ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 16. FACIAL COMPLIANCE REVIEWS AND AUDITS

1 TAC §§16.1 - 16.11

The Texas Ethics Commission (the Commission) adopts new Ethics Commission Rules §§16.1 - 16.11, regarding facial compliance reviews (FCRs) and audits performed by the Commission. The new rules are adopted without changes to the proposed text as published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5325). The new rules will not be republished.

Gov't Code §571.069(a) requires the Commission to review randomly selected statements and reports for facial compliance. In an FCR, Commission staff randomly select reports for review without a complaint. Under this process, the Commission may vote to initiate a full audit or initiate a complaint if the criteria set out in §571.069(b) of the Government Code are met, including failing to file a proper correction or provide requested information within a certain period of time. The new rules set out a process for conducting FCRs and audits and are intended to provide clarity in the FCR and audit process, provide a greater amount of time for filers to correct reports without receiving a fine, and allow filers to submit documentation to show that a report was filed correctly. The new rules also set out procedures for performing FCRs and initiating an audit or preliminary review for failure to comply with an FCR or audit and specify that any report subject to review must be randomly selected by Commission staff. The rules would largely codify the current practices of staff in performing FCRs but would also allow filers additional time to correct reports in good faith without receiving a late fine.

No written public comments were received on these new rules. At the June meeting, the Commission received comments from the public, including Gardner Pate and Donna García Davidson, who raised concerns that staff had requested that filers produce documents or information in addition to bank statements when there is a difference between the reported bank balance (total political contributions maintained or "cash on hand") and the bank balance that staff had expected when reviewing the filer's reports in the FCR process. In response, the Commission has proceeded to consider a separate rule to address their concerns.

New rules §§16.1 - 16.11 are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules concerning the laws administered and enforced by the Commission.

The new rules will affect §571.069 of the Government Code.

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

Filed with the Office of the Secretary of State on October 22, 2018.

TRD-201804619
Seana Willing
Executive Director
Texas Ethics Commission
Effective date: November 11, 2018
Proposal publication date: August 17, 2018
For further information, please call: (512) 463-5800

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CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.7

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission Rules §18.7, regarding the late filing of a report when the Commission's office is closed. The amendment is adopted without changes to the proposed text as published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5327) and will not be republished.

The amendment provides that a report required to be filed with the Commission is not late if the Commission's office is closed on the filing deadline due to weather or other emergency, or the Commission cannot accept reports on the deadline because the agency's filing system is not accessible or its network is inoperable, and the report is filed by midnight on the next regular business day when the Commission's office is open, not including a legal holiday. The basis of the rule is to treat a report as not late when certain circumstances, as stated in the rule, prevent filing and the report is filed promptly when those circumstances have been resolved.

No comments were received on this amended rule.

The amended rule §18.7 is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules concerning the laws administered and enforced by the commission.

The amended rule §18.7 affects Chapter 254 of the Election Code.

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

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 83, Subchapter A, §§83.102, 83.302, 83.304, 83.404, 83.505, 83.606, 83.707, 83.802, 83.828, 83.829, 83.833, and 83.835, concerning Rules for Regulated Lenders. The commission also adopts the repeal of 7 TAC §83.408.

The commission adopts the amendments to §§83.102, 83.302, 83.304, 83.404, 83.505, 83.606, 83.707, 83.802, 83.828, 83.829, 83.833, and 83.835; and adopts the repeal of §83.408 without changes to the proposed text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5619).

The commission received no written comments on the proposal.

The adopted changes affect rules contained in Division 1, concerning General Provisions; Division 3, concerning Application Procedures; Division 4, concerning License; Division 5, concerning Interest Charges on Loans; Division 6, concerning Alternate Charges for Consumer Loans; Division 7, concerning Interest and Other Charges on Secondary Mortgage Loans; Division 9, concerning Insurance; and Division 10, concerning Duties and Authority of Authorized Lenders.

In general, the purpose of the adoption regarding 7 TAC, Chapter 83, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 83, Subchapter A was published in the July 6, 2018, issue of the *Texas Register* (43 TexReg 4563). The commission received no comments in response to that notice.

The agency distributed an early draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal written precomments on the rule text draft. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments and repeal fulfill the following four purposes: 1) ensure consistency with current licensing terminology, agency procedures, and streamlined processes; 2) provide flexibility to licensees; 3) modernize or remove obsolete language; and 4) make technical corrections. Any regulated lender rule not included in this adoption will be maintained in its current form.

The individual purposes of the adopted amendments to each section, as well as the purpose of the adopted repeal, are provided in the following paragraphs. Specific explanation is included with regard to rule changes to ensure consistency, provide flexibility, and modernize language. The remaining changes throughout all sections consist of minor revisions to formatting, grammar, punctuation, and other technical corrections. The technical changes will be summarized more generally.

In §83.102, the definition of "Interpretation letter" in former paragraph (14) has been deleted, as this definition is not used in the subchapter. As a result, the remaining definitions have been renumbered accordingly.

The agency's acronym "OCCC," defined in adopted §83.102(17) (former §83.102(18)) replaces the use of "commissioner" in three instances in the introductory language of §83.302. The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition to §83.302, the following rules include amendments replacing "commissioner" with "OCCC": §83.802(b), concerning Authorized Property Insurance; and §83.835, concerning Annual Report.

Section 83.302, concerning Filing of New Application, includes numerous adopted rule changes to ensure consistency with current agency procedures. In §83.302(1)(A) and (1)(B), changes streamline the introductory wording (referred to as "taglines") and grammar to more closely track the OCCC's online licensing portal, and to no longer refer to specific titles used on paper licensing forms. In particular, a statement that the "responsible person is also known as the location contact" has been added to §83.302(1)(A)(ii), to further the use of online terminology.

Adopted changes are included in §83.302(1)(A)(iii) regarding the signature on a new license application. These changes involve the deletion of unnecessary language, allowing for the electronic signature of an authorized individual of the applicant, without reference to particular titles of the person signing.

An adopted revision throughout §83.302(1)(B) relates to the percentage of ownership that must be disclosed by various entities. In the former rule, these percentages are 5%. In evaluating the appropriate level of disclosure necessary for the agency to properly assess principal parties, the agency had determined that 10% would achieve the needed information. Therefore, the amendments align the rule with current agency practice and provide consistency in disclosure of ownership for new applications with transfer applications found in §83.303. Consequently, 5% has been replaced with 10% in the following proposed provisions: §83.302(1)(B)(iii)(II), (1)(B)(iv), and (1)(B)(v). A parallel change has also been adopted in §83.304, concerning Change in Form or Proportionate Ownership, as found in subsection (c)(1).

Adopted amendments updating licensing terminology continue in §83.302(1)(C) through (1)(K), (2)(A), and (3), to better align the rule with the OCCC's online portal. In addition, §83.302(1)(G) concerning employment history includes an amendment to remove the phrase "with no gaps." As the rule still requires "a continuous 10-year employment history, "the deleted language is not necessary.

Section 83.302(1)(D) contains several adopted amendments to ensure consistency with current agency procedure. First, the term "registered agent" will replace "statutory agent." These terms have been used synonymously, but "registered agent" is used by the Texas Secretary of State (SOS) and has become the more common term. Second, a natural person will require simply a different address from the licensed location, as opposed to the outdated requirement of a physical residential address. Third, a company's secretary may submit certification identifying an agent that differs from the SOS filing. Furthermore, these amendments are consistent with rule revisions previously adopted for other industries regulated by the agency and will provide consistency in the licensing process.

In §83.302(1)(J)(i), an adopted amendment adds language requiring all entity types to provide a bank confirmation if requested by the agency. This amendment memorializes the long-standing OCCC licensing procedure to obtain bank confirmations if necessary to confirm account balance information with financial institutions of applicants.

Section 83.302(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. Adopted amendments in §83.302(2)(A)(iv) update the fingerprinting requirements and provide increased flexibility so that applicants will not need to resubmit if acceptable fingerprints are on file. These amendments correspond to changes approved by the commission in the OCCC's other licensed areas and will provide consistency across regulated entities.

Regarding the entity documents under §83.302(2)(C), several adopted amendments update the documents required for new applications, increasing the efficiency of the licensing process. The provisions under former (2)(C)(ii)(II) and (III), and (2)(C)(iv)(II) and (III) required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective clause and language has been added to reflect that such documents should only be provided upon request. Additionally, the requirements in former §83.302(2)(C)(ii)(IV)(-a-) and (2)(C)(iv)(IV)(-a-) have been deleted. These provisions required applicants to provide minutes electing the statutory agent. The agency has streamlined the process for verification of the registered agent by certification from the secretary of the company.

Further, these adopted changes align the rule with the OCCC's online portal, listing the required documents first, removing documents no longer required, and listing last documents to only be provided "if requested" by the agency. Parallel changes are adopted for corporations in §83.302(2)(C)(ii), and for limited liability companies in §83.302(2)(C)(iv).

An adopted amendment in §83.302(2)(C)(viii) allows applicants to submit a "certification of formation." This language is similar to that approved by the commission in the OCCC's other regulated areas. The amendment provides flexibility to applicants that may wish to submit this type of document, as opposed to an entity-specific formation document (e.g., for a corporation, articles of incorporation).

Section 83.304 describes what action a licensee must take when it changes the proportion of ownership in or the form of the licensed entity and lists the time frame within which the licensee must notify the agency. The adopted changes in §83.304(b) revise grammar and formatting concerning mergers. Separate paragraphs have been created to distinguish the requirements for merger of a licensee, merger of a parent entity, and a merger beyond the parent level. These amendments do not change what is required for each type of merger, but are intended to provide clarity and improve readability.

Section 83.404 describes the effect of criminal history information on applicants and licensees. In §83.404(f)(2), unnecessary language has been deleted related to a citation update.

Section 83.408, concerning License Reissuance, has been repealed. Upon reissuance of a license, this rule requires the licensee to return to the agency the license certificate held prior to the reissuance. With the OCCC's online portal, licensees print their own licenses and the agency no longer issues license certificates. As a result, §83.408 has become obsolete.

In §83.505, concerning Deferment, adopted new subsection (j) provides important amendments that increase flexibility for licensees during times of natural disasters. With recent hurricanes and floods, the agency has recognized the need for licensees to assist borrowers in these difficult situations. In accordance with agency practice, the addition of §83.505(j) memorializes in the rule the deferment procedures the agency has recently permitted during natural disasters. This disaster exception allows the licensee to deliver the deferment notice without obtaining the borrower's signature if the borrower resides in an area designated as a state of disaster, and the deferment occurs before the state of disaster has been terminated. Further, the new exception is similar to that approved by the commission for motor vehicle sales finance licensees.

An adopted amendment to §83.606(f) will update internal references to a definition being renumbered as part of this adoption. With the deletion of the definition in former §83.102(14), all remaining definitions will be renumbered, including the definition of "United States rule" contained in former §83.102(30). Section 83.606, concerning Maximum Term and Maximum Installment Account Handling Charge, references the United States rule definition. Thus, the adopted amendments to §83.606(f) update the internal references to the new definition number, §83.102(29).

Section 83.707(d)(2), concerning Other Fees, contains an adopted amendment to make a correction in terminology. The rule previously used the phrase "finance charge," where the intended phrase as adopted is "contract rate."

Several adopted changes modernize §83.802, concerning Authorized Property Insurance. Since §83.802 was adopted, the Texas Department of Insurance (TDI) does not fix or approve rates for property insurance, but rather has what is referred to as a "file and use" system. As a result, this terminology has been modernized throughout §83.802. The rates provided by Figure: 7 TAC §83.802(c) have also been amended. The existing rates have not been updated for many years. The adopted rates in the figure correspond to those recently accepted by TDI for dual interest personal property insurance. Additionally, adopted §83.802(d) maintains the requirement for licensees to file with the OCCC a copy of the relevant policy to be used for a rate that has not been filed with TDI.

The adopted changes to the following rules enhance record-keeping and reporting for licensees. First, in §83.828(13), concerning Files and Records Required (Subchapter E and F lenders), an amendment streamlines the compliance file requirements to align with examinations issued through the online

portal. An additional amendment removes the requirement to maintain compliance bulletins, as these are now posted on the OCCC's website.

In §83.829(1)(H), concerning Files and Records Required (Subchapter G lenders), adopted terminology updates refer to the "compliance" file, as opposed to the prior term of "official correspondence" file.

Throughout §83.833(b), concerning Correction of Errors or Violations, adopted amendments make corrections in terminology. This rule previously used the term "retail buyer," where the intended term as adopted is "borrower."

In §83.835, concerning Annual Report, adopted changes in grammar and use of the agency's acronym will improve readability and consistency.

DIVISION 1. GENERAL PROVISIONS

7 TAC §83.102

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

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Laurie B. Hobbs
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Office of Consumer Credit Commissioner
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Proposal publication date: August 31, 2018
For further information, please call: (512) 936-7621

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DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.302, §83.304

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

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DIVISION 4. LICENSE

7 TAC §83.404

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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7 TAC §83.408

The repeal is adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adopted repeal are contained in Texas Finance Code, Chapter 342.

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

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DIVISION 5. INTEREST CHARGES ON LOANS

7 TAC §83.505

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

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DIVISION 6. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §83.606

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

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DIVISION 7. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

7 TAC §83.707

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

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DIVISION 9. INSURANCE

7 TAC §83.802

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

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DIVISION 10. DUTIES AND AUTHORITY OF AUTHORIZED LENDERS

7 TAC §§83.828, 83.829, 83.833, 83.835

The amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.121

The Credit Union Commission (the Commission) adopts amendments to 7 TAC, Chapter 91, §91.121, concerning complaint notices and procedures, without changes to the proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4927). The amendments will not be republished.

The amended rule is intended to be explanatory in nature and generally relate to four areas: (1) how to file a complaint with the Department, (2) how a complaint is handled after receipt, (3) the authority of the Department in reviewing complaints, and (4) the privacy of information provided in a complaint.

The Commission received one written comment from Alliance Credit Union supporting the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code Title 2, Chapter 15 and Title 3, Subchapter D.

The statutory provision affected by the adopted amendments is Texas Finance Code, Section 15.409, regarding consumer information and complaints.

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

Filed with the Office of the Secretary of State on October 16, 2018.

TRD-201804504
Harold E. Feeney
Commissioner
Credit Union Department
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Proposal publication date: July 27, 2018
For further information, please call: (512) 837-9236

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SUBCHAPTER D. POWERS OF CREDIT UNIONS

7 TAC §91.403

The Credit Union Commission (the Commission) adopts the amendments to 7 TAC, Chapter 91, Subchapter D, §91.403, concerning debt cancellation products consistent with competitive parity with federal credit unions, without changes to the proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4929). The amendments will not be republished.

The amended rule updates standards governing debt cancellation products in order to encourage credit unions to provide such products consistent with safe and sound credit union practices and subject to appropriate consumer protections. The amended rule also incorporates by reference the guidance issued by NCUA in its Letter to Federal Credit Unions No. 03-FCU-06 and directs credit unions to look to 12 C.F.R. Part 37, for guidance as to best practices related to the offer and sale of debt cancellation products.

The Commission received three written comments on the proposed amendments to the rule. The three commenters (Consumer Credit Industry Association, CUNA Mutual Group, and Alliance Credit Union) supported the amendments as proposed.

The rule changes are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §123.003 and §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The statutory provisions affected by this adoption are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D.

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

Filed with the Office of the Secretary of State on October 16, 2018.

TRD-201804505
Harold E. Feeney
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Credit Union Department
Effective date: November 5, 2018
Proposal publication date: July 27, 2018
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SUBCHAPTER G. LENDING POWERS

7 TAC §91.709

The Credit Union Commission (the Commission) adopts the amendments to 7 TAC, Chapter 91, Subchapter G, §91.709, concerning member business and commercial loans, without changes to the proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4931). The amendments will not be republished.

The amended rule modifies the definition of member business loan (MBL) with respect to 1- to 4-family dwellings to conform with recent amendments to 12 U.S.C. 1757a(c)(1)(B)(i). The amended rule also provides credit unions parity, under Texas Finance Code Section 123.003, with federal credit unions engaged in the business of making MBLs in Texas.

The Commission received one written comment from Alliance Credit Union supporting the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code Section 124.001, which authorizes the Commission to adopt rules regarding loans to members.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code Chapter 124.

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

Filed with the Office of the Secretary of State on October 16, 2018.

TRD-201804506
Harold E. Feeney
Commissioner
Credit Union Department
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Proposal publication date: July 27, 2018
For further information, please call: (512) 837-9236

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7 TAC §91.712

The Credit Union Commission (the Commission) adopts the amendments to 7 TAC, Chapter 91, Subchapter G, §91.712, concerning plastic cards, without changes to the proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4937). The amendments will not be republished.

The amended rule will allow a plastic card to be activated by logging on to the card issuer/processor's website to go through a member verification process.

The amended rule implements changes resulting from the Commission's review of the Chapter 91, Subchapter G under Texas Government Code, Section 2001.039.

The Commission receive one written comment from Alliance Credit Union supporting the proposed amendments to the rule.

The amended rule is adopted under authority granted by the Texas Legislature to the Commission pursuant to Texas Finance Code, Section 15.402(b) - (1), which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code Section 124.001, which authorizes the Commission to adopt rules regarding loans to members.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Section 15.402 and in Finance Code Chapter 124.

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

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Harold E. Feeney
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Credit Union Department
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.407

The Public Utility Commission of Texas (commission) adopts new §26.407, relating to Small and Rural Incumbent Local Exchange Company Universal Service Plan Support Adjustments with changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3714). The addition of §26.407 reflects the development and implementation of a mechanism to determine the annualized Small and Rural Incumbent Local Exchange Company Universal Service Plan support for certain small incumbent local exchange companies (small ILECs). The adopted rule establishes criteria by which a small ILEC may request that the commission determine the amount of Small and Rural Incumbent Local Exchange Company Universal Service Plan support it receives, so that the support, combined with regulated revenues provides the small ILEC an opportunity to earn a reasonable rate of return under this rule, as required by Senate Bill 586, 85th Legislative Session (Regular Session). This new section is adopted under Project Number 47669.

The commission received comments on the proposed amendments and new section from the Texas Cable Association (TCA); Office of Public Utility Counsel (OPUC); and Texas Statewide Telephone Cooperative, Inc. and Texas Telephone Association (collectively TSTCI and TTA).

No party requested that a public hearing be held regarding the proposed rule.

General Comments

TSTCI and TTA provided comments in response to the Chairman's request to create an alternative abbreviation or title in this section for the term Small and Rural Incumbent Local Exchange Carrier Universal Service Plan. TSTCI and TTA suggested that the commission use the title small ILEC plan (SIP) to describe the Small and Rural Incumbent Local Exchange Company Universal Service Plan.

Commission Response

The commission declines to adopt TSTCI and TTA's suggested change. The commission has determined that the entire term should be used when referring to the Small and Rural Incumbent Local Exchange Carrier Universal Service Plan, instead of using an acronym.

§26.407(a) - Purpose

TSTCI and TTA recommended that this subsection be revised to include a reference to show that the ILEC or staff may request an adjustment to support.

Commission Response

The commission declines to adopt TSTCI and TTA's suggested change to this subsection. The commission notes that the purpose of the section is to establish criteria for a small ILEC to request adjustments to the monthly support the company receives. Any adjustments to a small ILEC's reported rate of return that may be made by commission staff are a result of the review of information in the small ILEC's annual report. Similar to other types of applications, commission staff will review the information provided from the applicant and make any adjustments it deems necessary.

§26.407(d) - Notification to the Commission That a Small ILEC Seeks to Participate in This Section

TSTCI and TTA suggested that the language "is not an electing company under Chapter 58 or 59" be deleted, because the language is also in the statute.

Commission Response

The commission declines to adopt TSTCI and TTA's suggested change. The commission finds that the language "is not an electing company under Chapter 58 or 59" provides clarification to the type of ILEC that may seek an adjustment to its support under this section. Furthermore, the commission does not find TSTCI and TTA's argument that the language is already in the statute to be persuasive. Much of the language used in this section is in the statute, but is also used in the rule to provide additional guidance and clarity.

§26.407(e) - Comments Regarding the Annual Report of a Requesting Small ILEC

OPUC stated that prior to the commission making a determination of whether an ILEC's universal service support or basic rates should be increased, it must first make an analysis of an ILEC's regulated revenues. OPUC explained that in order for the commission to perform such an analysis, it needs to have sufficient information regarding revenues, expenses, affiliate transactions, and cost allocations to determine whether the reported rate of return should be adjusted. OPUC commented that it supports the inclusion of the items listed in subsection (e)(2). OPUC further explained that it believes the commission appropriately identified the kind of financial and other information that it needs to make a reasonable determination of whether the ILEC's reported rate of return falls below, within, or above the reasonable rate of return identified in subsection (c)(3). OPUC added that because the commission has the discretion to increase not only universal service support for ILECs whose rate of return falls below the reasonable rate of return but also basic rates, it is critical that the annual report include sufficient information.

In reply comments, TCA stated it concurred with OPUC that the published rule appropriately identifies the information the commission will need in order to make a determination of whether the ILEC's reported rate of return falls below, within, or above the reasonable rate of return identified in subsection (c)(3).

TSTCI and TTA submitted a number of comments on different paragraphs regarding subsection (e). TSTCI and TTA's comments have been summarized below by the applicable paragraph.

Subsection (e)(1) - TSTCI and TTA stated that subsection (e)(1) should allow an annual report to be filed within two months after a small ILEC elects to participate in this section, rather than requiring an annual report to be filed within two months after the effective date of this section. TSTCI and TTA explained that the language in the proposal for publication only allows for a one-time filing deadline that would exclude any small ILEC from filing at a later date. TSTCI and TTA also recommended that the annual reports should be filed in September of each year instead of May. TSTCI and TTA explained that moving the date from May to September would allow the small ILECs to use the current year's cost study jurisdictional percentages rather than the prior year's cost study information. Cost study jurisdictional percentages are developed and reported to the National Exchange Carrier Association by July of each year for the prior year's cost study information. TSTCI and TTA argued that by moving the due date of the report to September, this would ensure the proper matching of cost study separations and financial results of operations.

Commission Response

The commission agrees with TSTCI and TTA that the language in subsection (e)(1) should be changed to allow an annual report to be filed within two months after a small ILEC elects to participate in this section rather than requiring an annual report to be filed within two months after the effective date of this section. The commission also agrees with TSTCI and TTA that the annual reports should be due in September rather than May to ensure the proper matching of cost study separations and financial results of operations. The commission has made the necessary revisions to the proposed rule language and form instructions to incorporate these changes.

Subsection (e)(2)(B) - TSTCI and TTA suggested that it was not clear in subsection (e)(2)(B) whether the commission was asking for more detail than what was being requested in the proposed form. TSTCI and TTA stated that because subsection (e)(2)(K) already requests detail and supporting documentation, it would be preferable to reference "summary" data in subsection (e)(2)(B).

Commission Response

The commission declines to adopt TSTCI and TTA's recommendation that subsection (e)(2)(B) be described as "summary" data, as the information in subsection (e)(2)(A) is already characterized as such. Subsection (e)(2)(B) requests details for all revenue, expense, and capital accounts, including all subaccounts and balances, that make up the accounts on the annual report. The detail and supporting documentation required in subsection

(e)(2)(K) is a listing of each transaction, affected party, and monetary amount for the information identified in subsection (e)(2).

Subsection (e)(2)(C) - TSTCI and TTA recommended that "long-term" be inserted before "telephone plant under construction" in the Instructions for Schedule II (Invested Capital). TSTCI and TTA claim that this clarification aligns with the annual report and the Federal Communications Commission (FCC) rules.

Commission Response

The commission agrees with TSTCI and TTA's suggested revision that "long-term" be inserted before "telephone plant under construction" in Schedule II of the Instructions.

Subsection (e)(2)(I) - TSTCI and TTA argued that there is a reference to "other highly compensated employees" in subsection (e)(2)(I), but "highly compensated employee" is not defined. TSTCI and TTA believe that a definition of "highly compensated employee" should be provided in Attachment B in the instructions for Schedule VIII. TSTCI and TTA recommended that the commission use the Internal Revenue Service guidelines related to 401(k) reporting, which establishes the threshold of a "highly compensated employee" at $120,000. Additionally, TSTCI and TTA argued that any compensation that was reported in Schedule VIII of the annual report should not be included on Schedule IX to avoid double-counting.

Commission Response

The commission declines to adopt a specific definition of "highly compensated employee". Instead, it will review the issue on a case-by-case basis to determine what is considered "highly compensated". Because of the different sizes of the companies that may seek an adjustment to support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan, it is reasonable to determine the amount attributable to "highly compensated" employees for each company. For example, a company with 100 access lines may not have any employee that meets the Internal Revenue Service definition of "highly compensated"; however, the annual salary for the highest paid employees should be reviewed, whereas a company with 5,000 access lines may have numerous employees that meet the Internal Revenue Service definition of "highly compensated".

Subsection (e)(2)(J) - TSTCI and TTA suggested a change in Schedule IX (Report of Utility Affiliate Transactions) of the instructions to clarify that the amount allocated to the intrastate regulated operations of the small ILEC should be reported for such transactions.

Commission Response

The commission declines to adopt TSTCI and TTA's proposed changes to Schedule IX (Report of Utility Affiliate Transactions) of the annual report instructions that would state the amount allocated to the intrastate regulated operations of the small ILEC should be reported for such affiliate transactions. The commission should be provided the total amount of each affiliate transaction and then the breakdown between intrastate and interstate. The commission will use the cost allocation manual submitted by the ILEC to determine whether the allocation complies with FCC statutes and rules and is reasonable.

Subsection (e)(3) - TSTCI and TTA stated that the cost allocation manual only needs to be provided in the first year and companies will only need to provide updates or changes to the manual in subsequent years. TSTCI and TTA stated that a cost allocation manual gives instructions and formulas for how the separations processes and allocations are to be calculated for each company, and that, to their understanding, the manual is provided once. TSTCI and TTA suggested that the companies will provide only updates or changes to the manual in subsequent years.

Commission Response

The commission declines to adopt TSTCI and TTA's recommendation that the cost allocation manual only be provided in the first year and that updates or changes to the cost allocation manual be provided in subsequent years. A complete copy of the cost allocation manual should be submitted each time it is filed in order to facilitate staff's internal review. Additionally, due to record retention rules, the commission may not always have access to the original cost allocation manual.

Subsection (e)(4) - TSTCI and TTA stated that a new subsection (e)(4) should be added to allow a small ILEC the opportunity to defer filing an annual report during the pendency of a comprehensive base-rate proceeding. TSTCI and TTA concede that comprehensive base-rate proceedings are not imminent, but admit that this language is suggested just as a possibility in the future. TSTCI and TTA also stated that a corresponding addition would be required in the instructions to the annual report.

Commission Response

The commission declines to adopt TSTCI and TTA's recommendation that a new subsection (e)(4) should be added to allow a small ILEC the opportunity to defer filing an annual report during the pendency of any comprehensive base-rate proceeding. The commission notes that there currently are no base-rate proceedings, and there has not been a comprehensive base-rate case in many years. TSTCI and TTA conceded that a base-rate proceeding is not imminent, but admitted that this language is suggested just as a possibility in the future.

§26.407(f) - Commission Staff's Review of Annual Reports

Subsection (f)(1) - TSTCI and TTA commented that subsection (f)(1)(A) and (B) should have language allowing for reasonable extensions by either the small ILEC or the commission staff. TSTCI and TTA argued that even with an agreed-upon delay, it would result in the automatic placement of an ILEC in Category 3. TSTCI and TTA also requested that the rule be changed, so that the rule would not require the automatic placement of a Category 1 provider into Category 3 for a lack of response to commission staff's requests for information. TSTCI and TTA proffered an alternative to placing a non-responsive ILEC to Category 3. They proposed that an administrative penalty be assessed against the ILEC in lieu of re-categorization to Category 3 for not responding within ten days to the commission staff's request for information.

TCA stated that it opposes TSTCI and TTA's request for extensions of deadlines to the requirements of subsection (f). TCA asserted that TSTCI and TTA's proposal would cause uncertainty for the public and create an unfair opportunity for the small ILEC to delay a test year period to a time that included untimely expenses or a reduction in revenues that would ultimately result in higher universal service fund contributions by all Texans.

Commission Response

The commission declines to adopt TSTCI and TTA's recommendation that language be added to subsection (f)(1)(A) and (B) that would allow for reasonable extensions by either the small ILEC or the commission. An ILEC's failure to respond to the com-

mission staff's request for information or an ILEC's request for additional time to respond to the commission staff's request for information should be the exception, not the rule. To provide language in the rule that would automatically allow additional time to respond to a request for information may encourage the practice of delaying responses to request for information to become the norm rather than the exception. Subsection (h)(2)(B) provides a mechanism to request re-categorization by an ILEC that has a reported rate of return in Category 1 but is reclassified as a Category 3 by commission staff for failure to timely provide information to commission staff.

Subsection (f)(2) - TSTCI and TTA commented that the commission should include language in subsection (f)(2)(A)(ii) requiring any other adjustments the commission makes be tied to existing commission rules. TCA commented that TSTCI and TTA's request for any other adjustments the commission may make be tied to existing commission rules should be rejected. TCA argued that the commission's recommendations are always governed by the public interest and by applicable laws, so it does not need to be explicitly stated in the rule.

Commission Response

The commission declines to adopt TSTCI and TTA's request to include language stating that any other adjustments the commission staff may make be tied to existing commission rules. The commission staff is required to act according to the law and in a prudent manner as a representative of the public interest; therefore, any adjustments it makes would be in the public interest and would not be in violation of any statutes or commission rules.

§26.407(g)(1) and (j)(1)(A) - Comments Regarding Treatment of Small ILECs Based on Rate of Return Categories

OPUC stated that the published rule failed to include the language from the statute that states "[a] rate adjustment under this subsection may not adversely affect universal service." OPUC recommended that this language be added to subsection (g)(1) and subsection (j)(1)(A). In support of its position, OPUC explained that there are times when rates can be increased without adversely affecting universal service; however, under other circumstances, raising rates in lieu of or in addition to providing additional universal service fund support could adversely affect universal service if the existing rates were above FCC benchmarks or at or above comparable urban rates.

Commission Response

The commission adopts the language proposed by OPUC for subsection (g)(1) and subsection (j)(1)(A) to memorialize the intent of the statute that any proposed rate adjustments under this section do not adversely affect universal service.

§26.407(h) - Contested Case Procedures

Subsection (h)(1) - OPUC stated that in a contested case, intervenors need access to the underlying information to be able to analyze and determine whether the regulated revenues of the small ILEC are sufficient or whether an increase to universal service support or existing rates is reasonable. OPUC supports the requirements outlined in subsection (h) that require a small ILEC to provide not only testimony and workpapers necessary to support the requested adjustments, but also the underlying information that was provided to the commission staff during the review of the annual report. While OPUC agreed with and supported the requirements in subsection (h), it would like the commission to clarify the intent of subsection (h)(1) by stating in the preamble that any Category 1 proceeding in which a party has intervened and requested a hearing is a case initiated by a small ILEC and the filing requirements included in subsection (h)(1) apply.

In reply comments, TCA agreed with OPUC's comments that subsection (h)(1) applies to a case initiated by a small ILEC and includes both cases eligible for administrative disposition as well as a fully contested case in which parties have intervened and requested a hearing. TCA stated that in both types of cases, the information in subsection (h)(1) should be included in the filing and publicly available for review. TCA also commented that the commission should either adopt OPUC's suggestion that clarification be included in the preamble or by modifying the rule language to explicitly clarify that the treatment of Category 1 proceedings in which a party has intervened and requested a hearing is a case initiated by a small ILEC and that the requirements in subsection (h)(1) apply.

Commission Response

The commission agrees with OPUC and TCA that subsection (h)(1) should be clarified to state that any Category 1 proceeding in which a party has intervened and requested a hearing is a case initiated by a small ILEC and the filing requirements included in subsection (h)(1) apply. The commission also agrees with OPUC and TCA that subsection (h)(2)(B) should be clarified to indicate that a proceeding initiated by a small ILEC to protest a reclassification and in which a party has intervened and requested a hearing is a case initiated by a small ILEC and the filing requirements included in subsection (h)(1) apply. The commission has made the necessary revisions to the proposed rule language to incorporate these changes.

Subsection (h)(2) - TSTCI and TTA commented that subsection (h)(2)(B) should apply only to small ILECs that reported a rate of return in Category 1, rather than those in Category 1 or Category 2. TSTCI and TTA argued that small ILECs that report a rate of return in Category 2, but who are reclassified as Category 3 because of adjustments made by commission staff, should not have to petition to contest the commission-staff adjusted rate of return and make a support adjustment request. Instead, such small ILECs could petition to contest the commission staff adjustment without requesting a support adjustment, because Category 2 small ILECs are not eligible for a support adjustment.

Commission Response

The commission declines to adopt TSTCI and TTA's proposal that Category 2 be deleted from subsection (h)(2)(B). Commission staff will review all of the small ILECs annual reports when they are filed and make any adjustments it determines are necessary. Once the commission staff has completed its review, each small ILEC will be placed in either Category 1, Category 2, or Category 3. If a small ILEC's rate of return on the annual report indicated it was a Category 2, but commission staff made adjustments that caused that small ILEC to fall into Category 1 or Category 3, then the small ILEC has the opportunity in subsection (h)(2)(B) to contest that reclassification.

Subsection (h)(5) - TSTCI and TTA also commented subsection (h)(5) should use the same language to describe "good cause" that is used in the statute. They further commented that a sentence should be added to subsection (h)(5) to clarify that any contested cases initiated solely to contest commission staff's expense adjustments without adjusting the small ILEC's support should not trigger the three-year waiting period during which no further contested case can be initiated. TSTCI and TTA argued the statutory intent was to avoid adjusting support more frequently than every three years absent good cause.

In reply comments, TCA recommended rejection of TSTCI and TTA's suggestion that subsection (h)(5) be modified to shorten the three-year prohibition from filing a contested case.

In initial comments, OPUC addresses the timeline of a contested case by stating that, to its understanding, once a request for a hearing has been made under this subsection, the case proceeds as any other contested case.

In reply comments, TSTCI and TTA addressed OPUC's comments regarding contested case procedures and asserted that a contested case should be abbreviated and streamlined as compared to a typical rate case. In support of such a position, TSTCI and TTA stated that a time limit, such as 60 days subject to extensions for good cause, might be imposed upon contested cases to avoid such proceedings approaching the involvement, time, and cost incurred with comprehensive rate cases. TSTCI and TTA argued that a 60-day timeframe is consistent with other commission rules for review of certain certification proceedings and streamlined rate adjustments before the commission. In support of its position, TSTCI and TTA provided language for a new subsection (h)(5).

Commission Response

The commission agrees with TSTCI and TTA that the contested case procedures, including the timeline for the contested cases outlined in this section, should be more abbreviated and streamlined as compared to a typical rate case. However, the commission recognizes that the timeline of 60 days as proposed by TSTCI and TTA is not conducive to a contested case. In order to allow time for parties to conduct discovery and to be cognizant of resources of commission staff and the State Office of Administrative Hearings, the commission finds that a 120 day timeline is more realistic. The commission has inserted language as new subsection (h)(5) to implement the timeline.

§26.407(i) - Confidentiality of Information

OPUC supported the recommended treatment of the confidentiality of information in the proposed rule. OPUC stated that the annual review process is not intended to be an open, public process, but that, if the small ILEC initiates a contested case proceeding, the small ILEC cannot rely on a presumption of confidentiality on the underlying data. However, if the small ILEC chooses to dispute commission staff's assessment in a contested case, it is permitted to support a claim of confidentiality in and of itself, and not merely on the fact that it was submitted to commission staff for review under the annual review process. OPUC stated that requiring all "revenues and expenses, invested capital, taxes, weighted average cost of capital, affiliate transactions, and cost allocations" be treated as confidential would go against commission precedent and be unworkable in the context of a contested case proceeding.

TSTCI and TTA disagreed with the treatment of confidential information in the proposed rule in two respects. First, TSTCI and TTA construed PURA §56.032(d) to require that any "information" by any part of the rule, including both annual reports and contested cases, should be confidential. As a result, they asked for commission staff to strike the language referring to subsection (e) in subsection (i)(1) of the proposed rule.

Additionally, TSTCI and TTA argued that the language stating that "no claim of confidentiality shall arise from this subsection in such a subsequent contested case" in subsection (i)(3) conflicts with the language in subsection (i)(2) and the statutory language, because of their view that all information provided in compliance with the rule should be confidential. Moreover, they asserted that the meaning of "subsequent contested case" is unclear. TSTCI and TTA cited two Texas Attorney General letter-rulings as justification for this view, because those rulings exempt earnings monitoring reports from disclosure.

In reply comments, TCA stated that it agrees with OPUC's comments regarding the rule's treatment of the confidentiality of information and disagreed with TSTCI and TTA's comments, stating that TSTCI and TTA's comments expand upon the statutory language. TCA stated that the documents TSTCI and TTA reference from the Texas Attorney General in their initial comments only speak to annual reports and responses to commission staff questions, not subsequent contested cases. TCA argued that, once a contested case arises, then the requirements of the Administrative Procedures Act must apply, including the provisions that relate to confidentiality of information.

Commission Response

The commission declines to adopt the changes proposed by TSTCI and TTA. The proposed edits would expand upon the statutory language, because "information" in PURA §56.032(k) only refers to the mechanism used by the commission to determine the annualized support amount, as described in PURA §56.032(d), not discovery in a subsequent contested case where a small ILEC chooses to dispute the annualized support amount that was determined by the commission. Additionally, the logistics of conducting a contested case where all of the information is considered confidential would render it unwieldy and potentially unworkable. Finally, the two Open Records Letter Decisions cited by TSTCI and TTA are not binding precedent, and do not address whether the information described in subsection (i)(3) may be disclosed in the process of a contested case proceeding.

§26.407(j) - Commission Adjustment of the Small ILEC's Revenue Requirement and Small and Rural Incumbent Local Exchange Company Universal Service Plan Support

TSTCI and TTA stated that subsection (j)(1)(B) should be clarified to reflect commission staff's intent that in most cases, support would be adjusted by the minimum amount needed either to bring a Category 1 small ILEC up to the bottom of the reasonable rate-of-return range or to bring a Category 3 small ILEC down to the top of the reasonable rate-of-return range. TSTCI and TTA commented that more than minimum adjustments might be requested in some situations, although small ILECs making such requests would be aware that additional support would be needed.

TTA and TSTCI also stated that subsection (j)(3) should be clarified to refer to the previous December's eligible line counts to calculate competitive eligible telecommunications provider (ETP) support, rather than referring more generally to December line counts.

Commission Response

The commission declines to adopt the changes proposed by TSTCI and TTA. The commission finds that the language proposed by TSTCI and TTA does not provide additional clarity rather the language that "a small ILEC that is in Category 1 *should* request an increase in SIP support that would result in a rate of return *equal* to the minimum of the reasonable rate of return" is not accurate. A Category 1 small ILEC is not required to request an increase in Small and Rural Incumbent Local Exchange Company Universal Service Plan support that would re-

sult in a rate of return equal to the minimum of the reasonable rate of return, but rather it is optional as to the level of increase in Small and Rural Incumbent Local Exchange Company Universal Service Plan support the small ILEC requests as long as it is not greater than the minimum of the reasonable rate of return. Additionally, clarification regarding which December's line counts will be used for the calculation is unnecessary, because the determination will be used for the December during the test year, not referring more generally to December line counts.

§26.407 (k) - Recovery of Federal Universal Service Fund support from the Texas Universal Service Fund in accordance with PURA §56.025

Subsection (k)(1) - TSTCI and TTA proposed that both Part 36 and Part 54 of the FCC's rules be referenced in subsection (k)(1) and (2), because this would more accurately include the applicable FCC rules. This change would also be made in the general instructions #7 and in the General Questions tab, under question #13.

TSTCI and TTA proposed language to clarify subsection (k)(1) regarding the "timing of any FUSF support will be considered when making a determination under subsection (j) of this section."

TSTCI and TTA suggested that subsection (k)(1) should also address federal universal service fund true-ups as well, similar to paragraph (2).

TSTCI and TTA also recommended that the instructions regarding Schedule I should clarify that any federal universal service fund loss recovery under PURA §56.025 should be entered as part of federal universal service fund support as a contra amount in Schedule I, line 22, column "g". This change would clarify that any Texas universal service fund support received under PURA §56.025 would replace lost high cost loop funds and must be included on this line and not included as other federal support.

Commission Response

The commission agrees with TSTCI and TTA that both Part 36 and Part 54 of the FCC's rules be referenced in subsection (k)(1) and (2), because this would more accurately include the applicable FCC rules. The commission has made the necessary revisions to the proposed rule language to incorporate these changes.

The commission declines to adopt TSTCI and TTA's proposed language to clarify subsection (k)(1) that the timing of any federal universal service fund support would be considered when making a determination under subsection (j) of this section. This language was included in subsection (k)(2) only to address the concern that small ILECs had regarding the time frame when a small ILEC decided to file an application to recover a particular year's loss in federal universal service fund support from the Texas universal service fund and how the recovery support should be booked for that period.

The commission agrees in part and declines in part to adopt TSTCI and TTA's proposed change to the instructions regarding Schedule I. The commission agrees that language should be included in the instructions to clarify that any federal universal service fund loss recovered under PURA §56.025 should be entered as part of federal universal service fund support as a contra amount in Schedule I, line 22, column "g." The language should also state that any Texas universal service fund support received under PURA §56.025 that replaces lost high cost loop funds must be included on this line. The commission disagrees with TSTCI and TTA that other loss in federal support that is being recovered from the Texas universal service fund should not be included on this line. Any type of federal support that is being recovered from the Texas universal service fund and has intrastate support should be included on this line. The commission has made the necessary revisions to the proposed rule language to incorporate these changes.

Subsection (k)(2) - TCA asserted that the proposed rule has an error at subsection (k)(2) where it states the items included in a small ILEC's revenues. TCA explained the error that occurred relates to the FCC's accounting treatment of federal universal service fund dollars received by the small ILECs under PURA §56.025(c). TCA explained that this section of PURA is commonly referred to as the "make-whole" provision. Under this provision of PURA, the Texas universal service fund must replace an ILEC's loss in revenue caused by any FCC order that changes the ILEC's federal universal service fund subsidy revenues. TCA claimed that under the terms of subsection (k) of the proposed rule, the commission is ignoring the fact that the small ILECs are already being made-whole by the Texas universal service fund under PURA §56.025 and are therefore, being allowed to double recover from the Texas universal service fund. TCA stated that the small ILEC first recovers their lost federal universal service fund 100% from the Texas universal service fund in their make-whole proceeding and then second, the small ILEC recovers under this rule. TCA argued that the federal universal service fund jurisdiction allocation is irrelevant to the make-whole funding because 100% of the PURA §56.025(c) money comes from the Texas universal service fund. TCA further asserted that if any of the PURA §56.025(c) money is allocated to interstate revenues, then the small ILEC would receive a windfall because they would be receiving both the Texas universal service fund make-whole subsidy and not having to report it as Texas revenues, which may ultimately result in the small ILEC being entitled to higher subsidies from the Texas universal service fund. TCA recommended deleting the language in subsection (k)(2) that says "...that is considered an intrastate expense adjustment under Part 36 of the FCC rules or by FCC order, regardless of the category of FUSF support or type of budget control mechanism placed on FUSF support..."

In its reply comments, TSTCI and TTA recommended that the commission not adopt TCA's suggestions regarding PURA §56.025. TSTCI and TTA stated that the proposed rule accurately accounts for intrastate and interstate support received under PURA §56.025. TSTCI and TTA claimed that the assertions presented by TCA are inaccurate and that the proposed rule accurately allocates the PURA §56.025(c) support in compliance with the matching principle of generally accepted accounting principles. TSTCI and TTA further explained that PURA §56.025(c) allows the replacement of a reduction in federal universal service fund revenue and PURA §56.025(b) allows the replacement of intrastate support. Because there is a distinction between the federal and state replacement mechanisms, then there should remain a separation in the rule as well.

TSTCI and TTA contended that it is not the source of revenues or expenses that is important but rather making sure that all revenues and expenses are correctly booked, allocated, and accounted for properly. They stated that if the revenues or expenses are not accounted for properly, then a mismatch would occur by including interstate support revenues as intrastate revenues. With TCA's proposal, small ILECs would have to report interstate revenues in its annual report, but would not be allowed

to include interstate costs as part of the intrastate cost of service in the same report.

TSTCI and TTA recommended that "budget control mechanism" in subsection (k)(2) be changed to avoid confusion with the specific "budget control" line item.

Commission Response

The commission declines to adopt TCA's proposed changes to categorize all of the loss of federal universal service fund support that is recovered from the Texas universal service fund as intrastate revenue. The commission disagrees with TCA's claim that under the terms of subsection (k) of the proposed rule the commission is ignoring the fact that the small ILECs are already being made whole by the Texas universal service fund under PURA §56.025 and are therefore, being allowed to double recover from the Texas universal service fund. The commission agrees with TSTCI and TTA that the proposed rule accurately accounts for intrastate and interstate support received under PURA §56.025 and is in compliance with the matching principle of Generally Accepted Accounting Principles (GAAP).

The commission declines to adopt TSTCI and TTA's suggestion that "budget control mechanism" in subsection (k)(2) be changed to avoid confusion with the specific "budget control" line item. Budget control mechanism is a tool used by the FCC to keep the budget for certain support in line. This is an FCC term that was outlined in an FCC order, used by both the FCC and the industry and should not be changed. Also, Schedule I does not appear to have a line item titled "budget control."

§26.407(l) Treatment of Federal Income Tax

Subsection (l)(1)(B) - TSTCI and TTA commented that the rule should omit published subsection (l)(1)(B), because the calculation of excess accumulated deferred federal income taxes (ADFIT) occurred in 2017 and has been reclassified as a regulatory liability. The amount is fixed and will be amortized. Therefore, the provisions of published subsection (l)(1)(B), which require a telephone utility to stop recording excess ADFIT, would be unnecessary. TSTCI and TTA also commented that the provisions of published subsection (l)(1)(B) could be construed to conflict with the provisions of published subsection (l)(1)(C).

Commission Response

The commission agrees with TSTCI and TTA that subsection (l)(1)(B) as published should be omitted and modifies the rule language accordingly.

Subsection (l)(2)(A) - TSTCI and TTA commented that the rule should allow for a reasonable alternative calculation of the amount of excess current federal income taxes. TSTCI and TTA commented that, because telephone rates are established based on FCC benchmark requirements and are not based on use of a tax methodology in calculating a revenue requirement, it is difficult or practically impossible for a telephone utility to calculate its excess current federal income tax using the exact terms of the Modified Accounting Order in Project No. 47945. Accordingly, TSTCI and TTA suggested offering a reasonable and simple alternative calculation in subsection (l)(2)(A). The suggested alternative proffered by TSTCI and TTA is the difference in the current period federal income tax expense calculated under the Tax Cuts and Jobs Act of 2017 and the amount that would have been calculated under the federal tax code immediately preceding the Tax Cuts and Jobs Act of 2017.

Commission Response

The commission agrees with TSTCI and TTA that the rule should allow for a reasonable alternative calculation of the amount of excess current federal income taxes. The commission adopts the language recommended by TTA and TSTCI and modifies the rule language accordingly.

Subsection (l)(2)(B) - TSTCI and TTA commented that the rule should use the word "accrue" in place of the word "record" in the published language in subsection (l)(2)(B) to more accurately reflect the proper accounting action needed at that time.

Commission Response

The commission agrees with TSTCI and TTA that the word "accrue" should be used instead of "record" and modifies the rule language accordingly.

Subsection (l)(2)(D) - TSTCI and TTA commented that subsection (l)(2)(D) as published would require a telephone utility to violate GAAP by violating the matching principle. TSTCI and TTA offered an alternative using Schedule VII for Proposed Company Adjustments. Rather than adjust the information on the face of the reported schedules, a telephone utility would supplement those schedules with the requested information. TSTCI and TTA suggested changing the word "adjust" to "supplement" in subsection (l)(2)(D) as published and adding language providing that the changes to 2017 information will be reported as a proposed company adjustment.

Commission Response

The commission disagrees with TSTCI and TTA's assertion that the rule as published would have forced a telephone utility to violate GAAP, because the rule addresses a utility's filing with the commission and does not address quarterly or annual filings with the Securities and Exchange Commission or any other report of financial information governed by the GAAP accounting framework. The commission agrees, however, with TSTCI and TTA's other suggestion to supplement the schedules using Schedule VII for Proposed Company Adjustments instead of adjusting the information on the face of the reported schedules. The commission makes the suggested modifications to the rule.

New subsection (l)(3) -TSTCI and TTA commented that subsection (l) should include a new paragraph (3) to provide for the expiration of the subsection. Because subsection (l) addresses regulatory concerns that will exist only for a limited time, TSTCI and TTA recommended officially noting in the rule that the subsection would expire on December 31, 2019, and that the amortization of any regulatory liability would continue until completed.

TSTCI and TTA also stated that the instructions regarding Schedule III (Federal Income Taxes) errantly refer to Schedule IX instead of Schedule V.

Commission Response

The commission agrees with TSTCI and TTA that there should be an official notice of the expiration date for subsection (l) and modifies the rule accordingly. The commission also agrees that the instructions should include the correct references to Schedule IX and has modified the rule accordingly.

This new section is adopted under the section 14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016) (PURA) that provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §56.032, which requires that the commission develop and implement a mechanism to determine the annualized Small and Rural Incumbent

Local Exchange Company Universal Service Plan support for certain small ILECs.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §56.032.

§26.407. Small and Rural Incumbent Local Exchange Company Universal Service Plan Support Adjustments.

(a) Purpose. This section establishes criteria for a small incumbent local exchange company (small ILEC) to request adjustments to the monthly support the company receives in accordance with §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company Universal Service Plan).

(b) Application.

(1) Small ILECs. This section applies to a small ILEC that has been designated as an eligible telecommunications provider (ETP) by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(2) Other ETPs providing service in small or rural ILEC study areas. This section applies to a telecommunications provider other than a small ILEC that provides service in small ILEC study areas that have been designated as an ETP by the commission in accordance with §26.417 of this title.

(c) Definitions. The following words and terms, when used in this section, will have the following meaning, unless the context clearly indicates otherwise:

(1) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission in accordance with §26.417 of this title.

(2) Federal Communications Commission (FCC) Rate of Return--The FCC's most recently prescribed rate of return as of the date of any determination, review, or adjustment under this section, to be no greater than 9.75 percent prior to July 1, 2021. If the FCC no longer prescribes such a rate of return, commission staff will initiate proceedings as necessary for the commission to determine or modify the FCC rate of return to be used for purposes of this section.

(3) Reasonable Rate of Return--An intrastate rate of return within two percentage points above or three percentage points below the FCC rate of return.

(4) Small incumbent local exchange company (small ILEC)--For purposes of this section, a small ILEC is a small provider as defined by PURA §56.032(a)(2).

(d) Notification to the commission that a small ILEC seeks to participate in this section. A small ILEC that is not an electing company under Chapters 58 or 59 may file a written notice to the commission to participate in this section to have the commission determine the amount of Small and Rural Incumbent Local Exchange Company Universal Service Plan support it receives, so that such support, combined with regulated revenues, provides the small ILEC an opportunity to earn a reasonable rate of return if the reported rate of return of such small ILEC is based on expenses that it believes are reasonable and necessary. When adjusting monthly support, the commission will consider, among other things described in this section, the adequacy of basic rates to support universal service. A small ILEC that submits a written notice to participate in this section will continue to receive the same level of Small and Rural Incumbent Local Exchange Company Universal Service Plan support it was receiving on the date of the written notice until the commission makes a determination or adjustment under this section.

(e) Annual report of a requesting small ILEC.

(1) A small ILEC that submits a written notice under subsection (d) of this section must file an annual report each year with the commission, using commission-prescribed forms that are available on the commission's website. The initial annual report for a small ILEC that files a written notice under subsection (d) of this section must be filed within two months after a small ILEC elects to participate in this section. Subsequent annual reports must be filed no later than September 15th of each year. All annual reports must be related to the most recent calendar year prior to the filing of the annual report.

(2) The annual report filed by a small ILEC under this subsection must include information on the following:

(A) summary of revenues and expenses;

(B) all revenue, expense, and capital accounts;

(C) invested capital;

(D) intrastate federal income taxes calculated at the applicable tax rate;

(E) network access service revenue;

(F) weighted average cost of capital (for investor-owned utilities);

(G) historical financial statistics;

(H) proposed company adjustments;

(I) the name, job title, and total annual compensation of each officer, director, and, for investor-owned companies, owners and former owners (including each general manager and any other highly compensated employee that may not be designated as an officer of the company), and the name and compensation of each family member of officers, directors, owners, and former owners employed by the small ILEC;

(J) the amount and nature of each affiliate transaction, including transactions with family members of officers, directors, and, for an investor-owned company, owners and former owners;

(K) all detail and supporting documentation necessary to support each of the items in subsection (e)(2); and

(L) an authorized official's signature.

(3) The small ILEC must also provide its full and complete cost allocation manual.

(f) Commission staff's review of annual reports. Annual reports submitted under this section will be reviewed by commission staff to determine whether a small ILEC's support, when combined with regulated revenues, provide the small ILEC an opportunity to earn a reasonable rate of return and whether the reported rate of return of the small ILEC is based on expenses that the commission staff determines are reasonable and necessary.

(1) Timeline for review of the annual reports.

(A) During the review of an annual report, commission staff may submit requests for information to the small ILEC. Responses to such requests for information will be provided to the commission staff within ten days after receipt of the request by the small ILEC. If a small ILEC fails to timely provide information to commission staff, the small ILEC will be considered to be a Category 3 provider.

(B) Within 90 days after an annual report has been filed, commission staff will complete its review of the annual report and file a memorandum for the commission's consideration regarding a final

recommendation on the reported or commission-staff adjusted rate of return.

(2) Commission staff's review of an annual report.

(A) Commission staff will review and may make adjustments to information contained in the small ILEC's annual report, such as:

(i) expenses that are not reasonable or necessary;

(ii) expenses listed under §26.201(c)(2) of this title (relating to Cost of Service);

(iii) expenses that are not in compliance with FCC rules;

(iv) inappropriate affiliate transactions;

(v) inappropriate cost allocations;

(vi) inappropriate allocation of federal universal service support; and

(vii) any other adjustments that commission staff may find appropriate.

(B) Commission staff will recalculate the small ILEC's reported rate of return and provide an adjusted rate of return if any adjustments were made in paragraph (2)(A) of this subsection.

(3) Separation of small ILECs into rate of return categories. Upon completion of commission staff's review of a small ILEC's annual report, commission staff will determine the appropriate category for the small ILEC within the following three categories based on the small ILEC's reported or commission-staff adjusted rate of return:

(A) Category 1. A rate of return of more than three percentage points below the FCC rate of return;

(B) Category 2. A rate of return within two percentage points above or three percentage points below the FCC rate of return; and

(C) Category 3. A rate of return of more than two percentage points above the FCC rate of return.

(4) Commission staff will file a memorandum for the commission's consideration of the categorization of each small ILEC in accordance with paragraph (1)(B) of this subsection.

(g) Treatment of small ILECs based on rate of return categories. Each category will be processed as set forth below.

(1) Category 1 - A small ILEC that has a reported or commission-staff adjusted rate of return in Category 1 may file an application for an adjustment to have its annual Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates increased to a level that would allow the small ILEC to earn an amount that would be considered a reasonable rate of return, except that the adjustment may not set a small ILEC's support level at more than 140 percent of the annualized support the provider received in the 12-month period before the date of the adjustment. Any rate adjustments may not adversely affect universal service.

(2) Category 2 - A small ILEC that has a reported or commission-staff adjusted rate of return in Category 2 will be considered to be earning a reasonable rate of return and will not be eligible to file for an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support, except as described in subsection (h)(2)(B) of this section. The commission may not initiate a proceeding against a small ILEC that has a reported or commission-staff adjusted rate of return within Category 2.

(3) Category 3 - For a small ILEC that has a reported or commission-staff adjusted rate of return in Category 3, the commission staff may initiate a proceeding to review and adjust the small ILEC's Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates to adjust the small ILEC's rate of return into the reasonable rate of return range. A small ILEC that has a commission-staff adjusted rate of return in Category 3 is not eligible to file for an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support, except as described in subsection (h)(2)(B) of this section.

(h) Contested case procedures.

(1) Documents to be submitted. At a minimum, the following information must be provided by a small ILEC in a contested case proceeding, irrespective of whether such case is initiated by a small ILEC or commission staff. Any proceeding filed under this section in which a party has intervened and requested a hearing is a case initiated by a small ILEC or commission staff and the filing requirements listed below apply to such cases.

(A) all the data required by subsections (e) and (f) of this section;

(B) responses to commission staff's requests for information in connection with the review of each small ILEC's annual report;

(C) the requested Small and Rural Incumbent Local Exchange Company Universal Service Plan support or rate adjustments; and

(D) testimony and workpapers necessary to support the requested adjustments.

(2) Qualification for contested case proceeding.

(A) Category 1 small ILECs. A small ILEC in Category 1, as identified in subsection (f)(3) of this section, may file an application that is eligible for administrative review or informal disposition to request an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan or basic rates to allow the company to earn a reasonable rate of return.

(B) Category 2 or Category 3 small ILECs subsequent to rate of return adjustment by commission staff. A small ILEC that has a reported rate of return in Category 1 or Category 2, as identified in subsection (f)(3) of this section, but that has a commission-staff adjusted rate of return in Category 2 or Category 3, may file a petition to contest the commission-staff adjusted rate of return and may also request an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates in the same proceeding. A small ILEC that has a reported rate of return in Category 2 but because of commission-staff adjustments the small ILEC is in Category 3, may file a petition to contest the commission-staff adjustments. However, the small ILEC may not request an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates. Any proceeding that is initiated by a small ILEC to protest a reclassification and in which a party has intervened and requested a hearing is a case initiated by a small ILEC and the filing requirements listed below apply to these cases.

(C) Category 3 small ILECs. A small ILEC in Category 3, as identified in subsection (f)(3) of this section, is subject to a commission staff-initiated proceeding to review the company's annual report and reported rate of return, must submit the information listed in paragraph (1) of this subsection.

(3) Notice. Each small ILEC that files a contested case proceeding will provide notice as required by §22.55 of this title (relating

to Notice in Other Proceedings). At a minimum, notice will be published in the *Texas Register* and will be provided to the Office of Public Utility Counsel. Each Category 1 small ILEC that files an application under this section must provide notice to its customers that the company may be required to increase its rates as part of the adjustment to have its annual Small and Rural Incumbent Local Exchange Company Universal Service Plan support increased.

(4) Burden of proof. A small ILEC will bear the initial burden of production and the burden of persuasion.

(5) Timing for contested cases. The commission must grant or deny an application filed under subsection not later than the 120th day after the date a sufficient application is filed. The commission may extend the deadline upon a showing of good cause. The application will be processed in accordance with the commission's rules applicable to docketed cases.

(6) Timing to file a subsequent contested case. Once the commission issues an order in a contested case under this section, the small ILEC and commission staff may not file a subsequent contested case before the third anniversary of the date on which the small ILEC's most recent application for adjustment is initiated, unless good cause is proven.

(i) Confidentiality of information.

(1) A report or information that a small ILEC is required to provide to the commission under subsection (e) of this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(2) A third party may only access confidential information filed according to subsection (h) of this section, or proceedings related to that filing, if the third party is subject to an appropriate protective order.

(3) This subsection does not apply to a subsequent contested case initiated under subsection (h) of this section, and no claim of confidentiality will arise from this subsection in such a subsequent contested case.

(j) Commission adjustment of the small ILEC's revenue requirement and Small and Rural Incumbent Local Exchange Company Universal Service Plan support.

(1) Revised revenue requirements.

(A) In a proceeding conducted in accordance with subsection (h) of this section, the commission will determine the small ILEC's new revenue requirement necessary to allow the company to earn a reasonable rate of return; however, the commission may not set a small ILEC's support level at more than 140 percent of the annualized support the small ILEC received in the 12-month period before the date of the adjustment, nor may the rate adjustment adversely affect universal service.

(B) A small ILEC that is in Category 1 cannot request an increase in the Small and Rural Incumbent Local Exchange Company Universal Service Plan support that would result in a rate of return greater than the minimum of the reasonable rate of return. In a proceeding for a small ILEC in Category 3, a small ILEC or commission staff may not request a decrease in the Small and Rural Incumbent Local Exchange Company Universal Service Plan support that would result in a rate of return greater than the maximum reasonable rate of return.

(2) Small and Rural Incumbent Local Exchange Company Universal Service Plan support payments to small ILECs. The commission will determine the amount of adjustment to the annual Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates for the small ILEC that will be needed to meet the new revenue requirement identified in this paragraph. The commission will determine the fixed monthly support payment for a small ILEC by dividing the Small and Rural Incumbent Local Exchange Company Universal Service Plan support by 12. Each small ILEC that has Small and Rural Incumbent Local Exchange Company Universal Service Plan support adjusted under this section must provide the TUSF administrator with a copy of the final order indicating the adjusted amount of Small and Rural Incumbent Local Exchange Company Universal Service Plan support.

(3) Small and Rural Incumbent Local Exchange Company Universal Service Plan support payments to ETPs other than small ILECs. The Small and Rural Incumbent Local Exchange Company Universal Service Plan support for ETPs other than a small ILEC will be determined by calculating the per-line support for each small ILEC's study area based on the most recent monthly support using December line counts for the small ILEC. The payment to each ETP other than a small ILEC will be calculated by multiplying the computed per-line amount for the given small ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

(k) Miscellaneous items.

(1) Federal Universal Service Fund (FUSF) support. The amount of annual FUSF support received by the small ILEC that is considered to be an intrastate expense adjustment under Part 36 and Part 54 of the FCC's rules or by FCC order, regardless of the category of FUSF support, will offset the total intrastate expenses and be reflected as such in the small ILEC's annual report. The timing of any FUSF support will be considered when making a determination under subsection (j) of this section.

(2) Recovery of FUSF support from the TUSF in accordance with PURA §56.025. The amount of FUSF support recovered from the TUSF in accordance with PURA §56.025 that is considered an intrastate expense adjustment under Part 36 and Part 54 of the FCC rules or by FCC order, regardless of the category of FUSF support or type of budget control mechanism placed on FUSF support, will be shown as an offset to the total intrastate expenses in the small ILEC's annual report. The timing of any recovery of FUSF support from the TUSF in accordance with PURA §56.025 and the timing of any true-ups must be considered when making a determination under subsection (j) of this section.

(3) Commission authority. Nothing in this section prohibits the commission from conducting a review in accordance with PURA, Chapter 53, Subchapter D.

(l) Treatment of federal income tax expense.

(1) Accumulated deferred federal income taxes (ADFIT).

(A) For a small ILEC investor-owned utility (IOU) subject to federal income tax, the IOU must record on its books a regulatory liability for amounts of excess ADFIT resulting from the Tax Cuts and Jobs Act of 2017 (TCJA), in accordance with the commission's order in Project No. 47945. An IOU must include this information on the annual report required by this rule. For the purposes of this section, excess ADFIT is defined as the difference between the amount of ADFIT on the IOU's books after incorporating changes from the TCJA and the amount of ADFIT that would have been on the IOU's books had the tax changes in the TCJA not occurred.

(B) IOUs will either amortize the excess ADFIT regulatory liability over a period not to exceed five years or allow it to reverse along with the associated ADFIT according to the transaction that resulted in the ADFIT.

(2) Current federal income tax expense.

(A) For an IOU subject to federal income tax, the IOU must record on its books a regulatory liability for amounts of excess current federal income taxes resulting from the TCJA, in accordance with the commission's order in Project No. 47945. An IOU must include this information on the annual report required by this section. For purposes of this section, excess current federal income tax expense is defined as the difference between the amount of revenue collected under current rates related to current federal income tax expense and the amount of revenue related to current federal income tax expense that should have been collected under rates reflecting changes in the TCJA. An acceptable alternative calculation of an appropriate regulatory liability for purposes of this rule is the difference in the current period federal income tax expense calculated under the TCJA and the amount that would have been calculated under the federal tax code immediately preceding the TCJA.

(B) At such time that commission staff files a memorandum for the commission to categorize the IOUs' rate of return for 2017, the IOUs will no longer accrue on the books the regulatory liability for excess current federal income tax expense.

(C) An IOU will amortize the regulatory liability for the excess current federal income tax expense over a period not to exceed five years.

(D) An IOU will supplement its 2017 reported financial information to reflect the amount of current federal income tax expense for 2017 calculated as if the terms of the TCJA had applied to 2017 operations to calculate potential support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan. The IOU will report this information as a proposed adjustment.

(3) This subsection will expire on December 31, 2019. Any amortization of a regulatory liability resulting from application of this subsection would continue until completed.

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

Filed with the Office of the Secretary of State on October 16, 2018.

TRD-201804523
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: November 5, 2018
Proposal publication date: June 8, 2018
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.5

The Texas Board of Physical Therapy Examiners adopts new §322.5, Telehealth, Chapter 322, Practice, without changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5752).

The new rule is adopted in order to establish rules for the safe delivery of physical therapy through telehealth in compliance with Texas Occupations Code Chapter 111, Telemedicine and Telehealth, as amended during the 85th Legislative Session.

No comments were received regarding the proposed new rule.

The new rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on October 22, 2018.

TRD-201804612
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: November 11, 2018
Proposal publication date: September 7, 2018
For further information, please call: (512) 305-6900

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CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §329.1, General Licensure Requirements and Procedures, pursuant to Senate Bill (SB) 317 amendments to §453.215 of the Occupations Code enacted during the 85th Legislative Session. The amendment is adopted with changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5753). The rule will be republished.

The amendment is adopted in order to add criminal background checks from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting to the requirements for initial licensure.

The Board made minor punctuation changes in Subsection (a)(2) - (5).

No comments were received regarding the proposed amendments.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§329.1. General Licensure Requirements and Procedures.

(a) Requirements. All applications for licensure shall include:

(1) a completed board application form with a recent color photograph of the applicant;

(2) the non-refundable application fee as set by the executive council; the application fee of applicants who are active U.S. military service members or veterans will be waived upon submission of

official documentation of the active duty or veteran status of the applicant;

(3) a successfully completed board jurisprudence exam on the Texas Physical Therapy Practice Act and board rules;

(4) documentation of academic qualifications:

(A) for applicants who completed their physical therapy education in the U.S., the documentation required is:

(i) a transcript sent directly to the board from the degree-granting institution showing enrollment in the final semester of an accredited PT or PTA program as provided in §453.203 of the Act; and

(ii) a statement signed by the program director or other authorized school official, notarized or with the school seal affixed, stating that the applicant has successfully completed the PT or PTA program;

(B) for applicants who completed their physical therapy education outside of the U.S., the documentation required is set out in §329.5 of this title (relating to Licensing Procedures for Foreign-Trained Applicants);

(C) for applicants who are active U.S. military service members or veterans, any military service, training or education verified and credited by an accredited PT or PTA program is acceptable to the board; and

(5) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting.

(b) Licensure by examination. If an applicant has not passed the national licensure exam, the applicant must also meet the requirements in §329.2 of this title (relating to License by Examination).

(c) Licensure by endorsement. If the applicant is licensed as a PT or PTA in another state or jurisdiction of the U.S., the applicant must also meet the requirements as stated in §329.6 of this title (relating to Licensure by Endorsement).

(d) Application expiration. An application for licensure is valid for one year after the date it is received by the board.

(e) False information. An applicant who submits an application containing false information may be denied licensure by the board.

(f) Rejection. Should the board reject an application for licensure, the reasons for the rejection will be stated. The applicant may submit additional information and request reconsideration by the board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act, §453.352.

(g) Changes to licensee information. Applicants and licensees must notify the board in writing of changes in address of record, and residential, mailing, or business addresses within 30 days of the change. For a name change at time of renewal, the licensee must submit a copy of the legal document enacting the name change with the renewal application.

(h) Replacement copy of license. The board will issue a copy of a license to replace one lost or destroyed upon receipt of a written request and the appropriate fee from the licensee. The board will issue a new original license after a name change upon receipt of a written request, the appropriate fee, and a copy of the legal document enacting the name change.

(i) A new licensee may provide physical therapy services upon online verification of licensure. The Board will maintain a secure resource for verification of license status and expiration date on its website.

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

Filed with the Office of the Secretary of State on October 22, 2018.

TRD-201804611
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: January 1, 2019
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For further information, please call: (512) 305-6900

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CHAPTER 341. LICENSE RENEWAL

22 TAC §§341.1, 341.6, 341.8, 341.9

The Texas Board of Physical Therapy Examiners adopts amendments to Chapter 341, License Renewal, §341.1, Requirements for Renewal, §341.6, License Restoration, §341.8, Inactive Status, and §341.9, Retired Status, Performing Voluntary Charity Care, pursuant to SB 317 amendments to Sec. 453.255, Occupations Code, passed during the 85th Legislative Session, without changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5754).

The amendments are adopted in order to add criminal background checks from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting to the requirements for renewing or restoring a physical therapist or physical therapist assistant license unless the licensee has previously submitted fingerprints for initial issuance of licensure or for a prior license renewal or restoration.

No comments were received regarding the proposed amendments.

The amended rules are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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Proposal publication date: September 7, 2018
For further information, please call: (512) 305-6900

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22 TAC §341.2

The Texas Board of Physical Therapy Examiners adopts amendments to §341.2, Continuing Competence Requirements, with changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5756). Specifically, subsection (b) was edited to remove an internal reference to subsection (i), which had been deleted in the original proposal, and changes to correct grammar were made in subsection (f). The rule will be republished.

The amendments are adopted in order to delete references to the Texas Physical Therapy Association (TPTA) as a board approved organization for evaluating and approving continuing competence activities. Pursuant to Senate Bill (SB) 317 amendments to Sec. 453.254 of the Occupations Code, enacted during the 85th Legislative Session, the board is required to develop a process for selecting an appropriate organization to approve continuing competence activities that includes a request for proposal (RFP) and bidding process. Previously, the addition of §323.4. Request for Proposals for Outsourced Services was adopted to be effective November 27, 2016, and the board voted to approve an RFP for continuing competence approvers on July 27, 2018.

No comments were received regarding the proposed amendments.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§341.2. Continuing Competence Requirements.

(a) Continuing competence is the ongoing acquisition and maintenance of the professional knowledge, skill, and ability of the PT or PTA through successful completion of educational and professional activities related to the physical therapy profession.

(b) All continuing competence activities submitted to satisfy renewal requirements must be board-approved by an organization selected by the board.

(c) For each biennial renewal, physical therapists must complete a total of 30 continuing competence units (CCUs); physical therapist assistants must complete a total of 20 CCUs. A CCU is the relative value assigned to continuing competence activities based on specific criteria developed by the Board.

(d) Continuing competence activities utilized to fulfill renewal requirements must be completed within the 24 months prior to the license expiration date.

(e) Licensees must maintain original continuing competence activity completion documents, as specified in §341.3 of this title (relating to Qualifying Continuing Competence Activities), for four years after the license expiration date.

(f) All licensees must complete a board-approved jurisprudence assessment module as part of their total continuing competence requirement. The jurisprudence assessment module shall be assigned a CCU value and standard approval number by the board and shall include at a minimum the following components:

(1) The theoretical basis for ethical decision-making;

(2) APTA's Code of Ethics for the Physical Therapist and Guide for Professional Conduct, and the Guide for Conduct of the Physical Therapist Assistant and Standards of Ethical Conduct for the Physical Therapist Assistant;

(3) Legal standards of behavior (including but not limited to the Act and Rules of the board); and

(4) Application of content to real and/or hypothetical situations.

(g) The executive council will conduct an audit of a random sample of licensees at least quarterly to determine compliance with continuing competence requirements. Failure to maintain accurate documentation, or failure to respond to a request to submit documentation for an audit within 30 days of the date on the request, may result in disciplinary action by the board.

(1) Licensees who are more than 90 days late in renewing a license are not included in the audit, and must submit documentation of continuing competence activities at time of renewal.

(2) The board or its committees may request proof of completion of continuing competence activities claimed for renewal purposes at any time from any licensee.

(h) If the board chooses to authorize an organization(s) to approve continuing competence activities, the board shall select an appropriate organization(s) pursuant to §323.4 of this title, Request for Proposals for Outsourced Services.

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

Filed with the Office of the Secretary of State on October 22, 2018.

TRD-201804615
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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Proposal publication date: September 7, 2018
For further information, please call: (512) 305-6900

CHAPTER 344. ADMINISTRATIVE FINES AND PENALTIES

22 TAC §344.1

The Texas Board of Physical Therapy Examiners adopts amendments to §344.1, Administrative Fines and Penalties, pursuant to SB 317 amendments to Sec. 453.3525 and Sec. 453.402(b), Occupations Code, passed during the 85th Legislative Session, without changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5758).

The amendments are adopted in order to establish a Schedule of Sanctions and factors for consideration in conjunction with the Schedule of Sanctions when determining the appropriate penalty/sanction in disciplinary matters.

No comments were received regarding the proposed amendments.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

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John P. Maline
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 11. CONTRACTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §11.1 and §11.3 *without changes* to the proposed text as published in the June 22, 2018, issue of the *Texas Register* (43 TexReg 4108). The amended rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The Texas Comptroller of Public Accounts (Comptroller) revised and reorganized its rules, 34 TAC Chapter 20, Statewide Procurement and Support Services, in 2017. These revisions became effective on January 24, 2017.

Each state agency is required by Texas Government Code, §2161.003, to adopt the Historically Underutilized Businesses (HUB) rules and by Texas Government Code, §2156.005(d), to adopt the Bid Opening and Tabulation rules. The TCEQ's previous rules adopting the HUB and Bid Opening and Tabulation rules by reference referred to the prior versions of the rules and did not reflect the current numbering of the rules.

Section by Section Discussion §11.1, Historically Underutilized Business Program

The commission adopts amended §11.1 to update agency rules to reflect current citations of the Comptroller's rules regarding HUB (34 TAC Part 1, Chapter 20, Subchapter, Division 1). Each state agency is required by Texas Government Code, §2161.003, to adopt the Comptroller's HUB rules. The TCEQ's previous rule adopting the HUB rule by reference referred to the prior version of the rule and did not reflect the current numbering of the rule.

§11.3, Bid Opening and Tabulation

The commission adopts amended §11.3 to update agency rules to reflect current citations of the Comptroller's Bid Opening and Tabulation rules (34 TAC §20.207 and §20.208). Each state agency is required by Texas Government Code, §2156.005(d), to adopt the Comptroller's Bid Opening and Tabulation rules. The TCEQ's previous rule adopting the Bid Opening and Tabulation rules by reference referred to the prior version of the rule and did not reflect the current numbering of the rule.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the definition of a "Major environmental rule." The intent of the adopted rulemaking is to conform to Texas Government Code, §2161.003 and §2156.005(d). The changes are not expressly to protect the environment and/or reduce risks to human health and environment.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rules and assessed whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to conform to Texas Government Code, §2161.003 and §2156.005(d).

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), restrict or limit the owner's right to property, nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the adopted rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on July 18, 2018. The comment period closed on July 24, 2018. The commission did not receive any comments on this rulemaking project.

SUBCHAPTER A. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

30 TAC §11.1

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.012, which provides that the commission is responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.102, concerning general powers of the commission; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; and Texas Government Code, §2161.003, which provides statutory direction to adopt the Texas Comptroller of Public Accounts' (Comptroller) rules under

Texas Government Code, §2161.002, as the agency's or institution's own rules.

The adopted rule implements requirements of Texas Government Code, §2161.003, to adopt the Comptroller's rules under Texas Government Code, §2161.002, as the agency's or institution's own rules.

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

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David Timberger
Director, General Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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SUBCHAPTER C. BID OPENING AND TABULATION

30 TAC §11.3

Statutory Authority

The amendment is adopted under the Texas Water Code (TWC), §5.012, which provides that the commission is responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.102, concerning general powers of the commission; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; and Texas Government Code, §2156.005(d), which provides statutory direction that state agencies making purchases shall adopt the Texas Comptroller of Public Accounts' (Comptroller) rules related to bid opening and tabulation.

The adopted rule implements requirements of Texas Government Code, §2156.005(d), that state agencies making purchases shall adopt the Comptroller's rules related to bid opening and tabulation.

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

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§336.356, 336.1301, 336.1305, 336.1307, 336.1309 - 336.1311, and 336.1317; and the repeal of §336.1313.

The amendments to §§336.356, 336.1301, 336.1305, 336.1307, 336.1309 - 336.1311, and 336.1317 and the repeal of §336.1313 are adopted *without changes* to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3725) and, therefore, the sections will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is adopted to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." In most cases, rules which are designated by the NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules. Additionally, Texas Health and Safety Code (THSC), §401.245, requires the TCEQ to periodically revise party state compact waste disposal fees. The adopted rulemaking also adjusts the surcharge fees for compact waste disposal and remove the annual requirement for rate adjustment for disposal of Low-Level Radioactive Waste (LLRW) to allow flexibility to incorporate rate adjustments on an as-needed basis.

Section by Section Discussion

The commission adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, and establish consistency in the rules. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

§336.356, Soil and Vegetation Contamination Limits

The commission adopts amended §336.356(c) to add the requirement that the licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface.

§336.1301, Purpose and Scope

The commission adopts amended §336.1301(a) to remove the sentence that the compact waste disposal facility (CWF) is expected to be the sole facility for disposal of LLRW for generators within the states of Texas and Vermont.

The commission adopts amended §336.1301(b) to clarify that the commission will establish the maximum disposal rates charged by the licensee for disposal of party state compact waste.

The commission adopts amended §336.1301(c) to make minor clarifying changes.

§336.1305, Commission Powers

The commission adopts amended §336.1305(a) to clarify that the rates that the commission adopts are the maximum disposal rates for disposal of party state compact waste at the CWF and to also update the language from "establishing" to "determining."

The commission adopts amended §336.1305(c) to change the rates from "initial" to "new" or "revised."

The commission adopts amended §336.1305(e)(2) to correct a cross-reference.

The commission adopts amended §336.1305(f) to delete the word "initial" relating to rate application or revision because it is no longer needed.

The commission deletes and moves §336.1305(h) ("Initiation of rate revision by the executive director") to adopted §336.1311(d) with modifications as discussed later in this preamble.

§336.1307, Factors Considered for Determination of Maximum Disposal Rates

The commission modifies the title of §336.1307 by adding the words "Determination of" to clarify that this section is about the determination of the maximum disposal rates.

The commission adopts amended §336.1307(1) to remove the word "finality" from the phrase "compact waste disposal finality services."

§336.1309, Procedures for Determination of New and Revised Rates and Fees

The commission modifies the title of §336.1309 by adding the words "Procedures for" and "New and Revised" and deleting the word "Initial" to clarify the contents of this section.

The commission adopts amended §336.1309(a) to change the applicability of this section from "initial" rates and fees to "new or revised" rates and fees.

The commission adopts §336.1309(a)(2) to add the requirement that a licensee filing a rate application shall use the data in the submitted application and sustain the burden of proof that the proposed rate changes are just and reasonable and to also add the requirement that the data in the rate application may be modified only on a showing of good cause. The subsequent paragraphs are renumbered accordingly.

The commission adopts renumbered §336.1309(a)(3) to remove the requirement that the executive director recommend one or more rates to the commission for approval and to also add the requirement that the licensee has 20 days to provide information if requested by the executive director, unless a different time is agreed upon.

The commission adopts §336.1309(a)(4) to add that the commission may disallow unsupported costs or expenses in the application if the necessary documentation or other evidence supporting these costs or expenses are not provided within a reasonable time.

The commission adopts renumbered §336.1309(a)(5) to add the requirement that the licensee file with the commission proof of notice in the form of an affidavit stating that proper notice was mailed and the date of such mailing.

The commission adopts renumbered §336.1309(a)(6) to add the requirement of providing notice of the licensee's proposed rates by publication in the *Texas Register.*

The commission adopts amended §336.1309(b) to remove the applicability of this section from "initial" maximum disposal rates and to also clarify that the generator is a "party state" generator.

The commission adopts amended §336.1309(c) and (d) to clarify that the generator is a "party state" generator.

The commission removes §336.1309(e) and (f) concerning initial rate proceedings, because they are no longer needed. The subsequent subsection is re-lettered accordingly.

The commission adopts re-lettered §336.1309(e) to replace "initial" with "new or revised" maximum disposal rates and to also delete "volume adjustment" because it is no longer needed.

§336.1310, Rate Schedule

The commission adopts amended Figure: 30 TAC §336.1310. The base disposal charge for waste volume is amended to reflect that Class A LLW charges are $100 per cubic foot regardless of Routine or Shielded classification; the waste charge for sources is only for Class A sources; and delete the biological waste charge. The base disposal charge for radioactivity is amended by changing the curie inventory charge from $0.55 per millicurie (mCi) to $0.40 per mCi and to also delete the charges for carbon-14 inventory and for special nuclear material. The surcharges to the base disposal charge is amended to change the weight surcharge by removing the surcharge category of 10,000 to 50,000 pounds; to change the dose rate surcharge by removing the charges for one to five roentgen (R) per hour, greater than five to 50 R per hour, and greater than 50 to 100 R per hour; changing the category of greater than 100 R per hour to greater than 500 R per hour; and, to remove the cask (shielded waste) surcharge of $2,500 per cask.

§336.1311, Revisions to Maximum Disposal Rates

The commission adopts amended §336.1311(a) to clarify that the generator is a "party state" generator and to also clarify that rates are for disposal services at the CWF.

The commission adopts §336.1311(b) to add that the maximum disposal rate may be adjusted at the request of the licensee to incorporate inflation adjustments and establishes the methodology of determining the amount of the inflation adjustment. The subsequent subsections are re-lettered accordingly.

The commission deletes existing §336.1311(b) to remove the requirement that the maximum disposal rate shall be the initial rate because this is no longer needed.

The commission deletes existing §336.1311(c) to remove the requirement that the maximum disposal rate be adjusted every January to incorporate inflation and volume adjustments because this is no longer needed.

The commission adopts §336.1311(d) (which is a modified version of deleted §336.1305(h)) to add language that the executive director may initiate revisions to the maximum disposal rates if good cause exists. The subsequent subsections are re-lettered accordingly.

The commission adopts §336.1311(d)(1) - (3) to add language to outline examples of good cause circumstances.

The commission adopts §336.1311(e) to add the ability of one or more party state generators to petition the executive director to initiate a revision to the maximum disposal rate and establishes the procedures for the executive director's review of this petition. The subsequent subsections are re-lettered accordingly.

The commission adopts re-lettered §336.1311(f) to exclude inflation adjustments from the requirement that an application for revisions to the maximum disposal rate meet the requirements in §336.1309(a) and (b) and to also change when the licensee must provide notice to its customers about revisions to the maximum disposal rate from any revision to only when it is due to an inflation adjustment.

The commission adopts §336.1311(g) to move the language concerning computing allowable expenses to be its own subsection.

The commission deletes existing §336.1311(f) because it is no longer needed.

§336.1313, Extraordinary Volume Adjustment

The commission adopts the repeal of §336.1313 concerning extraordinary volume adjustments, as this rule is obsolete and it is no longer needed.

§336.1317, Contracted Disposal Rates

The commission adopts amended §336.1317(a) to change who the licensee may contract with from "any person" to a "party state generator."

Final Regulatory Impact Analysis Determination

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

This adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the adopted rules to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to ensure that §336.356(c) is compatible with federal regulations promulgated by the NRC, to adjust the surcharge fees for compact waste disposal, to remove the annual requirement for rate adjustment for disposal of LLRW, and to amend language for clarity and conciseness.

Further, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way 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 cost of complying with the adopted rulemaking is not expected to be significant with respect to the economy as a whole or as a sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking does not meet the four applicability requirements because the adopted rules: 1) do not exceed a standard set by federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the adopted rules; and 4) are not adopted solely under the general powers of the agency, but specifically under THSC, §401.425, which requires the commission to periodically revise party state compact waste disposal fees; and to ensure compatibility with federal regulations promulgated by the NRC.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission adopts this rulemaking for the specific purposes of ensuring that §336.356(c) is compatible with federal regulations promulgated by the NRC, adjusting the surcharge fees for compact waste disposal, removing the annual requirement for rate adjustment for disposal of LLRW, and amending language for clarity and conciseness. The adopted rulemaking substantially advances these stated purposes by adopting rules that incorporate NRC regulations requiring a licensee to minimize the introduction of residual radioactivity into a site, including the subsurface, and that are consistent with the waste disposal fee requirements in THSC, §401.245.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the portions of the rulemaking adopting rules that meet the minimum standards of the federal regulations promulgated by the NRC because Texas Government Code, §2007.003(b)(4) exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 10 CFR Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," the state must adopt rules designated by NRC as "compatibility items" to maintain its Agreement State status. Therefore, the portions of the rulemaking adopting rules that meet the minimum standards of the NRC's regulations are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Nevertheless, the commission evaluated the entirety of the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. Because no taking of private real property would occur by ensuring consistency with NRC regulations requiring a licensee to minimize the introduction of residual radioactivity into a site, including the subsurface; amending the surcharge fees for compact waste disposal; removing the an-

nual requirement for rate adjustment for disposal of LLRW; and amending language for clarity and conciseness, the commission has determined that promulgation and enforcement of this adopted rulemaking is neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there is no reduction in real property value as a result of the rulemaking. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission offered a public hearing on June 28, 2018. The comment period closed on July 10, 2018. One comment was received from the United State Nuclear Regulatory Commission (NRC).

Response to Comments

Comment

The NRC commented that §336.356(c) meets compatibility requirements.

Response

The commission appreciates the comment. No changes have been made in response to this comment.

SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §336.356

Statutory Authority

The amendment is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401, §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.151, which authorizes the commission to ensure that the management of low-level radioactive waste is compatible with applicable federal commission standards; THSC, §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances; and 10 Code of Federal Regulations (CFR) Part 150 which is necessary in order to preserve Texas as an Agreement State pursuant to 10 CFR Part 150. The rulemaking is also adopted as authorized by Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules.

The adopted amendment implements THSC, Chapter 401, and is adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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SUBCHAPTER N. FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

30 TAC §§336.1301, 336.1305, 336.1307, 336.1309 - 336.1311, 336.1317

Statutory Authority

The amendments are adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The adopted amendment is also authorized by Texas Water Code (TWC), §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state.

The adopted amendments implement THSC, §401.245.

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

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Director, Environmental Law Division
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30 TAC §336.1313

Statutory Authority

This repeal is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise

party state compact waste disposal fees. The adopted repeal is also authorized by Texas Water Code (TWC), §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state.

The adopted repeal implements THSC, §401.245.

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

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Director, Environmental Law Division
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER AA. AUTOMOTIVE OIL SALES FEE

34 TAC §3.701

The Comptroller of Public Accounts adopts amendments to §3.701, concerning reporting requirements, without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5935). The comptroller amendments also add an exemption for maquiladora enterprises and delete language that is no longer necessary due to the passage of time. The comptroller also renames this section to include the name of the fee. The new title is "Automotive Oil Sales Fee Reporting Requirements."

The comptroller adds statutory citation titles and makes grammatical corrections throughout the section.

The comptroller amends subsection (a) to add one definition and correct one citation. The comptroller amends paragraph (4) to expand the first sale definition to include the use or consumption of automotive oil in this state such as an oil change service. Additionally, this definition is restructured to improve readability. The comptroller amends paragraph (7) to reflect the correct title of §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules). The comptroller adds the definition for the abbreviation TCEQ in new paragraph (8) to make the section easier to read. The comptroller renumbers the subsequent paragraph.

The comptroller adds subparagraph (E) to subsection (b)(6), which provides an exemption for exports to a maquiladora enterprise. This exemption memorializes the comptroller's longstanding practice of allowing a maquiladora enterprise to purchase automotive oil tax-free for export to Mexico and references §3.358 of this title (relating to Maquiladoras).

The comptroller amends subsection (e) to repeal language that is no longer necessary. Senate Bill 1683, 74th Legislature, 1995, amended the Health and Safety Code, §371.062(j) (Fee on Sale of Automotive Oil) to update the fixed fees on the sales of automotive oil, effective September 1, 1997. Subsection (e)(4) of this section memorializes this change. Because periods prior to this legislative change are no longer within the statute of limitations, paragraphs (1), (2), and (3) no longer apply. The comptroller, therefore, deletes paragraphs (1) - (3) and incorporates amended paragraph (4) into subsection (e).

The comptroller amends subsection (h) to include the statutory language relating to the assessment of penalty found under Tax Code, §111.061 (Penalty on Delinquent Tax or Tax Reports) and subsection (i) related to the assessment of interest found under Tax Code, §111.060 (Interest on Delinquent Tax).

No comments were received regarding adoption of amended §3.701.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide 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), and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, §371.062.

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

Filed with the Office of the Secretary of State on October 18, 2018.

TRD-201804560
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: November 7, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.15

The Texas Board of Criminal Justice adopts amendments to §159.15, concerning the GO KIDS Initiative, without changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5759). The rule will not be republished.

The adopted amendments are necessary to make grammatical and formatting updates.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.001, §492.013.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on October 22, 2018.

TRD-201804621
Sharon Howell
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Texas Department of Criminal Justice
Effective date: November 11, 2018
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For further information, please call: (936) 437-2141