report data to TDI annually, and this rule creates a consistent time and procedure for those required to report the data without changing their existing reporting costs. As a result, the cost associated with reporting data does not result from the enforcement or administration of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. The people and entities this rule will affect are already required to report data annually, and this rule would require only that the data be reported at the same time every year. If anything, this predictability will increase efficiency for regulated people and entities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Also, no additional rule amendments are required under Government Code §2001.0045 because the proposed rule is necessary to implement legislation. The proposed rule implements Insurance Code §2703.153(a) and (b).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new rule is in effect, the rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

The proposed rule does not expand, limit, or repeal an existing regulation, but the changes would establish a consistent and predictable time for submission of data for title agents and title companies.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or

require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 15, 2025. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on September 15, 2025. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes new §9.402 under Insurance Code §§2551.003(a)(3), 2703.153(a) and (b), and 36.001.

Insurance Code §2551.003(a)(3) authorizes the commissioner to adopt rules the commissioner finds necessary to implement the Texas Title Insurance Act.

Insurance Code §2703.153(a) requires that each title insurance company and title insurance agent engaged in the business of title insurance in this state annually report data to TDI for the purpose of assisting with the promulgation of premium rates.

Insurance Code §2703.153(b) authorizes TDI to establish the form in which title insurance data is submitted to TDI.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Proposed new §9.402 implements Insurance Code §2703.153.

§9.402. Annual Submission of Title Insurance Statistical Reports.

(a) Each title insurance company and title insurance agent must submit its statistical report required by Insurance Code §2703.153, concerning Collection of Data for Fixing Premium Rates; Annual Statistical Report, in the form and manner TDI prescribes. Instructions for submission will be available on TDI's website on or before:

(1) February 1 for title agents; and

(2) March 1 for title companies.

(b) Title agents must submit their statistical report by March 1 of each year.

(c) Title companies must submit their statistical report by April 1 of each year.

(d) TDI will publish on its website compilation reports summarizing the submitted statistical reports by:

(1) July 1 of each year for title agents; and

(2) August 1 of each year for title companies.

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

Filed with the Office of the Secretary of State on July 30, 2025.

TRD-202502693
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 676-6655

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

31 TAC §15.41

The General Land Office (GLO) proposes amendments to Title 31, Part 1, Subchapter B §15.41, relating to the Coastal Erosion Planning and Response Act, Chapter 40 of the Texas Natural Resources Code to correct citations to rules.

BACKGROUND AND SECTION BY SECTION ANALYSIS OF THE PROPOSED AMENDMENT TO §15.41

The purpose of the Coastal Erosion Planning and Response Act, Texas Natural Resources Code Sections 33.601-.613 (CEPRA), is to implement coastal erosion response projects, demonstration projects, and related studies to reduce the effects of coastal erosion and to understand the process of coastal erosion as it continues to threaten public beaches, natural resources, coastal development, public infrastructure, and public and private property. The funds are awarded to qualified project partners through a competitive application process in which all coastal resources funding applications are evaluated and scored by the GLO's CEPRA team. Selected projects are approved by the Commissioner.

The proposed edits update citations to 31 TAC 501.26 to reflect changes made to that section in 2022. The citation relates to Policies for Construction in the Beach/Dune System which has been moved to 31 TAC 26.26(b). The amendment does not make substantive changes to the rule. It replaces an old, repealed citation with the newest amended citation.

FISCAL, BUSINESS AND EMPLOYMENT IMPACTS

David Green, Deputy Director, Coastal Resources, has determined that for each year of the first five years the amendments as proposed are in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended sections because they are non-substantive changes. No changes in employment will be required for the GLO or local governments for each of the first five years will be necessary.

Mr. Green has determined that the proposed amendments will not increase the costs of compliance for micro, small or large business or individuals required to comply with amendments and that a local employment impact statement on these amendments is not required because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect. The GLO has also determined that an economic impact statement and regulatory flexibility analysis on these proposed regulations are not required because the

proposed regulations do not have a material adverse economic effect on small business.

PUBLIC BENEFIT

Mr. Green has determined that the public will benefit from the amendments because the changes correct reference to applicable rules thereby giving public clear direction as to how an applicant must prepare an application for CEPRA funds. Clarity of the rules also enhances the ability of the GLO to implement the rules and effectively support its application requirements.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriation to the agency, and will not require the creation of new employee positions nor eliminate current employee positions. This rulemaking does not affect the fees paid to the agency or increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rule would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve that process of applying for CEPRA funds.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed amendments reflect updates are not subject to the Coastal Management Program (CMP), 31 TAC §505.11(c), relating to the Actions and Rules subject to the CMP. Therefore, consistency review is not required. Individual erosion response projects undertaken in compliance with these rules may be subject to the CMP, and consistency with the CMP will be individually determined at the appropriate stage of project planning.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the amendments to determine whether Texas Government Code, Chapter 2007 (Private Real Property Rights Preservation Act), is applicable and a detailed takings assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments by the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

MAJOR ENVIRONMENTAL RULE ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific Intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendment is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code, §33.602(c).

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code, §33.602(c) that provides the Commissioner of the GLO with the authority to adopt rules concerning coastal erosion as necessary to implement Texas Natural Resources Code, Chapter 33, Subchapter H.

§15.41. Evaluation Process for Coastal Erosion Studies and Projects.

(a) The General Land Office (GLO) will conduct an evaluation of potential coastal erosion studies and projects to designate funding for qualifying projects from the coastal erosion response account (Account). The evaluation process will consist of a review by the GLO of Coastal Resources Funding Application (Applications) to identify priority projects for funding. Throughout the evaluation process, the goal of the GLO is to work cooperatively with qualified project partners to identify and select preferred erosion response solutions to address erosion problems identified in the Applications.

(1) (No change.)

(2) To be considered for funding under the Account, a potential project partner must submit an Application to the GLO by the GLO's established submission deadline.

(A) The submitted Application must include the following information to be considered complete:

(i) - (xv) (No change.)

(xvi) a description of how the project is consistent with the Coastal Management Plan's enforceable policies set out in 31 TAC §26.26(b) of this title [~~31 TAC §501.26(b)~~] (relating to Policies for Construction in the Beach/Dune System), and identification of whether the project involves structural shoreline protection on or landward of a public beach; and

(xvii) (No change.)

(B) The GLO will evaluate received Applications based on the following general requirements:

(i) - (viii) (No change.)

(ix) if the project involves structural shoreline protection on or landward of a public beach, whether such project uses innovative technologies designed or engineered to minimize beach scour in accordance with Texas Natural Resources Code, §33.603(b)(14) and is consistent with the Coastal Management Plan's enforceable policies set out in 31 TAC §26.26(b) [~~31 TAC §501.26(b)~~] of this title (relating to Policies for Construction in the Beach/Dune System).

(C) - (E) (No change.)

(3) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State on August 4, 2025.

TRD-202502734
Jennifer Jones
Chief Clerk And Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 475-1859

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CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §19.6, §19.7

The General Land Office (GLO) proposes amendments to Title 31, Part 1, Subchapter A §19.6 and new §19.7, relating to the authority of the Oil Spill Prevention and Response Act of 1981, Chapter 40 of the Texas Natural Resources Code (OSPRA) to amend procedures in §19.6 and add and modify enforcement provisions and to make non-substantive edits.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.6

Proposed amendment to subsection amends the language to ensure it is clear that claims for confidentiality of documentation, records, and information must be done in writing when the item is filed.

BACKGROUND AND ANALYSIS OF NEW SECTION §19.7

Proposed amendment creates new §19.7 to address enforcement. The language present in §19.7 is substantially similar to the language present in §19.14(e). Moving the language from the Spill Prevention and Preparedness subchapter of the code to the General Provisions subchapter of the code clarifies that the enforcement provisions are intended to apply to facility owners and operators and all other parties that may cause the release of oil into the coastal environment. Language reciting OSPRA penalty provisions is left out of the language as it is already addressed in the statute and language giving examples of enforcement is deleted because other provisions of these rules can be used to determine when enforcement is appropriate. Additionally, §19.7(a)(2) provides additional factors the commissioner must consider for "any GLO penalty policy."

FISCAL AND EMPLOYMENT IMPACTS

Mr. Jimmy A. Martinez, Deputy Director of GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amendments as proposed are in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended sections because the majority of the changes are non-substantive changes necessary to reflect how the GLO is currently doing business and to clarify existing rules.

The changes that are substantive such as the creation of §19.7 to address enforcement in a clearer manner present no notable cost to the agency to comply with or enforce the amendments to these rules. The addition of language to §19.7 reflects the broader application of OSPRA and GLO policy. No changes in employment will be required for the GLO. There will be no fiscal impact on local governments for each of the first five years because local governments do not have a role in implementation over the proposed changes. To the extent that local governments are regulated under these rules, there may be minimal fiscal impacts associated with the substantive changes, but those changes are not sufficient to result in a material cost to them as a regulated entity.

Mr. Martinez has determined that the proposed amendments will not increase the costs of compliance for small or large business or individuals required to comply with amendments. Current law establishes basic requirements for oil spill prevention and response planning. The amendments acknowledge how the GLO performs business, clarifies the existing requirements, and where there are changes to substantive requirements, the enhanced standards have minimal costs associated with implementation.

The GLO has determined that a local employment impact statement on these proposed regulations is not required because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect. The GLO has determined that an economic impact statement and regulatory flexibility analysis on these proposed regulations are not required because the proposed regulations do not have a material adverse economic effect on small business.

PUBLIC BENEFIT

Mr. Martinez has determined that the public will benefit from the amendments because the changes reflect how the GLO is currently doing business and clarify existing rules. Some non-substantive changes that benefit the public include the increased clarity of claims of confidentiality. These changes will make procedural aspects clearer for the regulated community and clarify existing requirements so that the regulated community has a better understanding of what is required. Clarity of the rules also enhances the ability of the GLO to implement and enforce these regulations.

The substantive amendment that adds §19.7 addresses penalties in a clearer manner and enhances the owner, operator, or other party's ability to understand penalties that may be enforced against them. This change reflects existing enforcement authority under OSPRA and GLO regulations and policies.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriation to the agency, and will not require the creation of new employee positions nor eliminate current employee positions. This rulemaking does not affect the fees paid to the agency. The proposed rulemaking does create a new rule. However, the rule is consistent with statutory authority and is substantially similar to an already existing rule (§19.14(e)) that will be repealed. This change will not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rule would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed amended rules concerning procedures for oil spill prevention and response planning and enforcement reflect updates to bring the rules in line with current organizational practices and are not subject to the Coastal Management Program (CMP), 31 TAC §505.11(c), relating to the Actions and Rules subject to the CMP. Therefore, consistency review is not required.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the new rules to determine whether Texas Government Code, Chapter 2007 (Private Real Property Rights Preservation Act), is applicable and a detailed takings assessment is required. The GLO has determined that the proposed amendments and new rule do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments by the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

MAJOR ENVIRONMENTAL RULE ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific Intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendment and new rule are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code, §§40.109 - 40.113 and 40.251 - 40.254. The Texas Natural Resources Code provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods and reporting, plan criteria and penalties, hearings, and orders.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under OSPRA, Texas Natural Resources Code, §40.007(a), which give the Commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA, and §40.117(a)(10) & (11),which provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods, and reporting, criteria for spill response planning and penalties, hearings, and orders.

Texas Natural Resources Code §§40.109- 40.117 and 40.251-40.258 are affected and implemented by the proposed amendment to the rule.

§19.6. Confidentiality.

An applicant, claimant, or person filing information with the General Land Office (GLO) must make any claim of confidentiality of documentation, records, or information in writing when it is filed with the GLO or the claim of confidentiality is waived.

§19.7. Enforcement.

Penalties. GLO may pursue administrative penalties under TNRC §40.252 if an owner or operator violates a provision of TNRC §40.1-304 or rules, authorizations, or orders adopted under authority of OSPRA. When determining the amount of the penalty, the commissioner must take into consideration the factors identified in TNRC §40.252, any applicable GLO penalty policy and other relevant factors.

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

Filed with the Office of the Secretary of State on August 4, 2025.

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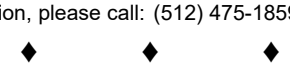
Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 475-1859



SUBCHAPTER B. SPILL PREVENTION AND PREPAREDNESS

31 TAC §§19.12 - 19.14, 19.20

The General Land Office (GLO) proposes amendments to Title 31, Part 1, Subchapter B §§19.12 - 19.14 and 19.20, relating to the authority of the Oil Spill Prevention and Response Act of 1981, Chapter 40 of the Texas Natural Resources Code (OSPRA) to reflect current organizational standards, remove subsection, clarify terms, and make non-substantive edits.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.12

Throughout the entire section the language adds the term "owners" as a party to which the facility rules will apply to ensure that it is clear that "owners or operators, which are specifically defined in §19.2, are responsible for following the rules. This also makes it consistent with other similar provisions in requiring operators to comply with these rules.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.12(a)

Proposed amendments modify currently existing language to clarify terms and more closely reflect the language of OSPRA. Staff has also removed references to "waterfront or offshore facility" and relies upon the term ‘facility’ which is defined in §19.2(5) as any "waterfront or offshore facility." Use of a defined terms is more concise and ensures the consistent use of defined terms. The terms gathering lines and flow lines has been deleted because these types of structures are not covered by OSPRA certification requirements. The second sentence of this section has been rewritten to clarify that if any part of a site has a "waterfront or offshore facility" than the entire site must be covered by a discharge prevention and response certificate. Language describing what facilities these rules apply is deleted

because it directly quotes language from OSPRA and need not be repeated in the rules.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.12(b)

Staff has also removed references to "waterfront or offshore facility" and relies upon the term ‘facility’ which is defined in §19.2(5) as any "waterfront or offshore facility." Use of a defined terms is more concise and ensures the consistent use of defined terms.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.12(d)

Proposed amendments add "owners" as a party to which the facility rules will apply to ensure that it is clear that owners and operators are responsible for following the rules. Additional changes include modifying currently existing language to reflect changes to the organizational structure of the General Land Office. Additionally, staff has removed reference to the "/" from the General Land Office website URL because it is an error and not part of the GLO website.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.12(e) and (g).

Proposed amendments delete references to operators and adds the term applicant in its place because this provision generally addresses applicants.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.12(i)

Proposed amendment modifies currently existing language to reflect changes to the organizational structure of the General Land Office.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.13

Proposed amendments add "owners" as a party to which the facility rules will apply to ensure that it is clear that owners and operators are responsible for following the rules or add the term applicant, where appropriate.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.14

Throughout the entire section the language adds the term "owners" as a party to which the facility rules will apply to ensure that it is clear that "owners or operators," which is specifically defined in §19.2, responsible for following these rules. This also makes it consistent with other similar provisions in requiring operators to comply with these rules.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.14(a)

Proposed amendments make non-substantive editorial changes to reflect more commonly used language when addressing electronic forms of communication, to clarify the scope of what may be updated and how, and notes that information about contacting the regional office can be obtained by calling the GLO during business hours. The phrase "or certificate" is added to make clear that the GLO's portal can be used to update application and certificate information. Language has also been added to reflect the means a party may use to acquire access to the secure online portal that certificate holders can use to access and update their information.

Amendment also modifies existing language to reflect changes to the organizational structure of the General Land Office.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.14(b)

Staff deletes language in (b)(2) that relates to audits and inspections when renewing certificates. New language in 12(j) addresses when audits and inspections will or may be performed including for purposes of renewal.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.14(e)

Proposed amendment deletes §19.14(e) which has been moved, in part, to new §19.7. The placement of the penalty provisions in §19.14(e) limits the enforcement of these provisions to the certification of facilities. However, the terms of enforcement as outlined in OSPRA also apply to spill response planning and responses to oil spills. Therefore, §19.14(e) will be deleted and replaced by new §19.7 that contains substantially similar language and will have broader application than placement within this subchapter.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.20(e)

Proposed amendment modifies language relating to discharge cleanup industrial organization certifications to increase the term to 5-years, which is consistent with other certificates under OSPRA.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Jimmy A. Martinez, Deputy Director of GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amendments as proposed are in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended sections because the majority of the changes are non-substantive changes necessary to reflect how the GLO is currently doing business and to clarify existing rules.

The changes that are substantive such as the deletion of §19.14(e) to address enforcement in a clearer manner present no notable cost to the agency to comply with or enforce the amendments to these rules. No changes in employment will be required for the GLO. There will be no fiscal impact on local governments for each of the first five years because local governments do not have a role in implementation over the proposed changes. To the extent that local governments are regulated under these rules, there may be minimal fiscal impacts associated with the substantive changes, but those changes are not sufficient to result in a material cost to them as a regulated entity.

Mr. Martinez has determined that the proposed amendments will not increase the costs of compliance for small or large business or individuals required to comply with amendments. Current law establishes basic requirements for oil spill prevention and response planning. The amendments acknowledge how the GLO performs business, clarifies the existing requirements, and where there are changes to substantive requirements, the enhanced standards have minimal costs associated with implementation.

The GLO has determined that a local employment impact statement on these proposed regulations is not required because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect. The GLO has determined that an economic impact statement and regulatory flexibility analysis on these proposed regulations

are not required because the proposed regulations do not have a material adverse economic effect on small business.

PUBLIC BENEFIT

Mr. Martinez has determined that the public will benefit from the amendments because the changes reflect how the GLO is currently doing business and clarify existing rules. Some non-substantive changes that benefit the public include those to reflect current organizational procedures and make non-substantive edits. These changes will make procedural aspects clearer for the regulated community and clarify existing requirements so that the regulated community has a better understanding of what is required. Clarity of the rules also enhances the ability of the GLO to implement and enforce these regulations.

The changes that are substantive such as the removal of §19.14(e) to address enforcement in a clearer manner enhance the owner, operator, or other party's ability to understand penalties that may be enforced against them. This change enhances the enforcement ability of OSPRA and its regulations.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriation to the agency, and will not require the creation of new employee positions nor eliminate current employee positions. This rulemaking does not affect the fees paid to the agency. The proposed rulemaking does repeal an existing rule. However, the rule is substantially similar to a newly established rule (§19.7). This change will not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rule would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed amended rules concerning procedures for oil spill prevention and response planning and enforcement reflect updates to bring the rules in line with current organizational practices and are not subject to the Coastal Management Program (CMP), 31 TAC §505.11(c), relating to the Actions and Rules subject to the CMP. Therefore, consistency review is not required.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the new rules to determine whether Texas Government Code, Chapter 2007 (Private Real Property Rights Preservation Act), is applicable and a detailed takings assessment is required. The GLO has determined that the proposed amendments and new rules do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments by the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

MAJOR ENVIRONMENTAL RULE ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific Intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code, §§40.109 - 40.113 and 40.251 - 40.254. The Texas Natural Resources Code provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods and reporting, plan criteria and penalties, hearings, and orders.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under OSPRA, Texas Natural Resources Code, §40.007(a), which give the Commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA, and §40.117(a)(1)-(a)(4), (a)(6) & a(11)which provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods, and reporting, criteria for spill response planning, and certification of discharge clean up organizations.

Texas Natural Resources Code §§40.109 - 40.117 and 40.251 - 40.258 are affected and implemented by the proposed amendment to the rule.

§19.12. Facility Certification Requirements.

(a) Applicability. This section applies to any person who owns or operates a [~~waterfront or offshore~~] facility, as defined by Section 19.2(5) of this title (relating to Definitions). If an owner or operator controls a facility on any part of a site, the entire site [~~part of a waterfront or offshore facility which is waterfront or offshore, the entire facility in which oil is handled or stored under the control of that operator~~] must be covered by the discharge prevention and response certificate. [~~Pipelines, flowlines, gathering lines, or transmission lines that transfer oil across an area of could threaten coastal waters are considered facilities.~~] A combination of interrelated or adjacent tanks, impoundments, pipelines, [~~gathering lines, flow lines,~~] separator or treatment facilities, and other structures, equipment, or devices under common ownership or operation will be considered a single facility under OSPRA. Interrelated means the devices are all an integral part of one commercial or industrial operation or are managed and controlled by a single entity. [~~The term includes facilities owned by units of federal, state, or local government, as well as privately owned facilities.~~]

(b) Current certificate and implementation of certified plan required to operate. No entity may operate a [~~waterfront or offshore~~] facility without implementing a current discharge prevention and response plan that has been certified by the GLO. This requirement does

not apply, however, to an entity that operates a facility and has obtained a waiver from the facility certification requirement pursuant to §19.4 of this title (relating to Waiver) or if an exemption applies to the facility.

(c) Certificate void when owner or operator changes or facility classification level increases. A discharge prevention and response certificate is issued to a specific owner or operator and for a particular facility classification level. When the owner or operator of a facility changes, the discharge prevention and response certificate is void. The new owner or operator of the facility will need to submit an application for a certificate to the GLO before beginning to operate the facility. A certificate is also void when the facility changes its operations in a manner that increases its facility classification level. If an owner or operator increases storage capacity or installs new oil transfer lines at a facility, causing the facility classification to change from small to intermediate or large or from intermediate to large, the owner or operator will need to apply for a new certificate in accordance with 31 TAC §19.12(d).

(d) Obtaining a discharge prevention and response certificate.

(1) The owner or operator of a facility must apply for a discharge prevention and response certificate by submitting a completed application form to the GLO. Application forms are available from the General Land Office, Oil Spill Prevention and Response Division [~~Program~~], 1700 North Congress Avenue, Austin, Texas 78701-1495 or from any regional office of the GLO. The application form can also be downloaded from the GLO's Oil Spill Prevention and Response Division [~~Program~~] website, www.glo.texas.gov[~~/~~].

(2) The certificate application must be signed by a representative of the facility owner or operator who has approved the facility's discharge prevention and response plan and has the authority to commit the necessary resources to implement the plan.

(3) After consultation with the GLO, the applicant must prepare and implement a discharge prevention and response plan that meets the requirements of §19.13 of this title (relating to Requirements for Discharge Prevention and Response Plans) and make the plan available to the GLO for review.

(e) Facility audits. After the GLO determines the application is administratively complete, the GLO may contact the applicant [~~facility operator~~] to discuss the classification of the facility and the discharge prevention and response plan. The GLO will schedule an on-site audit and review of the facility's discharge prevention and response plan and its implementation. The audit will cover the following elements:

(1) the facility's compliance with applicable regulations;

(2) whether the discharge prevention and response plan adequately addresses all the applicable elements required by §19.13;

(3) if the facility is an intermediate or large facility, whether the discharge prevention and response plan specifically addresses the requirements of §19.13(d) and (e); and

(4) whether the discharge prevention and response plan has been implemented, or, if the facility is new, adequate steps have been taken to implement the discharge prevention and response plan.

(f) Additional information. After the on-site audit, the GLO may require an applicant to submit additional information to resolve any issues related to the applicant's discharge prevention and response preparedness. The GLO may also require an applicant to develop and implement additional measures to prevent and respond to unauthorized discharges of oil.

(g) Notification that certification requirements have been met. When the GLO determines the facility has submitted sufficient and accurate information in its application, has made available a discharge and prevention response plan, and has implemented the plan, the GLO will notify the applicant [~~facility operator~~] that the certification requirements have been met and confirm the facility classification.

(h) Change at facility. If there is a change at the facility, the GLO must be notified in writing of the change within 15 days so that a determination of whether a new certificate is required can be made. Facility owners or operators must re-apply for certification if the changes result in higher classification within 15 days of notice from the GLO that the facility classification has changed.

(i) Term for certificates. The GLO will issue certificates with a term of five years from the date of issuance. Each certificate will be assigned an identification number. The facility owner or operator will regularly review and amend the facility information on the GLO's Oil Spill Prevention and Response Division [~~Program~~] interactive website, as appropriate. The identification number will be sent to the person who signed the application form, with instructions on how to update data on the website.

(j) Review of discharge prevention and response plan and inspection or audit of a facility. After a certificate is issued to a facility, the GLO can require the facility owner or operator to submit to the GLO a complete copy of its discharge prevention and response plan for review.

(1) A review of the plan and an inspection or audit of the facility can be required if the GLO determines that there has been a complaint, a spill, a change in ownership or operation at the facility, or the facility is not compliant with these rules or may not be adequately implementing its plan to prevent and respond to unauthorized discharges of oil.

(2) The GLO can also review a plan and perform on-site inspections or audits to review a facility's implementation of the discharge prevention and response plan as part of the renewal process.

(3) Inspections or audits will be performed annually.

(k) Exemptions. The following facilities that handle oil do not need to apply to the GLO for a discharge prevention and response certificate:

(1) Mobile or portable oil-handling equipment, such as a mobile offshore drilling unit, when it is fixed in place for less than 90 days.

(2) A farm, ranch, or residential property that stores up to and including 1,320 gallons of oil for farming, ranching, or residential purposes.

(3) A facility that stores oil exclusively in underground tanks and does not transfer oil to vessels in the water.

(4) A facility that stores or transfers oil only in containers with a volume of 55 gallons or less.

(l) Effect of certificate on other violations. Issuance of a certificate does not estop the state in an action brought under OSPRA, or any other law, from alleging a violation of any such law, other than failure to have a certificate.

§19.13. Requirements for Discharge Prevention and Response Plans.

(a) Applicability. Any person who owns or operates a [~~waterfront or offshore~~] facility and must obtain a discharge prevention and response certificate prior to operation.

(b) Implementation of plans. An owner or operator of any facility that requires certification must develop and implement a written discharge prevention and response plan. Before issuing a certificate,

the GLO will conduct an on-site review of the plan. The GLO will determine whether the facility's plan contains all the information required by this section and has been fully implemented. Any person who operates a [~~waterfront or offshore~~] facility must maintain compliance with the plan requirements.

(c) Required elements of discharge prevention and response plans for all facility classifications. Owners or operators [~~Operators~~] of all facilities that require certification must prepare discharge prevention and response plans which meet the requirements of TNRC §40.111 and include the following information:

(1) the owner and operator of the facility;

(2) the person or persons in charge of the facility, as required by §19.16 of this title (relating to Person in Charge), and a current emergency contact phone number that will be answered 24 hours a day;

(3) the name and address (both physical and mailing) of the facility;

(4) a description of the facility, including:

(A) the location of the facility by latitude and longitude;

(B) the facility's primary activity;

(C) the types of oil handled, whether safety data sheets (SDS) have been prepared for them, and the location where the (SDS) are maintained;

(D) the storage capacity of each tank used for storing oil;

(E) the diameter of all lines through which oil is transferred;

(F) the average daily throughput of oil at the facility; and

(G) the dimensions and capacity in barrels of the largest oil-handling vessel which docks at the facility.

(5) for a facility which normally does not have personnel on-site, a commitment to maintain in a prominent location a legible sign or placard, which must state that the GLO and National Response Center are to be notified of an oil spill and give the 24-hour phone numbers for notifying the GLO and National Response Center, and a description and specific location of all signs;

(6) a general description of measures taken by the facility to prevent unauthorized discharges of oil;

(7) a plan to conduct an annual oil spill drill that entails notifying the GLO and National Response Center and maintenance of a log at the facility which documents when the notification drill was conducted and facility personnel who participated in it;

(8) if oil is transferred at the facility, emergency transfer procedures to be implemented if an actual or threatened unauthorized discharge of oil occurs at the facility;

(9) strategic plans to contain and clean up unauthorized discharges of oil from the facility;

(10) a statement that all facility personnel who might be involved in an oil spill response have been informed that detergents or other surfactants are prohibited from being used on an oil spill in the water, and that dispersants can only be used with the approval of the Regional Response Team, the interagency group composed of federal and state agency representatives that coordinates oil spill responses; and

(11) a description of any secondary containment or diversionary structures, equipment, or systems at the facility that operate to prevent discharged oil from reaching coastal waters, including, at minimum:

(A) a description of all secondary containment at the site; and

(B) the methodology for determining that the containment structures or equipment are adequate to prevent oil from reaching coastal waters.

(d) Additional requirements for facilities classified as intermediate. In addition to the requirements in §19.13(c), owners or operators of intermediate facilities must prepare written discharge prevention and response plans which include the following information:

(1) a description of the worst case unauthorized discharge of oil reasonably likely to occur at the facility and the rationale used to determine the worst case unauthorized discharge;

(2) a description and map of environmentally sensitive areas that would be impacted by the worst case unauthorized discharge and plans for protecting these areas if an oil spill occurs at the facility;

(3) a description of the facility's response strategies to contain and clean up the worst case unauthorized discharge;

(4) a description of discharge prevention procedures implemented at the facility, including procedures to prevent discharges from transfers of oil;

(5) a plan to conduct an annual oil spill drill that includes the following elements:

(A) notifying the GLO and National Response Center;

(B) notifying any third parties, such as discharge cleanup organizations, which have agreed to respond to an oil spill and confirming they would be able to respond to an oil spill at the facility on the day of the drill;

(C) if the facility has spill response equipment stored on-site, deployment of a representative portion of the equipment which would be used to respond to the type of discharge most likely to occur at the facility; and

(D) a log documenting when the annual drill was conducted and the facility personnel who participated in it; and

(6) if the owner or operator has entered into any oil spill response or cleanup contracts or basic ordering agreements with a discharge cleanup organization, copies of the contracts or agreements or a narrative description of their terms.

(e) Additional requirements for facilities classified as large. In addition to the requirements in §19.13(c), owners or operators of large facilities must prepare written discharge prevention and response plans which include the following information:

(1) maps showing vehicular access to the facility, pipelines to and from the facility, and nearby residential or other populous areas;

(2) a site plan of the facility showing:

(A) the location of all structures in which oil is stored;

(B) the location of all areas where oil is transferred at the facility; and

(C) drainage and diversion systems at the facility, such as sewers, outfalls, catchment or containment systems or basins, sumps, and all watercourses into which surface runoff from the facility drains (all of which will be shown on the site plan or maps);

(3) a plan to conduct an annual oil spill drill that includes the following elements:

(A) notifying the GLO and National Response Center;

(B) notifying any third parties, such as discharge cleanup organizations, which have agreed to respond to an oil spill and confirming they would be able to respond to an oil spill at the facility on the day of the drill;

(C) if the facility has spill response equipment stored on-site, deployment of a representative portion of the equipment which would be used to respond to the type of discharge most likely to occur at the facility; and

(D) a log documenting when the annual drill was conducted and the facility personnel who participated in it;

(4) a detailed description of the facility's discharge prevention and response capability, including:

(A) leak detection and safety systems to prevent accidental discharges of oil, including a description of equipment and procedures;

(B) schedules, methods, and procedures for testing, maintaining, and inspecting storage tanks, pipelines, and other equipment used for handling oil;

(C) schedules, methods, and procedures for conducting accidental discharge response drills;

(D) whether the facility's oil spill response capability will primarily be based on contracts or agreements with third parties or on the facility's own personnel and equipment;

(E) planned response actions, the chain of command, lines of communication, and procedures for notifying the GLO, emergency response and public safety entities, other agencies, and neighboring facilities in the event of an unauthorized discharge of oil;

(F) oil spill response equipment and supplies located at the facility, their ownership and location, and the time required to deploy them;

(G) if the facility owns and maintains oil spill response equipment, the schedules, methods, and procedures for maintaining the equipment in a state of constant readiness for deployment;

(H) if the owner or operator has entered into any oil spill response or cleanup contracts or basic ordering agreements with a discharge cleanup organization, copies of the contracts or agreements or a narrative description of their terms;

(I) the worst case unauthorized discharge of oil reasonably likely to occur at the facility and the rationale used to determine the worst case unauthorized discharge;

(J) a description and map of environmentally sensitive areas that would be impacted by the worst case unauthorized discharge and plans for protecting these areas if an oil spill occurs at the facility;

(K) a description of response strategies that would be implemented to contain and clean up the worst case unauthorized discharge;

(L) information on the facility's program for training facility personnel on accidental discharge prevention and response;

(M) information on facility personnel who have been specifically designated to respond to an oil spill, including any training they have received and where the training records are maintained;

(N) plans for transferring oil during an emergency; plans for recovering, storing, separating, transporting, and disposing of oily waste materials generated during an oil spill response; and

(O) plans for providing emergency medical treatment, site safety, and security during an oil spill.

§19.14. Updating of Information; Renewal and Suspension of Certificates [; ~~Enforcement~~]

(a) Update of [~~application~~] information. Facility owners or operators are required to report any material changes as provided for in §19.12(h). Facility owners or operators must ensure that the information in the interactive website is regularly updated to reflect any changes as provided in §19.12(i). Changes that do not require a re-classification must be reported no later than the anniversary of the date the certificate was issued. Facility owners or operators can update information on file with the GLO in the following ways:

(1) Electronically [~~Internet~~]. The GLO has established a link on its website (www.glo.texas.gov) to allow facility owners or operators to review and amend application or certificate information on file with the GLO. Facility owners or operators must establish online security credentials by contacting the appropriate Oil Spill Field Office or by emailing a request to oilspills@glo.texas.gov [~~can use the identification number, which is issued with the certificate, to access this interactive link~~]. To minimize the GLO's administrative expense of updating information, the GLO encourages certificate holders to use the GLO website [~~Internet~~] to revise facility information on file with the GLO.

(2) Mail. If a facility owner or operator cannot update application or certification information over the GLO website [~~Internet~~], updated information can be sent by standard mail or email to the appropriate GLO regional office. Contact information for the regional office covering a particular facility can be obtained by calling the main oil spill division [~~program~~] office in Austin at (512) 475-1575 during business hours, [~~or~~] by visiting www.glo.texas.gov or by email to oilspills@glo.texas.gov.

(b) Renewing certificates. Owners or operators [~~Operators~~] must renew their certificates by their expiration dates. The GLO will not send expiration notices to owners or operators. To renew a certificate, certificate holders must complete and submit to the GLO a new application form. To give the GLO sufficient time to review the application, it must be submitted to the GLO at least 15 days before the expiration date.

(1) All certificates, which will be issued for a period of five years, will specify the date of expiration.

(2) To process the application to renew a certificate, the GLO may conduct a review of the discharge prevention and response plan and perform an on-site audit or inspection of the facility's implementation of the discharge prevention and response plan. The GLO will require the applicant to amend its plan if the GLO determines the plan does not adequately address the elements required by §19.13.

(c) Notification to GLO when facility closes, is sold, or is shut-in. A facility owner or operator is required to notify the GLO when the facility closes, is sold, or when the facility is shut-in and no longer handling oil.

(d) Certificate suspension. Suspension of a certificate requires the facility owner or operator to apply for a new certificate. The GLO may suspend a certificate if the facility owner or operator violates a provision of OSPRA or rules or orders adopted under authority of OSPRA. A certificate may also be suspended if the GLO determines the facility has failed to implement its discharge prevention and response plan or the facility's response to an unauthorized discharge of oil was

inadequate. Before suspending a certificate, the GLO will inform the certificate holder in writing that suspension is being considered. The reasons for the proposed suspension will be specified, and the certificate holder will be afforded an opportunity to address the problems. If the GLO ultimately determines the certificate holder has not adequately addressed the facility's problems and suspension of the certificate is appropriate, the facility owner or operator is entitled to request a hearing on the suspension in the same manner provided under Chapter 2 of this title (relating to Rules of Practice and Procedure) for contested case hearings before the GLO.

~~[(e) Penalties. GLO may pursue administrative penalties under TNRC §40.252 and civil penalties under TNRC §40.251(f) if the facility operator violates a provision of TNRC §40.1-304 or rules, authorizations, or orders adopted under authority of OSPRA, including the failure to obtain or renew a certificate or to implement a discharge prevention and response plan.]~~

~~[(1) Any person who violates the OSPRA or this subchapter or any authorization or order issued under this subchapter is subject to administrative penalties of not less than $100 or more than $10,000 per violation for each day of violation, not to exceed a maximum of $125,000.]~~

~~[(2) When determining the amount of the penalty, the commissioner must take into consideration the factors identified in TNRC §40.252 and other relevant factors.]~~

§19.20. Certification of Discharge Cleanup Organizations.

(a) Persons or organizations desiring certification as discharge cleanup organizations must apply to the General Land Office (GLO). Application forms are available from the GLO.

(b) A discharge cleanup organization must be certified by the GLO to be listed by an owner or operator as a source of adequate response equipment and/or personnel in a facility or vessel discharge prevention and response plan.

(c) An owner or operator of the facility or vessel will not be required to comply with this section if its response activities are limited to its own unauthorized discharges or to assistance rendered to others in emergency situations. The requirements of this section apply to those organizations who engage in the business of emergency spill response and cleanup operations.

(d) Discharge cleanup organizations will be categorized as either industry or volunteer.

(1) Industry organizations are those entities capable of containing, abating, removing and disposing of, or arranging for the disposal of oil and waste from an unauthorized discharge. Industry organizations have personnel trained pursuant to 29 Code of Federal Regulations §1910.120 and subsequent revisions and have equipment or access to equipment sufficient to perform response operations pursuant to national and state contingency plans.

(2) Volunteer organizations are those entities whose primary purpose is protecting, rescuing, or rehabilitating wildlife and natural resources injured or damaged by an unauthorized discharge. Volunteer organizations must only be permitted by the Texas Parks and Wildlife Department or have certification from an organization with equivalent standards for the purposes of wildlife rehabilitation and other response activities concerning rescuing of any animal affected by a discharge. A separate GLO certificate is not required of the above-described wildlife and natural resource volunteer organizations. Volunteer organizations are also those entities who assist in other response activities approved by the on-scene coordinator but who do not receive compensation for their efforts.

(e) Industry organizations must be certified by the GLO in order to be listed on a vessel or facility discharge response plan, and in order to be employed by the GLO when it expends fund monies in response to a discharge. Organizations exempt from the certification requirement are those whose primary business activity is vacuum trucks, earth moving, or oil field equipment maintenance. Any other business enterprise which does not represent itself as a spill response entity is not required to be certified under this subsection. Certificates will be issued for a five [~~three~~]-year term with annual review. Certificates may be suspended if the discharge cleanup organization fails to maintain adequate response capability. Pursuant to Chapter 21 of this title (relating to Oil Spill Prevention and Response Hearing Procedures) the notice of suspension can be challenged.

(f) Applicants for certification as an industry organization must submit the following information:

(1) the applicant's name and address, its legal form or status, the names and addresses of the persons owning or operating the organization, and its membership if applicable;

(2) the geographic area the applicant will serve;

(3) the equipment and supplies owned by the applicant and available for abatement, containment, and removal of pollution from an unauthorized discharge of oil; if the applicant intends to rely in whole or in part on equipment and supplies owned by a separate entity, then the applicant must submit the name of the owner and the location of the equipment and supplies, and the procedure for accessing such equipment and supplies;

(4) a certified statement of the applicant's general liability insurance coverage, and workmen's compensation and automobile liability insurance coverage;

(5) the number of employees and whether they are employed on a full or part-time basis and the number of employees which the applicant can command in the event of a major spill event; the training of such personnel including whether they have received training pursuant to 29 Code of Federal Regulations §1910.120; the experience and other relevant qualifications of all personnel;

(6) the applicant's standard operating plan for containment, recovery, storage, separation, transportation, disposal or arrangements for disposal or recycling of oil or waste, and minimization of waste generated from an unauthorized discharge;

(7) the applicant's health and safety plan.

(g) In certifying industry organizations, the GLO will consider factors including:

(1) the applicant's size, membership, and quality of response capability (which includes among other things the experience of the applicant's owners, operators, and personnel, the applicant's ability to properly dispose of waste or to arrange for the proper disposal of waste and recycling of materials generated by the discharge, the plan for waste minimization from discharges, the quantity and quality of equipment or supplies owned or available to the applicant, and the proximity of such equipment and supplies to the area the applicant intends to serve); and

(2) the geographic distribution of discharge cleanup organizations in the coastal area for the purpose of insuring sufficient response capability.

(h) Industry organizations must report material changes in response capability to the GLO within 30 days of the change. Material changes in response capability include among other things:

(1) a change in the location or a significant change in the quantity of the organization's response equipment or supplies; or

(2) a change in the organization's ownership or full-time personnel to the extent that such change affects discharge response capability; such change shall be reported within 72 hours.

(i) Volunteer organizations who register with the GLO are considered certified. Registration forms are available from the GLO. The registration must include the organization's size, experience in discharge response, ability to properly dispose of or arrange for the disposal of waste from discharges, the qualifications of persons who will lead or coordinate response activities for the organization, and the quantity and quality of equipment and supplies owned or available to the organization. Volunteer organizations engaged in wildlife rescue or rehabilitation will be certified only if they comply with requirements of the Texas Parks and Wildlife Department's regulations related to such organizations or with equivalent regulations. A volunteer organization shall ensure its actions are consistent with the National Contingency Plan, §300.185 and §300.700. The GLO may suspend a certificate if the organization's response activities are inconsistent with state or federal requirements.

(j) Volunteer discharge cleanup organizations or any discharge cleanup organization that is a not-for-profit entity must appoint a minimum of two ex officio representatives from local governments to its governing body to advise it on discharge response matters. The representatives from local government may be from any level or agency of local government but must be from the geographic area to be served by the organization. The Marine Spill Response Corporation and for-profit entities are exempt from this requirement pursuant to OSPRA, §40.117(b).

(k) Those entities having federal Oil Spill Response Organization classification shall, on proper proof of such classification, be certified by the GLO as a discharge cleanup organization. Proper proof includes, but is not limited to, all information submitted to the United States Coast Guard, National Strike Force Coordination Center.

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

Filed with the Office of the Secretary of State on August 4, 2025.

TRD-202502736
Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 475-1859

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SUBCHAPTER C. SPILL RESPONSE

31 TAC §19.33, §19.34

The General Land Office (GLO) proposes amendments to Title 31, Part 1, Subchapter C §19.33 and §19.34, relating to the authority of the Oil Spill Prevention and Response Act of 1981, Chapter 40 of the Texas Natural Resources Code (OSPRA) to make non-substantive edits.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.33

Proposed amendment is editorial in nature and does not change a substantive requirement of the rule. It changes the term "insure" to "ensure" to accurately reflect that state on-scene coordinator must make sure that response activities comply with applicable requirements.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.34

Proposed amendment deletes §19.34(g), which describes the duties of a responsible party. The purpose of §19.34(g) addressed by the currently existing rules in §19.33(e) which describes response activities.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Jimmy A. Martinez, Deputy Director of GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amendment as proposed is in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended sections because the changes are non-substantive changes necessary to reflect how the GLO is currently doing business and to clarify existing rules.

No changes in employment will be required for the GLO. There will be no fiscal impact on local governments for each of the first five years because local governments do not have a role in implementation over the proposed changes. To the extent that local governments are regulated under these rules, there may be minimal fiscal impacts associated with the substantive changes, but those changes are not sufficient to result in a material cost to them as a regulated entity.

Mr. Martinez has determined that the proposed amendment will not increase the costs of compliance for small or large business or individuals required to comply with amendment. Current law establishes basic requirements for oil spill prevention and response planning. The amendments acknowledge how the GLO performs business, clarifies the existing requirements, and where there are changes to substantive requirements, the enhanced standards have minimal costs associated with implementation.

The GLO has determined that a local employment impact statement on these proposed regulations is not required because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect. The GLO has determined that an economic impact statement and regulatory flexibility analysis on these proposed regulations are not required because the proposed regulations do not have a material adverse economic effect on small business.

PUBLIC BENEFIT

Mr. Martinez has determined that the public will benefit from the amendment because the changes reflect how the GLO is currently doing business and clarify existing rules. Some non-substantive changes that benefit the public include editorial changes to ensure clarity within the rules.

These changes will make procedural aspects clearer for the regulated community and clarify existing requirements so that the regulated community has a better understanding of what is required. Clarity of the rules also enhances the ability of the GLO to implement and enforce these regulations.

This change enhances the enforcement ability of OSPRA and its regulations.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriation to the agency, and will not require the creation of new employee positions nor eliminate current employee positions. This rulemaking does not affect the fees paid to the agency. The proposed rulemaking does not create, limit, or repeal existing regulation. The proposed regulation does not increase or decrease the number of individuals' subject to the rule's applicability.

During the first five years that the proposed rule would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed amended rules concerning procedures for oil spill prevention and response planning and enforcement reflect updates to bring the rules in line with current organizational practices and are not subject to the Coastal Management Program (CMP), 31 TAC §505.11(c), relating to the Actions and Rules subject to the CMP. Therefore, consistency review is not required.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the new rules to determine whether Texas Government Code, Chapter 2007 (Private Real Property Rights Preservation Act), is applicable and a detailed takings assessment is required. The GLO has determined that the proposed amendments and new rules do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments by the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

MAJOR ENVIRONMENTAL RULE ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific Intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendment is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code, §§40.109 - 40.113 and 40.251 - 40.254. The Texas Natural Resources Code provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods and reporting, plan criteria and penalties, hearings, and orders.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under OSPRA, Texas Natural Resources Code, §40.007(a), which give the Commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA, and §40.117(a)(1)-(a)(4) & a(11), which provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods, and reporting, criteria for spill response planning and penalties, hearings, and orders.

Texas Natural Resources Code §§40.109 - 40.117 and 40.251 - 40.258 are affected and implemented by the proposed amendment to the rule.

§19.33. Response.

(a) When the General Land Office (GLO) receives notice of an actual or threatened unauthorized discharge of oil into Texas coastal waters, the GLO will determine whether state response action is required. If state response action is required, the GLO will assess the discharge and determine whether further response actions should be initiated or required. If assessments of the discharge indicate it involves predominantly a hazardous substance, the GLO shall coordinate all response actions until the Texas Commission on Environmental Quality can assume responsibility over hazardous substance discharge response operations. A substance is predominantly a hazardous substance when analytical testing of a representative sample indicates the presence of more than 50% of a substance that is not oil as defined by OSPRA, and that is a hazardous substance as defined by the Texas Commission on Environmental Quality or its successor agency. Pending results of analytical tests of the substance, the determination of its predominant characteristics shall be made by investigating the source of the discharge, its physical properties, and its behavior in the environment. The GLO will notify the trustees of the actual or threatened unauthorized discharge.

(b) In response to any actual or threatened unauthorized discharge, the commissioner may designate a state on-scene coordinator to act on the commissioner's behalf at the site of the actual or threatened discharge. It is the duty of the state on-scene coordinator, in cooperation with the federal on-scene coordinator, to assess in detail all aspects of the actual or threatened unauthorized discharge, evaluate and direct the responsible person's response activities, initiate and direct other response activities, carry out orders of the commissioner, and report at regular intervals to the commissioner. The state on-scene coordinator has an ongoing duty to evaluate, assess, and direct all response activities in order to ensure [~~insure~~] compliance with applicable contingency plans, discharge response plans, and to ensure public health and safety, and to minimize to the greatest extent possible property damage and damages to natural resources.

(c) The GLO will coordinate its response with the federal on-scene coordinator and will contact other state agencies who have jurisdiction over the unauthorized discharge.

(d) Based on the assessment of the state on-scene coordinator, the GLO will determine whether and where to establish an on-scene command post. The state on-scene command post will serve as the single point of communication and coordination for state oversight and coordination of response actions. The post will be staffed until response operations are declared complete.

(e) The GLO will utilize the Incident Command System for all spills where a state on-scene coordinator is appointed by the commissioner.

§19.34. Duties of Responsible Person.

(a) In the event of an actual or threatened unauthorized discharge of oil into Texas coastal waters, it is the duty of the responsible person to immediately initiate response action, or to ensure that the person in charge will initiate response action. The responsible person is the owner or operator of a vessel or facility from which an unauthorized discharge of oil emanates or threatens to emanate. The person in charge is the person at the vessel or facility who is empowered by the responsible person to initiate response actions and to perform all actions necessary to prevent, abate, contain, and remove all pollution. The responsible person or the person in charge must inform the General Land Office (GLO) of the person's strategy for responding to the unauthorized discharge, including whether the facility's or vessel's discharge prevention and response plan will be adequate for abating, containing, and removing pollution or whether it appears that an adequate response to the discharge will require deviation from the plan. The response strategy and proposed deviations from the plan must be reported to the on-scene coordinator on a regular basis throughout response operations.

(b) The GLO may determine that the responsible person is unknown or appears unwilling or unable to respond adequately to the discharge, including reasonably foreseeable worst case scenarios of the discharge. The commissioner may delegate this determination to the state on-scene coordinator. In the event of such a determination the state on-scene coordinator may order the responsible person to take certain response actions. The state on-scene coordinator may also initiate response action by the state, either in addition to or in lieu of further response actions by the responsible person. As soon as possible after a determination of inadequate response, the state on-scene coordinator will notify the responsible person or the person acting for the responsible person of the inadequacy of response and inform the person of the intended corrective action. A determination that a responsible person appears unwilling or unable to respond adequately will be made by evaluating the resources committed to the response, the degree of cooperation with directions of the on-scene coordinator, the ability to commit further resources, and adherence to response and contingency plans.

(c) The responsible person or anyone acting on behalf of the responsible person must notify the state on-scene coordinator if the person intends not to comply with, or has not complied with, state response orders or actions. The GLO may determine the person has unreasonably failed to comply with state response actions if noncompliance is for any reason other than an objective and reasonable belief that compliance unavoidably conflicts with federal requirements or poses an unjustifiable risk to public safety or natural resources. Any failure to comply may be grounds for a determination of inadequate response under subsection (b) of this section.

(d) The responsible person must orally state the reasons for noncompliance with an order of the state on-scene coordinator and must give written justification for the refusal within 48 hours as required by OSPRA, §40.106.

(e) The responsible person is required to provide an emergency response plan consistent with 29 Code of Federal Regulations §1910.120 for the health and safety of spill response personnel at the spill response scene. In order to comply with the National Contingency Plan, responsible persons must ensure that contractors and others under their employ have an emergency response plan program for the health and safety of personnel responding during the spill response. Failure to provide an emergency response plan for the health and safety of responders will be considered a failure to adequately respond to a spill event.

(f) The responsible person is required to respond and operate in a manner consistent with the National Contingency Plan and any applicable area or local contingency plan.

~~[(g) The GLO will utilize the Incident Command System for all spills where a state on-scene coordinator is appointed by the commissioner.]~~

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

Filed with the Office of the Secretary of State on August 4, 2025.

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Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
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For further information, please call: (512) 475-1859

SUBCHAPTER D. COMPENSATION AND LIABILITY

31 TAC §§19.51, 19.53, 19.55

The General Land Office (GLO) proposes amendments to Title 31, Part 1, Subchapter D §§19.51, 19.53, and 19.55, relating to the authority of the Oil Spill Prevention and Response Act of 1981, Chapter 40 of the Texas Natural Resources Code (OSPRA) to clarify requirements for reimbursement from the coastal protection fund and to make non-substantive edits.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.51

Proposed amendment clarifies that the GLO relies upon the appropriation of funds by the Texas Legislature to provide reimbursements of this nature. Staff feels it is necessary to provide clarity to ensure that applicants under this provision understand that funds may not be available, or reimbursement may be delayed until the legislature appropriates monies from the fund that are necessary to provide reimbursement.

Proposed amendment also adds a requirement for obtaining reimbursements from the coastal protection fund. Reimbursement will not be available to a state agency unless the agency has obtained prior written approval from the GLO's "State On Scene Coordinator."

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.53(a)

Similar to amendments to §19.51, the proposed amendment provides editorial clarification to ensure clarity about the GLO's ability to reimburse funds through claims reimbursement procedures, which depends upon a sufficient legislative appropriation from the coastal protection fund.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.55(a)-(b)

Proposed amendment implements non-substantive editorial changes to ensure consistency with references made throughout the rules. The removal of the phrase "coastal protection" from "coastal protection fund" ensures greater consistency and throughout the rules and relies upon the definition of the term in §19.2(6).

FISCAL AND EMPLOYMENT IMPACTS

Mr. Jimmy A. Martinez, Deputy Director of GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amendments as proposed are in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended sections because the majority of the changes are non-substantive changes necessary to reflect how the GLO is currently doing business and to clarify existing rules.

No changes in employment will be required for the GLO. There will be no fiscal impact on local governments for each of the first five years because local governments do not have a role in implementation over the proposed changes. To the extent that local governments are regulated under these rules, there may be minimal fiscal impacts associated with the substantive changes, but those changes are not sufficient to result in a material cost to them as a regulated entity.

Mr. Martinez has determined that the proposed amendments will not increase the costs of compliance for small or large business or individuals required to comply with amendments. Current law establishes basic requirements for oil spill prevention and response planning. The amendments acknowledge how the GLO performs business, clarifies the existing requirements, and where there are changes to substantive requirements, the enhanced standards have minimal costs associated with implementation.

The GLO has determined that a local employment impact statement on these proposed regulations is not required because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect. The GLO has determined that an economic impact statement and regulatory flexibility analysis on these proposed regulations are not required because the proposed regulations do not have a material adverse economic effect on small business.

PUBLIC BENEFIT

Mr. Martinez has determined that the public will benefit from the amendments because the changes reflect how the GLO is currently doing business and clarify existing rules. Some non-substantive changes that benefit the public include those to reflect current organizational procedures and make non-substantive edits. These changes will make procedural aspects clearer for the regulated community and clarify existing requirements so that the regulated community has a better understanding of what is required. Clarity of the rules also enhances the ability of the GLO to implement and enforce these regulations.

This change enhances the enforcement ability of OSPRA and its regulations.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriation to the agency, and will not require the creation of new employee positions nor eliminate current employee positions. This rulemaking does not affect the fees paid to the agency. The proposed rulemaking does not create, limit, or repeal existing regulation. The proposed regulation does not increase or decrease the number of individuals' subject to the rule's applicability.

During the first five years that the proposed rule would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed amended rules concerning procedures for oil spill prevention and response planning and enforcement reflect and are not subject to the Coastal Management Program (CMP), 31 TAC §505.11(c), relating to the Actions and Rules subject to the CMP. Therefore, consistency review is not required.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the new rules to determine whether Texas Government Code, Chapter 2007 (Private Real Property Rights Preservation Act), is applicable and a detailed takings assessment is required. The GLO has determined that the proposed amendments and new rules do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments by the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

MAJOR ENVIRONMENTAL RULE ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific Intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code, §§40.109 - 40.113 and 40.251 - 40.254. The Texas Natural Resources Code provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods and reporting, plan criteria and penalties, hearings, and orders.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under OSPRA, Texas Natural Resources Code, §40.007(a), which give the Commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA, and §40.157(c), which provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, meth-

ods, and reporting, criteria for spill response planning and penalties, hearings, and orders.

Texas Natural Resources Code §§40.109 - 40.117 and 40.251 - 40.258 are affected and implemented by the proposed amendment to the rule.

§19.51. State Agency Reporting and Reimbursement Procedures.

As funds are appropriated, the GLO may reimburse a state agency from the fund for its response costs. To be eligible for reimbursement a state agency must obtain prior written approval for the expense(s) from the State On Scene Coordinator. To request [~~receive~~] reimbursement from the fund for costs incurred in responding to an unauthorized discharge, a state agency must, within 90 days of the General Land Office's (GLO) declaration of the completion of response actions, submit to the GLO a report of its response activities and an itemization of the response costs it incurred. The GLO will approve reimbursement from the fund for costs of response actions it authorized or for any other reasonable and necessary response costs consistent with state response actions. The GLO may require additional information to support a response costs reimbursement claim under this section.

§19.53. Claims Procedures.

(a) OSPRA established the fund to provide immediately available compensation for response costs incurred and damages suffered as a result of an unauthorized discharge. The intent of this section is to avoid economic displacement and to simplify resolution of liability issues by creating procedures conducive to settlement and adjustment of claims in as orderly, efficient, and timely a manner as possible. "Reasonably responded" for the purposes of this section means that the receipt of the claim has been acknowledged, that claimant has been advised of the need for any further documentation to complete claims processing, and that the claimant has been advised in writing whether or not the responsible person will make an offer of settlement on any part or all of the claim and the date by which such offer will be made. As funds are appropriated, the GLO may reimburse damages or response costs from the fund as provided for in this subsection.

(b) If there is a designated responsible person, all claims must be presented to the designated responsible person first.

(1) If the claim is for $50,000 or less and is not reasonably responded to within 30 days of presentation to the designated responsible person, the claimant may present the claim to the General Land Office (GLO).

(2) If the claim is for over $50,000 and is not reasonably responded to within 90 days of presentation to the designated responsible person, the claimant must present the claim to the federal fund prior to the presentation to the GLO. If a claim presented to the federal fund is not settled within 60 days of presentation, the claimant may then present it to the GLO.

(c) If there is no designated responsible person, either because the identity of the person responsible for the unauthorized discharge is unknown or a proposed designation is challenged, claims of $50,000 or less may be presented to the GLO first. Claims over $50,000 must be presented to the federal fund first. Any such claim not reasonably responded to within 60 days may then be presented to the GLO.

(d) A claim is presented when the GLO actually receives it. Claimants must present claims to the GLO within 180 days from the date the claim is first eligible to be filed with the GLO. When necessary to meet this deadline, the claimant may present the claim even though it is under consideration by the responsible person or the federal fund. The GLO may extend the 180-day period if the claimant cannot present it within that time for reasons beyond the claimant's control.

(e) Claims must be in writing, must be signed and verified by the claimant or the claimant's agent or legal representative, and must include the following information:

(1) whether it is for damages or response costs or both;

(2) the cause, nature, and dollar amount of the claim;

(3) whether the claim is covered by insurance or other benefits for which the claimant is eligible;

(4) the amount and nature of any compensation or earnings the claimant received as a consequence of the unauthorized discharge; and

(5) an oath or affirmation that the same claim is not being pursued through any other claim, suit, settlement, or proceeding.

(f) The GLO may prescribe appropriate claim forms. Claimants must present claims to the GLO accompanied by evidence supporting the claim and proof that all prerequisites to filing a claim with the GLO have been satisfied, including a copy or summary of any offer of settlement or payment by the responsible person or the federal fund. Claimant must provide the GLO with a copy of the claim previously submitted to the designated responsible person. The GLO may require additional information or evidence to support a claim.

(g) The GLO shall review the evidence and any settlement offer and may require or consider additional evidence or proof from the claimant or from the designated responsible person.

(h) The GLO may, in its discretion, treat separately each class of damages or costs set out in a claim. The GLO may make partial awards of damages or costs set out in the claim based on separate classes of damages or costs or for other good cause.

(i) If the GLO determines that the settlement offer was reasonable, and the claimant did not make reasonable effort to settle, or that the evidence submitted is insufficient to support the claim, the GLO will deny the claim. The GLO will inform the claimant and the designated responsible person of denial in writing. After denial, if a claimant attempts reasonable efforts to settle and the person responsible or the federal fund does not tender a reasonable settlement offer, the GLO may allow the claim to be reinstated.

(j) If the GLO determines a settlement offer is not reasonable, or if a settlement offer is not a prerequisite to the claim, the GLO will propose an award amount. The GLO will notify the claimant and the responsible person of the proposal in writing.

(k) The GLO will hold a hearing on the proposed award if either the claimant or the designated responsible person files a written request for a hearing within 20 days of issuance of the proposal.

(l) If no hearing is requested within 20 days, or after the hearing if one is requested, the GLO will either notify the claimant and the designated responsible person of denial or tender the award to the claimant and notify the designated responsible person of the award amount. The claimant may reject the tender by returning it to the GLO within ten days of receipt.

(m) Acceptance of an award is final settlement as to the claimant and constitutes a full release as to the claimant. If the tender is refused or not accepted within 10 days, the claimant is ineligible for compensation from the fund for the claim.

(n) Compensation may be claimed and awarded for costs necessarily incurred for claims preparation and presentation.

(o) The GLO will not consider any claim filed by a claimant who is pursuing substantially the same claim through litigation.

§19.55. Response Costs.

(a) The General Land Office (GLO) is required to recover expenditures from the [~~coastal protection~~] fund pursuant to OSPRA, §40.153 and §40.161(a), and therefore the GLO will assess response costs as delineated in this subsection.

(b) Whenever the GLO is unable to identify the person responsible for an unauthorized discharge of oil into or posing an imminent threat to coastal waters, the GLO will respond to the unauthorized discharge by initiating cleanup and other necessary response actions. Upon identification of the responsible person, the GLO will seek reimbursement for all monies expended from the [~~coastal protection~~] fund including, but not limited to, the following:

(1) actual costs of engaging a contractor to conduct cleanup;

(2) actual expenses of GLO personnel including time, transportation, lodging, and overhead;

(3) administrative and investigative expenses incurred in identifying the responsible person, including, but not limited to:

(A) sampling and analysis of the discharged oil and comparison samples; and

(B) field investigative costs; and

(C) accounting and legal costs.

(c) Whenever GLO personnel respond to the scene of an unauthorized discharge of oil that actually enters or poses an imminent threat to coastal waters, the following response costs shall be assessed against the responsible person:

(1) actual expenses of GLO personnel including time, transportation, lodging, and overhead; and all administrative costs of preparing the assessment; or

(2) a minimum response cost of $250.

(d) The GLO will assess response costs when:

(1) oil enters coastal waters;

(2) oil does not enter coastal waters but poses an imminent threat to coastal waters and a response is required to prevent the oil from entering coastal waters.

(e) The GLO will not assess response costs when:

(1) oil enters coastal waters but GLO personnel do not spend more than two hours, excluding travel time, at the scene of the spill;

(2) oil is spilled but does not enter or pose an imminent threat to coastal waters.

(f) The minimum response cost of $250 will be billed whenever GLO personnel are required to monitor prevention or response activities and the time spent at the spill scene, excluding travel time, is more than two hours and less than eight hours. In the event that eight or more hours of GLO response personnel time is required at the scene of the spill, the responsible party will be assessed the actual costs of response incurred by the GLO. Response costs will not be assessed where either the Railroad Commission of Texas or the Texas Commission on Environmental Quality is the state on-scene coordinator, unless requested by the Railroad Commission of Texas or the Texas Commission on Environmental Quality and approved by the commissioner.

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

Filed with the Office of the Secretary of State on August 4, 2025.

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Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
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For further information, please call: (512) 475-1859

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SUBCHAPTER E. VESSELS

31 TAC §19.60, §19.61

The General Land Office (GLO) proposes amendments to Title 31, Part 1, Subchapter E §19.60 and §19.61, relating to the authority of the Oil Spill Prevention and Response Act of 1981, Chapter 40 of the Texas Natural Resources Code (OSPRA) to reflect current organizational procedures and make non-substantive edits.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.60(c)(2)

Proposed amendment modifies language to reflect current organizational structures and operations and makes non-substantive edits to ensure consistency and readability throughout the rules. The proposed amendment specifically modifies the description to reflect the appropriate divisions within the GLO and removes references to faxes which are not currently employed by the GLO in the fashion outlined within this provision.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENT TO §19.61(a) - (b)

Proposed amendment deletes language related to providing information to the GLO and makes non-substantive editorial changes to reflect current organizational operations, ensure it is sufficiently clear what is required in a vessel response plan and which parties are required to submit information under a plan, how this information may be updated, and notes that information about contacting the regional office can be obtained by calling the GLO during business hours. The submittal of information section in subsection (b) has been deleted and replaced with language substantial similar to the modified language in §19.14(a)(1) and (a)(2) which updates the requirements for submitting information to the GLO.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Jimmy A. Martinez, Deputy Director of GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amendments as proposed are in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended sections because the majority of the changes are non-substantive changes necessary to reflect how the GLO is currently doing business and to clarify existing rules.

No changes in employment will be required for the GLO. There will be no fiscal impact on local governments for each of the first five years because local governments do not have a role in implementation over the proposed changes. To the extent that local governments are regulated under these rules, there may be minimal fiscal impacts associated with the substantive changes, but those changes are not sufficient to result in a material cost to them as a regulated entity.

Mr. Martinez has determined that the proposed amendments will not increase the costs of compliance for small or large business or individuals required to comply with amendments. Current law establishes basic requirements for oil spill prevention and response planning. The amendments acknowledge how the GLO performs business, clarifies the existing requirements, and where there are changes to substantive requirements, the enhanced standards have minimal costs associated with implementation.

The GLO has determined that a local employment impact statement on these proposed regulations is not required because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect. The GLO has determined that an economic impact statement and regulatory flexibility analysis on these proposed regulations are not required because the proposed regulations do not have a material adverse economic effect on small business.

PUBLIC BENEFIT

Mr. Martinez has determined that the public will benefit from the amendments because the changes reflect how the GLO is currently doing business and clarify existing rules. Some non-substantive changes that benefit the public include those to reflect current organizational procedures and make non-substantive edits. These changes will make procedural aspects clearer for the regulated community and clarify existing requirements so that the regulated community has a better understanding of what is required. Clarity of the rules also enhances the ability of the GLO to implement and enforce these regulations.

This change enhances the enforcement ability of OSPRA and its regulations.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriation to the agency, and will not require the creation of new employee positions nor eliminate current employee positions. This rulemaking does not affect the fees paid to the agency. The proposed rulemaking does not create, limit, or repeal existing regulation. The proposed regulation does not increase or decrease the number of individuals' subject to the rule's applicability.

During the first five years that the proposed rule would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed amended rules concerning procedures for oil spill prevention and response planning and enforcement reflect updates to bring the rules in line with current organizational practices and are not subject to the Coastal Management Program (CMP), 31 TAC §505.11(c), relating to the Actions and Rules subject to the CMP. Therefore, consistency review is not required.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the new rules to determine whether Texas Government Code, Chapter 2007 (Private Real Property Rights Preservation Act), is applicable and a detailed takings assessment is required. The GLO has determined that the proposed amendments and new rules do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments by the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

MAJOR ENVIRONMENTAL RULE ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific Intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code, §§40.117 a(11)09 - 40.113. The Texas Natural Resources Code provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods and reporting, plan criteria and penalties, hearings, and orders.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under OSPRA, Texas Natural Resources Code, §40.007(a), which give the Commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA, and §40.117(a)(1)-(a)(4),which provides the GLO with the authority to adopt requirements for discharge prevention and response capabilities, equipment, methods, and reporting, criteria for spill response planning and penalties, hearings, and orders.

Texas Natural Resources Code §§40.109 - 40.117 and 40.251 - 40.258 are affected and implemented by the proposed amendment to the rule.

§19.60. Applicability, Definitions, Exemptions.

(a) Applicability. This subchapter applies to any vessel that operates in the coastal waters of the state of Texas and has a total fuel, lube and cargo tank capacity equal to or exceeding 10,000 U.S. gallons.

(b) Definitions. The following words, terms and phrases, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other terms are defined in §19.2 of this title (relating to Definitions).

(1) MARPOL 73/78--The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended.

(2) Annex I of MARPOL--Regulations for the Prevention of Pollution by Oil.

(3) Oil Tanker--A vessel constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes combination carriers and any "chemical tanker" as defined in Annex II of MARPOL 73/78 when it is carrying a cargo or part cargo of oil in bulk.

(4) Regulation 26 of Annex I of MARPOL--The regulation adopted in July of 1991 by the Marine Environment Protection Committee of the International Maritime Organization (IMO), requiring every oil tanker of 150 gross tons and above and every other vessel of 400 gross tons and above to carry on board a shipboard oil pollution emergency plan approved by its flag state, or authorized organization.

(5) Vessel--Every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.

(6) Authorized Person--The person who is responsible for and in control of all oil spill response operations on behalf of the vessel.

(7) Official Number--The unique number assigned to a vessel for purposes of identification, e.g., the Texas State Registration Number, IMO Number, OPA Plan Number, etc.

(8) Preparedness Manager--As required by MARPOL 73/78, the person responsible for ensuring that personnel aboard an international vessel are properly trained in mitigating and controlling an unauthorized discharge of oil.

(9) Qualified Individual--The person authorized by the owner or operator of a vessel to conduct and assume responsibility for all emergency response operations for the vessel.

(c) Exemptions

(1) The GLO may grant an exemption from compliance with any requirement in this subchapter if special circumstances such as those listed below are identified by a vessel owner or operator and a request for exemption is submitted to the GLO as soon as possible before the effective period of the exemption being requested. Requests for exemptions will be considered by the GLO for the following situations, which are not meant to be exclusive of other situations where an exemption may be appropriate.

(A) A vessel with only residual cargo or fuel on board being towed for repair, salvage, or demolition.

(B) Vessels involved in unplanned emergency response or rescue activities.

(C) Vessels involved in an emergency caused by operational malfunctions or the violence of nature.

(2) A request for exemption must be made in writing and can be [~~submitted in the following ways~~]:

(A) Mailed to: Texas General Land Office, Oil Spill Prevention and Response Division [~~Program~~], P.O. Box 12873, Austin, Texas 78711-2873 or [~~. The written request can also be sent by facsimile to the GLO's Oil Spill Prevention and Response Program at (512) 475-1560.~~]

[~~(B) Sent by facsimile to the GLO's Oil Spill Prevention and Response Program at (512) 475-1560; or~~]

(B) [~~(C)~~] Emailed [~~Via e-mail~~] to oil-spills@glo.texas.gov.

(3) All written requests for an exemption must include the following information:

(A) the vessel's name;

(B) the vessel's qualified individual or person in charge;

(C) whether a vessel-specific and approved oil spill prevention and response plan is aboard the vessel;

(D) the specific requirement for which an exemption is being sought;

(E) a summary statement on why the exemption is being sought; and

(F) the expected duration of the situation for which an exemption is sought.

(4) The GLO will respond to requests for exemption as soon as possible. The vessel's owner or operator is responsible for obtaining the exemption before entering Texas coastal waters. If the exemption is denied, the GLO will provide its reasoning for denial.

§19.61. Vessel Response Plans.

(a) Vessel Response Plan Requirements.

(1) Owners and operators of vessels subject to this subchapter are required to prepare and maintain written, vessel-specific discharge prevention and response plans. A tank or nontank vessel response plan approved by the U.S. Coast Guard satisfies the requirements of this section. A current copy of the plan must be maintained aboard each vessel. Owners and operators of unmanned vessels can satisfy the requirements of this section by maintaining the plan at a primary business location and maintaining the information in subparagraph (G) of this paragraph aboard the unmanned vessel. The vessel-specific discharge prevention and response plan shall include, at a minimum, the following information:

(A) How to contact the owner and operator, including physical and mailing addresses, and a telephone number that is answered 24 hours a day [, ~~and a 24-hour fax number~~]. This information must also be provided for agents of the owner or operator who should be contacted initially instead of the owner or operator.

(B) The names and contact information for the [~~The~~] person(s)-in-charge, qualified individual(s), or authorized person(s).

(C) Procedures for vessel personnel to make required reports to immediately notify regulatory agencies of unauthorized discharges or threatened discharges of oil.

(D) The total vessel capacity for fuel and oil.

(E) The vessel's official number.

(F) If applicable, a copy of the Coast Guard Vessel Response Plan approval letter.

(G) Spill prevention and response procedures, including:

(i) shutting down operations;

(ii) securing the source of the spill;

(iii) assessing the spill situation and evaluating for safety hazards to vessel personnel;

(iv) immediate actions for reducing the potential for future spillage;

(v) assessing the condition of the vessel and taking action to prevent further vessel damage;

(vi) notifying the GLO at 1-800-832-8224 as well as other regulatory agencies, local officials, and private property owners impacted by an unauthorized discharge; and

(vii) anticipated actions for abating, containing, and cleaning up an unauthorized discharge of oil.

(2) Owners and operators of unmanned vessels subject to this subchapter shall maintain the following information aboard each unmanned vessel:

(A) How to contact the owner and operator, including physical and mailing addresses, a telephone number that is answered 24 hours a day[~~, and a 24-hour fax number~~]. This information must also be provided for agents of the owner or operator who should be contacted initially instead of the owner or operator.

(B) Qualified individual(s), authorized person(s), or preparedness manager(s).

(C) A checklist for notification of appropriate regulatory agencies in the event of an unauthorized or threatened unauthorized discharge and pertinent information and procedures for response personnel to abate and respond to an actual spill.

(D) The total vessel capacity for fuel and oil.

(b) Submission of Information to the GLO.

(1) Applicability. This section, which requires the submittal of limited information to the GLO, applies to owners and operators of any tank or nontank vessel over 400 gross tons required to maintain a federally approved response plan aboard the vessel.

(2) Owners, [~~or~~] operators or authorized persons of vessels to which this subsection applies must submit the following information to the GLO:

(A) the name of the owner and operator;

(B) the address of the owner and operator;

(C) the electronic mail (email) address, if applicable;

(D) the phone [~~and facsimile~~] number of the owner and operator;

(E) the qualified individual(s) or authorized person(s) for each vessel to be covered, and information on how these people can be contacted 24 hours a day;

(F) the names and official numbers of vessels subject to this section;

(G) the gross tonnage of all vessels subject to this section; and

(H) the total capacity for fuel and oil of each vessel subject to this section.

(3) Completion and Update [~~Submittal~~] of information. A vessel owner, operator or authorized person(s) can update information on file with the GLO in the following ways: [~~The GLO has established a link on the GLO website (http://www.glo.texas.gov) for submittal of the information required in this section. An account login must be requested to initiate this process. To request this account be established contact the Director of Maritime Affairs by:~~]

(A) Electronically. The GLO has established a link on its website (www.glo.texas.gov) to allow a vessel owner, operator or authorized person(s) to review, update, and amend information on file with the GLO. A vessel owner, operator or authorized person(s) must establish online security credentials by contacting the appropriate Oil Spill Field Office or by emailing a request to oilspills@glo.texas.gov. To minimize the GLO's administrative expense of updating information, the GLO encourages vessel owners, operators or authorized person(s)to use the GLO website to revise vessel information on file with the GLO.

(B) Mail. If a vessel owner, operator or authorized person(s) cannot update information over the GLO website, updated information can be sent by standard mail, email to oilspills@glo.texas.gov or by calling (512) 475-1575 during business hours.

[~~(A) calling (512) 475-1575 during business hours;~~]

[~~(B) facsimile sent to (512) 475-1560; or~~]

[~~(C) electronic mail sent to oilspills@glo.texas.gov~~]

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

Filed with the Office of the Secretary of State on August 4, 2025.

TRD-202502740
Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 475-1859

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PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.1

The School Land Board (Board) proposes amendments to Texas Administrative Code (TAC), Title 31, Part 4, Chapter 151, §151.1, relating to School Land Board Meeting Administration. The Board is proposing the amendments to §151.1 to 1.) update terminology, 2.) clarify how the public interacts with the Board during its meetings, 3.) accurately reflect current Board practices and 4.) delete unnecessary information.

During a review of its Chapter 151 rules, under §2001.039 of the Texas Government Code, the Board identified the need for these proposed amendments. At its June 3, 2025 meeting, the Board unanimously approved the readoption of Chapter 151, with amendments.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENTS TO §151.1

The amendments to §151.1(a) and (b) update terminology and add clarifying language.

The amendments to §151.1(c) affirm the Board policy of encouraging public participation at its meetings. The amendments more clearly state that the public may address the Board during a meeting, on matters within Board authority, at the physical location of the meeting, during the public comment period. Members of the public will be required to identify themselves when speaking.

Section 151.1(d) - (h) and (j) have been deleted as outdated or unnecessary.

Section 151.1(i) is amended to change its designation to §151.1(d) and delete text duplicative of what is already provided by statute.

FISCAL AND EMPLOYMENT IMPACTS

Jeff Gordon, General Counsel, Texas General Land Office (GLO), has determined that for each year of the first five years the proposed amended rules are in effect, there will be no fiscal implications for the state government, local governments or local economies as a result of enforcing or administering the amended rules. Mr. Gordon has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Mr. Gordon has determined that there will be minimal fiscal implications to the local government and no additional costs of compliance for large and small businesses or individuals resulting from the proposed amendments.

PUBLIC BENEFIT

Mr. Gordon has determined that the public will benefit from the proposed amendments.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, David Repp, GLO Senior Deputy Director & Chief Financial Officer, provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, he has determined the following:

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

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

(3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Board;

(4) the proposed amendments will not require an increase or decrease in fees paid to the Board;

(5) the proposed amendments do not create a new regulation;

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

(7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and

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

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

These actions are proposed under Texas Natural Resources Code §31.051, which gives the commissioner the authority to make and enforce rules consistent with the law, and Texas Natural Resources Code §§32.062 and 32.205, which grants rulemaking authority to the SLB.

Texas Natural Resources Codes §§32.026, 32.107 are affected by these rules.

§151.1. School Land Board Meeting Administration.

(a) The secretary of the School Land Board (SLB) shall keep as records at the General Land Office, the minutes and the agenda [~~docket~~] of each meeting.

(b) The secretary of the SLB shall prepare the agenda [~~docket~~] for the meeting and file and post notice of the meeting in compliance with the Open Meetings Act. Notice of the board meeting will include:

(1) the time, date, and location of the meeting; and

(2) those items to be considered by the SLB at the meeting.

(c) The SLB's policy is to encourage and ensure public participation in all matters it considers in accordance with the Open Meetings Act. Members of the public may address the SLB on matters within the authority of the SLB at the physical location where the meeting is held during the public comment period of the meeting. Members of the public must identify themselves for the record as part of their public comments. [~~Members of the public may make personal statements of their views on a matter before the SLB provided that they identify themselves for the record. Members of the public making only such statements will not be considered parties to the meeting.~~]

[~~(d) Any person requesting a formal action by the SLB must notify the secretary prior to the meeting, providing in writing the person's name, address, and interest in the meeting. Any such participant will be considered a party to the meeting.~~]

[~~(e) All persons appearing before the SLB and any evidence they present will be subject to full examination by the members of the SLB.~~]

[~~(f) Parties may be represented by an attorney. Upon notification of the secretary, the attorney will receive all correspondence directed to the party on behalf of the SLB.~~]

[~~(g) Any applicant before the SLB and any other person filing their name, address, and a request for notification with the secretary, will be notified in writing of the date, time, and place of the board meeting at which the application will be considered. However, failure to mail the notice does not invalidate any action taken by the SLB.~~]

[~~(h) An applicant and those persons who have properly requested notification will be informed in writing of any action taken by the SLB concerning that person's application as expeditiously as possible following the meeting.~~]

(d) [~~(i)~~] The SLB shall adopt, amend, and repeal rules in accordance with applicable law. [~~the Texas Register and Administrative Code, Government Code, Chapter 2002.~~] Any interested person may petition the SLB in writing to request adoption of a rule. [~~The SLB shall consider the request at the next scheduled meeting and shall either grant or deny the request. Rulemaking procedures shall be initiated within 60 days of the receipt of the request if granted. If denied, the SLB shall state its reasons in writing and mail them to the petitioner within 60 days of receipt of the request.~~]

[~~(j) The SLB's policy is to encourage and ensure maximum public participation in all matters it considers. The SLB shall conduct all meetings in accordance with the Open Meetings Act.~~]

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

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TRD-202502744

Jennifer Jones
Chief Clerk and Deputy Land Commissioner
School Land Board
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 475-1859

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CHAPTER 155. LAND RESOURCES
SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.3

The School Land Board (SLB) proposes amendments to Texas Administrative Code (TAC), Title 31, Part 4, Chapter 155, relating to Easements, to correct citations to rules in §155.3.

During a review of its Chapter 151 rules, under §2001.039 of the Texas Government Code, the Board identified the need for these proposed amendments. At its June 3, 2025 meeting, the Board approved publication and readoption of the proposed amendments.

BACKGROUND AND SECTION BY SECTION ANALYSIS OF THE PROPOSED AMENDMENTS TO §155.3.

Under Chapter 33.103 and 33.111 of the Natural Resources Code, the School Land Board (SLB) is authorized to issue easements for the use of coastal public lands. The purpose of 31 TAC Chapter 155 is to address how coastal public lands will be managed by the SLB. The proposed amendments correct references that refer to incorrect citations within the rule.

Proposed amendment to TAC §155.3(f)(3) corrects an incorrect reference. The current rule requires applicants for an easement on coastal public lands to mitigate for impacts which are unavoidable. The current reference points the reader to TAC §155.3(b), which requires applicants to obtain permits required for a proposed project. Instead, it should point the reader to TAC §155.3(g), which addresses the mitigation sequences that an applicant must follow to avoid impacts.

Proposed amendment(s) to TAC §155.3(g)(3) also corrects an incorrect reference. The current rule provides that an applicant, who is unable to avoid impacts to coastal public land, must mitigate for the impacts and/or pay a resource impact fee. The current reference points the reader to TAC §155.15(b)(6), which addresses the treatment of rental adjustments. Instead, it should point the reader to TAC §155.15(b)(3), which discusses the resource impact fee.

FISCAL, BUSINESS AND EMPLOYMENT IMPACTS

David Green, Senior Deputy Director, Coastal Protection, has determined that for each year of the first five years the amendments as proposed are in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended sections because they are non-substantive changes. No changes in employment will be required for the GLO or local governments for each of the first five years will be necessary.

David Green, Senior Deputy Director, Coastal Protection, has determined that the proposed amendments will not increase the costs of compliance for micro, small or large business or individuals required to comply with amendments and that a local employment impact statement on these amendments is not required because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect. The GLO has also determined that an economic impact statement and regulatory flexibility analysis on these proposed regulations are not required because the proposed regulations do not have a material adverse economic effect on small business.

Mr. Green has also determined that the proposed amendments will not have an adverse economic effect on rural communities, or individuals since the amendments are non-substantive changes.

PUBLIC BENEFIT

David Green, Senior Deputy Director, Coastal Protection, has determined that the public will benefit from the amendments because the changes correct references to applicable rules thereby giving public clear direction as to how an application for the use of coastal public lands will be reviewed. Clarity of the rules better informs applicants of what to expect from the application process and enhances the ability of the SLB to consistently evaluate applications.

GOVERNMENT GROWTH IMPACT STATEMENT

David Green, Senior Deputy Director, Coastal Protection, prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriation to the agency, and will not require the creation of new employee positions nor eliminate current employee positions. This rulemaking does not affect the fees paid to the agency or increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rule would be in effect, it is not anticipated that there will be any adverse impact on the state's economy. The proposed amendments will clarify the application process.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed amendments reflect updates and are not subject to the Coastal Management Program (CMP), 31 TAC §§29.11, which relate to the actions and rules subject to the CMP. Therefore, consistency review is not required. Individual easements undertaken in compliance with these rules may be subject to the CMP, and consistency with the CMP will be individually determined when evaluating an easement.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the amendments to determine whether Texas Government Code, Chapter 2007 (Private Real Property Rights Preservation Act), is applicable and a detailed takings assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments by the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

MAJOR ENVIRONMENTAL RULE ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major envi-

ronmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific Intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendment is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code, §33.602(c).

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code, §33.064 that provides the SLB with the authority to adopt procedural and substantive rules concerning administration, implementation and enforcement of this chapter.

Texas Natural Resources Code §§40.109- 40.117 and 40.251-40.258 are affected and implemented by the proposed amendment to the rule.

§155.3. Easements.

(a) - (e) (No change.)

(f) Criteria for decision. Project proposals will be evaluated in accordance with the following factors.

(1) - (2) (No change.)

(3) Adverse impacts to coastal natural resource areas must be avoided to the extent practicable and minimized where unavoidable. Applicants may be required to provide appropriate mitigation, as set forth in subsection (g) [~~(b)~~] of this section, for those impacts which are unavoidable. Where impacts to coastal natural resource areas are minimal, the payment of a resource impact fee may be required in lieu of undertaking a physical mitigation project where such project is not practicable.

(4) - (10) (No change.)

(g) Mitigation sequence. An applicant is responsible for identifying practicable alternatives or available sites for a proposed project with the fewest adverse impacts. For projects requiring mitigation for unavoidable adverse impacts to natural resources, review shall be based on the following sequence:

(1) - (2) (No change.)

(3) Mitigation and Compensation. Unavoidable impacts or damages to coastal public land will require mitigation and/or a resource impact fee as set forth in §155.15(b)(3) [~~§155.15(b)(6)~~] of this title. Mitigation for impacts to coastal public land must occur on coastal public land.

(h) - (i) (No change.)

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

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School Land Board
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.587

The Comptroller of Public Accounts proposes amendments to §3.587 concerning margin: total revenue. The comptroller amends the section to implement House Bill 446, Senate Bill 604, and Senate Bill 1243, 88th Legislature, 2023; House Bill 1195, House Bill 1520, House Bill 4492, and Senate Bill 1580, 87th Legislature, 2021; Senate Bill 1824, 86th Legislature, 2019; House Bill 3254, 85th Legislature, 2017; House Bill 500, House Bill 2451, House Bill 2766, and Senate Bill 1286, 83rd Legislature, 2013; Senate Bill 1, 82nd Legislature, First Called Session, 2011.

Throughout the section, the comptroller adds titles to statutory references and makes non-substantive changes to improve readability and clarity.

The comptroller amends subsection (b)(1)(H), relating to the actual cost of uncompensated care, to improve readability. The comptroller also restructures the subparagraph to provide guidance on how a single entity and a combined group compute the required adjustment to the cost of goods sold or the compensation deduction for the portion of the actual cost of uncompensated care excluded from total revenue.

Implementing House Bill 446, the comptroller amends paragraph (3), defining "health care institutions," to replace the term "the mentally retarded" with the term "individuals with an intellectual disability" and to replace the term "mental retardation" with the term "intellectual disabilities."

Implementing House Bill 500 and Senate Bill 604, the comptroller adds new paragraph (5) to define "landman services" pursuant to Tax Code, §171.1011(g-11) (Determination of Total Revenue from Entire Business). Subsequent paragraphs are renumbered accordingly.

The comptroller moves the definition of "product" in former paragraph (10) to clause (ii) in renumbered paragraph (15) defining "sales commission" because, in this section, the term "product" is used only in relation to sales commissions.

Implementing Senate Bill 1286, the comptroller adds new paragraph (11) to define "professional employer organization" pursuant to Tax Code, §171.0001 (Definitions) and §171.1011(k). Professional employer organization replaces the term "staff leasing services company" in former paragraph (13) which the comptroller deletes.

Implementing Senate Bill 1 and House Bill 3254, the comptroller adds new paragraph (12) to define "qualified courier and logistics company" pursuant to Tax Code, §171.1011(g-7).

The comptroller adds new paragraph (13) to define "qualified destination management company" pursuant to §171.1011(g-6) and as defined by Tax Code, §151.0565.

Implementing Senate Bill 1, the comptroller adds new paragraph (14) to define "qualified live event promotion company" pursuant to Tax Code, §171.0001(10-a), (10-b), and (11-b). Subsequent paragraphs are renumbered accordingly.

Implementing House Bill 500, the comptroller adds new paragraph (21) to define "vaccine" pursuant to Tax Code, §171.1011(p)(8).

The comptroller amends subsection (c)(3) titled "federal consolidated group" to remove the information related to a federal disregarded entity from the paragraph and add it, with changes, as new paragraph (10).

The comptroller amends subsections (c)(5) and (6) to replace the current titles with more appropriate titles.

The comptroller amends subsection (c)(8) to delete reference to "discounts" as House Bill 500 repealed Tax Code, §171.0021 (Discounts from Tax Liability for Small Businesses).

The comptroller retitles subsection (c)(9) "nontaxable revenue" and amends the paragraph to be consistent with Tax Code, §171.001(b) which provides that the franchise tax extends to the limits of the United States Constitution. Revenue that Texas cannot tax under the United States Constitution is not included in total revenue.

The comptroller adds subsection (c)(10), titled "federal disregarded entity," to include the information related to a federal disregarded entity the comptroller removed from subsection (c)(3). The amendment requires an entity that is disregarded for federal tax purposes to compute revenue for franchise tax as if it reported as a corporation for federal tax purposes. Under Treasury Regulation, §301.7701-3 (Classification of certain business entities) if an entity is disregarded for federal tax purposes, the only other option available for that entity's federal reporting is to report as an association, and therefore as a corporation.

The comptroller prospectively amends subsection (d), relating to computing total revenue. Tax Code, §171.0001(9) defines the term "Internal Revenue Code" by reference to the code in effect for the federal tax year beginning January 1, 2007. The current language of subsection (d) applies that definition to the federal tax form line items referenced in Tax Code, §171.1011, so that the line items must be recomputed to reflect the 2007 version of the Internal Revenue Code. After reexamining the language, the comptroller concludes that the definition of "Internal Revenue Code" only applies to computing the franchise tax where specifically stated in the statute. Because the Internal Revenue Code is not referenced in relation to the line items on the mentioned Internal Revenue Service forms when determining total revenue under Tax Code, §171.1011, the proposed rule uses the line items as they are reported under the then-current Internal Revenue Code. The former rule, tied to the 2007 Internal Revenue Code, is retained for prior report years.

Subsection (e) addresses exclusions from total revenue. The comptroller amends subsection (e)(1), regarding the exclusion of flow-through funds mandated by law or fiduciary duty, to add new subparagraph (D) to give examples of flow-through funds that are mandated by law.

Implementing House Bill 2766, the comptroller amends paragraph (2) regarding the exclusion of flow-through funds mandated by contract. The comptroller adds "subcontract" to the mandate and "remediation" to the list of real property activities for which subcontracting payments are allowed as flow-through funds pursuant to Tax Code, §171.1011(g). The comptroller adds new subparagraph (C)(i)-(iii) to provide guidance from *Titan Transp., LP v. Combs, 433 S.W.3d 625 (Tex. App-Austin 2014, pet. denied)* and *Hegar v. Gulf Copper & Mfg. Corp., 601 S.W.3d (Tex. 2020)* in determining which payments are flow-through funds and what activities are included by the phrase - in connection with. The comptroller adds language in clause (iii) so that the terms are consistent with §3.588, concerning Margin: Cost of Goods Sold.

The comptroller amends paragraph (5)(A) to add "or persons" to "other entities" to make clear that qualifying payments distributed to individuals are also excluded from total revenue. The comptroller amends subparagraph (B), regarding the exclusion of reimbursements of certain expenses incurred in providing legal services, to provide guidance on what costs are general operating expenses and not excludable.

Implementing House Bill 500, the comptroller amends paragraph (6) to add a provision allowing an exclusion from total revenue for pharmacy networks pursuant to Tax Code, §171.1011(g-4).

Implementing Senate Bill 1286, the comptroller amends paragraph (7) to refer to a "professional employer organization" instead of a "staff leasing services company" pursuant to Tax Code, §171.1011(k).

The comptroller amends paragraph (10)(A)(i) to allow health care providers an exclusion from total revenue for capitation awards from the Centers for Medicare & Medicaid Services transferred to the taxable entity from an entity within the health care provider's corporate structure pursuant to STAR Accession No. 201207010L (July 13, 2012).

The comptroller amends paragraph (13) to make clear that the qualifications for excluding revenue from a low-producing oil well or low-producing gas well are determined independently.

The comptroller amends the definition of "qualified destination management company" in paragraph (14) to improve readability and deletes references to statutory definitions that are incorporated into this section through the amendment.

Implementing Senate Bill 1, the comptroller adds new paragraph (15) to provide guidance on the exclusion from total revenue allowed to qualified live event promotion companies pursuant to Tax Code, §171.1011(g-5).

Also implementing Senate Bill 636, the comptroller adds new paragraph (16) to provide guidance on the exclusion from total revenue allowed to qualified courier and logistics companies pursuant to Tax Code, §171.1011(g-7).

Implementing House Bill 500, the comptroller adds new paragraph (17) to provide guidance on the exclusion from total revenue allowed to aggregate transportation companies pursuant to Tax Code, §171.1011(g-8).

Implementing House Bill 500, the comptroller adds new paragraph (18) to provide guidance on the exclusion from total revenue allowed to barite transportation companies pursuant to Tax Code, §171.1011(g-10).

Implementing House Bill 500, the comptroller adds new paragraph (19) to provide guidance on the exclusion from total revenue allowed to landman services companies pursuant to Tax Code, §171.1011(g-11).

Implementing House Bill 500, the comptroller adds new paragraph (20) to provide guidance on the exclusion from total revenue for the cost paid for a vaccine pursuant to Tax Code, §171.1011(u).

Implementing House Bill 500, the comptroller adds new paragraph (21) to provide guidance on the exclusion from total revenue allowed to waterway transportation companies pursuant to Tax Code, §171.1011(v).

Implementing House Bill 2451, the comptroller adds new paragraph (22) to provide guidance on the exclusion from total revenue allowed to agricultural aircraft operation companies pursuant to Tax Code, §171.1011(w-1).

Implementing House Bill 500, the comptroller adds new paragraph (23) to provide guidance on the exclusion from total revenue allowed to motor carrier companies pursuant to Tax Code, §171.1011(x).

Implementing Senate Bill 1824, the comptroller adds new paragraph (24) to provide guidance on the exclusion from total revenue allowed to performing rights societies pursuant to Tax Code, §171.1011(g-12).

Implementing House Bill 1195, the comptroller adds new paragraph (25) to allow an exclusion from total revenue for qualifying loan and grant proceeds received for COVID-19 relief pursuant to Tax Code, §171.10131.

Implementing Senate Bill 1243, the comptroller adds new paragraph (26) to allow an exclusion from total revenue for qualifying grant proceeds received for broadband deployment in Texas pursuant to Tax Code, §171.10132.

Implementing House Bill 1520, House Bill 4492, and Senate Bill 1580, the comptroller adds subsection (f), exempting certain transactions and receipts related to the financing of the extraordinary costs incurred by gas and electric providers during Winter Storm Uri.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§171.0001 (General Definitions), 171.1011 (Determination of Total Revenue from Entire Business), 171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief), and 171.10132 (Provisions Related to Certain Grants Received for Broadband Deployment in Texas); Utilities Code, §§39.607 (Tax Exemption), 39.658 (Tax Exemption), 41.161 (Tax Exemption), and 104.375 (Tax Exemption); and Government Code, §1232.1072 (Issuance of Obligations for Financing Customer Rate Relief Property).

§3.587. Margin: Total Revenue.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

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

(1) Actual cost of uncompensated care--The amount determined by multiplying Operating Expenses by the Uncompensated Care Ratio where:

(A) operating expenses are the amounts reported on line 2 (cost of goods sold) and line 21 (total deductions), Internal Revenue Service Form 1065; [~~or~~] the amounts reported on line 2 (cost of goods sold) and line 20 (total deductions), Internal Revenue Service Form 1120S; or the corresponding line items from any other federal form filed, less any items that have already been subtracted from total revenue (e.g., bad debts);

(B) uncompensated care ratio means uncompensated care charges less partial payments divided by total charges;

(C) uncompensated care charges are the [~~standard~~] charges for health care services where the provider has not received any payment or where the provider has received partial payment that does not cover the cost of the health care provided to the patient. Uncompensated care charges do not include any portion of a charge that the health care provider has no right to collect under a private health care plan, under an agreement with an individual for a specific amount, or under the charge limitations imposed by the programs described in subsection (e)(10)(A)(i) - (iii) of this section;

(D) [~~standard~~] charges must be comparable to the charges applied to services provided to all patients of the health care provider;

(E) partial payment is an amount that has been received toward uncompensated care charges that does not cover the cost of the services provided;

(F) total charges are charges for all health care services, including uncompensated care;

(G) records that clearly identify each patient, the procedure performed, and the [~~standard~~] charge for such a service, as well as payments received from each patient must be maintained by the health care provider for all uncompensated care;

(H) a corresponding adjustment must be made to reduce the cost of goods sold deduction calculated under §3.588 of this title (re-

lating to Margin: Cost of Goods Sold) or the compensation deduction calculated under §3.589 of this title (relating to Margin: Compensation) for the portion of the cost of goods sold or compensation that has been excluded from total revenue.[:]

(i) For a single taxable entity,

(I) [(i)] the cost of goods sold adjustment is equal to [deduction is reduced by subtracting the product of] the cost of goods sold deduction [under §3.588 of this title (relating to Margin: Cost of Goods Sold)] multiplied by the uncompensated care ratio; and

(II) [(ii)] the compensation adjustment is equal to [deduction is reduced by subtracting the product of] the compensation deduction [and benefits amounts under §3.589 of this title (relating to Margin: Compensation)] multiplied by the uncompensated care ratio.

(ii) For a combined group,

(I) the cost of goods sold adjustment, as described in clause (i)(I) of this subparagraph, is only calculated for and applied to the costs of goods sold deduction for each member of the combined group claiming the exclusion from total revenue for the actual cost of uncompensated care; and

(II) the compensation adjustment, as described in clause (i)(II) of this subparagraph, is only calculated for and applied to the compensation deduction for each member of the combined group claiming the exclusion from total revenue for the actual cost of uncompensated care.

(III) If an employee is paid by more than one member of a combined group, the compensation adjustment calculated in subclause (II) of this clause is subject to reduction based on the combined group's limitation on wages and cash compensation under §3.589(c)(1) of this title. The compensation adjustment for a member is reduced by the member's pro-rata share of the employee's wages and cash compensation that exceeds the combined group's wages and cash compensation limitation, multiplied by the uncompensated care ratio.

(2) Federal obligations--

(A) stocks and other direct obligations of, and obligations unconditionally guaranteed by, the United States government and United States government agencies; and

(B) direct obligations of a United States government-sponsored agency.

(3) Health care institution--An ambulatory surgical center; an assisted living facility licensed under Health and Safety Code, Chapter 247 (Assisted Living Facilities); an emergency medical services provider; a home and community support services agency; a hospice; a hospital; a hospital system; an intermediate care facility for individuals with an intellectual disability [the mentally retarded] or a home and community-based services waiver program for persons with intellectual disabilities [mental retardation] adopted in accordance with the federal Social Security Act, §1915(c) (42 U.S.C. §1396n) (Compliance with State plan and payment); a birthing center; a nursing home; an end stage renal disease facility licensed under Health and Safety Code, §251.011 (License Required); or a pharmacy.

(4) Health care provider--Any taxable entity that participates in the Medicaid program, Medicare program, Children's Health Insurance Program (CHIP), state workers' compensation program, or TRICARE military health system as a provider of health care services.

(5) Landman services--

(A) performing title searches for the purpose of determining ownership of or curing title defects related to oil, gas, other energy sources, or other related mineral or petroleum interests;

(B) negotiating the acquisition or divestiture of mineral rights for the purposes of the exploration, development, or production of oil, gas, other energy sources, or other related mineral or petroleum interests; or

(C) negotiating or managing the negotiation of contracts or other agreements related to the ownership of mineral interests for the exploration, exploitation, disposition, development, or production of oil, gas, other energy sources, or other related mineral or petroleum interests.

(6) [(5)] Lending institution--An entity that makes loans; and

(A) is regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, the Office of Thrift Supervision, the Texas Department of Banking, the Office of Consumer Credit Commissioner, the Credit Union Department, or any comparable regulatory body;

(B) is licensed by, registered with, or otherwise regulated by the Department of Savings and Mortgage Lending;

(C) is a "broker" or "dealer" as defined by the Securities Exchange Act of 1934 at 15 U.S.C. §78c (Definitions and application); or

(D) provides financing to unrelated parties solely for agricultural production.

(7) [(6)] Management company--A corporation, limited liability company, or other limited liability entity that conducts all or part of the active trade or business of another entity ("the managed entity") in exchange for a management fee and reimbursement of specified costs incurred in the conduct of the active trade or business of the managed entity, including wages and cash compensation as determined under Tax Code, §171.1013(a) and (b) (Determination of Compensation). To qualify as a management company:

(A) the entity must perform active and substantial management and operational functions, control and direct the daily operations and provide services such as accounting, general administration, legal, financial or similar services; or

(B) if the entity does not conduct all of the active trade or business of an entity, the entity must conduct all operations, as provided in subparagraph (A) of this paragraph, for a distinct revenue-producing component of the entity.

(8) [(7)] Net distributive income--The net amount of income, gain, deduction, or loss relating to a pass-through entity or disregarded entity reportable to the owners for the tax year of the entity.

(9) [(8)] Obligation--Any bond, debenture, security, mortgage-backed security, pass-through certificate, or other evidence of indebtedness of the issuing entity. The term does not include a deposit, a repurchase agreement, a loan, a lease, a participation in a loan or pool of loans, a loan collateralized by an obligation of a United States government agency, or a loan guaranteed by a United States government agency.

(10) [(9)] Pro bono services--The direct provision of legal services to the poor, without an expectation of compensation.

[(10) Product--Services, tangible personal property, and intangible property.]

(11) Professional employer organization--A business entity that offers professional employer services or temporary employment services. For the purposes of this paragraph:

(A) "Professional employer services" means the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. "Professional employer services" does not include temporary help, an independent contractor, the provision of services that otherwise meet the definition of professional employer services by one person solely to other persons who are related to the service provider by common ownership, or a temporary common worker employer.

(B) "Temporary employment services" means a person who employs individuals for the purpose of assigning those individuals to the clients of the service to support or supplement the client's workforce in a special work situation, including an employee absence, a temporary skill shortage, a seasonal workload, or a special assignment or project.

(12) Qualified courier and logistics company--A taxable entity that:

(A) receives at least 80% of the taxable entity's annual total revenue from its entire business from a combination of at least two of the following courier and logistics services:

(i) expedited same-day delivery of an envelope, package, parcel, roll of architectural drawings, box or pallet. "Same-day delivery" means the service provider must pick up and deliver an item on the same calendar day;

(ii) temporary storage and delivery of the property of another entity, including an envelope, package, parcel, roll of architectural drawings, box, or pallet; and

(iii) brokerage of same-day or expedited courier and logistics services to be completed by a person or entity under a contract that includes a contractual obligation by the taxable entity to make payments to the person or entity for those services;

(B) during the period on which margin is based, is registered as a motor carrier under Transportation Code, Chapter 643 (Motor Carrier Registration), and if the taxable entity operates on an interstate basis, is registered as a motor carrier or broker under the motor vehicle registration system established under 49 U.S.C. §14504a (Unified Carrier Registration System plan and agreement) or a similar federal registration program that replaces that system, during that period;

(C) maintains an automobile liability insurance policy covering individuals operating vehicles owned, hired, or otherwise used in the taxable entity's business, with a combined single limit for each occurrence of at least $1 million;

(D) maintains at least $25,000 of cargo insurance;

(E) maintains a permanent nonresidential office from which the courier and logistics services are provided or arranged;

(F) has at least five full-time employees during the period on which margin is based;

(G) is not doing business as a livery service, floral delivery service, motor coach service, taxicab service, building supply delivery service, water supply service, fuel or energy supply service, restaurant supply service, commercial moving and storage company, or overnight delivery service; and

(H) is not delivering items that the taxable entity or an affiliated entity sold.

(13) Qualified destination management company--A taxable entity that:

(A) is incorporated or is a limited liability company;

(B) receives at least 80% of the entity's annual total revenue from providing or arranging for the provision of a combination of at least six destination management services. "Destination management services" means transportation vehicle management; booking and managing entertainers; coordination of tours or recreational activities; meeting, conference, or event registration; meeting, conference, transportation, or event staffing; event management; meal coordination; shuttle system services, including vehicle staging, radio communications, signage, and routing services; and airport meet-and-greet services, including the provision of airport permits, manifest management services, porterage, and passenger greeting services;

(C) maintains a permanent nonresidential office from which the destination management services are provided or arranged;

(D) has at least three full-time employees;

(E) maintains a general liability insurance policy with a limit of at least $1 million;

(F) during the preceding tax year, had at least 80% of the entity's client contracts for:

(i) clients from outside Texas who were determined by a contracting entity outside this state; or

(ii) clients from outside this state who were program attendees staying in a hotel in this state;

(G) other than office equipment used in the conduct of the entity's business, does not own equipment used to directly provide destination management services, including motor coaches, limousines, sedans, dance floors, decorative props, lighting, podiums, sound or video equipment, or equipment for catered meals;

(H) does not prepare or serve beverages, meals, or other food products, but may procure catering services on behalf of the entity's clients;

(I) does not provide services for weddings;

(J) does not own or operate a venue at which events or activities for which destination management services are provided occur; and

(K) is not a member of an affiliated group, as that term is defined by Tax Code, §171.0001, another member of which:

(i) prepares or serves beverages, meals, or other food products; or

(ii) owns or operates a venue described by subparagraph (J) of this paragraph.

(14) Qualified live event promotion company--

(A) A taxable entity that:

(i) receives at least 50% of the entity's annual total revenue from the provision or arrangement for the provision of three or more live event promotion services;

(ii) maintains a permanent nonresidential office from which the live event promotion services are provided or arranged;

(iii) employs 10 or more full-time employees during all or part of the period for which taxable margin is calculated;

(iv) does not provide services for a wedding or carnival; and

(v) is not a movie theater.

(B) For the purposes of this section:

(i) "live event promotion services" means services related to the promotion, coordination, operation, or management of a live entertainment event. The term includes services related to the provision of the staff for the live entertainment event or the scheduling and promotion of an artist performing or entertaining at the live entertainment event;

(ii) "live entertainment event" means an event that occurs on a specific date to which tickets are sold in advance by a third-party vendor and at which: a natural person or a group of natural persons, physically present at the venue, performs for the purpose of entertaining a ticket holder who is present at the event; a traveling circus or animal show performs for the purpose of entertaining a ticket holder who is present at the event; or a historical, museum-quality artifact is on display in an exhibition; and

(iii) "artist" means a natural person or an entity that contracts to perform or entertain at a live entertainment event.

(15) [~~(11)~~] Sales commission--

(A) any form of compensation paid to a person for engaging in an act for which a license is required by Occupations Code, Chapter 1101 (Real Estate Brokers and Sales Agent); or

(B) compensation paid to a sales representative by a principal in an amount that is based on the amount or level of certain orders for or sales of the principal's product and that the principal is required to report on Internal Revenue Service Form 1099-MISC (or would have been reported if the amount had met the Internal Revenue Service minimum reporting requirement).

(C) For [~~for~~] purposes of this paragraph: [~~defining sales commission,~~]

(i) a "principal" is a person who[~~:~~]

[(i)] manufactures, produces, imports, distributes, or acts as an independent agent for the distribution of a product for sale;

[(ii)] uses a sales representative to solicit orders for the product; and

[(iii)] compensates the sales representative wholly or partly by sales commission.

(ii) A "product" means services, tangible personal property, and intangible property.

(16) [~~(12)~~] Security--The meaning assigned by Internal Revenue Code, §475(c)(2) (Security defined), and includes instruments described by Internal Revenue Code, §475(e)(2)(B), (C), and (D) (Commodity).

~~[(13) Staff leasing services company--A business entity that offers staff leasing services, as that term is defined by Labor Code, §91.001, or a temporary employment service, as that term is defined by Labor Code, §93.001.]~~

(17) [~~(14)~~] Tiered partnership arrangement--An ownership structure in which any of the interests in one taxable entity treated as a partnership or an S corporation for federal income tax purposes (a "lower tier entity") are owned by one or more other taxable entities (an "upper tier entity").

(18) [~~(15)~~] United States government--Any department or ministry of the federal government, including a federal reserve bank. The term does not include a state or local government, a commercial enterprise owned wholly or partly by the United States government, or a local governmental entity or commercial enterprise whose obligations are guaranteed by the United States government.

(19) [~~(16)~~] United States government agency--An instrumentality of the United States government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States government. The term includes the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, the Small Business Administration, and any successor agency.

(20) [~~(17)~~] United States government-sponsored agency--An agency originally established or chartered by the United States government to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States government. The term includes the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, and any successor agency.

(21) Vaccine--A preparation or suspension of dead, live attenuated, or live fully virulent viruses or bacteria, or of antigenic proteins derived from them, used to prevent, ameliorate, or treat an infectious disease.

(c) General rules for reporting total revenue.

(1) Variant of form. Any reference to an Internal Revenue Service form includes a variant of the form. For example, a reference to Form 1120 includes Forms 1120-A, 1120-S, and other variants of Form 1120. A reference to an Internal Revenue Service form also includes any subsequent form with a different number or designation that substantially provides the same information as the original form.

(2) Amount reportable. Any reference to an amount reportable as income on a line number on an Internal Revenue Service form is the amount entered to the extent the amount entered complies with federal income tax law and includes the corresponding amount entered on a variant of the form, or a subsequent form, with a different line number to the extent the amount entered complies with federal income tax law.

(3) Federal consolidated group. A taxable entity that is part of a federal consolidated group computes [~~or is a disregarded entity shall compute~~] its total revenue as if it had filed a separate return for federal income tax purposes[~~; provided, however, that a disregarded entity may combine its revenue, cost of goods sold, compensation and gross revenue with its parent as provided by §3.590(d)(6) of this title (relating to Margin: Combined Reporting)~~]. Information [~~Further information~~] on combined reporting [~~entities~~] can be found in §3.590 of this title (relating to Margin: Combined Reporting).

(4) Passive entity. A taxable entity shall [~~will~~] include its share of net distributive income from a passive entity, but only to the extent the net income of the passive entity was not generated by any other taxable entity.

(5) Treatment of total revenue exclusions for cost of goods sold and compensation [~~Exclusions from total revenue~~].

(A) Any expense excluded from total revenue (e.g., flow-through funds or the cost of uncompensated care allowed under subsection (e) of this section) may not be included in the determination of cost of goods sold (see §3.588 of this title) or the determination of compensation (see §3.589 of this title).

(B) Net distributive income that is subtracted from total revenue may not be included in the determination of compensation.

(6) Ordinary contract for [~~Contract~~] services. Except as provided by subsection (e)(2) of this section, a payment received under an ordinary contract for the provision of services in the ordinary course of business may not be excluded from the calculation of total revenue.

(7) Payment to affiliated group members. If the taxable entity belongs to an affiliated group, the taxable entity may not exclude from the calculation of total revenue any payments described by subsection (e)(1) - (6) of this section that are made to entities that are members of the affiliated group.

(8) Tiered partnership provision. This provision is not mandatory. Subject to the following subparagraphs, a lower tier entity in a tiered partnership arrangement may exclude from total revenue the amount of total revenue reported to an upper tier entity. If a lower tier entity chooses to file under the tiered partnership provision, the lower tier entity may report total revenue to any or all of its upper tier entities. The total revenue reported to an upper tier entity must equal the upper tier entity's ownership percentage of the lower tier entity's entire total revenue.

(A) Reporting requirements. The lower tier entity must submit a report to the comptroller showing the amount of total revenue that each upper tier entity must include with the upper tier entity's own total revenue. Each upper tier entity must submit a report to the comptroller showing the amount of the lower tier entity's total revenue that was passed to the upper tier entity and is included in the total revenue of the upper tier entity.

(B) Nontaxable upper tier entity. This paragraph does not apply to that percentage of the total revenue attributable to an upper tier entity by a lower tier entity if the upper tier entity is not subject to the tax under this chapter. In this case, the lower tier entity cannot report total revenue to the nontaxable upper tier entity and the lower tier entity cannot exclude this total revenue from its franchise tax report.

(C) Eligibility for no tax due[~~, discounts~~] and the E-Z Computation. The no tax due thresholds[~~, discounts~~] and the E-Z Computation do not apply to an upper or lower tier entity if, before the attribution of any total revenue by a lower tier entity to upper tier entities under this section, the lower tier entity does not meet the criteria. See §3.584(d)(7) [~~§3.584(d)(8)~~] of this title (relating to Margin: Reports and Payments).

(D) Not a partnership distribution. Total revenue reported from a lower tier entity to an upper tier entity under the provisions of Tax Code, §171.1015(b) (Reporting for Certain Partnerships in Tiered Partnership Arrangement), is not a distribution from a partnership.

(E) Combined reporting. The tiered partnership provision is not an alternative to combined reporting. Combined reporting is mandatory for taxable entities that meet the ownership and unitary criteria. See §3.590 of this title. Therefore, the tiered partnership provision is not allowed if the lower tier entity is included in a combined group.

(F) Accounting period. If the lower tier entity and an upper tier entity have different accounting periods, the upper tier entity must allocate the revenue reported from the lower tier entity to the accounting period that the upper tier entity's report is based on.

(G) Lower tier entity no tax due. For reports originally due on or after January 1, 2010, if the lower tier entity owes no tax before the attribution of total revenue to the upper tier entities, filing under the tiered partnership provision is not allowed.

(9) Nontaxable revenue [~~Allocated revenue~~]. Revenue that Texas cannot tax [~~because the activities generating that item of revenue do not have sufficient unitary connection with the entity's other activities conducted in Texas~~] under the United States Constitution is not included in total revenue.

(10) Federal disregarded entity. A taxable entity that is disregarded for federal income tax purposes computes its total revenue as if it had filed a separate return as a corporation for federal income tax purposes. The federal disregarded entity may, however, choose to combine its revenue, cost of goods sold, compensation and gross revenue with its parent as provided by §3.590(d)(6) of this title. Further information on combined reporting can be found in §3.590 of this title.

(d) Total [~~Reporting total~~] revenue. The line items in this subsection refer to line items on the 2006 Internal Revenue Service forms. A reference to a line item on the 2006 Internal Revenue Service forms includes any line item on a subsequent form with a different number or designation that substantially provides the same information as the line item on the 2006 Internal Revenue Service forms. For reports originally due prior to January 1, 2026, total revenue is based on the equivalent line numbers from the corresponding federal return, the amounts of which are [~~In computing total revenue for a subsequent report year, total revenue should be based on the equivalent line numbers from the corresponding federal report and~~] computed based on the Internal Revenue Code of 1986 in effect for the federal tax year beginning on January 1, 2007. For reports originally due on or after January 1, 2026 total revenue is based on the equivalent line numbers from the corresponding federal return.

(1) Corporations. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as a corporation for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1120;

(ii) the amounts reportable as income on lines 4 through 10, Internal Revenue Service Form 1120; and

(iii) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 (Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit) or §§951 - 964 (Controlled Foreign Corporations);

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) allowable deductions from Internal Revenue Service Form 1120, Schedule C, to the extent the relating dividend income is included in total revenue;

(v) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(vi) other amounts authorized by subsection (e) of this section.

(2) S corporations. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as an S corporation for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1120S;

(ii) the amounts reportable as income on lines 4 and 5, Internal Revenue Service Form 1120S;

(iii) the amounts reportable as income on lines 3a and 4 through 10, Internal Revenue Service Form 1120S, Schedule K;

(iv) the amounts reportable as income on lines 17 and 19, Internal Revenue Service Form 8825; and

(v) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(3) Partnerships. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as a partnership for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1065;

(ii) the amounts reportable as income on lines 4, 6, and 7, Internal Revenue Service Form 1065;

(iii) the amounts reportable as income on lines 3a and 5 through 11, Internal Revenue Service Form 1065, Schedule K;

(iv) the amounts reportable as income on line 17, Internal Revenue Service Form 8825;

(v) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F; and

(vi) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(4) Trusts. For the purpose of computing its taxable margin, the total revenue of a taxable entity treated as a trust for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on lines 1, 2a, 3, 4, 7, and 8 of Internal Revenue Service Form 1041;

(ii) the amount reportable as income on lines 3, 4, 32, and 37 of Internal Revenue Service Form 1040, Schedule E;

(iii) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F; and

(iv) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(5) Single member limited liability company (SMLLC) [~~(LLC)~~] filing as a sole proprietorship. For the purpose of computing its taxable margin, the total revenue of a taxable entity registered as a single member limited liability company and filing as a sole proprietorship for federal income tax purposes is computed by:

(A) adding:

(i) the amount reportable as income on line 3 of Internal Revenue Service, Form 1040, Schedule C;

(ii) the amount reportable as income on line 17, Internal Revenue Service Form 4797, to the extent that it relates to the SMLLC [~~LLC~~];

(iii) ordinary income or loss from partnerships, S corporations, estates and trusts, Internal Revenue Service Form 1040, Schedule E, to the extent that it relates to the SMLLC [~~LLC~~];

(iv) the amount reportable as income on line 16 of Internal Revenue Service Form 1040, Schedule D, to the extent that it relates to the SMLLC [~~LLC~~];

(v) the amounts reportable as income on lines 3 and 4, Internal Revenue Service Form 1040, Schedule E, to the extent that it relates to the SMLLC [~~LLC~~];

(vi) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F, to the extent that it relates to the SMLLC [~~LLC~~];

(vii) the amount reportable as income on line 6 of Internal Revenue Service Form 1040, Schedule C, that has not already been included in this subparagraph; and

(viii) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Tax Code, §171.1015(b); and

(B) subtracting, to the extent included in the calculation under subparagraph (A) of this paragraph:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included for the current reporting period or a past reporting period;

(ii) foreign royalties and foreign dividends, including amounts determined under Internal Revenue Code, §78 or §§951 - 964;

(iii) net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes, except as provided by subsection (c)(4) of this section;

(iv) items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) other amounts authorized by subsection (e) of this section.

(6) Other taxable entities. For a taxable entity other than a taxable entity treated for federal income tax purposes as a corporation, S corporation, partnership, trust, or single member limited liability company filing as a sole proprietorship, the total revenue shall [~~will~~] be an amount determined in a manner substantially equivalent to the amount calculated for the entities listed in this subsection.

(e) Exclusions from total revenue. Except as otherwise provided in this section and only to the extent included in the calculation of total revenue under subsection (d)(1) - (6) of this section, the following items shall be excluded from total revenue:

(1) Flow-through funds mandated by law or fiduciary duty. Flow-through funds that are mandated by law or fiduciary duty to be distributed to other entities or persons, including taxes collected from a third party by the taxable entity and remitted by the taxable entity to a taxing authority.[~~:~~]

(A) Allowed exclusions include, but are not limited to, taxes imposed by law on a third party but collected by the taxable entity and remitted by it to a taxing authority. Examples include, but are not limited to, state sales tax and the Texas hotel occupancy tax.

(B) For excise taxes, only those entities that collect and remit the tax to the taxing authority may exclude the tax from total revenue. Excise taxes include, but are not limited to, motor fuels taxes and tobacco taxes.

(C) Taxes imposed by law on the taxable entity itself are not allowed as flow-through funds and cannot be excluded from total revenue. Examples include, but are not limited to, the Texas mixed beverage gross receipts tax and the Texas franchise tax.

(D) Payments of monetary awards in judgments and administrative orders are flow-through funds mandated by law if the judgments or orders are based on a statutory directive to distribute revenue to another entity or person. An example of a flow-through fund mandated by law is the public performance royalty based on a percentage of licensee gross revenues, which is mandated by a Copyright Royalty Board order pursuant to 17 U.S.C. §112 (Limitation on executive rights: Ephemeral recordings) and §114 (Scope of exclusive rights and sound recordings). Examples of flow-through funds that are not mandated by law are payments of judgments awarding contract or tort damages, agreed payments pursuant to antitrust consent decrees, and agreed payments to obtain permit approvals.

(2) Flow-through funds mandated by contract or subcontract. Flow-through funds that are mandated by contract or subcontract to be distributed to other entities or persons are[~~,~~] limited to:

(A) sales commissions, as that term is defined by subsection (b)(15) [~~(b)(11)~~] of this section, to non-employees, including split-fee real estate commissions;

(B) the tax basis as determined under the Internal Revenue Code of securities underwritten; and

(C) subcontracting payments made under a contract or subcontract entered into [~~handled~~] by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, remediation, or repair of improvements on real property or the location of the boundaries of real property. For the purpose of this paragraph, a payment is a subcontracting payment when the following requirements are met:[~~;~~]

(i) The payment is made for services, labor, or material that the taxpayer is obligated and compensated by its customer to provide;

(ii) the taxpayer has a contractual obligation to compensate its subcontractor; and

(iii) the connection between the payment and the actual or proposed design, construction, remodeling, or repair of improvements on real property or the location of the boundaries of real property is more than tangential. However, the taxpayer's subcontractor is not required to effect a material or physical change to the real property.

(3) Principal repayments. A taxable entity that is a lending institution shall exclude the principal repayment of loans.[~~:~~]

(4) Tax basis of securities and loans. A taxable entity shall exclude the tax basis, as determined under the Internal Revenue Code, of securities and loans sold.[~~:~~]

(5) Legal services. A taxable entity that provides legal services shall exclude:

(A) the following flow-through funds that are mandated by law, contract, or fiduciary duty to be distributed to the claimant by the claimant's attorney or to other entities or persons on behalf of a claimant by the claimant's attorney:

(i) damages due the claimant;

(ii) funds subject to a lien or other contractual obligation arising out of the representation, other than fees owed to the attorney;

(iii) funds subject to a subrogation interest or other third-party contractual claim; and

(iv) fees paid an attorney in the matter who is not a member, partner, shareholder, or employee of the taxable entity;

(B) reimbursement of the taxable entity's expenses incurred in prosecuting a claimant's matter that are specific to the matter, are reimbursed on a dollar-for-dollar basis, and [~~that~~] are not estimated amounts, such as general operating expenses; and

(C) regardless of whether it was included in the calculation of total revenue under subsection (d) of this section, $500 per pro bono services case handled by the attorney, but only if the attorney maintains records of the pro bono services for auditing purposes in accordance with the manner in which those services are reported to the State Bar of Texas.[~~;~~]

(6) Pharmacy cooperative or network. A taxable entity that is a pharmacy cooperative shall exclude flow-through funds from rebates from pharmacy wholesalers that are distributed to the pharmacy cooperative's shareholders. A taxable entity that provides a pharmacy network shall exclude reimbursements, pursuant to contractual agreements, for payments to pharmacies in the pharmacy network.[~~;~~]

(7) Professional employer organization [~~Staff leasing services company~~]. A taxable entity that is a professional employer organization [~~staff leasing services company~~] shall exclude payments received from a client [~~company~~] for wages, payroll taxes on those wages, employee benefits, and workers' compensation benefits for the covered employees of [~~assigned to~~] the client [~~company~~]. A professional employer organization [~~staff leasing services company~~] cannot exclude payments received from a client [~~company~~] for payments made to independent contractors assigned to the client [~~company~~] and reportable on Internal Revenue Service Form 1099.[~~;~~]

(8) Dividends and interest from federal obligations. A taxable entity shall exclude dividends and interest received from federal obligations.[~~;~~]

(9) Management company. A taxable entity that is a management company shall exclude reimbursements of specified costs incurred in its conduct of the active trade or business of a managed entity, including wages and cash compensation as determined under Tax Code, §171.1013(a) and (b).[~~;~~]

(10) Health care provider. A taxable entity that is a health care provider shall exclude:

(A) the total amount of payments, including co-payments and deductibles from the patient or supplemental insurance, received:

(i) under the Medicaid program, Medicare program, Indigent Health Care and Treatment Act (Health and Safety Code, Chapter 61), and Children's Health Insurance Program (CHIP), including any plans under these programs and capitation awards from the Centers for Medicare & Medicaid Services transferred from another entity in the health care provider's corporate structure;

(ii) for professional services provided in relation to a workers' compensation claim under Labor Code, Title 5 (Texas Workers' Compensation Act);

(iii) for professional services provided to a beneficiary rendered under the TRICARE military health system, including any plans under this program;

(iv) from a third-party agent or administrator for revenue earned under clauses (i) - (iii) of this subparagraph; and

(B) the actual costs, regardless of whether it was included in the calculation of total revenue under subsection (d)(1) - (6) of this section, of uncompensated care provided, but only if the provider maintains records of the uncompensated care for auditing purposes and, if the provider later receives payment for all or part of that care, the provider adjusts the amount excluded for the tax year in which the payment is received.

(11) Health care institution. A health care provider that is a health care institution shall exclude 50% of the exclusion described in paragraph (10) of this subsection.

(12) Federal government and armed forces. A taxable entity shall exclude all revenue received that is directly derived from the operation of a facility that is:

(A) located on property owned or leased by the federal government; and

(B) managed or operated primarily to house members of the armed forces of the United States.

(13) Oil and gas revenue from low-producing wells. [~~During the dates, certified by the comptroller, in which the monthly average closing price of West Texas Intermediate crude oil is below $40 per barrel and the average closing price of gas is below $5 per MMBtu, as recorded on the New York Mercantile Exchange (NYMEX), a taxable entity shall exclude total revenue received from oil or gas produced from:~~]

(A) During the dates certified by the comptroller in which the monthly average closing price of West Texas Intermediate crude oil is below $40 per barrel, as recorded on the New York Mercantile Exchange, a taxable entity shall exclude revenue received from the sale of oil produced from an oil well designated by the Railroad Commission of Texas or similar authority of another state whose production averages less than 10 barrels a day over a 90-day period.[~~; and~~]

(B) During the dates certified by the comptroller in which the average closing price of gas is below $5 per MMBtu, as recorded on the New York Mercantile Exchange, a taxable entity shall exclude revenue received from the sale of gas produced from a gas well designated by the Railroad Commission of Texas or similar authority of another state whose production averages less than 250 mcf a day over a 90-day period.

(14) Qualified destination management company. Effective for reports originally due on or after January 1, 2010, a taxable entity that is a qualified destination management company [~~as defined by Tax Code, §151.0565~~] shall exclude [~~from its total revenue~~] payments made to other entities or persons to provide services, labor, or materials in connection with the provision of destination management services [~~as defined in Tax Code, §151.0565~~].

(15) Qualified live event promotion company. Effective for reports originally due on or after January 1, 2012, a taxable entity that is a qualified live event promotion company shall exclude payments made to artists in connection with the provision of a live entertainment event or live event promotion services.

(16) Qualified courier and logistics company. Effective for reports originally due on or after January 1, 2012, a taxable entity that is a qualified courier and logistics company shall exclude subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services.

(17) Aggregate transportation company. Effective for reports originally due on or after January 1, 2014, a taxable entity that is primarily engaged in the business of transporting aggregates shall

exclude subcontracting payments made to nonemployee agents for the performance of delivery services. "Aggregates" means any commonly recognized construction material removed or extracted from the earth, including dimension stone, crushed and broken limestone, crushed and broken granite, other crushed and broken stone, construction sand and gravel, industrial sand, dirt, soil, cementitious material, and caliche.

(18) Barite transportation company. Effective for reports originally due on or after January 1, 2014, a taxable entity that is primarily engaged in the business of transporting barite shall exclude subcontracting payments to nonemployee agents for the performance of transportation services. "Barite" means barium sulfate (BaSO4), a mineral used as a weighing agent in oil and gas exploration.

(19) Landman services company. Effective for reports originally due on or after January 1, 2014, a taxable entity that is primarily engaged in the business of performing landman services shall exclude subcontracting payments made to nonemployees for the performance of landman services.

(20) Vaccine. Effective for reports originally due on or after January 1, 2014, a taxable entity shall exclude the actual cost paid for a vaccine.

(21) Waterway transportation company. Effective for reports originally due on or after January 1, 2014, a taxable entity primarily engaged in the business of transporting goods by waterway that does not subtract cost of goods sold in computing taxable margin shall exclude direct costs of providing transportation services by intrastate or interstate waterways to the same extent that a taxable entity that sells in the ordinary course of business real or tangible personal property would be authorized by Tax Code, §171.1012 to subtract those costs as costs of goods sold in computing its taxable margin, notwithstanding Tax Code, §171.1012(e)(3).

(22) Agricultural aircraft operation company. Effective for reports originally due on or after January 1, 2014, a taxable entity primarily engaged in the business of providing services as an agricultural aircraft operation, as defined by 14 C.F.R. §137.3 (Definitions), shall exclude the cost of labor, equipment, fuel, and materials used in providing those services.

(23) Motor carrier company. Effective for reports originally due on or after January 1, 2014, a taxable entity that is registered as a motor carrier under Transportation Code, Chapter 643, shall exclude flow-through revenue derived from taxes and fees.

(24) Performing rights society. Effective for payments received on or after June 4, 2019, a taxable entity that is a performing rights society that licenses the public performance of nondramatic musical works on behalf of a copyright owner shall exclude payments made to the public performance rights holder and the copyright owner for whom the taxable entity licenses the public performance.

(25) Qualifying loan or grant proceeds related to COVID-19 relief. Effective for reports originally due on or after January 1, 2021, a taxable entity shall exclude qualifying loan or grant proceeds, as defined under Tax Code, §171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief).

(26) Qualifying grant proceeds related to broadband deployment. Effective for reports originally due on or after January 1, 2023, a taxable entity shall exclude qualifying grant proceeds, as defined under Tax Code, §171.10132 (Provisions Related to Certain Grants Received for Broadband Deployment in Texas).

(f) Exemptions. Effective June 16, 2021, the following items related to Winter Storm Uri are exempt from the franchise tax and are not included in total revenue:

(1) Gas utilities:

(A) any interest on customer rate relief bonds, as defined by Utilities Code, §104.362;

(B) the sale or purchase of customer rate relief bonds issued under Utilities Code, Subchapter I (Customer Rate Relief Bonds);

(C) revenue derived from services performed in the issuance or transfer of customer rate relief bonds issued under Utilities Code, Subchapter I; and

(D) a gas utility's receipt of customer rate relief charges, as defined under Utilities Code, §104.362 (Definitions);

(2) Electric markets:

(A) the transfer and receipt of default charges, as defined under Utilities Code, §39.602 (Definitions);

(B) transactions involving the transfer and ownership of uplift property, as described by Utilities Code, §39.662 (Property rights); and

(C) the receipt of uplift charges, as defined under Utilities Code, §39.652 (Definitions);

(3) Electric Cooperatives:

(A) transactions involving the transfer and ownership of securitized property, as defined under Utilities Code, §41.152 (Definitions); and

(B) the receipt of securitized charges, as defined under Utilities Code, §41.152.

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

Filed with the Office of the Secretary of State on August 4, 2025.

TRD-202502745
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 475-2220

SUBCHAPTER NN. FIREWORKS TAX

34 TAC §3.1281

The Comptroller of Public Accounts proposes the repeal of §3.1281, concerning fireworks tax. The comptroller repeals this section following the passage of Senate Bill 761, 84th Legislature, 2015, effective September 1, 2015, which repealed Tax Code, Chapter 161 (Fireworks Tax).

After filing the report and paying the fireworks tax, due August 20, 2015, fireworks sellers are no longer required to file a report and pay this tax. This period is now outside the four-year statute of limitations for assessments and refund claims. See Tax Code, §111.107(a) (When Refund or Credit Is Permitted) and §111.201 (Assessment Limitation).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed rule repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative ap-

propriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed rule repeal would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed rule repeal would have no fiscal impact on the state government, units of local government, or individuals. There would be no anticipated economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This repeal is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), as well as taxes, fees, and other charges that the comptroller administers under other law.

This proposal implements the repeal of Tax Code Chapter 161 (Fireworks Tax).

§3.1281. Fireworks Tax.

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

Filed with the Office of the Secretary of State on August 4, 2025.

TRD-202502738
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 467. FIRE MARSHAL

SUBCHAPTER A. MINIMUM STANDARDS FOR BASIC FIRE MARSHAL CERTIFICATION

37 TAC §467.1

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter, 37 Texas Administrative Code Chapter 467, Fire Marshal, Subchapter A, Minimum Standards For Basic Fire Marshal Certification, concerning §467.1 Basic Fire Marshal Certification.

BACKGROUND AND PURPOSE

The proposed amendment removes subsection (c), which outlines a special temporary provision scheduled to expire on August 30, 2024. This change eliminates the time-limited eligibility pathway and restores the rule's standard structure and formatting.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period, the proposed amendment is in effect, there will be no significant fiscal impact to state government or local governments because of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the proposed amendment is in effect, the public benefit will be accurate, clear, and concise rules.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the proposed amendment. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the proposed amendment is in effect:

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

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

(7) the rules will not increase the number of individuals subject to the rule; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The Commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does

not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

COSTS TO REGULATED PERSONS

The proposed amendment does not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, are not subject to Texas Government Code §2001.0045.

ENVIRONMENTAL IMPACT STATEMENT

The Commission has determined that the proposed amendment does not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register,* to Frank King, General Counsel, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768, or e-mailed to frank.king@tcfp.texas.gov.

STATUTORY AUTHORITY

These amendment is proposed under Texas Government Code §419.008(f), which provides the Commission may appoint an advisory committee to assist it in the performance of its duties, and under Texas Government Code §419.008(a), which provides the Commission may adopt rules for the administration of its powers and duties. Additionally, §463.7, Terms, is proposed pursuant to Texas Government Code §419.008(f), which provides members appointed under chapter 419 shall serve six-year staggered terms but may not be appointed to more than two consecutive terms.

CROSS-REFERENCE TO STATUTE

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

§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 or Arson Investigator certification through the Commission; and]~~

~~[(3) holding as a minimum, Fire Inspector certification through the Commission.]~~

~~[(4) 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.]~~

~~[(5) This subsection will expire on August 30, 2024.]~~

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

Filed with the Office of the Secretary of State on July 29, 2025.

TRD-202502674
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Earliest possible date of adoption: September 14, 2025
For further information, please call: (512) 936-3812

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