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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 2. LICENSING

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §2.1

The Texas Department of Agriculture (Department) proposes amendments to 4 Texas Administrative Code, Chapter 2 (Licensing), Subchapter A (General Provisions), §2.1 (Application for a License).

The Department identified the need for the proposed amendments during its rule review of this subchapter conducted pursuant Texas Government Code, §2001.039, the adoption for which can be found in the *Review of Agency Rules* section of this issue.

The proposed amendments to §2.1 change language to allow the Department to determine what constitutes an incomplete application, change references to Chapter 2 from "these rules" to "this chapter," remove unnecessary language, make grammatical corrections, make editorial changes to language to improve the rule's readability, and update the form of a legal citation to the Texas Government Code, §2005.004.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

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

(2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;

(3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Department;

(4) the proposed amendments will not require an increase or decrease in fees paid to the Department;

(5) the proposed amendments do not create a new regulation;

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

(7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and

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

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Ms. Christina Osborn, the Director for Consumer Product Protection, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Osborn has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be increased consumer protection through improved readability and clarity of this subchapter, and increased efficiency in the licensing process. Ms. Osborn has also determined that for each year of the first five-year period the proposed amendments are in effect, there will be no costs to persons who are required to comply with the proposal.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Written comments on the proposed amendments may be submitted by mail to John "Chris" Gee, Lead Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Chris.Gee@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Section 12.016 of the Texas Agriculture Code, which allows the Department to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposed amendments is Texas Agriculture Code, Chapter 12.

§2.1. Application for a License.

(a) An application is not an agency request for information for any purpose under the Texas Government Code, the Texas Agriculture Code, or this chapter [~~these rules~~].

(b) (No change.)

(c) An applicant for an initial license or renewal of a license shall submit to the department in a timely fashion all application forms, bonds, tests, data, fees, and other material required [~~by law~~] to precede the issuance of such initial license or renewal license.

(d) Any application for a license that does not include all such required forms and materials, or which includes forms or other materials that contain deficient information or on which required information is missing, may be determined to be [~~is~~] an incomplete application.

(e) An incomplete application shall become void on the one-year anniversary of its [~~the~~] submission [~~of the incomplete application~~]. A void application will not be processed and any application fee associated with the void application shall not be refunded. This action is not a denial of a license for any purpose under the Texas Government Code, the Texas Agriculture Code, or this chapter [~~these rules~~].

(f) The department shall within 15 days after receipt of the first application form:

(1) [~~issue a license,~~] if the application is complete and correct and the applicant is eligible and meets all the requirements for the license, issue a license;

(2) if the application is complete and a determination regarding the issuance of a license will be delayed beyond 15 days, send the applicant a written notice stating that the application is complete and accepted and [~~,~~] that a determination regarding issuance of the license will be delayed [~~,~~] and [~~stating~~] the time period within which a determination will be made; [~~or~~]

(3) - (4) (No change.)

(g) (No change.)

(h) If notice of protest is timely filed and the commissioner determines that the specified time periods for processing under subsection (f) of this section have been exceeded and that good cause does not exist for exceeding those time periods, the license or permit filing fee shall be reimbursed in full to the applicant. The term "good cause" as used in this subsection has the meaning specified in [~~§2005.004 of~~] the Texas Government Code, §2005.004.

(i) (No change.)

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402280
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 463-6591

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes rule amendments to multiple sections of its Chapter 21, Interconnection Agreements for Telecommunications Service Providers. The specific proposed amendments are detailed below. This rule review is performed in accordance with Texas Government Code §2001.039, which requires a state agency to review and consider for readoption each of its rules every four years.

The proposed changes make amendments to the following rules: 16 Texas Administrative Code (TAC) §21.5, relating to Representative Appearances; §21.31, relating to Filing of Pleadings, Documents, and Other Materials; §21.33, relating to Formal Requisites of Pleading and Documents to be Filed with the Commission; §21.35, relating to Service of Pleadings and Documents; §21.41, relating to Motions; §21.61, relating to Threshold Issues and Certification of Issues to the Commission, §21.75, relating to Motions for Clarification and Motions for Reconsideration; §21.95, relating to Compulsory Arbitration; §21.99, relating to Approval of Arbitrated Agreements; §21.101, relating to Approval of Amendments to Existing Interconnection Agreements; §21.103, relating to Approval of Agreements Adopting Terms and Conditions pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i); §21.123, relating to Informal Settlement Conference; and §21.125, relating to Formal Dispute Resolution Proceeding.

The proposed amendments make minor and confirming changes to the following rules, such as removing requirements to file multiple copies of a document with the commission and remove outdated information: 16 TAC §21.5; §21.31; §21.33; §21.75; §21.95; §21.99; §21.101; §21.103; §21.123; and §21.125.

The proposed amendments to §21.33 and §21.35 authorize electronic filing of documents in lieu of filing multiple paper copies and also remove the paper filing requirements across the chapter to be consistent with current commission electronic filing practices.

The proposed amendments to §21.41 clarify the process for granting continuances and extending filing deadlines by revising the applicable standards of review.

The proposed amendments to §21.61 permit more flexibility in the determination and appeal of threshold issues.

The proposed amendments to §21.95 revise the requirements for waiver regarding telecommunication service provider interconnection agreements and require an arbitration notice to be issued in writing, electronically or otherwise.

The proposed amendments to §21.123 and §21.125 provide for electronic delivery as a method for service to align with current commission practice.

Growth Impact Statement

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

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

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

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

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

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

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

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Jena Abel, Agency Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Abel has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be streamlined filing requirements for activities related to commission review of telecommunications interconnection agreements. There will not be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by June 28, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by June 28, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 55293.

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

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

16 TAC §21.5

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14,052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.5. Representative Appearances.

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

(b) Change in authorized representative. Any person appearing through an authorized representative must [~~shall~~] provide written notification to the commission and all parties to the proceeding of any change in that person's authorized representative. A copy of the notification must be filed with the commission's Central Records Division under the applicable control number [~~The required number of copies of the notification shall be filed in Central Records under the control number(s)~~] for each affected proceeding and must [~~shall~~] include the authorized representative's name, address, telephone number, email address, and facsimile number.

(c) Lead counsel. A party represented by more than one attorney or authorized representative in a matter before the commission may be required by the presiding officer to designate a lead counsel who is authorized to act on behalf of all [~~of~~] the party's representatives. All[~~, but all~~] other attorneys or authorized representatives for the party may take part in the proceeding in an orderly manner, as ordered by the presiding officer.

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

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

Filed with the Office of the Secretary of State on May 23, 2024.

TRD-202402331
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 936-7322

SUBCHAPTER B. PLEADINGS, DOCUMENTS, AND OTHER MATERIALS

16 TAC §§21.31, 21.33, 21.35, 21.41

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14,052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.31. Filing of Pleadings, Documents, and Other Materials.

(a) Applicability. This section applies to all pleadings as defined in §21.3 of this title (relating to Definitions) and the following documents:

(1) letters or memoranda relating to any item with a control number;

(2) discovery requests and responses; and

(3) Decision Point List (DPL) filings.

(b) File with the commission filing clerk. All pleadings and documents required to be filed with the commission must [~~shall~~] be filed with the commission's Central Records Division [~~commission filing clerk~~] and must [~~shall~~] state the control number in the heading, if known.

[~~(c) Number of items to be filed. Unless otherwise provided by this chapter or ordered by the presiding officer, the number of copies to be filed, including the original, is as follows:~~]

[~~(1) for applications filed pursuant to §21.97 of this title (relating to Approval of Negotiated Agreements), §21.101 of this title (relating to Approval of Amendments to Existing Interconnection Agreements), and §21.103 of this title (relating to Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i)): three copies;~~]

[~~(2) for all other petitions and responses: ten copies;~~]

[~~(3) for discovery requests: ten copies;~~]

[~~(4) for testimony and briefs: ten copies, except when it is known that two or more of the Commissioners will serve as the presiding officer;~~]

[~~(5) for testimony and briefs when two or more of the Commissioners will serve as the presiding officer: 19 copies;~~]

[~~(6) for the final approved interconnection agreement: two copies; and~~]

[~~(7) for other pleadings and documents: ten copies.~~]

(c) [~~(d)~~] Receipt by the commission. Pleadings and any other documents are [~~shall be~~] deemed filed when received by commission's Central Records Division. Central Records will [~~the required number of copies and the electronic copy, if required, in conformance with §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission), are presented to the commission filing clerk for filing The commission filing clerk shall~~] accept pleadings and documents if the person seeking to make the filing is in line by the time the pleading or document is required to be filed.

(d) [~~(e)~~] No filing fee. No filing fee is required to file any pleading or document with the commission.

(e) [~~(f)~~] Office hours of Central Records [~~the commission filing clerk. With the exception of open meeting days, for the purpose of filing documents, the office hours of the commission filing clerk are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days.~~]

(1) For the purpose of filing documents, the [~~The~~] office hours of Central Records are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days, except on Fridays, when Central Records will close for all purposes from noon to 1:00 p.m.

(2) Central Records will open at 8:00 a.m. on open meeting days. With the exception of paragraph (3) of this subsection, no filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m.

(3) On open meeting days, between the hours of 8:00 a.m. and 9:00 a.m., the presiding officer, a commissioner, or the Office of Policy and Docket Management (OPDM) [~~Commissioners and the Policy Development Division~~] may file items related to the open meeting on behalf of the commission or an individual commissioner [~~Commissioners~~].

[~~(A) The Commissioners and the Policy Development Division shall provide the filing clerk with an extra copy of all documents filed pursuant to this paragraph for public access.~~]

[~~(B)~~] The presiding officer or OPDM will [~~Policy Development Division shall~~] provide the parties of record a copy of each document [~~copies of documents~~] filed under this paragraph as soon as possible after filing. To the extent practicable, the existence of a docu-

ment [documents] filed under this paragraph will [shall] be announced prior to the discussion on the noticed item at the open meeting. In addition to providing copies via mail or facsimile, staff may transmit the documents to the parties of record by electronic transmission or via hand-delivery at the open meeting.

[(g) Filing a copy or facsimile copy in lieu of an original. Subject to the requirements of subsection (c) of this section and §21.33 of this title, a copy of an original document or pleading, including a copy that has been transmitted through a facsimile machine, may be filed, so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.]

(f) [(h)] Filing deadline. All documents must [shall] be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.

§21.33. Formal Requisites of Pleadings and Documents to be Filed with the Commission.

(a) Applicability. This section applies to all pleadings as defined in §21.3 of this title (relating to Definitions) and the following documents:

(1) Letters or memoranda relating to any item with a control number;

(2) Reports required under [pursuant to] commission rules or requested by [request of] the commission;

(3) Discovery requests; and

(4) Decision Point List (DPL) filings.

(b) Requirements of form.

(1) Style.

(A) All requests for dispute resolution or arbitration must [shall] be styled as follows: Petition of {Party} for {Compulsory Arbitration or Post-Interconnection Dispute Resolution} with {Party} under FTA relating to {concise description of major issue}. All responses to requests for dispute resolution or arbitration must [shall] be styled as follows: Response of {Party} to Petition of {Party} for {Compulsory Arbitration or Post-Interconnection Dispute Resolution} under FTA relating to {concise description of major issues}.

(B) Requests for dispute resolution [pursuant to] §21.131 of this title (relating to Request for Expedited Ruling) and §21.133 of this title (relating to Request for Interim Ruling Pending Dispute Resolution) must [shall] also include such specific requests, as appropriate, in the pleading style, as follows: Petition of {Party} for {Compulsory Arbitration or Post-Interconnection Dispute Resolution} and Request for {Expedited Ruling or [and/or] Request for Interim Ruling} with {Party} under FTA relating to {concise description of major issues}.

(2) Unless otherwise authorized or required by the presiding officer or this chapter, documents must [shall]:

(A) include the style and control number of the docket or project in which they are submitted, if available;

(B) identify by heading the nature of the document submitted and the name of the party submitting the same; and

(C) be signed by the party or the party's representative.

(3) Whenever possible, all documents should be provided on 8.5 by 11 inch paper. However, any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in subsection (g) of this section, if it cannot be provided legibly on letter-size paper. The document must be able to be folded to a size no larger than 8.5 by 11 inches. Documents that cannot be folded may not be accepted.

(c) (No change).

(d) Citation.

(1) Form. Any party filing with the commission should endeavor to comply with the rules of citation set forth, in the following order of preference, by: the commission's "Citation Guide;" the most current edition of the "Texas Rules of Form," published by the University of Texas Law Review Association (for Texas authorities); and the most current edition of "A Uniform System of Citation," published by The Harvard Law Review Association (for all other authorities). Neither Rule 1.1 of the Uniform System nor the comparable portion of the "Texas Rules of Form" are [shall be] applicable in proceedings.

(2) Copies. When a party cites to authority other than PURA and other Texas state statutes, commission rules, reported Texas cases, an FCC decision, the United States Code, the Texas Administrative Code, the Code of Federal Regulations, or a document on file with the commission, such party must [shall] provide a copy of the cited authority to the presiding officer and all parties of record. Copies of authority may be provided to the presiding officer and all parties of record electronically.

(e) Signature. Every pleading and document must [shall] be signed by the party or the party's authorized representative, and must [shall] include the party's address, telephone number, facsimile number, and email address. If the person signing the pleading or document is an attorney licensed in Texas, the attorney's State bar number must [shall] be provided.

(f) Page limits. Unless otherwise authorized by the presiding officer, page limits must be in accordance with the following standards [shall be as follows]:

(1) With the exception of DPLs and discovery responses, no pleading or brief relating to interconnection agreements may [shall] exceed 50 pages, excluding exhibits.

(2) Prefiled direct testimony must [shall] not exceed 75 pages in length per witness, excluding exhibits or [and/or] attachments. A party may request [requesting] the presiding officer to establish a larger page limit and must [shall so move, and shall] provide support on relevant factors in accordance with [pursuant to] paragraph (4) of this subsection.

(3) The page limitation does [shall] not apply to copies of legal authorities provided under [pursuant to] subsection (d)(2) of this section.

(4) A presiding officer may establish a larger or smaller page limit. In establishing parties' page limits, the presiding officer will [shall] consider such factors as which party has the burden of proof, the number of parties opposing a party's position, alignment of parties, the number and complexity of issues, the number of witnesses per party, and demonstrated need.

(g) Hard copy filing standards. Hard copies of each document may [shall] be filed with the commission in accordance with the requirements set forth in paragraphs (1)-(4) of this subsection.

(1) Each document must [shall] be typed or printed on paper measuring 8.5 by 11 inches. Oversized documents being filed on larger paper under [pursuant to] subsection (b)(3) of this section must [shall] be filed as separate referenced attachments. Except for responses to discovery, each document must consist of the same [no single document shall consist of more than one] paper size.

(2) A [~~One~~] copy of each document must[~~, that is not the original file copy,~~ ~~shall~~] be filed without bindings, staples, tabs, or separators.

(A) This copy must [~~shall~~] be printed on both sides of the paper or, if it cannot be printed on both sides of the paper, every page of the copy must [~~shall~~] be single sided.

(B) All pages of the copy filed under [~~pursuant to~~] this paragraph, starting with the first page of the table of contents, must [~~shall~~] be consecutively numbered through the last page of the document, including attachments, if any.

(3) For documents for which an electronic filing is required, all non-native figures, illustrations, or objects must [~~shall~~] be filed as referenced attachments. Non-native [~~No non-native~~] figures, illustrations, or objects must not [~~shall~~] be embedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.

(4) Unless otherwise provided by §21.31 of this title (relating to Filing of Pleadings, Documents and Other Materials), this section, or the applicable commission rule under this title [~~Whenever possible~~], all documents and copies must [~~shall~~] be printed on both sides of the paper.

(h) Electronic filing standards. Any document may be filed, and all documents containing more than ten pages must [~~shall~~] be filed, electronically in accordance with the requirements of paragraphs (1)-(7) of this subsection. Electronic filings are registered by submission of the relevant electronic documents via external storage for digital media [~~diskette~~] or the internet, in accordance with transfer standards available in the commission's central records office or on the commission's website [~~World Wide Website~~], and, as applicable, the submission of the required number of [~~paper~~] copies to the commission [~~filing clerk~~] under the provisions of this section and §21.31 of this title[~~(relating to Filing of Pleadings, Documents and Other Materials)~~].

(1) All non-native figures, illustrations, or objects must be filed as referenced attachments. No non-native figures, illustrations, or objects may [~~shall~~] be imbedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.

(2) Oversized documents must [~~shall~~] not be filed in electronic media, but must [~~shall~~] be filed as referenced attachments.

(3) Each document that has five or more headings or [~~and/or~~] subheadings must [~~shall~~] have a table of contents that lists the major sections of the document, the page numbers for each major section and the name of the electronic file that contains each major section of the document. Discovery responses are exempt from the requirements of this paragraph.

(4) Each document must [~~shall~~] have a list of file names that are included in the filing and must [~~shall~~] be referenced in a [~~an ASCII~~] text file.

(5) The table of contents and list of file names must [~~shall~~] be placed at the beginning of the document.

(6) Each external storage device for digital media must [~~diskette shall~~] be labeled with the control number, if known, and the name of the person submitting the document.

(7) Any information submitted under claim of confidentiality should not be submitted in electronic format.

(i) External storage for digital media. Each document that is submitted to the commission on an external storage device for digital media may be password-protected but must be made accessible to commission staff. In addition to the applicable requirements of subsection (h) of this section, each external storage device for digital media provided to the commission must be accompanied by:

(1) a statement indicating the contents of the device'

(2) the docket number in which each document on the device is to be filed; and

(3) a statement indicating which documents are to be filed confidentially.

[~~(i) Disk format standards. Each document that is submitted to the filing clerk on diskette shall be submitted as set forth in paragraphs (1)-(3) of this subsection.~~]

[~~(1) 3.5 inch diskette;~~]

[~~(2) 1.44 M double sided, high density storage capacity; and~~]

[~~(3) IBM format.~~]

(j) File format standards.

(1) Electronic filings must [~~shall~~] be made in accordance with the current list of preferred file formats published by [~~available in~~] the commission's Central Records Division [~~central records office and~~] on the commission's website [~~World Wide Website~~].

(2) Electronic filings that are submitted in a format other than that required by paragraph (1) of this subsection will not be accepted until after successful conversion of the file to a commission-approved [~~commission~~] standard.

§21.35. Service of Pleadings and Documents.

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

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

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

(2) Service by agent or by courier receipted delivery is [~~shall be~~] complete upon delivery to the agent or courier.

(3) Service by facsimile transmission is [~~shall be~~] complete upon actual receipt by the recipient's facsimile machine.

(4) Service by electronic mail is complete upon issuance by the sender's electronic mail account.

(5) [~~(4)~~] Unless otherwise established by the receiving party, if service is made by hand delivery, facsimile transmission, or electronic mail, it is [~~shall be~~] presumed that all pleadings are received on the day filed.

(A) If service is made by overnight delivery, it is [~~shall be~~] presumed that pleadings are received on the day after filing.

(B) If service is made by regular mail, it is [~~shall be~~] presumed that pleadings are received on the third day after filing.

(C) Service after 5:00 p.m. local time of the recipient will [~~shall~~] be deemed served on the following day.

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

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

§21.41. Motions.

(a) General requirements. A motion must [~~shall~~] be in writing, unless the motion is made on the record at a prehearing conference or hearing. It must [~~shall~~] state the relief sought and the specific grounds supporting a grant of relief. If the motion is based upon alleged facts that are not a matter of record, the motion must [~~shall~~] be supported by an affidavit. Written motions must [~~shall~~] be served on all parties in accordance with §21.35 of this title (relating to Service of Pleadings and Documents).

(b) Time for response. Unless otherwise provided by the presiding officer, commission rule, or statute, a responsive pleading, if made, must [~~shall~~] be filed by a party within five working days after receipt of the pleading to which the response is made.

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

(d) Motions for continuances and extensions.

(1) Generally. Motions for continuance and for extension of a deadline must [~~shall~~] set forth the specific grounds for which the moving party seeks a continuance or an [~~and/or~~] extension and must [~~shall~~] reference all other motions for continuance or [~~and/or~~] extension filed by the moving party in the proceeding. [~~The moving party shall attempt to contact all other parties and shall state in the motion each party that was contacted and whether that party objects to the relief requested. The moving party shall have the burden of proof with respect to the need for the continuance and/or extension.~~]

(2) Standard of Review. The moving party must show good cause with respect to the need for the continuance or extension.

(A) Motions for Continuance. The moving party must show good cause with respect to the need for a continuance. Motions for continuance [~~Continuances~~] will not be granted based on the need for discovery if the party seeking the continuance previously had the opportunity to obtain or [~~and/or~~] compel discovery from the person from whom discovery is sought, except when necessary due to discovery abuses, surprise or discovery of facts or evidence which could not have been discovered previously through reasonably diligent effort by the moving party.

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

(3) Granting of motion. The presiding officer may grant timely filed motions for continuance or extension [~~and/or extension of deadline continuances~~] agreed to by all parties provided that any applicable statutory deadlines are extended as necessary.

(e) Deadlines for motions for continuance [~~and extension of filing deadline~~].

(1) Unless otherwise ordered by the presiding officer, motions for continuance of a prehearing conference, informal settlement conference, or discovery conference must [~~shall~~] be in writing and must [~~shall~~] be filed no less than two working days prior to the conference or hearing.

(2) Unless otherwise ordered by the presiding officer, motions for continuance of the hearing on the merits must [~~shall~~] be in writing and must [~~shall~~] be filed not less than three working days prior to the hearing. In addition to the requirements in paragraph (1) of this subsection[~~(e)(1) of this section~~], motions for continuance must [~~shall~~] state proposed dates for a rescheduled hearing.

[~~(3) Unless otherwise ordered by the presiding officer, motions for extension of a filing deadline shall be in writing and shall be filed not less than one working day prior to the filing deadline.~~]

(3) [~~(4)~~] Untimely motions for continuance will [~~and/or extension of a deadline shall~~] be presumed to be denied. The moving party has the burden to show good cause for untimely filing.

(f) Modification of [~~discovery~~] deadlines.

(1) Notwithstanding the requirements of subsections (b), (d), and (e) of this section [~~Notwithstanding the foregoing~~], the deadlines for responses, objections and motions to compel may be modified by agreement of the affected parties, by filing a letter or other document evidencing the agreement no later than the date the responses, objections or motions to compel are due.

(2) In the event the parties' agreed modification of a discovery deadline affects a scheduled discovery conference, parties must also comply with subsection (e) of this section.

(3) Unless the parties show good cause for untimely filing of a modified deadline, the presiding officer may impose the original deadlines for subsequent filings.

(4) In no event will [~~shall~~] the modification of discovery deadlines by agreement be allowed if such modification would affect a statutory deadline, unless the parties' agreed modification is accompanied by a written waiver and is approved by the presiding officer.

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

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Public Utility Commission of Texas
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SUBCHAPTER C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS

16 TAC §21.61, §21.75

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14,052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.61. Threshold Issues and Certification of Issues to the Commission.

(a) Threshold issues. Threshold issues are legal or policy issues that the [a] presiding officer determines to be of such significance that the issues must [~~to the proceeding that these issues should~~] be addressed prior to proceeding with the other issues in the docket [~~proceeding~~]. Threshold issues include[~~, but are not limited to,~~] issues to be certified to the commission in accordance with subsection (b) of this section.

(1) Threshold issues may be identified by the presiding officer or by motion of a party to the proceeding.

(A) The presiding officer will establish a reasonable timeframe to raise or challenge a threshold issue.

(B) Parties must [~~shall~~] raise any threshold issues as well as challenges to the arbitrability of any issue at the first prehearing conference. If such challenges are not raised at the first prehearing conference, they will [~~shall~~] be deemed waived by the parties.

(C) The presiding officer will provide the parties [~~Parties shall be given~~] an opportunity to brief the question of threshold issues. At the discretion of the presiding officer, reply briefs may be permitted. Any determination on threshold issues by the presiding officer will [~~shall~~] be made in a written order.

(2) Once a presiding officer has determined that there are one or more threshold issues in a proceeding, the presiding officer may certify each issue in accordance with subsection (b) of this section. A decision on a threshold issue is subject to a motion for reconsideration and is eligible for appeal. For purposes of this paragraph the term "motion for reconsideration" and "appeal" are interchangeable.

[~~(2) Once a presiding officer has determined that there is a threshold issue(s) in a proceeding, the presiding officer shalltake up the threshold issue(s) prior to proceeding with the other issues or certify the issue(s) to the commission pursuant to subsection (b) of this section. A decision on a threshold issue is not subject to motion for reconsideration.~~]

(b) Certification. Certified issues will [~~shall~~] be addressed by the commission [~~prior to proceeding with the other issues in the proceeding~~].

(1) Issues for certification. The presiding officer may certify to the commission a significant issue that involves an ultimate finding in the proceeding. Issues appropriate for certification include [~~are~~]:

(A) the commission's interpretation of its rules and applicable statutes;

(B) which rules or statutes are applicable to a proceeding; or

(C) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(2) Procedure for certification. The presiding officer will file [~~shall submit~~] the certified issue and issue notice to the parties [~~to the Policy Development Division, with notice to the parties when the issue is so submitted~~]. The [~~Policy Development Division shall place the~~] certified issue will be placed on the commission's agenda to be considered at the earliest time practicable. Parties may file briefs on the certified issue within five working days from the date the presiding officer files the certified issue [~~of its submission~~].

(3) Abatement.

(A) In a compulsory arbitration proceeding, the presiding officer may abate all or a part of the proceeding while a certified issue is pending only if agreed to by the parties.

(B) In a post-interconnection dispute proceeding, the presiding officer may abate all or a part of the proceeding while a certified issue is pending at the presiding officer's discretion.

(4) Commission action. The commission will [~~shall~~] issue a written decision on the certified issue no later than six working days after the open meeting at which the issue is decided by the commission, unless extended for good cause. A commission decision on a certified issue is not subject to a motion for reconsideration or appeal. For purposes of this paragraph the term "motion for reconsideration" and "appeal" are interchangeable.

§21.75. Motions for Clarification and Motions for Reconsideration.

(a) Motions for clarification. This subsection only applies to motions for clarification of arbitration awards [~~Arbitration Awards~~]. Motions for clarification of an arbitration award [~~Arbitration Award~~] may be made to the presiding officer requesting that an ambiguity be clarified or an error, other than an error of law, be corrected.

(1) Procedure. A motion for clarification must [~~shall~~] be filed within ten working days of the issuance of the presiding officer's decision or order. The motion for clarification must [~~shall~~] be served on all parties by hand delivery, facsimile transmission, electronic mail, or by overnight courier delivery. Responses to a motion for clarification must [~~shall~~] be filed within five working days of the filing of the motion.

(2) Content. A motion for clarification must [~~shall~~] specify the alleged ambiguity or error and, as appropriate, include proposed [~~contract~~] language that corrects the alleged ambiguity or error.

(3) Denial or granting of motion. The presiding officer will [~~shall~~] grant or deny the motion within ten working days of the filing of the motion. If the motion is granted, the presiding officer will [~~shall~~] issue a decision or revised order within 15 working days of the filing of the motion.

(b) Motions for reconsideration. Motions for reconsideration [~~rehearing~~], appeals, or motions for rehearing must [~~reconsideration shall~~] be styled accordingly and will be presented directly to the commission [~~"Motion for Reconsideration" and shall be made directly to the commission~~]. For purposes of dispute resolution and approval proceedings the terms "motion for reconsideration," "appeal," and "motion for rehearing," [~~and "motion for reconsideration"~~] are interchangeable.

(1) Limitations.

(A) Only parties to the negotiation in a compulsory arbitration under [~~pursuant to~~] §21.95 of this title (relating to Compulsory Arbitration) may file motions for reconsideration.

(B) In a proceeding under [~~pursuant to~~] §21.97 of this title (relating to Approval of Negotiated Agreements), only parties to the negotiated agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to modifications made to the agreement.

(C) In a proceeding under [~~pursuant to~~] §21.99 of this title (relating to Approval of Arbitrated Agreements), only parties to the arbitrated agreement may file motions for reconsideration.

(D) In a proceeding under [~~pursuant to~~] §21.125 of this title (relating to Formal Dispute Resolution Proceeding), only parties to the agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to interpretations of and modifications made to the negotiated agreement.

(E) In a proceeding under [~~pursuant to~~] §21.101 of this title (relating to Approval of Amendments to Existing Interconnection Agreements), only parties to the amended agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to amendments or modifications made to the agreement.

[~~(F) In a proceeding pursuant to §21.105 of this title (relating to Approval of Agreements Adopting Terms and Conditions of T2A), only parties to the agreement may file motions for reconsideration. Issues subject to motions for reconsideration are limited to non-T2A portions of the agreement.~~]

(F) [~~(G)~~] Any motions for reconsideration not filed by parties will be considered as a comment filed by an interested party.

(2) Procedure. A motion for reconsideration must [~~shall~~] be filed within 20 days of the issuance of the order under consideration. The motion for reconsideration must [~~shall~~] be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery, or by electronic mail. Responses to a motion for reconsideration must [~~shall~~] be filed within ten days of the filing of the motion.

(3) Content. A motion for reconsideration must [~~shall~~] specify the reasons why the order is unjustified or improper. If the moving party objects to contract language recommended by the presiding officer, then the motion must [~~shall~~] contain alternative contract language along with an explanation of why the alternative language is appropriate.

(4) Commission Agenda [~~ballot~~]. Upon filing a motion for reconsideration, the commission will [~~Policy Development Division shall send separate ballots to each Commissioner to~~] determine whether the motion will be placed on an open meeting agenda and considered at an open meeting. The commission will [~~Policy Development Division shall~~] notify the parties by facsimile or [~~and~~] electronic mail whether any commissioner, [~~Commissioner~~] by individual ballot, has added the motion to an open meeting agenda, but will not identify the requesting commissioner [~~Commissioner(s)~~].

(5) Denial or granting of motion.

(A) The motion is deemed denied if, after five working days of the filing of a motion, the parties have not been notified that the motion has been placed on an open meeting agenda.

(B) If the commission determines that ruling on the motion is necessary, the motion will be placed on the agenda for the next regularly scheduled open meeting or such other meeting as determined by the commission.

[~~(A) The motion is deemed denied if, after five working days of the filing of a motion, no Commissioner by separate agenda ballot has placed the motion on the agenda for an open meeting. In such event, the Policy Development Division shall so notify the parties by facsimile and electronic mail.~~]

[~~(B) If a Commissioner does ballot in favor of considering the motion, it shall be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the Commissioner may direct by the agenda ballot. In the event two or more Commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots.~~]

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

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SUBCHAPTER D. DISPUTE RESOLUTION

16 TAC §§21.95, 21.99, 21.101, 21.103

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14,052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.95. Compulsory Arbitration.

(a) Request for arbitration.

(1) Any party to negotiations concerning a request for interconnection, services or network elements in accordance with [~~pursuant to~~] the Federal Telecommunications Act of 1996 (FTA) §251 may request arbitration by the commission by filing with the commission [~~commission's filing clerk~~] a petition for arbitration. The petitioner must [~~shall~~] send a copy of the petition and any documentation to the negotiating party with whom agreement cannot be reached the date the petition is filed with the commission [~~not later than the day on which the commission receives the petition~~].

(2) The petition must be received by the commission during the period from the 135th to the 160th day [~~(inclusive)~~] after the date the negotiating party received the request for negotiation. The commission will [~~shall~~] perform a sufficiency review of the petition. To the extent that a petition is determined to be insufficient, the commission will [~~shall~~] file a notice of insufficiency within five working days of receipt of the petition. In the absence of a notice of insufficiency, the petition will [~~shall~~] be presumed sufficient.

(3) Where a petition for arbitration is found insufficient, the presiding officer may consider dismissal without prejudice in accordance with [~~pursuant to~~] §21.67 of this title (relating to Dismissal of a Proceeding) and order the petitioner to refile.

(4) A petition that is procedurally sufficient must be filed [~~on file~~] with the commission by the 160th day after the date on which petitioner requested negotiation.

(5) In addition to the requirements of form specified in §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission) the petition for arbitration must [~~shall~~] include:

(A) the name, address, telephone number, facsimile number, and email address of each party to the negotiations and the party's designated representative;

(B) a description of the parties' efforts to resolve their differences by negotiation, including [~~but not limited to~~] the dates of the request for negotiation and the projected timeline for compliance under FTA deadlines;

(C) a Decision Point List (DPL) that includes a list of any unresolved issues and the position of each party [~~of the parties~~] on each issue [~~of those issues~~];

(D) the proposed contract language from each party, as applicable, for each unresolved issue;

(E) all [~~agreed~~] contract language agreed upon by the parties;

(F) if the arbitration request concerns a request for interconnection under §26.272 of this title (relating to Interconnection), the material required by §26.272(g) of this title;

(G) the [~~most~~] current version of the interconnection agreement being negotiated by the parties, if any, containing both the agreed language and the disputed language of both parties; and

(H) a certificate of service that complies with the requirements of §21.35 of this title (relating to Service of Pleadings and Documents).

(b) Response. Any non-petitioning party to the negotiation must [~~shall~~] respond to the request for arbitration by filing the response with the commission [~~commission's filing clerk~~] and serving a copy on each party to the negotiation. In accordance with [~~Pursuant to~~] FTA §252(b)(3) the response must be filed within 25 days after the commission received the request for arbitration. The response must [~~shall~~] indicate any disagreement with the matters contained in the petition for arbitration, including a detailed response to the DPL and alternative proposed contract language, and may provide [~~such~~] additional information [~~as~~] the party wishes to present.

(c) Selection and replacement of presiding officer.

(1) Upon receipt of a complete petition for arbitration, the commission may delegate authority to a presiding officer [~~shall be selected to act for the commission, unless two or more of the Commissioners choose~~] to hear the arbitration [~~en banc~~]. The parties will [~~shall~~] be notified of the commission-designated presiding officer or whether the commission will hear the arbitration directly by electronic mail or in writing[~~, or of the Commissioners' decision to act as presiding officer themselves~~]. The presiding officer and [~~along with~~] designated commission staff will act as an arbitration team. The presiding officer may be advised on legal and technical issues by members of the arbitration team. The commission staff members included in the arbitration [~~selected to be part of the~~] team will [~~shall~~] be identified to the parties.

(2) If at any time a presiding officer is unable to continue presiding over a case, a substitute presiding officer will [~~shall~~] be appointed who will [~~shall~~] perform any remaining functions without the necessity of repeating any previous proceedings. The substitute presiding officer will [~~shall~~] read the record of the proceedings that occurred prior to their appointment before issuing an arbitration award or other decision.

(d) (No change.)

(e) Prehearing conference; challenges. As soon as is practicable [~~practical~~] after selection, the presiding officer will [~~shall~~] schedule a prehearing conference with the parties to the arbitration. At the prehearing conference, parties may [~~should be prepared to~~] raise any challenges to the appointment of the presiding officer or to the inclusion of any issue identified for arbitration in the petition and responses. [~~If such challenges are not raised at the first prehearing conference, they shall be deemed waived by the parties~~].

(1) The presiding officer may establish criteria for waiver of issues, including threshold issues, identified for arbitration. If a challenge to the appointment of the presiding officer is not raised at the first prehearing conference, such a challenge will be deemed waived by the parties

(2) The presiding officer will [~~shall~~] serve parties with the orders ruling on challenges within ten working days of the first prehearing conference.

(3) The presiding officer may [~~has the authority to~~] schedule additional prehearing conferences to consider discovery, procedural schedules, clarification of issues, amending pleadings, stipulations, evidentiary matters, requests for interim relief, and any other matters that [~~as may~~] assist the disposition of the proceedings in a fair and efficient manner.

(f) Notice. The presiding officer will establish a procedural schedule [~~shall make arrangements~~] for the arbitration hearing, which may not be scheduled earlier than 35 days after the commission receives a complete request for arbitration. The presiding officer will [~~shall~~] notify the parties, not less than ten days before the hearing, of the date, time, and location of the hearing.

(g) Record of hearing. The arbitration hearing will [~~shall~~] be open to the public. If any party requests it, a stenographic record will [~~shall~~] be made of the hearing by an official court reporter appointed by the commission. It is the responsibility of the party ordering the stenographic record to request that the commission have an official reporter present. A party may purchase a copy of the transcript from the official reporter at rates set by the commission. The court reporter must [~~shall~~] provide the transcript and exhibits in a hearing to the presiding officer at the time the transcript is provided to the requesting party. If no court reporter is requested by a party, the presiding officer will [~~shall~~] record the proceedings and maintain the official record and exhibits. Each party to the arbitration hearing is [~~shall be~~] responsible for its own costs of participation in the arbitration process.

(h) Hearing procedures.

(1) The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing.

(2) Redirect examination may be allowed at the discretion of the presiding officer, provided that parties have reserved time for redirect.

(3) The presiding officer may temporarily close the arbitration hearing to the public to hear evidence containing information filed as confidential under §21.77 of this title (relating to Confidential Material). The presiding officer will [~~shall~~] close the hearing only if there is no other practical means of protecting the confidentiality of the information.

(4) Each party, as applicable, must provide a copy of all exhibits or must pay the court reporter costs associated with the production of any copies the party asks the court reporter to provide.

[~~(4) In addition to providing sufficient copies for all parties, the presiding officer, and, if appropriate, the court reporter, parties shall provide three copies of all exhibits for purposes of appeal at the hearing.~~]

(i) Applicable rules. The rules of privilege and exemption recognized by Texas law [~~shall~~] apply to arbitration proceedings under this subchapter. The Texas Rules of Civil Procedure, Texas Rules of Civil Evidence, Texas Administrative Procedure Act §2001.081, and Chapter 22 of this title (relating to Procedural Rules [~~Practice and Procedure~~]) may be used as guidance in proceedings under this chapter.

(j) Authority of presiding officer.

(1) Generally. The presiding officer has broad discretion in conducting the arbitration hearing, including the authority given to a presiding officer under [~~pursuant to~~] §22.202 of this title (relating to Presiding Officer). In addition, the presiding officer has broad discretion to ask clarifying questions and to direct a party or a witness to provide information[~~,~~] at any time during the proceeding, as provided by [~~set out in~~] subsection (q) of this section.

(2) Subpoenas.

(A) Issuance of Subpoenas. In accordance with Texas Government Code [~~Pursuant to APA~~], §2001.089, the presiding officer may issue a subpoena for the attendance of a witness or for the production of books, records, papers, or other objects. Motions for subpoenas to compel the production of books, records, papers, or other objects must [~~shall~~] describe with reasonable particularity the objects desired and the material and relevant facts sought to be proved by them.

(B) Service and return. A subpoena may be addressed to the sheriff or any constable, who may serve the subpoena in any manner authorized by the Texas Rules of Civil Procedure; and service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena, or by any other method authorized by the Texas Rules of Civil Procedure.

(C) Fees. Subpoenas must [~~shall~~] be issued by the presiding officer only after sums have been deposited to ensure payment of expense fees incident to the subpoenas. Payment of any such fees or expenses must [~~shall~~] be made in the manner prescribed by Texas Government Code [~~in APA,~~] §2001.089 and §2001.103.

(D) Motions to quash. Motions to quash subpoenas must [~~shall~~] be filed within five working days after the issuance of the subpoena, unless the party ordered to respond to the subpoena shows that it was justifiably unable to file objections at that time.

(k) Discovery. In accordance with [~~Pursuant to~~] subsection (j) of this section, the presiding officer has broad discretion regarding discovery. Except as modified in paragraphs (1) - (3) of this subsection, Chapter 22, Subchapter H of this title (relating to Discovery Procedures) must [~~shall~~] serve as guidance for all discovery conducted under this chapter.

(1) Scope. The presiding officer will [~~shall~~] permit only such discovery as the presiding officer determines is essential, considering public policy, the needs of the parties and the commission, the commission's deadlines under FTA §252(b)(4)(C)[~~(c)~~], and considering the desirability of making discovery effective, expeditious and cost effective. The presiding officer will [~~shall~~] be the judge of the relevance and materiality of the discovery sought.

(2) Limits. Parties may obtain discovery relevant to the arbitration by submitting requests for information (RFIs), requests for inspection and production of documents (RFPs), requests for admissions (RFAs), and depositions by oral or written examination. RFIs, RFPs and RFAs must [~~shall~~] contain no more than 40 requests (subparts are counted as separate requests). The presiding officer, upon a motion filed by a party, may permit a party to propound more than 40 requests provided that the moving party has made a clear demonstration of the relevance of and the need for the additional requests. Factors to be considered by the presiding officer in determining whether to allow additional requests [~~shall~~] include[~~, but are not limited to~~]: the number of unresolved issues, the complexity of the unresolved issues, and whether the proceeding addresses costs or [~~and/or~~] cost studies.

(3) Timing. Discovery may commence upon the filing of the petition for arbitration. Parties must [~~shall~~] file a proposed discovery schedule that accommodates the commission's deadlines under FTA §252(b)(4)(C)[~~(c)~~], taking into consideration relevant commission regulatory timeframes. The presiding officer may impose a discovery schedule that accommodates the commission's deadlines under FTA §252(b)(4)(C)[~~(c)~~]. If any party requests an extension that will affect the ability to complete the proceeding within the commission's deadlines under FTA §252(b)(4)(C)[~~(c)~~], all parties must agree to the extension and file a joint waiver to extend such deadlines.

(l) Time for hearing. The arbitration hearing will [~~shall~~] be conducted expeditiously and in an informal manner. The presiding officer is authorized [~~empowered~~] to impose reasonable time limits on the arbitration hearing. The presiding officer may continue an arbitration [~~a~~] hearing from time to time and place to place. Unless additional time is allowed by the commission or additional information is requested by the presiding officer, the hearing may not exceed five working days.

(m) Evidence.

(1) Relevance. The parties may only offer such evidence as is relevant and material to a proceeding and must [~~shall~~] provide such evidence as the presiding officer deems necessary [~~may deem necessary~~

to determination of the proceeding]. The presiding officer will [shall] be the judge of the relevance and materiality of the evidence offered.

(2) Conformity to rules. The presiding officer will [shall] have the authority to decide whether [or not] to apply strict rules of evidence [{]or any other rules[}] as to the admissibility, relevance, or weight of any material tendered by a party on any matter of fact or expert opinion. The presiding officer will [shall] provide notice of this decision prior to the deadline for filing direct testimony.

(3) Exhibits. The offering of exhibits is [shall be] governed by §22.226 of this title (relating to Exhibits).

(4) Offers of proof. Offers of proof are [shall be] governed by §22.227 of this title (relating to Offers of Proof).

(5) Stipulation of facts. Stipulation of facts are [shall be] governed by §22.228 of this title (relating to Stipulation of Facts).

(6) Prefiled evidence.

(A) Parties to the hearing must file [shall provide] their direct case [cases to the presiding officer] at least 15 working days prior to the hearing unless the presiding officer establishes a different deadline. A copy of the direct case and notice of filing must be provided to each of the other parties to the hearing the same day the direct case is filed with the commission [Ten copies of the direct case shall be filed with the commission filing clerk and a copy shall be provided to each of the other parties to the hearing at the same time it is provided to the presiding officer].

(B) The prepared direct case must [shall] include all of the party's direct evidence on all DPL issues in the proceeding, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer as part of its direct case. The prepared case must [shall] present the entirety of the party's direct evidence on each of the issues in controversy and must [shall] serve as the party's complete direct case.

(C) Prefiled evidence must [shall] include, to the extent allowed or requested by the presiding officer, prefiled rebuttal testimony and exhibits and must [shall] be filed not less than eight working days prior to the hearing unless the presiding officer establishes a different deadline.

(7) Public Information. Except as provided in §21.77 of this title (relating to Confidential Information), all materials filed with the commission or provided to the presiding officer will [shall] be considered public information under the Texas Public Information Act (TPIA), Texas Government Code, §552.001, *et. seq.*

(n) Sanctions. Whenever a party fails to comply with a presiding officer's order or commission rules in a manner deemed material by the presiding officer, the presiding officer will establish [shall fix] a reasonable period of time for compliance. If the party does not comply within that time period, then after notice and opportunity for a hearing, the presiding officer may impose a remedy as set forth in §21.71 of this title (relating to Sanctions).

(o) Decision Point List (DPL) and witness list.

(1) Ten days after the filing of the response to the petition, the parties must [shall] file a revised DPL that is jointly populated to the extent practicable, taking into consideration the status of discovery.

(2) Parties must [shall] file a jointly populated DPL in a format approved by the presiding officer, no later than five working days before the commencement of the hearing. An electronic copy of the DPL must [shall] also be provided. The DPL must [shall] identify all issues to be addressed, the witnesses who will address each issue, and a short synopsis of each witness's position on each issue, with specific citation to the parties' testimony relevant to that issue. The DPL must [shall] also provide the parties' competing contract language. Except as provided in §21.77 of this title (relating to Confidential Material), all materials filed with the commission or provided to the presiding officer will [shall] be considered public information under the TPIA, Texas Government Code, §552.001, *et. seq.*

(p) Cross-examination. Each witness presenting written prefiled testimony must [shall] be available for cross-examination by the other parties to the arbitration. The presiding officer will [shall] judge the credibility of each witness and the weight to be given their testimony based upon their response to cross-examination. If the presiding officer determines that the witness's responses are evasive or non-responsive to the questions asked, the presiding officer may disregard the witness's testimony on the basis of a lack of credibility.

(q) Clarifying questions. The presiding officer or an arbitration team member, at any point during the proceeding, may ask clarifying questions and may direct a party or a witness to provide additional information as needed to fully develop the record of the proceeding. This has no effect on a party's responsibility to meet its burden of proof. If a party fails to present information requested by the presiding officer, the presiding officer will [shall] render a decision based on [the basis of] the best information available [from whatever source derived]. Moreover, failure to provide requested information may subject a party to sanctions, as set forth in §21.71 of this title.

(r) Briefs. The presiding officer may require the parties to submit post-hearing briefs or written summaries of their positions. The presiding officer will [shall] determine the filing deadline and any limitations on the length of such submissions. Reply briefs are [shall] not [be] permitted unless the presiding officer determines that they would aid in the resolution of the proceeding, after consideration of applicable deadlines.

(s) Time for decision. The presiding officer will [shall] endeavor to issue a proposal for award [Proposal for Award] on the arbitration within 30 days after the filing of any post-hearing briefs.

(1) If post-hearing briefs are not filed, the presiding officer will [shall] endeavor to issue the proposal for award [Proposal for Award] within 30 days after the conclusion of the hearing.

(2) The arbitration team must [shall] issue an arbitration award not later than nine months after the date on which a party receives a request for negotiation under FTA, unless the parties have waived the nine-month deadline in writing or orally on the record.

(t) Decision.

(1) Proposal for award [Award]. The proposal for award will [Proposal for Award shall] be based upon the record of the arbitration hearing. The presiding officer may agree with the positions of one or more of the parties on any or all issues or may offer an independent resolution of the issues. The presiding officer is the judge of whether a party has met its burden of proof. The proposal for award will [Proposal for Award shall] include:

(A) a ruling on each of the issues presented for arbitration by the parties, including specific contract language;

(B) a statement of any conditions imposed on the parties to the agreement in order to comply with the provisions of FTA §252(c);

(C) a statement of how the final decision meets the requirements of FTA §251, including any regulations adopted by the Federal Communications Commission (FCC) in accordance with [pursuant to] FTA §251;

(D) the rates for interconnection, services, or [and/or] network elements established in accordance with [according to] FTA §252(d);

(E) a schedule for implementation of the terms and conditions by the parties to the agreement;

(F) a narrative report explaining the rulings included in the proposal for award [Proposal for Award], unless the arbitration is conducted by two or more of the commissioners acting as the presiding officers; and

(G) to the extent that a ruling establishes a new or different price for an unbundled network element, combination of unbundled network elements, or resold service, a statement requiring that all certificated carriers be notified of such price either through web posting, mass mailing, or electronic mail within ten days of the date the ruling becomes final.

(2) Exceptions to the proposal for award [Proposal for Award]. Within ten working days of the issuance of the proposal for award [Proposal for Award] the parties must [shall] file any exceptions to the proposal for award [Exceptions to the Proposal for Award] specifying any alleged ambiguities or errors. To the extent that a party objects to contract language within the proposal for award [Proposal for Award], the party's exceptions [Exceptions] to the proposal for award [Proposal for Award] must include alternative contract language along with an explanation of why the alternative language is appropriate, with citation to the record.

(3) Arbitration award [Award]. The arbitration award will [Arbitration Award shall] be based upon the record of the arbitration hearing. The presiding officer will [shall] endeavor to issue the arbitration award [Arbitration Award] within ten working days of the receipt of parties' exceptions [Exceptions] to the proposal for award [Proposal for Award]. The presiding officer may agree with the positions of one or more of the parties on any or all issues or may offer an independent resolution of the issues. The presiding officer is the judge of whether a party has met its burden of proof. The arbitration award will [Arbitration Award shall] include:

(A) - (B) (No change.)

(C) a statement of how the final decision meets the requirements of FTA §251, including any regulations adopted by the FCC in accordance with FTA [pursuant to] §251;

(D) the rates for interconnection, services, or [and/or] network elements established according to FTA §252(d), as appropriate;

(E) (No change.)

(F) a narrative report explaining the presiding officer's rationale for each of the rulings included in the final decision, unless the arbitration is conducted by a majority [two or more] of the commissioners acting as the presiding officers; and

(G) to the extent that a ruling establishes a new or different price for an unbundled network element;[,] combination of unbundled network elements;[,] or resold service, a statement requiring that all certificated carriers be notified of such price either through a web posting, mass mailing, or electronic mail within ten days of the date the ruling becomes final.

(u) Distribution. The proposal for award and arbitration award will [Proposal for Award and Arbitration Award shall] be filed with the commission as a public record and will [shall] be mailed by first class mail, or transmitted via facsimile to all parties of record in the arbitration. On the same day that a decision is issued, the presiding officer will [shall] notify the parties by facsimile or electronic mail that a decision has been issued. If a decision involves 9-1-1 issues, the presiding officer will [shall] also notify the Commission on State Emergency Communications [(CSEC)] by facsimile or electronic mail on the same day.

(v) Implementation. Unless modified, implementation of the terms and conditions of the arbitration award must [Arbitration Award shall] comply with §21.99 of this title (relating to Approval of Arbitrated Agreements).

(w) Motions for reconsideration. No motions for reconsideration of the proposal for award [Proposal for Award] are permitted. Motions for reconsideration of the arbitration award must be filed in accordance with [Arbitration Award shall be filed pursuant to] §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

§21.99. Approval of Arbitrated Agreements.

(a) Application. Any interconnection agreement resulting from arbitration must [shall] be submitted to the commission for approval and filed in the same proceeding within 30 days of the date of the presiding officer's arbitration award [Arbitration Award], unless otherwise provided. Following the issuance of the presiding officer's arbitration award [Arbitration Award] under §21.95 of this title (relating to Compulsory Arbitration), the parties must [shall] jointly file with the commission a copy of [ten copies of] the final interconnection agreement, [with the commission's filing clerk,] incorporating all contract language ordered by the presiding officer. Any interconnection agreement submitted to the commission for approval is a public record and no portion of the interconnection agreement may be treated as confidential information under §21.77 of this title (relating to Confidential Material). The application for approval of an arbitrated agreement must [shall] be accompanied by:

(1) - (3) (No change.)

(b) Parties' comments. Any party wishing to file comments on the interconnection agreement incorporating the contract language ordered by the presiding officer as required in subsection (a) of this section, must [shall] do so within five calendar days following the filing of the application under subsection (a) of this section. Any reply comments must [shall] be filed within three calendar days of any initial comments.

(c) Commission approval. The commission will issue its final decision on an agreement adopted by arbitration within 30 calendar days following the filing of the application under subsection (a) of this section. The commission's final decision may reject, approve, or modify the agreement, and will provide [with] written findings as to any deficiencies. If the commission does not act to approve or reject the agreement adopted by arbitration within 30 days after submission by the parties under subsection (a) of this section, the agreement will [shall] be deemed approved.

(d) Effective date. An interconnection agreement approved by arbitration becomes effective within ten calendar days from [days after] the date that the commission's order approving the interconnection agreement is signed by all commissioners [Commissioners] unless otherwise specified in the order approving the agreement.

(e) Filing of agreement. Following the commission's approval of the agreement, the parties to the interconnection agreement must [shall] file a copy of the complete agreement with the commission [two copies, one unbound, of the complete agreement, consistent with the commission's direction, with the commission's filing clerk] within ten working days of the commission's decision. The copy [copies shall] be clearly marked with the control number for the proceeding and the

language "Complete interconnection agreement (as modified) and approved on (insert date)." Also within 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) must [~~shall~~] post notice of the approved interconnection agreement on its website in a manner that is [~~in a separate,~~] easily identifiable[~~area of the website~~]. The ILEC website must [~~shall~~] provide a complete list of commission-approved [~~approved~~] interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website must [~~shall~~] provide a direct link to the commission's website.

§21.101. Approval of Amendments to Existing Interconnection Agreements.

(a) Application. Any amendments, including modifications, to a previously approved interconnection agreement must [~~shall~~] be submitted to the commission for review and approval. Any one party to the agreement may file the application for approval of the amendments, provided that all parties to the agreement seek approval. The parties requesting approval must [~~shall~~] file a copy with the commission [~~three copies of the application with the commission's filing clerk and, when applicable,~~] serve a copy on each of the other parties to the agreement as applicable. An application for approval of an amended agreement must [~~shall~~] include:

(1) - (4) (No change.)

(b) Notice. The commission may require the parties to the agreement to provide reasonable notice of the filing of the agreement. The commission may require publication of the notice in addition to direct notice to affected persons. At the commission's discretion, direct notice may be provided by electronic mail or a website, provided all affected persons are made aware of the website. The commission will [~~shall~~] determine the appropriate scope and wording of the notice to be provided.

(c) Proceeding.

(1) Administrative review. The commission delegates its authority to the presiding officer to administratively approve or deny any interconnection agreement amendments. Notice of approval or denial will [~~shall~~] be issued within 15 days of the filing of the application. If a notice of denial is filed, the notice of denial without prejudice will [~~shall~~] include written findings indicating any deficiencies in the agreement. Amendments to interconnection agreements will [~~shall~~] be administratively reviewed by the presiding officer unless the presiding officer determines that a formal review of the amendments is appropriate in accordance with [~~pursuant to~~] paragraph (2) of this subsection. At the presiding officer's discretion, approval can be referred directly to the commission should the presiding officer determine that there is an issue that is [~~issue(s)~~] more appropriately decided by the commission that does not necessarily require formal resolution.

(2) (No change.)

(d) Comments. An interested person may file comments on the amended agreement by filing the comments with the commission's filing clerk and serving a copy of the comments on each party to the agreement within five days of the filing of the application. The comments must [~~shall~~] include the following information:

(1) - (3) (No change.)

(e) Issues. In any proceeding conducted by the commission in accordance with [~~pursuant to~~] subsection (c)(2) of this section, the commission will consider only evidence and argument concerning whether the agreement, or some portion thereof:

(1) - (3) (No change.)

(f) Authority of presiding officer. The presiding officer has broad discretion in conducting the proceeding, including the authority given to a presiding officer under [~~pursuant to~~] §22.202 of this title (relating to Presiding Officer) and [~~pursuant to~~] §21.95 of this title. Discovery is [~~shall be~~] governed by §21.95(k) of this title. In addition, the presiding officer has broad discretion to ask clarifying questions and to direct a party or a witness to provide information, at any time during the proceeding, as set out in §21.95(q) of this title.

(g) Effective date. Any amendment to an existing interconnection agreement is [~~shall become~~] effective upon issuance by the commission of a notice of approval.

(h) Formal approval. When an amendment to an existing interconnection agreement is subject to the formal review process as proposed in subsection (c) of this section, the commission will issue its final decision on the amendment within 90 days following the filing of the application. The commission may reject, approve, or modify the amendment, or the commission may remand the agreement to the presiding officer for further proceedings. If the commission rejects the amendment, the final decision will [~~shall~~] include written findings indicating any deficiencies in the amendment.

(i) Filing of agreement. If the presiding officer approves the amendments to the agreement, the parties to the agreement must [~~shall~~] file a copy [~~two copies, one unbound,~~] of the complete amended interconnection agreement with the commission's filing clerk within ten working days of the presiding officer's decision. The filed copy must [~~copies shall~~] be clearly marked with the control number assigned to the proceeding and the language "Amended interconnection agreement as approved (or modified and approved) on (insert date)." Within [~~Also within~~] 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) must [~~shall~~] post notice of the approved interconnection agreement on its website in a separate, easily identifiable area of the website. The ILEC website must [~~shall~~] provide a complete list of approved interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website must [~~shall~~] provide a direct link to the commission's website.

§21.103. Approval of Agreements Adopting Terms and Conditions in accordance with [~~Pursuant to~~] Federal Telecommunications Act of 1996 (FTA) §252(i).

(a) Application. Under the Federal Telecommunications Act of 1996 (FTA) §252(i), a local exchange carrier must [~~shall~~] make available within 15 working days of receipt of request, any interconnection, service, or network element provided under a previously approved interconnection agreement to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. Any agreement adopting terms and conditions of a previously approved interconnection agreement in accordance with [~~pursuant to~~] FTA §252(i) must [~~shall~~] be submitted to the commission for review and approval. Any or all of the parties to the agreement may file the application for approval. The parties requesting approval must [~~shall~~] file a copy [~~three copies~~] of the application with the commission's filing clerk and[~~, when applicable,~~] serve a copy on each of the other parties to the agreement as applicable. An application for approval of an agreement adopting terms and conditions in accordance with FTA §252(i) must [~~pursuant to FTA §252(i) shall~~] include:

(1) - (4) (No change.)

(b) Provisions incorporated from §21.101 of this title (relating to the Approval of Amendments to Existing Interconnection Agreements). Applications for approval filed under this section will [~~shall~~] be processed according to the following provisions of §21.101 of this

title, which are incorporated by reference into this section: §21.101(b), (c), (d), (e), (f), and (g).

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

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION

16 TAC §21.123, §21.125

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14,052; and the Federal Telecommunications Act of 1996, 47 U.S.C. §151, et. seq.

§21.123. Informal Settlement Conference.

(a) Filing a request. Either party to an interconnection agreement may request an informal settlement conference by filing [~~ten copies of~~] a written request with the commission and, on the same day, delivering a copy of the request either by hand delivery, electronic mail, or by facsimile to each party, including the [~~other~~] party [~~(respondent)~~] to the interconnection agreement from which the dispute arises. The written request should include:

(1) - (4) (No change.)

(b) The settlement conference. The commission staff conducting the informal settlement conference will [~~shall~~] notify the parties of the time, date, and location of the settlement conference[~~,~~] which, if held, will [~~shall~~] be held no later than ten working days from the date the request was filed. The commission staff may require each party [~~the respondent~~] to file a response to the request. The parties should provide the appropriate personnel with authority to discuss and to resolve the disputes at the settlement conference. If the parties are in disagreement as to the need for a settlement conference, the presiding officer may deny the request for good cause.

(c) Conduct. The settlement conference will [~~shall~~] be conducted as an informal meeting [~~informal meetings~~] and will not be transcribed. Only parties to the interconnection agreement may participate as parties to the settlement conference.

(d) Results of settlement conference. The settlement conference may result in an agreement on the resolution of the dispute described in the request. If an agreement is reached, the agreement will be binding on the parties. If [~~In the event that~~] the parties do not reach an agreement as a result of the settlement conference, either party may utilize other procedures for dispute resolution provided in this subchapter. The commission staff conducting the informal settlement conference may participate in a subsequent dispute resolution proceeding involving the parties to the informal settlement conference.

(e) Both formal dispute resolution and informal settlement request. In the event a party negotiating a request for interconnection, services, or network elements under the Federal Telecommunications Act of 1996 (FTA) has requested both formal dispute resolution and an informal settlement conference, the informal settlement conference will precede formal dispute resolution. If agreed to by both parties, any procedural deadlines applicable to formal dispute resolution will be tolled for the duration of the informal settlement proceedings, including time needed for commission approval of an informal settlement agreement. To the extent parties do not settle all matters at issue in the informal settlement conference, the formal dispute resolution proceeding will [~~shall~~] not be initiated until the parties jointly file an update of unresolved issues and a revised procedural schedule.

§21.125. Formal Dispute Resolution Proceeding.

(a) Initiation of formal proceeding. A formal proceeding for dispute resolution under this subchapter will commence when a party files a petition with the commission and, on the same day, delivers a copy of the petition either by hand delivery, electronic mail, or by facsimile to each party, including the other party [~~(respondent)~~] to the interconnection agreement from which the dispute arises (respondent).

(1) The petition must [~~shall~~] comply with §21.33 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). The petition must [~~shall~~] include:

(A) (No change.)

(B) a description of the parties' efforts to resolve their differences by negotiation, such as through an informal settlement conference in accordance with §21.123 of this title (relating to Informal Settlement Conference);

(C) - (G) (No change.)

(2) (No change.)

(3) The commission will [~~shall~~] perform a sufficiency review of a petition. To the extent that a petition is determined to be insufficient, the commission will [~~shall~~] file a notice of insufficiency within five working days of receipt of the petition. In the absence of a notice of insufficiency, the petition will [~~shall~~] be presumed sufficient.

(4) Where a request for formal dispute resolution found insufficient, the presiding officer may consider dismissal without prejudice in accordance with [~~pursuant to~~] §21.67 of this title (relating to Dismissal of a Proceeding) and order the party to refile.

(b) Response to the petition. Unless §21.127 or §21.129 of this title apply, the respondent must [~~shall~~] file a response to the petition within ten days after the filing of the petition. On the response filing date, the respondent must [~~shall~~] serve a copy of the response on the petitioner. The response must [~~shall~~] specifically affirm or deny each allegation in the petition. The response must [~~shall~~] include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the parties' most current interconnection agreement, identified by docket number, applicable or pertaining to the issue in dispute, and

the respondent's proposed solution on each issue in dispute. In addition, the response also must [~~shall~~]:

(1) - (2) (No change.)

(c) Reply to response to complaint. Unless §21.127 or §21.129 of this title apply, the petitioner may file a reply within five working days after the filing of the response to the petition and serve a copy on respondent on the same day. The reply must [~~shall~~] be limited solely to new issues raised in the response to the petition.

(d) Provisions incorporated from §21.95 of this title (relating to Compulsory Arbitration). Except as specified otherwise in this subchapter, the following provisions of §21.95 of this title are incorporated by reference into this subchapter: §21.95(c)-(i) and (k)-(r) [~~, (d), (e), (f), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q), and (r)~~], except that any discovery schedule must [~~shall~~] take into consideration the 50-day deadline in subsection (g) of this section.

(e) Number of copies to be filed. Unless otherwise ordered by the presiding officer, parties must file a copy of each pleading [~~shall file ten copies of pleadings~~] subject to this subchapter with the commission.

(f) (No change.)

(g) Notice and hearing. Unless §21.127 or §21.129 of this title apply, the presiding officer will hold [~~shall make arrangements for~~] the hearing to address the petition[~~, which shall commence~~] no later than 50 days after filing of the complaint. If the parties' joint procedural schedule sets a hearing more than 50 days after the filing of the petition, then approval of the joint procedural schedule will [~~shall~~] be conditioned upon the parties filing a joint waiver of the 50-day deadline. The presiding officer will [~~shall~~] notify the parties, not less than 15 days before the hearing, of the date, time, and location of the hearing. The hearing will [~~shall~~] be transcribed by a court reporter designated by the presiding officer.

(h) Authority of presiding officer. The presiding officer has broad discretion in conducting the dispute resolution proceeding, including the authority given to a presiding officer in accordance with [~~pursuant to~~] §22.202 of this title (relating to Presiding Officer) and in accordance with [~~pursuant to~~] §21.95 of this title (relating to Compulsory Arbitration). The presiding officer also has [~~shall also have~~] the authority to award remedies or relief deemed necessary by the presiding officer to resolve a dispute subject to the procedures established in this subchapter. The authority to award remedies or relief includes[~~, but is not limited to,~~] the award of prejudgment interest, specific performance of any obligation created in or found by the presiding officer to be intended under the interconnection agreement subject to the dispute, issuance of an injunction, or imposition of sanctions for abuse or frustration of the dispute resolution process subject to this subchapter and Subchapter D of this chapter (relating to Dispute Resolution), except that the presiding officer does not have authority to award punitive or consequential damages.

(i) (No change.)

(j) Prefiled evidence and witness [~~evidence/witness~~] list. The arbitrator must [~~shall~~] require the parties to file a direct case and a joint Decision Point List (DPL) on or before the commencement of the hearing. The arbitrator must [~~shall~~] require the parties to file their direct cases under the same deadline. The prepared direct case must [~~shall~~] include all of the party's direct evidence, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer. The DPL must [~~shall~~] identify all issues to be addressed, the witnesses who will be addressing each issue, and a short synopsis of each witness's position on each issue. Except as provided in §21.77 of this title (relating to Confidential Information), all materials filed with the commission or provided to the arbitrator must [~~shall~~] be considered public information under the Texas Public Information Act (TPIA), Texas Government Code, §552.001, *et seq.*

(k) Arbitration award [~~Award~~].

(1) The presiding officer will [~~shall~~] endeavor to issue a final decision on the dispute resolution within 30 days after the filing of any post-hearing briefs in the dispute resolution proceeding. If no post-hearing briefs are filed, the presiding officer will [~~shall~~] endeavor to issue a final decision within 30 days of the close of the hearing.

(2) The arbitration award will [~~Arbitration Award shall~~] be filed with the commission as a public record and will [~~shall~~] be mailed by first-class mail to all parties of record in the dispute resolution proceeding. On the same day that the arbitration award [~~Arbitration Award~~] is issued, the presiding officer will [~~shall~~] notify the parties in writing by electronic mail or facsimile that it has been issued. If the decision involves 9-1-1 issues, the presiding officer will [~~shall~~] also notify the Commission on State Emergency Communications [~~(CSEC)~~] by facsimile on the same day.

(3) The arbitration award will [~~Arbitration Award shall~~] be based upon the record of the dispute resolution hearing, and will [~~shall~~] include a specific ruling on each of the disputed issues presented for resolution by the parties. The presiding officer may agree with the positions of one or more parties on any or all issues or may offer an independent resolution of the issues. The presiding officer is the judge of whether a party has met their burden of proof. The presiding officer may provide for later implementation of specific provisions as addressed in the presiding officer's decision. The decision may also contain the items addressed in §21.95(t)(1) to the extent deemed necessary by the presiding officer to explain or support the decision.

(4) Within five working days from the date the arbitrator's decision is issued, any commissioner may place the presiding officer's decision on the agenda for the next available open meeting. The decision will [~~shall~~] be stayed until the commission affirms or modifies the decision, but such stay will [~~shall~~] not stay any order of interim relief already in effect in the proceeding

(5) If no commissioner places the arbitrator's decision on the open meeting agenda within five working days, the arbitrator's decision is final and effective on the expiration of that fifth working day. The arbitrator must [~~shall~~] notify the parties when the arbitrator's decision is deemed final under this paragraph.

(l) Filing of agreement. Where modifications are ordered, the parties to the interconnection agreement must [~~shall~~] file in the same docket a copy [~~number, two copies, one unbound,~~] of the complete agreement with the filing clerk within five working days of approval. The copy must [~~copies shall~~] be clearly marked with the control number assigned to the proceeding and the language "Complete interconnection agreement as approved (or modified and approved) on (insert date)." Also within 15 working days of the approval of the agreement, the incumbent local exchange company (ILEC) must [~~shall~~] post notice of the approved interconnection agreement on its website in a manner that is [~~separate,~~] easily identifiable [~~area of the website~~]. The ILEC website must [~~shall~~] provide a complete list of commission-approved [~~approved~~] interconnection agreements, listed alphabetically by carrier, including docket numbers and effective dates. In addition, the ILEC website must [~~shall~~] provide a direct link to the commission's website.

(m) Motions for reconsideration. Motions for reconsideration are [~~shall be~~] governed by §21.75 of this title (relating to Motions for Clarification and Motions for Reconsideration).

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

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Public Utility Commission of Texas
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL

SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1012

The Texas Education Agency (TEA) proposes an amendment to §150.1012, concerning local optional teacher designation systems. The proposed amendment would update procedures and terminology and provide TEA additional discretion to allow system changes outside the existing approval timeline in certain situations.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 150.1012 implements Texas Education Code (TEC), §21.3521 and §48.112, by establishing the requirements for school districts and charter schools to implement local teacher designation systems.

Following is a description of the proposed amendment to §150.1012.

The proposed amendment to §150.1012(a)(1)(D) would update the definition of the term "data capture year" to align with current program terminology.

The proposed amendment to §150.1012(c)(1)(A) would clarify existing procedure to include resubmissions of applications for review.

Proposed new §150.1012(d)(2) would allow flexibility for school districts by expanding TEA's authority to accept a modification of a district's local optional designation system outside of the existing timeline in cases where the timeline is unfeasible based on circumstances outside of a district's control.

The proposed amendment to §150.1012(f)(1) would update language to align with current program terminology. The amended language would specify that a renewal application is required in a district's fourth year after the system application is accepted.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by providing TEA the authority to accept a modification of a district's local optional designation system outside of the existing timeline in cases where the timeline is unfeasible based on circumstances outside of a district's control. The proposed amendment would also allow provisions related to incomplete applications to apply to resubmissions.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Hodge has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing school districts and open-enrollment charter schools with clear processes and requirements to implement a local optional teacher designation system. Additionally, it would allow flexibility to modify systems when there is a clear need. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins June 7, 2024, and ends July 8, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 7, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.3521, which establishes a

local optional teacher designation system; and TEC, §48.112, which establishes a teacher incentive allotment.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.3521 and §48.112.

§150.1012. Local Optional Teacher Designation System.

(a) General provisions.

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

(A) Beginning of course--The first nine weeks of a year-long course or the first six weeks of a semester course.

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252;

(iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002; or

(iv) has a charter granted under TEC, §11.157(b).

(C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year--The school year in which the teacher observation and student growth measure data is collected based on the accepted [~~proposed~~] local teacher designation system.

(E) Designated teacher--An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.

(G) End of course--The last twelve weeks of a year-long course or the last six weeks of a semester course.

(H) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(I) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review, data validation, additional required documentation, video submission, and/or other technical assistance for further data submission.

(J) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(K) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).

(L) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.

(M) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.

(N) Teacher category--One or more eligible teaching assignments evaluated with the same teacher observation rubric, student growth measure, and optional components and weighting as defined in a district's local designation system.

(O) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.

(P) Texas Student Data System (TSDS)--Data collected annually during the Class Roster Winter Submission.

(Q) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.

(2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable fees listed in subparagraphs (A) and (B) of this paragraph. The following fees must be paid by the district and cannot be paid by the teachers submitted for designation:

(A) a $500 fee for each teacher submitted for designation to TEA; and

(B) a $2,500 system renewal fee for districts where all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection the year prior to renewal application submission or a $10,000 system renewal fee for districts where not all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection.

(b) Teacher eligibility.

(1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:

(A) the teacher is employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in TSDS for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment. A charter partner operating under subsection (a)(1)(B)(ii) or (iv) of this section is required to report teacher-level data in TSDS or provide teacher-level data to its partner school district for reporting by the district in TSDS;

(B) the teacher was employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section during the year the teacher's effectiveness was collected in alignment with the recommended designation;

(C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation; and

(D) the teacher does not have a suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification and is not found on the registry of persons not eligible for employment in public schools under TEC,

§22.092, and Chapter 153, Subchapter EE, of this title (relating to Commissioner's Rules Concerning Registry of Persons Not Eligible for Employment in Public Schools).

(2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) of this subsection for each district. TEA may exercise administrative discretion to determine the eligibility of a teacher if a district disputes TSDS data. Disputes must be received by TEA by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(c) Application procedures and approval process.

(1) The following provisions apply to applications submitted under this section.

(A) If TEA determines that an application or resubmission is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven business days after the original submission deadline, the application will be denied.

(B) If TEA determines that a system application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application by June 30. If no resubmission is made by the deadline, the application will be denied.

(C) Applicants that are determined to meet the standards established under TEC, §21.3521 and §48.112, and the requirements of the statutorily based framework provided in the figure in this subparagraph shall be approved.
Figure: 19 TAC §150.1012(c)(1)(C) (No change.)

(D) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years. Applications that are determined to need ongoing support may result in provisional approval.

(2) The application shall include the following for each eligible teaching assignment:

(A) components of a local system for issuing designations, including:

(i) a teacher observation component that contains:

(I) a plan for calibration, using the rubric approved under subclause (II) of this clause, that includes congruence among appraisers, a review of teacher observation data and the correlation between teacher observation and student growth data, and implementation of next steps; and

(II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teaching and The Danielson Group, or another rubric that is based on observable, job-related behaviors that are described with progressive descriptors for each dimension, including alignment to §149.1001 of this title (relating to Teacher Standards) and a clear proficiency indicator. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

(ii) a specified student growth component by measure and/or assessment that:

(I) if using a student learning objective, is aligned to the Texas Student Learning Objectives (SLO) process described on the TEA website for SLOs at https://texasslo.org;

(II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, utilizes a skills proficiency rubric, and includes criteria for scoring various artifacts;

(III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(IV) if using a school district- or teacher-created assessment in conjunction with a third-party assessment, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(V) if using third-party assessments with third-party accompanying growth targets, is aligned to the standards for the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course; or

(VI) if using third-party assessments with district-created growth targets, is aligned to the standards of the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course. Mid-year data may be used in instances where the student was not present for the beginning of course administration.

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

(i) test security protocols;

(ii) testing windows;

(iii) testing accommodations; and

(iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year in alignment with TEC, §21.351 or §21.352. Multi-year data shall include student growth and observation data from the same year and teacher category. Single-year data shall include student growth and observation data from the same teacher category. TEA may exercise administrative discretion regarding the requirements of this subparagraph in situations in which data is difficult to provide due to circumstances beyond a district's control and the district would otherwise be unable to provide sufficient data for application consideration.

(d) System expansion, spending modifications, and changes.

(1) School districts must apply for approval through the system application process the year prior to implementation if:

(A) [~~(1)~~] adding new eligible teaching assignments or campuses (if started with less than all campuses in the district);

(B) [~~(2)~~] adding a new teacher observation rubric;

(C) [~~(3)~~] changing a previously approved teacher observation rubric;

(D) [~~(4)~~] adding new student growth measures;

(E) [~~(5)~~] changing the student growth measure used by an eligible teaching assignment;

(F) [~~(6)~~] adding or changing the third-party assessment used in a student growth measure;

(G) [~~(7)~~] adding or changing the type of assessment used in a student growth measure;

(H) [~~(8)~~] removing a student growth measure used by an eligible teaching assignment;

(I) [~~(9)~~] removing an eligible teaching assignment; or

(J) [~~(10)~~] modifying a district's spending plan. TEA may exercise administrative discretion to allow spending modifications outside of the approval timeline outlined in this subsection.

(2) TEA may exercise administrative discretion to allow system changes outside of the approval timeline outlined in this subsection in situations in which the application timeline is unfeasible due to circumstances beyond a district's control and the district would otherwise be unable to implement its current system.

(e) Monitoring and annual program submission of approved local designation systems.

(1) For the program submission, approved school districts shall submit the following information regarding a local teacher designation system and associated spending:

(A) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(B) a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and

(C) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations collected in alignment with §150.1003(b)(5) and (l)(3) of this title (relating to Appraisals, Data Sources, and Conferences). TEA reserves the right to request data for the purposes of performance evaluation and investigation based on data review outcomes. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

(2) Outcomes of the annual program submission may lead to a review, pursuant to TEC, §48.272(e), and subject to the period of review limitation in TEC, §48.272(f), of the local optional designation system that may be conducted at any time at the discretion of [~~the~~] TEA staff.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA. The renewal application is required in a district's fourth year after the system application is accepted [~~of system approval~~] and will follow the process and requirements outlined in subsection (c) of this section.

(A) Charter management organizations that operate approved systems with multiple campus district numbers shall submit an application for each system at the time of required renewal.

(B) Systems with provisional approval in a district's fourth year shall renew in the year after receiving system approval.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements as defined in this section;

(B) failure to comply with annual program submission requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA;

(E) failure to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations; or

(F) at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;

(D) the suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher;

(E) the addition of the designated teacher to the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title;

(F) the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest; or

(G) at the discretion of the commissioner.

(g) Funding.

(1) State funding.

(A) School districts will receive teacher incentive allotment funds based on prior-year estimates. The final amount will be based on data from the current school year as provided in subparagraph (D) of this paragraph. Any difference from the estimated amount will be addressed as part of the Foundation School Program settle-up process according to the provisions in TEC, §48.272.

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the

multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be calculated and split equally among the campuses where the employee is working in a role coded as 087 (Teacher) in TSDS at each campus.

(D) Designated teacher campus and district of employment shall be determined annually by data collected in TSDS.

(E) School districts shall annually verify and confirm teacher designations and corresponding allotments.

(F) TEA may exercise administrative discretion to redirect or recalculate funds to the district where the designated teacher works if a district disputes TSDS data. Disputes must be received by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(G) The average point value and rural status for the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired will be calculated by utilizing the home districts of the schools' students.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112, including the requirement that at least 90% of each allotment must be used for compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed. School districts that receive funding for designated teachers employed by the charter partner for charter partnerships pursuant to subsection (a)(1)(B)(ii) or (iv) of this section shall pass along at least 90% of the teacher incentive allotment funding and 100% of fees pursuant to subsection (a)(2) of this section paid by the charter partner to the charter partner. Charter partners and districts shall work together to ensure that the spending requirements of TEC, §48.112, are met.

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

Filed with the Office of the Secretary of State on May 23, 2024.

TRD-202402322
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §104.1, concerning continuing education requirements. The proposed amendment allows course instructors who offer continuing education through a provider listed in §104.2 of this title to receive 2 hours of continuing education credit for every 1 hour of instruction provided. This credit would apply per course, per renewal period.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or emailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§104.1. Continuing Education Requirements [~~Requirement~~].

As a prerequisite to the biennial renewal of a dental or dental hygiene license, proof of completion of 24 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education

course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the biennial period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2018, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 16 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Effective January 1, 2021, a licensed dentist whose practice includes direct patient care must complete not less than 2 hours of continuing education annually, and not less than 4 hours for each biennial renewal, regarding safe and effective pain management related to the prescription of opioids and other controlled substances. These 4 hours may be used to satisfy the 16-hour technical and scientific requirement. The courses taken to satisfy the safe and effective pain management requirement must include education regarding:

(i) reasonable standards of care;

(ii) the identification of drug-seeking behavior in patients; and

(iii) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(C) Up to 8 hours of coursework may be in risk-management courses. Acceptable "risk management" courses include courses in risk management, record-keeping, and ethics. Dentists may complete continuing education courses described by §111.1 of this title (relating to Additional Continuing Education Required) to satisfy a portion of the risk-management requirement.

(D) Up to 8 hours of coursework may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(E) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 24-hour requirement.

(F) Hours of coursework in practice finance may not be considered in the 24-hour requirement.

(3) As part of the 24-hour requirement, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

(4) Each licensee shall complete the jurisprudence assessment every four (4) years. This requirement is in addition to the twenty-four (24) hours of continuing education required biennially for the renewal of a license.

(5) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 24-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the one year immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(6) Examiners for The Commission on Dental Competency Assessments-The Western Regional Examining Board-The Council of Interstate Testing Agencies (CDCA-WREB-CITA), States Resources for Testing and Assessments (SRTA), and Central Regional Dental Testing Services Inc. (CRDTS) will be allowed credit for no more than 12 hours biennially, obtained from calibration and standardization exercises associated with the examinations.

(7) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(8) Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(9) A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 12 hours of continuing education credit biennially to apply towards the biennial renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director, or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in writing and based upon a reasonable assessment of the time required to complete the task.

(10) A course instructor who offers continuing education through a provider listed in §104.2 of this title is eligible to receive 2 hours of continuing education credit for every 1 hour of instruction provided. This credit applies per course, per renewal period.

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402319

Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 305-8910

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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.3

The State Board of Dental Examiners (Board) proposes this repeal of 22 TAC §107.3, concerning the effects of student loan payment default on licensure. The proposed repeal implements Senate Bill 37 of the 86th Texas Legislature, Regular Session (2019). The bill prohibits a licensing agency from taking disciplinary action against a person who has defaulted on a student loan, or denying a license to that person based on a default of a student loan.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed repeal is in effect, the proposed repeal does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed repeal is in effect, the public benefit anticipated as a result of this proposed repeal will be to remove a regulation that is not consistent with state law.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed repeal does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed repeal.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed repeal does not create or eliminate a government program; (2) implementation of the proposed repeal does not require the creation or elimination of employee positions; (3) the implementation of the proposed repeal does not require an increase or decrease in future appropriations; (4) the proposed repeal does not require an increase in fees paid to the agency; (5) the proposed repeal does not create a new regulation; (6) the proposed repeal does limit an existing regulation by eliminating requirements that were repealed by state law; (7) the proposed repeal does decrease the number of individuals subject to it by eliminating the requirements of the rule; and (8) the proposed repeal does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed repeal does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed repeal may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed repeal is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or emailed by midnight on the last day of the comment period.

This repeal is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed repeal implements the amendments to Chapter 56, Texas Occupations Code and Chapter 57, Texas Education Code as set out in Senate Bill 37 of the 86th Texas Legislature, Regular Session (2019).

§107.3. Effects of Student Loan Payment Default on Licensure.

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402313
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 305-8910

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22 TAC §107.17

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.17, concerning service in non-rulemaking proceedings. The proposed amendment updates the cited SOAH rule from 1 TAC §155.103 to 1 TAC §155.105.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3)

the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§107.17. Service in Non-rulemaking Proceedings.

(a) Notification of Decisions and Orders. When the agency is required to provide service of notice to any party of a decision or order, the agency shall notify the party either personally or by first class mail. Notice must be in writing and addressed to the licensee at the licensee's address of record on file with the Board at the time of the mailing or the licensee's attorney of record.

(b) Notification of Notice of Hearing. Notification of a Notice of Hearing shall be made to a licensee by hand delivery, regular, registered or certified mail, courier service, or otherwise in accordance with the APA and the Rules of SOAH. Notice must be in writing and addressed to the licensee at the licensee's address of record on file with the Board at the time of the mailing or addressed to the party's attorney of record. Notice of Hearing in a contested case must comply with Texas Government Code §2001.052. Service is complete when made pursuant to 1 TAC §155.105 [~~§155.103~~] (SOAH).

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402314
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 305-8910

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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §107.105

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.105, concerning collection of information and records. Because the Board no longer issues citations, the proposed amendment removes the citation language from the rule. Instead, the Board issues administrative penalties pursuant to §264.001 of the Dental Practice Act, and board rule 22 TAC §107.201.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§107.105. Collection of Information and Records.

(a) Dental Records. Upon request by board staff, a dental custodian of records shall provide copies of dental records or original records. Board staff may require a dental custodian of records to sub-

mit records immediately if required by the urgency of the situation or the possibility that the records may be lost, damaged, or destroyed.

(b) Response to Board Requests. In addition to the requirements of responding or reporting to the board under this section, a licensee/registrant shall respond in writing to all written board requests for information within ten days of receipt of such request.

(c) Business Records Affidavits. Dental records must be provided under a business records affidavit or as otherwise required by board staff.

(d) Failure to Comply.

(1) Administrative Penalty. Failure to comply with board staff's request for records or information may be grounds for the issuance of an administrative penalty [~~citation~~] pursuant to §264.001 [~~§254.0115~~] of the Act.

(2) Disciplinary Action. Failure to comply with board staff's request for records or information may be unprofessional and dishonorable conduct that is subject to disciplinary action by the board pursuant to §263.002 of the Act.

(3) Civil Penalty. Failure to comply with board staff's request for records and other evidence or failure to comply with other law regulating dental patient records may be subject to a civil penalty pursuant to §258.0511 and §264.101 of the Act.

(4) Criminal penalty. Failure to comply with board staff's request for records and other evidence or failure to comply with other law regulating dental patient records, in violation of §258.0511, is a criminal offense pursuant to §264.152 of the Act.

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402315
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 305-8910

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22 TAC §107.106

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.106, concerning confidentiality of investigations. Because the Board no longer issues citations, the proposed amendment removes the citation language from the rule. Instead, the Board issues administrative penalties pursuant to §264.001 of the Dental Practice Act, and board rule 22 TAC §107.201.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§107.106. Confidentiality of Investigations.

(a) Investigation files and other records are confidential, except board staff shall inform the license holder of the specific allegations against the license holder.

(b) No employee, agent, or member of the board may disclose confidential information except in the following circumstances:

(1) to another local, state or federal regulatory agency;

(2) to local, state or federal law enforcement agencies;

(3) to other persons if required during the course of the investigation;

(4) to other entities as required by law; and

(5) a person who has provided a statement may receive a copy of the statement.

(c) A final disciplinary action of the board is not excepted from public disclosure, including:

(1) the revocation or suspension of a license/registration;

(2) the placement on probation with conditions of a license/registration that has been suspended;

(3) the reprimand of a licensee/registrant;

(4) the issuance of a warning order to a licensee/registrant; [and]

(5) a final cease and desist order issued to a non-licensee;[.] and

(6) an administrative penalty.

(d) A final public action of the board is not excepted from public disclosure, including[:]

[(1)] a non-disciplinary remedial plan.[; and]

[(2) an administrative penalty citation.]

(e) Files and other records collected during the investigation of a license application are confidential, except board staff shall maintain a public profile of each licensee that contains the following information:

(1) License name and former last name;

(2) License number;

(3) License status;

(4) License issue date;

(5) License expiration date;

(6) Primary address;

(7) Information related to issuance of nitrous and sedation/anesthesia permits;

(8) Area of practice reported by licensee/registrant;

(9) Dental school and year of graduation; and

(10) Year of birth.

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402316
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 305-8910

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SUBCHAPTER D. COMPLIANCE PROGRAM

22 TAC §107.300

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.300, concerning responsibilities of compliance division. Because the Board no longer issues citations, the proposed amendment removes the citation language from the rule. Instead, the Board issues administrative penalties pursuant to §264.001 of the Dental Practice Act, and board rule 22 TAC §107.201.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this proposed rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§107.300. Responsibilities of Compliance Division.

(a) The Director of Compliance shall ensure that a compliance monitoring program is established and maintained for those licensee/registrants who have received a disciplinary action[,] or remedial plan.[, or administrative penalty citation].

(b) The monitoring program shall be maintained by board staff serving as compliance officers.

(c) Monitoring disciplinary action and remedial plans.

(1) The compliance officer shall provide the licensee/registrant with initial notification of the requirements imposed by the disciplinary action or remedial plan. The initial notification shall include a copy of the disciplinary action or remedial plan and a copy of the compliance program rules and procedures.

(2) The compliance officer shall make good faith efforts to assist the licensee/registrants in attaining and maintaining compliance with the disciplinary action or remedial plan.

(3) The compliance officer shall refer non-compliance with disciplinary action or remedial plans to the Director of Compliance to determine whether to initiate an investigation into non-compliance with the disciplinary action or remedial plan.

~~[(d) Monitoring administrative penalty citations.]~~

~~[(1) The compliance officer shall monitor administrative penalty citations for the response required by §107.201 of this title (relating to Procedures for Alternative Informal Assessment of Administrative Penalty).]~~

~~[(2) The compliance officer shall refer timely requests for appeal of administrative penalty citations to the Director of Compliance to initiate the appeal.]~~

~~[(3) The compliance officer shall refer non-payment of the administrative penalty citation to the Director of Compliance to determine whether to initiate an investigation into non-payment of the administrative penalty citation.]~~

(d) [~~(e)~~] Applications for modification of a disciplinary action shall be made in accordance with §107.66 of this title (relating to Application for Modification of Board Order).

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402317
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 305-8910

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE
SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE

22 TAC §533.8

The Texas Real Estate Commission (TREC) proposes an amendment to 22 TAC §533.8, Motions for Rehearing, in Chapter 533, Practice and Procedure. The proposed amendment to this section is made as a result of the Commission's quadrennial rule review.

The amendment is proposed to correct a typographical error in subsection (h) of the rule--changing the word "supersedes" to "supersedeas."

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater legal accuracy and clarity in the rules.

For each year of the first five years the proposed amendment is in effect the amendment will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§533.8. Motions for Rehearing.

(a) The timely filing of a motion for rehearing is a prerequisite to appeal. The motion must be filed with the Commission by:

(1) delivering the motion in-person to the Commission's headquarters;

(2) sending the motion via email to administration@trec.texas.gov; or

(3) sending the motion via fax to (512) 936-3788, ATTN: TREC General Counsel.

(b) Motions for rehearing are controlled by the APA, §§2001.145 - 2001.147 and this section.

(c) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error, such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse

of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Commission will take no action and the motion will be overruled by operation of law.

(d) The Commission delegates authority to hear and rule on motions for rehearing to the Commission's Enforcement Committee, consisting of three Commission members appointed by the Commission chair. A motion for rehearing may be ruled upon pursuant to §2001.146(d), Texas Government Code.

(e) Any party may request oral arguments before the Enforcement Committee prior to the final disposition of the motion for rehearing. If the Enforcement Committee grants a request for oral argument, oral arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) The chair of the Enforcement Committee or the member designated by the chair to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence, such as excerpts of the record before the presiding officer, may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing, or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal, subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Enforcement Committee may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Enforcement Committee, and any discussion by the members of the Enforcement Committee, the presiding member shall call for a vote on the motion. A member of the Enforcement Committee need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the Enforcement Committee members are present and vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) A petition for judicial review must be filed in a District Court of Travis County Texas as provided by the APA. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(g) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

(h) If, after judicial review, the administrative penalty is reduced or not assessed, the Executive Director shall remit to the person charged the appropriate amount, plus accrued interest if the administrative penalty has been paid, or shall execute a release of the bond if a supersedeas [~~supersedes~~] bond has been posted. The accrued interest on amounts remitted by the Executive Director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed administrative penalty is paid to the Commission and ending on the date the administrative penalty is remitted.

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402301
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 936-3057

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CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.4, §534.7

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §534.4, Historically Underutilized Businesses Program, and §534.7, Vendor Protest Procedures, in Chapter 534, General Administration.

The proposed amendments are made as a result of the Commission's quadrennial rule review. The amendments are proposed to correct references to applicable regulations in the Texas Administrative Code.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rules or amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater legal accuracy and clarity in the rules.

For each year of the first five years the proposed amendments are in effect, the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under §1101.151, Occupations Code, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment to 22 TAC §534.4 is also proposed under §2161.003, Government Code, which requires the agency to adopt such a rule.

The statutes affected by this proposal are Chapters 1101 and 1102, Occupations Code. No other statute, code or article is affected by the proposed amendments.

§534.4. Historically Underutilized Businesses Program.

To comply with Texas Government Code §2161.003, the Commission adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter D, Division 1 (relating to the Historically Underutilized Business Program).

§534.7. Vendor Protest Procedures.

(a) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Commission and the Board. Protests of purchases made by the TFC on behalf of the Agency are addressed in 1 TAC Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution). Protests of purchases made by DIR on behalf of the Agency are addressed in 1 TAC [~~Chapter 201,~~] §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by the Statewide Procurement Division of the Comptroller on behalf of the Agency are addressed in 34 TAC Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals). The rules of TFC, DIR, and the Comptroller are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml.

(b) - (k) (No change.)

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

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.64, Content Requirements for Qualifying Real Estate Courses, in Chapter 535, General Provisions.

The amendments are proposed to reflect changes to the course approval forms incorporated by reference in subsection (a)(1) - (3) of the rule related to the Principles of Real Estate I, Principles of Real Estate II, and Law of Agency courses. These course approval form revisions were recommended by the Education Standards Advisory Committee. These changes reorder and remove content from the course approval forms to ensure relevancy and that course objectives are being met.

Vanessa Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity and consistency in the rules, as well as ensuring relevant education.

For each year of the first five years the proposed amendments are in effect, the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under §1101.151, Texas Occupations Code, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102, as well as §1101.003, Texas Occupations Code, which allows the Commission to prescribe by rule the content of the qualifying real estate courses listed in this section.

The statute affected by this proposal is Chapter 1101, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.64. Content Requirements for Qualifying Real Estate Courses.

(a) Mandatory qualifying courses. To be approved by the Commission, the following mandatory qualifying courses must contain the content outlined below:

(1) Principles of Real Estate I shall contain the topics and units outlined in the PRINS 1-1 [~~1-0~~], Qualifying Real Estate Course Approval Form, Principles of Real Estate I, hereby adopted by reference.

(2) Principles of Real Estate II shall contain the topics and units outlined in the PRINS 2-1 [~~2-0~~], Qualifying Real Estate Course Approval Form, Principles of Real Estate II, hereby adopted by reference.

(3) Law of Agency shall contain the topics and units outlined in the LOA-1 [~~LOA-0~~], Qualifying Real Estate Course Approval Form, Law of Agency, hereby adopted by reference.

(4) Law of Contracts shall contain the topics and units outlined in the LOC-0, Qualifying Real Estate Course Approval Form, Law of Contracts, hereby adopted by reference.

(5) Promulgated Contract Forms shall contain the topics and units outlined in the PCF-0, Qualifying Real Estate Course Approval Form, Promulgated Contract Forms, hereby adopted by reference.

(6) Real Estate Finance shall contain the topics and units outlined in the REF-0, Qualifying Real Estate Course Approval Form, Real Estate Finance, hereby adopted by reference.

(7) Real Estate Brokerage (mandatory for a broker's license) shall contain the topics and units outlined in the REB-1, Qualifying Real Estate Course Approval Form, Real Estate Brokerage, hereby adopted by reference.

(b) Elective qualifying courses. To be approved by the Commission, the following elective qualifying courses must contain the content outlined below.

(1) Residential Property Management shall contain the topics and units outlined in the PROPM-1, Qualifying Real Estate Course Approval Form, Residential Property Management, hereby adopted by reference.

(2) Real Estate Marketing shall contain the topics and units outlined in the REM-0, Qualifying Real Estate Course Approval Form, Real Estate Marketing, hereby adopted by reference.

(3) Real Estate Math shall contain the topics and units outlined in the REMath-0, Qualifying Real Estate Course Approval Form, Real Estate Math, hereby adopted by reference.

(4) Real Estate Appraisal shall contain the topics outlined in the REA-0, Qualifying Real Estate Course Approval Form, Real Estate Appraisal, hereby adopted by reference.

(5) Real Estate Investment shall contain the topics outlined in the REI-0, Qualifying Real Estate Course Approval Form, Real Estate Investment, hereby adopted by reference.

(6) Real Estate Law shall contain the topics outlined in the REL-0, Qualifying Real Estate Course Approval Form, Real Estate Law, hereby adopted by reference.

(7) Residential Inspection for Real Estate Agents shall contain the outlined in the RIREA-0, Qualifying Real Estate Course Approval Form, Residential Inspection for Real Estate Agents, hereby adopted by reference.

(8) A 30 hour advanced course on any qualifying course subject matter or a combination of several different qualifying course subject matter topics as set out in subsections (a) and (b) of this section.

(c) Course Approval forms. All forms adopted by this section are available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

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

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Vanessa E. Burgess
General Counsel
Texas Real Estate Commission
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SUBCHAPTER L. INACTIVE LICENSE STATUS

22 TAC §§535.121, 535.123, 535.124

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.121, Inactive Sales Agent License; §535.123, Inactive Broker Status; and new §535.124, Death of a Designated Broker, in Chapter 535, General Provisions.

Under Chapter 1101, Occupations Code (the Act) and Commission rules, in order for a business entity to obtain a broker's license, the entity must name a designated broker that: (i) holds an active broker's license in good standing with the Commission; and (ii) has managing authority for the business entity (*e.g.*, a corporate officer, an LLC manager, an LLC member with managing authority, or a general partner). Under current Commission rules, when a designated broker for a business entity dies, the business entity license becomes inactive, as does any sponsored sales agent's license. This means that neither the entity nor the sales agent will be able to perform any real estate services that require a license, even if in the middle of a transaction. To return to active status, the entity needs to designate a new broker, who must satisfy the legal requirements referenced above. Even if the entity has a succession plan in place, this transition period can take time and leave consumers in the middle of transactions without representation.

Under the proposed amendments and new rule, the business entity and sponsored sales agents will be given a "safe harbor" or grace period of 14 days from the broker's death before their licenses inactivate. This will provide the entity with time to name a new designated broker that satisfies the statutory requirements

under the Act prior to going inactive. The proposed changes also remove the word "immediately" from §535.121 and §535.123. Through these changes, the proposal better aligns with current agency practice and provides better guidance in the event the designated broker of a licensed business entity dies.

Vanessa Burgess, General Counsel, has determined that for the first five-year period the proposed amendments and new rule are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments and new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments and new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity in the rules to reflect agency processes surrounding broker succession.

For each year of the first five years the proposed amendments and new rule are in effect, the amendments and new rule will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1101, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.121. Inactive Sales Agent License.

(a) The license of a sales agent [~~immediately~~] becomes inactive upon:

(1) the death of the sales agent's sponsoring broker;

(2) the expiration, suspension, revocation or inactivation of the license of the sponsoring broker;

(3) if the sponsoring broker is a business entity, the dissolution of the entity or the forfeiture of its charter;

(4) if the sponsoring broker is a business entity, the expiration, suspension, revocation, or inactivation of the license of the designated broker of the entity[~~, or the death of the designated broker~~];

(5) termination of sponsorship by the sales agent or sponsoring broker;

(6) failure to timely complete continuing education required under the Act and this chapter; or

(7) receipt by the Commission of an application for inactive status.

(b) If the broker intends to terminate the sponsorship, the broker must immediately:

(1) notify the sales agent in writing; and

(2) terminate the sponsorship:

(A) through the online process approved by the Commission; or

(B) on the appropriate form delivered to the Commission.

(c) If the sales agent intends to terminate the sponsorship, the sales agent must immediately:

(1) notify the broker in writing; and

(2) terminate the sponsorship:

(A) through the online process approved by the Commission; or

(B) on the appropriate form delivered to the Commission.

(d) If a sponsorship is terminated on a form under this section, the effective date of the termination of the sponsorship is the date the Commission receives the completed form and any applicable fee.

(e) It is the responsibility of the sales agent on inactive status to pay all required license renewal fees timely to prevent the inactive license from expiring.

§535.123. Inactive Broker Status.

(a) The license of an individual broker [~~immediately~~] becomes inactive when:

(1) the Commission receives an application for inactive status from the broker; or

(2) the broker is placed on inactive status by the Commission for failure to comply with a requirement of the Act or this chapter.

(b) The license of a business entity broker [~~immediately~~] becomes inactive when:

(1) the Commission receives an application for inactive status from the broker;

(2) the entity is not qualified to transact business in Texas;

(3) the designated broker's license:

(A) expires;

(B) is suspended, including a probated suspension; or

(C) is revoked, including a probated revocation; or

(4) the designated broker dies or resigns as designated broker, except as provided in §535.124 of this subchapter (relating to Death of a Designated Broker).

(c) The broker must confirm to the Commission in writing that the broker has given all sales agents sponsored by the broker written notice of termination of sponsorship at least 30 days before filing the application for inactive status.

(d) It is the responsibility of the broker on inactive status to pay all required license renewal fees timely to prevent the inactive license from expiring.

(e) To return to active status, a broker on inactive status must apply to the Commission for return to active status on a form approved by the Commission, pay the appropriate fee, and satisfy any continuing education requirements under the Act and this chapter.

§535.124. Death of a Designated Broker.

If the business entity broker sponsors any sales agents, the license of the business entity and any sponsored sales agent becomes inactive upon the expiration of 14 days after the date the designated broker dies, unless prior to the 14th day, the entity:

(1) names a new designated broker;

(2) provides to the Commission the information required by section 535.53(b)(5) of this chapter (relating to Business Entity; Designated Broker); and

(3) the Commission approves the new designated broker.

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

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Vanessa E. Burgess
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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.209, 535.213, 535.214

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.209, Examinations, §535.213, Qualifying Real Estate Inspector Instructors and Courses, and §535.214, Education and Experience Requirements for a License, in Chapter 535, General Provisions.

The amendments--which primarily rearrange existing requirements are being proposed to clarify that the Texas Practicum is an experience requirement (categorized by statute as field work) and is separate and apart from an educational course. Education providers can still offer the Texas Practicum, but will no longer need to submit a course application for the Texas Practicum or issue course completion certificates to students. Instead, students will submit the credit request form to the agency to obtain credit.

The Texas Real Estate Inspector Committee recommended the amendments.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as provided below, for each year of the first five years the proposed amendments are in effect the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

The amendments would decrease fees paid to the agency as a result of bypassing the course approval requirements and associated fees as outlined above.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code, §1102.111, which requires the agency, by rule, to provide for substitution of relevant experience in place of certain licensing requirements and limits the number of hours of field work.

The statute affected by this proposal is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the proposed amendments.

§535.209. Examinations.

(a) Examinations for licensure.

(1) The examination for a real estate inspector license and for a professional inspector license consists of a national part and a state part.

(2) The Commission adopts the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors for the national portion of the examination. For the state portion of the examination, questions shall be used which measure competency in the subject areas required for a license by Chapter 1102, and which demonstrate an awareness of its provisions relating to inspectors.

(3) Each real estate inspector applicant must achieve a score of at least 70% on the state portion of the examination. Each professional inspector applicant must achieve a score of at least 75% on the state portion of the examination. Examination results are valid for a period of one year from the date the examination is passed.

(b) Administration of examination. Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.57 of this chapter (relating to Examinations). An applicant is eligible to take a qualifying examination for a license after the Commission has received evidence of completion of all education and experience required by this subchapter.

(c) Exam Eligibility.

(1) Before the applicant is eligible to take the national portion of the examination, the applicant must submit evidence of completion of the following courses to the Commission:

(A) Property and Building Inspection Module I;

(B) Property and Building Inspection Module II;

(C) Business Operations and Professional Responsibilities Module; and

(D) Analysis of Findings and Reporting Module, if required for licensure under §535.214 of this subchapter (relating to Education and Experience Requirements for Licensure).

(2) Before the applicant is eligible to take the state portion of the examination, the applicant must submit evidence of completion of the following [~~coursework~~] to the Commission, if required for licensure under §535.214 of this subchapter:

(A) Texas Law Module;

(B) Texas Standards of Practice Module; and

(C) Texas Practicum, as defined by §535.214(h) of this subchapter.

(3) If the applicant has previously passed the national portion of the examination, before the applicant is eligible to take the state portion of the examination, the applicant:

(A) must submit evidence of completion of the required coursework as provided under paragraph (2) [~~subsection (c)(2)~~] of this subsection [~~section~~]; and

(B) is not required to complete coursework outlined under paragraph (1) [~~subsection (c)(1)~~] of this subsection [~~section~~].

(4) If the applicant fails the examination three consecutive times, the applicant may not apply for reexamination or submit a new license application unless the applicant submits evidence to the Commission that the applicant has successfully completed additional qualifying education after the date of the third failed examination, as follows:

(A) for an applicant who failed the national part of the examination, Property and Building Inspection Module I or Property and Building Inspection Module II; or

(B) for an applicant who failed the state part of the examination, Texas Law Module, or Texas Standards of Practice Module.

(5) If the applicant chooses to take the national portion and state portion of the exam separately, the national portion must be taken before the state portion of the exam.

§535.213. Qualifying Real Estate Inspector Instructors and Courses.

(a) Approval of Inspector Qualifying Courses. Inspector qualifying courses are approved and regulated as required by §535.62 of this chapter (relating to Approval of Qualifying Courses).

(b) Approved Qualifying Courses of Study. The subjects approved for credit for qualifying inspector courses consist of the following modules:

(1) Property and Building Inspection Module I (40 hours shall contain the topics and units outlined in the PBIM 1-0, Property and Building Inspection I Qualifying Inspector Course Approval Form, hereby adopted by reference.

(2) Property and Building Inspection Module II (40 hours) shall contain the topics and units outlined in the PBIM 2-0, Property and Building Inspection II Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

(3) Analysis of Findings and Reporting Module (20 hours) shall contain the topics and units outlined in the AFRM-0, Analysis of Findings and Reporting Module Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

(4) Business Operations and Professional Responsibilities Module (10 hours) shall contain the topics and units outlined in the BOPRM-0, Business Operations and Professional Responsibilities Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

(5) Texas Law Module (20 hours) shall contain the topics and units outlined in the TLM-1, Texas Law Module, Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

(6) Texas Standards of Practice Module (24 hours shall contain the topics and units outlined in the TSOPM-0, Texas Standards of Practice Module Qualifying Real Estate Inspector Course Approval Form, hereby adopted by reference.

~~[(7) Texas Practicum (40 hours), which shall consist of a minimum of five complete and in-person inspections.]~~

~~[(A) The Texas Practicum must:]~~

~~*[(i)* be supervised by a currently licensed inspector who has:]~~

~~*[(I)* been actively licensed as a professional inspector for at least five years; and]~~

~~*[(II)* at least three years of supervisory or training experience with inspectors; or]~~

~~*[(III)* performed a minimum of 200 real estate inspections as a Texas professional inspector; and]~~

~~*[(ii)* consist of no more than four students per inspector supervising the Texas Practicum.]~~

~~[(B) The inspector supervising the Texas Practicum must evaluate that upon completion by the student, each report is:]~~

~~[(i) considered satisfactory for release to an average consumer; and]~~

~~[(ii) demonstrates an understanding of:]~~

~~[(I) report writing;]~~

~~[(II) client interaction;]~~

~~[(III) personal property protection; and]~~

~~[(IV) concepts critical for the positive outcome of the inspection process.]~~

~~[(C) An applicant may request credit for completing the Texas Practicum (40 hours) by submitting the credit request form approved by the Commission.]~~

~~[(D) Audits.]~~

~~[(i) The Commission staff may conduct an audit of any information provided on a Texas Practicum credit request form, including verifying that the inspector supervising the Texas Practicum meets the qualifications required to supervise the practicum.]~~

~~[(ii) The following acts committed by a supervisory inspector conducting the Texas Practicum are grounds for disciplinary action:]~~

~~[(I) making material misrepresentation of fact;]~~

~~[(II) making a false representation to the Commission, either intentionally or negligently, that a student completed the Texas Practicum in its entirety, satisfying all requirements for credit to be awarded.]~~

§535.214. Education and Experience Requirements for a License.

(a) Sponsored Experience and Education Requirements for a Real Estate Inspector License. To become licensed as a real estate inspector a person must:

(1) satisfy the 90-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours; and

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(2) have been licensed as an apprentice inspector on active status for a total of at least three months within the 12 month period before the filing of the application;

(3) complete 25 inspections; and

(4) pass the licensure examinations set out in §535.209 of this subchapter (relating to Examinations).

(b) Sponsored Experience and Education Requirements for a Professional Inspector License. To become licensed as a professional inspector, a person must:

(1) satisfy the 134-hour education requirement for licensure by completing the following coursework:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Law Module, total 20 hours; and

(E) Texas Standards of Practice Module, total 24 hours;

(2) have been licensed as a real estate inspector on active status for a total of at least 12 months within the 24 month period before the filing of the application;

(3) complete 175 inspections; and

(4) pass the licensure examinations set out in §535.209 of this subchapter.

(c) Sponsored Experience Criteria. To meet the experience requirements for licensure under subsections (a) or (b) of this section, or to sponsor apprentice inspectors or real estate inspectors:

(1) the Commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold; and

(2) an inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(d) Substitute Experience and Education Requirements for a Real Estate Inspector License. As an alternative to subsection (a) of this section, to become a licensed real estate inspector, a person must:

(1) complete a total of 114 [~~154~~] hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours; and

(D) Texas Standards of Practice Module, total 24 hours; and

(2) [~~(E)~~] complete the Texas Practicum, as defined by subsection (h) of this section [~~total~~ 40 ~~hours~~]; and

(3) [~~(2)~~] pass the licensure examinations set out in §535.209 of this subchapter; and

(4) [~~(3)~~] be sponsored by a professional inspector.

(e) Substitute Experience and Education Requirements for a Professional Inspector License. As an alternative to subsection (b) of this section, to become a licensed professional inspector, a person must:

(1) complete a total of 154 [~~194~~] hours of qualifying inspection coursework, which must include the following:

(A) Property and Building Inspection Module I, total 40 hours;

(B) Property and Building Inspection Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Analysis of Findings and Reporting Module, total 20 hours;

(E) Texas Law Module, total 20 hours;

(F) Texas Standards of Practice Module, total 24 hours; and

(2) [~~(G)~~] complete the Texas Practicum as defined by subsection (h) of this section [, ~~total~~ 40 ~~hours~~]; and

(3) [~~(2)~~] pass the licensure examinations set out in §535.209 of this subchapter.

(f) Courses completed for a real estate inspector license under this section shall count towards the identical qualifying inspection coursework for licensure as a professional inspector.

(g) Experience Credit. The Commission may award credit for education required under subsections (d) and (e) of this section to an applicant who:

(1) has three years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property; and

(2) provides to the Commission two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(h) Texas Practicum.

(1) To receive credit for completion, the Texas Practicum must:

(A) be supervised by a licensed inspector who has:

(i) been actively licensed as a professional inspector for at least five years; and

(ii) at least three years of supervisory or training experience with inspectors; or

(iii) performed a minimum of 200 real estate inspections as a Texas professional inspector;

(B) consist of:

(i) a minimum of five complete and in-person inspections, totaling 40 hours; and

(ii) no more than four students per supervising inspector; and

(C) include a review of each inspection report prepared by the applicant in which the supervising inspector must find that each report:

(i) is considered satisfactory for release to an average consumer; and

(ii) demonstrates an understanding of:

(I) report writing;

(II) client interaction;

(III) personal property protection; and

(IV) concepts critical for the positive outcome of the inspection process.

(2) An applicant may request credit for completing the Texas Practicum by submitting to the Commission the credit request form approved by the Commission.

(3) Audits.

(A) The Commission staff may conduct an audit of any information provided on the credit request form, including verifying that the supervising inspector meets the qualifications in paragraph (1)(A) of this subsection.

(B) The following acts committed by a supervising inspector conducting the Texas Practicum are grounds for disciplinary action:

(i) making material misrepresentation of fact;

(ii) making a false representation to the Commission, either intentionally or negligently, that an applicant completed the Texas Practicum in its entirety, satisfying all requirements for credit.

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

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 363. COUNTY INDIGENT HEALTH CARE PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §363.1, concerning State Assistance Fund; §363.3, concerning Eligibility Dispute; §363.53, concerning Residence; §363.59, concerning Resources; and §363.101, concerning Basic and Optional Services; and new §363.5, concerning Eligibility of a County for State Assistance.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill 4510, 88th Legislature, Regular Session, 2023, which authorizes HHSC to require a county to provide certain tax information for the purpose of determining eligibility for state assistance under the County Indigent Health Care Program (CIHCP). This proposal also makes updates to reflect the previous transfer of program administration from the Department of State Health Services (DSHS) to HHSC and other minor administrative edits to improve clarity throughout the chapter.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §363.1, State Assistance Fund, makes updates to refer to "HHSC" rather than "DSHS" and minor administrative edits to clarify rule language that may be confusing to stakeholders and the public.

The proposed amendment to §363.3, Eligibility Dispute, makes updates to refer to "HHSC" rather than "department" and the term "provider of assistance" to "health care provider."

Proposed new §363.5, Eligibility of a County for State Assistance, includes new requirements and guidance for counties to

report certain tax information to HHSC in order to be eligible to receive state assistance under CIHCP, as authorized by House Bill 4510. The proposed rule includes the eligibility rules being removed from §363.1(b) and (c) in the proposed amendment to §363.1. This is being done to organize the rules related to eligibility of a county for state assistance into one rule section.

The proposed amendment to §363.53, Residence, clarifies language regarding who can be counted as a county resident with minor administrative edits to clarify language that may be confusing to stakeholders and the public.

The proposed amendment to §363.59, Resources, makes updates to refer to "HHSC" rather than "DSHS" and minor administrative edits to clarify rule language that may be confusing to stakeholders and the public.

The proposed amendment to §363.101, Basic and Optional Services, makes updates to refer to "HHSC" rather than "DSHS" and updates licensing language for Advanced Practice Registered Nurses, certified nurse practitioners, and certified midwives.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will not expand existing regulations;

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

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

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Rob Ries, Deputy Executive Commissioner for Family Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be compliance with current statute and improved readability of the rule language.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules do not impose any additional costs or fees.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or by e-mail to CIHCP@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, hand-delivered or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R050" in the subject line.

SUBCHAPTER A. PROGRAM ADMINISTRATION

26 TAC §§363.1, 363.3, 363.5

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the administration of Health and Safety Code Chapter 1001; Health & Safety Code §§61.006-61.009, which require the establishment of eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under the program; and Health and Safety Code §61.040(a), which provides that HHSC may require a county to provide certain information for determining eligibility for state assistance under Chapter 61, and §61.040(b), which requires HHSC to prescribe the manner in which a county must provide such information.

The amendments and new section affect Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075 and §§61.006-61.009 and §61.040.

§363.1. State Assistance Fund.

(a) The Health and Human Services Commission (commission) [~~Department of State Health Services (department)~~] is respon-

sible for distributing state assistance to eligible counties to the extent appropriated state funds are available.

[(b) The department establishes the eligibility requirements and internal procedures for a county applying for state assistance.]

[(c) The department determines a county's eligibility for state assistance.]

(b) [(d)] The commission [department] distributes funds to eligible counties based on a maximum annual allocation.

(1) The maximum annual allocation will be based on such factors as spending history, population, and the number of residents living below the Federal Poverty Guideline.

(2) The commission-established [department-established] allocation of the state assistance funds will distinguish the amount of funds allocated between the counties that [actually] were eligible and received state assistance funds the prior state fiscal year, and other potentially eligible counties.

(3) The commission [Up to the legislatively-mandated or department-established appropriated state assistance funds for each county, the department] may reallocate the unspent funds to eligible counties, up to the appropriated state assistance funds available for each county.

(4) No county can be approved for more than the legislatively mandated [legislatively-mandated] or commission-established [department-established] percent of the appropriated state assistance fund within a state fiscal year.

§363.3. Eligibility Dispute.

(a) If a health care provider [of assistance] and a governmental entity or hospital district cannot agree on a household's eligibility for assistance, the provider or the governmental entity or hospital district may submit the matter to the Health and Human Services Commission (commission) [department] not later than the 90th day after the eligibility determination was issued.

(b) The health care provider [of assistance] and the governmental entity or hospital shall submit all relevant information to the commission [department] in accordance with the internal procedures established by the commission [department].

(c) From the information submitted, the commission [department] shall determine the household's eligibility for assistance.

(d) Not later than the 45th day after the receipt of the matter, the commission [department] shall notify each governmental entity or hospital district and the health care provider [of assistance] of the decision and the reasons for the decision.

§363.5. Eligibility of a County for State Assistance.

(a) The Health and Human Services Commission (commission) establishes the eligibility requirements and internal procedures for a county applying for state assistance.

(b) The commission determines a county's eligibility for state assistance.

(c) To be eligible for state assistance under this chapter, a county must provide the following information for September 1 to August 31 of each fiscal year:

(1) the taxable value of property taxable by the county;

(2) the county's applicable general revenue tax levy; and

(3) the amount of sales and use tax revenue received by the county.

(d) A county must submit the information required by subsection (c) of this section:

(1) according to commission guidelines in the program policy manual; and

(2) by the deadline prescribed by the commission.

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

Filed with the Office of the Secretary of State on May 24, 2024.

TRD-202402343
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 438-2350

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SUBCHAPTER B. DETERMINING ELIGIBILITY

26 TAC §363.53, §363.59

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the administration of Health and Safety Code Chapter 1001; Health & Safety Code §§61.006-61.009, which require the establishment of eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under the program; and Health and Safety Code §61.040(a), which provides that HHSC may require a county to provide certain information for determining eligibility for state assistance under Chapter 61, and §61.040(b), which requires HHSC to prescribe the manner in which a county must provide such information.

The amendments affect Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075 and §§61.006-61.009 and §61.040.

§363.53. Residence.

(a) A person must live in the Texas county where the person [to which he] applies for assistance.

(b) No time limit is placed on a person's absence from the county. If a person proves county residency at application, the person remains a county resident until factual evidence proves otherwise.

(c) A person is not required to live in a county [There are no durational requirements] for any specific period of time to be considered a resident [residency].

(d) A person is not considered a county resident, even if the person lives in the county, if the person:

(1) is [Even if] a student who is a minor; and

(2) is [student lives in the county, the minor student] primarily supported by a parent [his parents,] whose [home] residence is in another county or state[, is not considered a county resident].

(e) A person cannot qualify for county health care assistance from more than one county simultaneously.

(f) A person is not required to have a permanent dwelling or [a] fixed residence in the person's county to be considered a resident.

§363.59. Resources.

(a) Definitions. The following words and terms when used in [within] this section [chapter] shall have the following meanings, unless the context clearly indicates otherwise.

(1) Assets--All items of monetary value owned by an individual, excluding personal possessions.

(2) Resources--Both liquid and non-liquid assets a person can convert to meet his immediate needs. As established by the Health and Human Services Commission (commission) [department], resources are either countable or exempt.

(A) Liquid resources are resources that are readily negotiable, such as cash, checking or savings accounts, savings certificates, stocks, or bonds.

(B) Non-liquid resources include vehicles, buildings, land, or certain other property.

(3) Accessible resource--A resource that is legally available to the household.

(4) Inaccessible resource--A resource that is not legally available to the household.

(5) Personal possessions--Furniture, appliances, jewelry, clothing, livestock, farm equipment, and other items if the household uses them to meet personal needs essential for daily living.

(6) Real property--Land and any improvements on it.

(7) Fair market value--The amount of money an item would bring if sold in the current local market.

(8) Equity--The fair market value of an item minus all money owed on it and the cost associated with its sale or transfer.

(b) Resource Limit. The total value of non-exempt resources available to the household cannot exceed:

(1) $3,000 for households which include the applicant or a relative living in the home who is aged or disabled; or

(2) $2,000 for all other households.

(c) The following criteria will be used to determine the household's resource limit category.

(1) A related person is a person who meets the Temporary Assistance for Needy Families (TANF) [TANF] relationship criteria, either biologically or by adoption.

(2) An aged person is a person age 60 or older as of the last day of the month for which benefits are being requested.

(3) A disabled person is a person who meets the TANF disability criteria.

(d) In determining eligibility:

(1) a county must not consider the value of the applicant's homestead;

(2) a county must consider as a resource the value of a vehicle under commission-established [department-established] guidelines;

(3) a county must consider a household ineligible for assistance if [, within three months before application or any time after certification,] the household transfers title of a countable resource for less than its fair market value within three months before application or any time after certification to reach [qualify for assistance, the county must consider the household ineligible for the department-established length of time. This penalty applies if the total of the transferred] resource eligibility guidelines [added to other resources affects eligibility for assistance];

(4) a county must consider as a resource real property other than a homestead and must count that property in determining eligibility;

(5) a county may disregard the applicant's real property if the applicant agrees to the terms of an enforceable obligation negotiated with the county to reimburse the county for all or part of the benefits received under the County Indigent Health Care Program; and

(6) resources from non-household members or [and/or] disqualified household members are excluded, unless a county chooses to include the resources of a person who executed an affidavit of support on behalf of a sponsored alien, as defined in §363.57(a)(4) [at §14.104(a)(4)] of this subchapter (relating to Income) [title], and the resources of the person's spouse, as authorized by Health and Safety Code, §61.008(a)(6).

(e) If a county chooses to include the resources of a person who executed an affidavit of support on behalf of a sponsored alien and the resources of the person's spouse, the county shall adopt written procedures for processing the resources of the sponsor and the sponsor's spouse.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-2350

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SUBCHAPTER C. PROVIDING SERVICES

26 TAC §363.101

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the administration of Health and Safety Code Chapter 1001; Health & Safety Code §§61.006-61.009, which require the establishment of eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under the program; and Health and Safety Code §61.040(a), which provides that HHSC may require a county to provide certain information for determining eligibility for state assistance under Chapter 61, and §61.040(b), which requires HHSC to prescribe the manner in which a county must provide such information.

The amendment affects Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075 and §§61.006-61.009 and §61.040.

§363.101. Basic and Optional Services.

(a) Except as specified in the Health and Human Services Commission-established [~~department-established~~] service exclusions and limitations, counties are required to provide the following basic health care services to eligible households by reimbursing providers of services who meet the requirements of this chapter and the responsible county.

(1) Inpatient hospital services. Services must be medically necessary and:

(A) provided in an acute care hospital;

(B) provided to hospital inpatients;

(C) provided by or under the direction of a physician; and

(D) provided for the care and treatment of patients.

(2) Outpatient hospital services. Services must be medically necessary and:

(A) provided in an acute care hospital or hospital-based ambulatory surgical center;

(B) provided to hospital outpatients;

(C) provided by or under the direction of a physician; and

(D) are diagnostic, therapeutic, or rehabilitative.

(3) Physician services. Services must be medically necessary and provided by a physician in the doctor's office, a hospital, a skilled nursing facility, or elsewhere.

(4) Up to three prescriptions for drugs per recipient per month. New and refilled prescriptions count equally toward this total prescription limit. Drugs must be prescribed by a physician or other practitioner within the scope of practice under law. The quantity of drugs prescribed depends on the prescribing practice of the physician or other practitioner and the needs of the patient.

(5) Skilled nursing facility services (SNF). Services must be medically necessary, ordered by a physician, and provided in a SNF [~~skilled nursing facility~~] that provides daily services on an inpatient basis.

(6) Rural health clinic services. Rural health clinic services must be provided in a rural health clinic by a physician, a physician [~~physician's~~] assistant (PA), an advanced practice registered nurse (APRN) licensed by the Texas Board of Nursing, such as a certified nurse practitioner, a certified nurse midwife, or other specialized nurse practitioner.

(7) Family planning services. These are preventive health and medical services that assist an individual in controlling fertility and achieving optimal reproductive and general health.

(8) Laboratory and x-ray services. These are technical laboratory and radiological services ordered and provided by, or under the direction of, a physician in an office or a similar facility other than a hospital outpatient department or clinic.

(9) Immunizations. These are given when appropriate.

(10) Medical screening services. These medical services include blood pressure, blood sugar, and cholesterol screening.

(11) Annual physical examinations. These are examinations provided once per calendar year by a physician or a PA[~~physician's assistant (PA)~~]. Associated testing, such as mammograms, can be covered with a physician's referral. These services may also be provided by an APRN [~~Advanced Practice Nurse (APN)~~] if the services [~~they~~] are within the scope of practice of the APRN [~~APN~~] in accordance with the standards established by the Texas Board of Nursing [~~Nurse Examiners and published in 22 Texas Administrative Code, §221.13~~].

(b) The following services are optional health care services.

(1) Ambulatory surgical center (ASC) services. These services must be provided in a freestanding ASC, and are limited to items and services provided in reference to an ambulatory surgical procedure, including those services on the Center for Medicare & [~~and~~] Medicaid Services [~~(CMS)~~]-approved list and selected Medicaid-only procedures.

(2) Federally Qualified Health Center (FQHC) services. These services must be provided in an FQHC by a physician, a PA [~~physician's assistant~~], an APRN [~~a nurse practitioner~~], a clinical psychologist, or a clinical social worker.

(3) PA [~~Physician assistant (PA)~~] services. These services must be medically necessary and provided by a PA under the direction of a physician and may be billed by and paid to the supervising physician.

(4) APRN [~~Advanced practice nurse (APN)~~] services. These services must be provided by an APRN licensed by the Texas Board of Nursing as [~~An APN must be licensed as a registered nurse (RN) within the categories of practice, specifically,~~] a certified nurse practitioner, a clinical nurse specialist, a certified nurse midwife[~~(CNM) and~~], or a certified registered nurse anesthetist[~~(CRNA), as determined by the Board of Nurse Examiners~~]. APRN [~~APN~~] services must be medically necessary, provided within the scope of practice of an APRN[~~APN~~], and covered in the Texas Medicaid Program.

(5) Counseling services. Psychotherapy services must be medically necessary based on a physician referral, and provided by a licensed professional counselor[~~(LPC)~~], a licensed master social worker-advanced clinical practitioner [~~(LMSW-ACP)~~], a licensed marriage family therapist[~~(LMFT)~~], or a doctorate-level [~~Ph.D.~~] psychologist. These services may also be provided based on an APRN [~~APN~~] referral if the referral is within the scope of the APRN's [~~their~~] practice in accordance with the standards established by the Texas Board of Nursing [~~Nurse Examiners and published in 22 Texas Administrative Code, §221.13~~].

(6) Diabetic medical supplies and equipment. These supplies and equipment must be medically necessary and prescribed by a physician. The county may require the supplier to receive prior authorization. Items covered are lancets, alcohol prep pads, syringes, test strips, Humulin [~~humulin~~] pens, and glucometers. These supplies and equipment may also be prescribed by an APRN [~~APN~~] if this is within the scope of the APRN's [~~their~~] practice in accordance with the standards established by the Texas Board of Nursing[~~Nurse Examiners and published in 22 Texas Administrative Code, §221.13~~].

(7) Colostomy medical supplies and equipment. These supplies and equipment must be medically necessary and prescribed by a physician. The county may require the supplier to receive prior authorization. Items covered are colostomy bags/pouches; cleansing irrigation kits, paste, or powder; and skin barriers with flange (wafers). These supplies and equipment may also be prescribed by an APRN [~~APN~~] if this is within the scope of the APRN's [~~their~~] practice in

accordance with the standards established by the Texas Board of Nursing[~~Nurse Examiners and published in 22 Texas Administrative Code, §221.13~~].

(8) Durable medical equipment. This equipment must be medically necessary; meet the Medicare/Medicaid requirements; and provided under a written, signed, and dated physician's prescription. The county may require the supplier to receive prior authorization. Items can be rented or purchased, whichever is the least costly. Items covered are crutches, canes, walkers, standard wheel chairs, hospital beds, home oxygen equipment (including masks, oxygen hose, and nebulizers), and reasonable and appropriate appliances for measuring blood pressure. These supplies and equipment may also be prescribed by an APRN [~~APN~~] if this is within the scope of the APRN's [~~their~~] practice in accordance with the standards established by the Texas Board of Nursing[~~Nurse Examiners and published in 22 Texas Administrative Code, §221.13~~].

(9) Home and community health care services. These services must be medically necessary; meet the Medicare/Medicaid requirements; and provided by a certified home health agency. A plan of care must be recommended, signed, and dated by the recipient's attending physician prior to care being given. A plan of care may also be recommended, signed, and dated by a PA or APRN who is licensed by the Texas Board of Nursing as a certified nurse practitioner or clinical nurse specialist. The county may require prior authorization. Items covered are registered nurse [~~Registered Nurse~~] (RN) visits for skilled nursing observation, assessment, evaluation, and treatment provided a physician specifically requests the RN visit for this purpose. A home health aide to assist with administering medication is also covered. Visits made for performing housekeeping services are not covered.

(10) Dental care. These services must be medically necessary and provided by a doctor of dental surgery, a doctor of medicine in dentistry, or a doctor of dental medicine[~~DDS, a DMD, or a DDM~~]. The county may require prior authorization. Items covered are an annual routine dental exam and the least costly service for emergency dental conditions for the removal or filling of a tooth due to abscess, infection, or extreme pain.

(11) Vision care, including eyeglasses. The county may require prior authorization. Items covered are one examination of the eyes by refraction and one pair of prescribed glasses every 24 months.

(12) Emergency medical services. These services are ground ambulance transport services. When the client's condition is life-threatening and requires the use of special equipment, life support systems, and close monitoring by trained attendants while en route to the nearest appropriate facility, ground ambulance transport is an emergency service.

(13) Physical therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or free-standing rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Texas Occupations Code Chapter 453.

(14) Occupational therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or free-standing rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Texas Occupations Code Chapter 454.

(15) Other medically necessary services or supplies that the local governmental municipality/entity determines to be cost effective.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 438-2350

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

SUBCHAPTER D. PAYING ROYALTY TO THE STATE

31 TAC §9.51

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT

On behalf of the School Land Board ("SLB"), the General Land Office ("GLO") proposes an amendment to 31 TAC §9.51 (relating to Royalty and Reporting Obligations to the State) by amending clause 9.51(b)(3)(E)(iv).

The proposed amendment clarifies the procedures and standards for the reduction by the SLB of interest charged or penalties assessed under Texas Natural Resources Code §52.131 or any other interest or penalties assessed by the Land Commissioner relating to unpaid or delinquent royalties, or unfiled or delinquent reports.

FISCAL AND EMPLOYMENT IMPACTS

Brian Carter, Senior Deputy Director of Asset Enhancement of the GLO, has determined that (i) during the first five-year period the proposed amended rule is in effect, there will be no cost or fiscal implications for local governments expected as a result of enforcing or administering the rule, and that any fiscal impact of reduced penalties and/or interest on the State or the permanent school fund will be offset by reducing the inherent risks of litigation and/or by the more efficient use of audit, revenue reporting, and collections staff in pursuing other and greater amounts due relating to unpaid or delinquent royalties of other lessees, and (ii) there will be no impact on employment expected.

PUBLIC BENEFIT

Brian Carter, Senior Deputy Director of Asset Enhancement of the GLO, has determined that, during the first five-year period the proposed amended rule is in effect, the public benefits expected from the proposed amendment include clarification of the procedures and standards used by the SLB in evaluating requests for reduced penalties and/or interest, greater transparency in agency decision making, and more efficient use of staff time for maintaining income into the permanent school fund. Mr. Carter has further determined that, during the same period, there are

no persons required to comply with this rule amendment, and that there are no probable costs to persons who seek to take advantage of the rule amendment.

PUBLIC COMMENT REQUEST

Comments may be submitted to Walter Talley, Office of General Counsel, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701 or by facsimile (512) 463-6311, by no later than 30 days after publication.

STATUTORY AUTHORITY

This amendment to 31 TAC §9.51 is proposed pursuant to the authority set out in Texas Natural Resources Code (1) §52.131(j), which states that the SLB may provide procedures and standards for reduction of interest charged or penalties assessed under Texas Natural Resources Code §52.131 or any other interest or penalties assessed by the Land Commissioner relating to unpaid or delinquent royalties, and (2) §52.131(h), which states that the Land Commissioner may establish by rule a reasonable penalty for late filing of reports or any other instrument to be filed pursuant to Texas Natural Resources Code, Chapter 52.

Jeff Gordon, General Counsel of the GLO, has determined, and certifies, that the proposed amendment is within the SLB's authority to adopt.

§9.51. Royalty and Reporting Obligations to the State.

(a) (No change.)

(b) Monetary royalties and reports

(1) - (2) (No change.)

(3) Penalties and interest.

(A) - (D) (No change.)

(E) Reduction of penalty and/or interest. For royalties due on or after February 26, 2010, the interest rate assessed on delinquent royalties shall be determined as of the date of the first business day of the year the royalty becomes delinquent and will be reduced to prime plus one percent.

(i) - (iii) (No change.)

(iv) A lessee may request in writing a reduction of interest charged or penalties assessed under Texas Natural Resource Code §52.131 or any other interest or penalties assessed by the commissioner relating to unpaid or delinquent royalties, or late filed reports. The board may consider any factors when considering such a request, including the facts and circumstances supporting the lessee's request for a reduction, any history of delinquency by the lessee, any good faith attempts of the lessee to rectify the consequences of the delinquency, including by paying the amount of the unpaid or delinquent royalty, the recommendations of staff, and the costs and risks associated with litigation. For governmental efficiency, the board may delegate to the commissioner and/or to staff designated by the commissioner for this purpose the authority to reduce interest charged or penalties assessed relating to unpaid or delinquent royalties if the aggregate unreduced amount of such penalties and interest to be reduced is equal to or less than a de minimis amount established by the board from time to time at a regular or special public meeting.

(4) - (5) (No change.)

(c) (No change.)

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

Filed with the Office of the Secretary of State on May 22, 2024.

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Mark Havens
Chief Clerk
General Land Office
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 475-1859

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CHAPTER 15. COASTAL AREA PLANNING SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.36

The General Land Office (GLO) proposes amendments to 31 Texas Administrative Code (TAC) §15.36, relating to Certification Status of the City of Galveston Dune Protection and Beach Access Plan (Plan). The City of Galveston (City) has proposed amendments to its Plan and to its Erosion Response Plan (ERP) that include adopting a variance for the use of reinforced concrete in the area within 200 feet from the line of vegetation for a certain property partially behind the seawall, prohibiting vehicular beach access at Access Point 7 -- Sunny Beach Subdivision, reducing the size of the Restricted Use Area at Access Point 1(C) by 1,000 linear feet, adding an ADA use area at Access Point 2 and additional vehicular beach access areas at Access Point 6 and Access Point 13, updating the Beach Access Plan in Appendix A, and modifications to the Beach Access Maps in Exhibit C.

The GLO also proposes to change the conditional certification status of the City's Plan to fully certified and to certify its beach access provisions as consistent with state law. During the time its Plan was conditionally certified, the City continued to restore and enhance the public's ability to access and use the public beach. The noncompliance issues noted in the previous Compliance Plan have been resolved, and many of those resolutions are memorialized in the City's proposed amendments to Appendix A and Exhibit C of the Plan.

The GLO proposes to amend §15.36(d) and to add new subsection (e) to certify the amendments to the Plan as consistent with state law. Copies of the City's proposed Plan can be obtained by contacting the GLO or the City of Galveston.

BACKGROUND OF THE PROPOSED AMENDMENTS

Pursuant to the Open Beaches Act, Texas Natural Resources Code (TNRC) Chapter 61; the Dune Protection Act, TNRC Chapter 63; TNRC §33.607, and 31 Texas Administrative Code (TAC) §§15.3, 15.7, and 15.17, a local government with jurisdiction over Gulf coast beaches must submit any proposed amendments to its Plan or ERP to the GLO for certification. If appropriate, the GLO will certify that the Plan or ERP as consistent with state law by amendment of a rule, as authorized in TNRC §§61.011(d)(5), 61.015(b), and 63.121. The certification by rule reflects the state's certification of the Plan; however, the text of the Plan is not adopted by the GLO, as provided in 31 TAC §15.3(o)(4).

On March 21, 2024, the Galveston City Council passed Resolution No. 24-012, which authorized the City Manager to submit proposed amendments to the City's Plan to the GLO for certification. The amendments to the City's Plan were submitted to the GLO with proposed changes shown in redline. The proposed

changes will be adopted in an ordinance by City Council after certification of the Plan amendments as consistent with state law by the GLO. The document submitted to the GLO by the City includes proposed changes to the Plan previously adopted in City Ordinance Numbers 23-030, 23-038, 23-039, and 23-071. The Plan was submitted to the GLO with a request for certification of the amendments to the Plan as consistent with state law, and in accordance with 31 TAC §15.3 and §15.7, and TNRC Chapters 61 and 63.

The City is a coastal community in Galveston County, located on Galveston Island and bordering West Bay, Galveston Bay and the Gulf of Mexico. The City's Dune Protection and Beach Access Plan was first adopted on August 12, 1993, and most recently amended to adopt a Beach User Fee (BUF) increase at Seawall Beach Urban Park, which was conditionally certified by the GLO as consistent with state law effective March 4, 2021. The conditional certification status was renewed on October 22, 2021 and June 3, 2022 in *Texas Register* postings. The amendments to adopt a BUF increase at Seawall Beach Urban Park were conditionally certified because the City was not in compliance with certain beach access requirements under its Plan. The City has since met the requirements, and those amendments are now fully certified as consistent with state law.

ANALYSIS OF PLAN AMENDMENTS AND GLO'S PROPOSED AMENDMENT TO 31 TAC §15.36.

The proposed amendments to the City's Plan include a variance from 31 TAC §15.6(f) that would allow an exemption from the prohibition on the use of concrete under a structure located within 200 feet of the line of vegetation in an eroding area, under limited circumstances. To qualify for an exemption, the proposed or existing use of the structure is required to be multiple-family or commercial, and the structure must have an elevated, reinforced concrete deck at or above Base Flood Elevation. In addition, the proposed or existing structure must be designed, built, rented, or leased to be occupied as an attached, multiple-family residential living unit at least five stories in height, include multiple-family residential living units, be constructed at least in part behind the Galveston seawall, and utilize a stormwater detention system that mitigates peak water runoff on the development site. Exemption requests must be submitted to the Development Services Department and include stamped engineering drawings dated within 12 months of the submittal date, a statement of explanation for the request, documentation of the need to use reinforced concrete instead of fibercrete underneath the structure, and a demonstration that the above provisions will be met. The City will assess a special concrete maintenance fee to be used to pay for the clean-up of concrete from the public beach near the property, should the need arise.

The proposed variance is limited in scope and application to only one potential property, which is located partially behind the seawall. The City is requesting an exemption to the prohibition on concrete beneath a structure within 200 feet of the line of vegetation in an eroding area because of demonstrated concerns that fibercrete would not provide adequate structural support for a robust stormwater detention system under the footprint of a large multiple-family or commercial structure. A robust and effective stormwater detention system is a necessary component of coastal development and prevents further erosion of the beach and dune system, which is particularly important in areas adjacent to or partially behind a seawall or other hard structure. In proposing the rule, the GLO considered the multitude of conditions that must be demonstrated for an exemption to be granted, the limited geographical scope of the variance, the requisite location partially behind the seawall, and the necessity of a robust and effective stormwater detention system that minimizes impacts to the beach and dune system.

The City also proposes to prohibit vehicles from 1,300 linear feet of beach at Access Point (AP) 7 - Sunny Beach Subdivision. Before vehicles can be prohibited from the beach, public beach access parking must be provided in the nearby public parking lot that will accommodate 92 cars (including 7 ADA spaces). In addition, 330 feet of overflow parallel parking (16 parking spaces, 7 of which will be ADA spaces) will be provided adjacent to the 8 Mile Road right-of-way between the parking lot and the beach. Pedestrian beach access from the parking areas will be via a sidewalk connecting the parking areas to the beach. In addition, a 100-foot-wide turnaround will be available on the beach at the seaward end of 8 Mile Road to allow beachgoers to drop off beach gear, non-motorized watercraft, fishing equipment, and people with mobility concerns.

The proposed modification to beach access meets the criteria in 31 TAC §15.7(h)(1), which states that when vehicles are prohibited from the beach, beach access and use is presumed to be preserved if parking on or adjacent to the beach is adequate to accommodate one car for each 15 linear feet of beach, ingress/egress access ways are no farther than ½ mile apart, and signs are conspicuously posted which explain the nature and extent of vehicular controls, parking areas, and access points, including access for persons with disabilities. Ninety-two public parking spaces are proposed for the parking lot, exceeding the 87 required parking spaces, and the ingress/egress access way is no more than ½ mile from adjacent access points. The City has committed to providing the required beach access signage at this access point and will conduct quarterly inspections of the signage, replacing the signage as needed. The public parking lot and pedestrian access pathway to the beach are required to be constructed and to be available to the public free of charge, and the required beach access signage must be conspicuously posted before the City implements the proposed vehicular prohibition at AP 7. The City is required to maintain the off-beach parking and pedestrian access pathway for the beach to remain closed to vehicular traffic.

The City also proposes to reduce the size of the Restricted Use Area (RUA) at AP 1(C) by 1,000 linear feet and to preserve those uses by authorizing a new ADA-only vehicular beach area at AP 2 and adding additional vehicular beach areas at AP 6 and AP 13. The existing RUA is a 2,640-foot-long stretch of beach adjacent to the east end of Stewart Beach that is open to vehicles for persons with disabilities displaying an ADA placard, people who are fishing, or people who are launching non-motorized personal watercraft. The RUA is also accessible to pedestrians from an adjacent off-beach parking area. To accommodate for the removal of 1,000 feet of existing RUA beach, the City is creating a 500-foot-long area that only vehicles with appropriate ADA placards can use for parking and direct access to the water. This new ADA-only beach area will be located within AP 2 - Stewart Beach in an area that is currently pedestrian only. This ADA-only beach area at AP 2 will be accessible by a vehicular access route shown on the Beach Access Maps in Exhibit C. The other 500 linear feet being removed from the RUA will be relocated to AP 6 - Pocket Park #1 and will consist of a vehicular beach added to the west side of that access point, increasing the area where vehicles are permitted on the beach at AP 6 from 1,690 linear feet to 2,190 linear feet. The proposed Plan amendments also include the addition of a 350-foot vehicular beach at AP 13 -

Pocket Park #3. The conversion of a pedestrian-only beach to vehicular beach at AP 13 is in addition to the required off-beach parking at this access point. The City will be required to adhere to the requirements in 31 TAC §15.7(h)(1) should the City ever propose to prohibit vehicles from driving on the beach in the new vehicular areas in the future.

The removal of 1,000 feet of the RUA and creation of a 500-foot ADA-only vehicular beach area within AP 2 and the expansion of the vehicular beach by 500 feet at AP 6 and 350 feet at AP 13 preserves the public's use of and access to the beach as required in 31 TAC §15.7(h). The GLO considers vehicular beaches to be an adequate preservation of beach access and use for persons with disabilities since vehicles are able to access the water directly and without limitation in those areas. Therefore, the linear footage of beach areas that are accessible for persons with disabilities is being increased from 1,000 feet to 1,350 feet across the island. The expansion of vehicular beaches at AP 6 and AP 13 also preserves the uses of launching non-motorized watercraft and fishing since vehicles can directly access the water. Prior to implementing the proposed changes to beach access in these areas, the required beach access signage must be conspicuously posted, and the 500 linear feet of vehicular beach dedicated to ADA use at AP 2 and the additional 850 linear feet of vehicular beaches at AP 6 and 13 must be available to the public before the City implements the proposed changes.

Since the existing RUA is open to vehicles only as a special use area for persons with disabilities, saltwater fishermen, and the launching of non-motorized personal watercraft, an off-beach parking area and pedestrian beach access pathway area is already required and provided at AP 1(C) - Area west of the Islander East to eastern boundary of Stewart Beach Park. The City proposes to specify in the Plan that 143 parking spaces are available at AP 1(C) and also proposes changes to the parking areas at AP 1(A) - Beachtown Development and AP 1(B) - Palisade Palms to reflect the actual, verified number and location of the parking spaces at these access points, and to incorporate previous changes included in City Ordinance No. 11-037. Ordinance No. 11-037 was adopted by City Council on May 26, 2011 and consisted of on-beach and off-beach parking and pedestrian access requirements for AP 1(A), AP 1(B), and AP 1(C) that were necessary for GLO to certify the City of Galveston Beach Access Plan as consistent with state law at that time.

At AP 1(A), the proposed Plan amendments would add an on-beach parking area with a minimum width of 480 feet and a minimum number of 101 on-beach parking spaces, reduce the number of parking spaces in the off-beach parking lots from 295 spaces to 161 spaces to reflect the actual capacity of the parking lots, and add 46 off-beach parking spaces throughout the subdivision. Therefore, the number of parking spaces reflected in the Plan at AP 1(A) has increased from 295 off-beach spaces to a total of 308 on-beach and off-beach spaces, combined. The number of off-beach parking spaces at AP 1(B) was increased from 108 spaces to 116 spaces, and one off-beach parking area with a minimum of 143 spaces was added in the Plan to AP 1(C). City Ordinance No. 11-037 requires a total of 610 parking spaces at these access points. The current Plan amendments provide a total of 567 parking spaces at APs 1(A), 1(B), and 1(C), which is 43 spaces short of the required number of spaces. To accommodate for this deficit, 50 additional parking spaces have been added to the free parking area at AP 2 - Stewart Beach Park. The City confirmed that they verified that the parking spaces proposed for APs 1(A), 1(B), 1(C), and in the free parking area at Stewart Beach Park are available on-the-ground.

The GLO notified the City of numerous beach access and parking compliance concerns in 2018. Since that time, the City has been working to achieve compliance with the beach access provisions in its Plan. The City was required to develop a Compliance Plan that outlined the compliance issues and established timelines for resolution. After the City provided an adequate Compliance Plan and achieved partial compliance, the GLO conditionally certified the City's Plan and later renewed the conditional certification status on October 22, 2021 and June 3, 2022 in *Texas Register* postings. On February 1, 2023, the GLO notified the City that the outstanding compliance issues had been resolved since the City had demonstrated full compliance with all beach access and parking concerns noted in the Compliance Plan and submitted a Compliance Maintenance Plan requiring quarterly signage inspections and annual beach access and parking inspections. In addition to the currently proposed amendments described above, the GLO proposes to fully certify the amendments to the Plan that were published in the February 26, 2021 edition of the *Texas Register.* The currently proposed Plan amendments include updates to the Beach Access Plan in Appendix A and to the Beach Access Maps in Exhibit C to reflect the actions taken by the City to resolve the compliance issues. The City is required to maintain the parking areas and pedestrian access pathways in the Beach Access Maps by conducting regular inspections and taking corrective action as needed, as agreed in the Compliance Maintenance Plan provided to the GLO on February 8, 2023.

The City also proposes to amend the Plan to specify that 1,993 public beach access parking spaces are available at AP 3 - Seawall Beach Urban Park, which is 266 spaces short of the 2,259 spaces previously required in the City's Plan. The size of the free parking area at AP 2 - Stewart Beach Park has been increased by 300 spaces to accommodate for the required 266 spaces, bringing the total number of parking spaces in the free parking area to 600 spaces. In the future, 34 parking spaces are available in the free parking area at Stewart Beach for the City to relocate additional required parking from the Seawall Beach Urban Park as needed to make space on the seawall for beach access amenities and public safety.

The proposed Plan amendments also reduce the number of off-beach parking spaces at AP 9 - Pocket Park #2 from 352 spaces to 265 spaces to reflect the actual capacity of the parking lot. To accommodate the deficit in parking, 63 of the required spaces were relocated to AP 8 - Beachside Village, and 24 of the required spaces were relocated to AP 15(A) - Pirates Beach Subdivision. In total, 352 parking spaces are available in these three locations. The location of the off-beach public beach access parking at AP 8 - Beachside Village Subdivision was also changed from Butterfly Street to locations on streets throughout the subdivision.

The City also proposes to amend the Plan to reduce the number of off-beach parking spaces at AP 12 - Bermuda Beach Subdivision from 211 spaces to 87 spaces, distributed on John Reynolds Road, John Reynolds Circle, and Jane Road to reflect the actual verified amount and location of the parking spaces. To accommodate the deficit in parking, the on-beach parking area at Pabst Road was expanded from 150 linear feet to a minimum of 564.2 linear feet, which accommodates a minimum of 124 parking spaces.

The Plan amendments also include administrative changes related to updating non-substantive language for consistency with 31 TAC Chapter 15, including revisions to the requirements regarding permit renewals to mirror the requirements in 31 TAC §15.3(t). Specifically, the amendments change references from "permit extensions" to "renewals," remove the requirement for permit renewals to be submitted to the GLO before City review, and require permit renewals to be in compliance with the requirements outlined in 31 TAC §15.3(t).

FISCAL AND EMPLOYMENT IMPACTS

Ms. Angela Sunley, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government or local economy as a result of enforcing or administering the amended rules. Ms. Sunley has determined that the proposed amendments will not affect the costs of compliance for businesses or individuals. The proposed rulemaking will have no adverse local employment, and no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Sunley has determined that the public will be affected by the changes to the beach access plan and the adoption of the updated beach access maps. The amended and updated beach access plan and maps will enhance public beach access by making the public aware of the location of public beach parking throughout Galveston. In addition, the amendments will benefit the public by maintaining or enhancing ADA access to the beach.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are proposed under TNRC §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and access public beaches and to certify local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. The GLO has also determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to property or use of that property. GLO has therefore determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. Since the proposed rules simply certify the amendments to City of Galveston's Dune Protection and Beach Access Plan and its Erosion Response Plan, they will not affect the operations of the General Land Office. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the General Land Office. The proposed rule amendments do not create, limit, or repeal existing agency regulations, but rather certify the amendments to the Plan as consistent with state law. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to enhance or preserve beach access and protect environmental protection and safety.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in Texas Natural Resources Code §33.2053 and 31 TAC §29.11(a)(1)(J) and §29.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determinate that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §26.12 (relating to Goals) and §26.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed amendments are consistent with the CMP goals outlined in 31 TAC §26.12(5). These goals seek to balance the benefits of economic development and multiple human uses, the benefits of protecting, preserving, restoring, and enhancing coastal natural resource areas (CNRAs), and the benefits from public access to and enjoyment of the coastal zone. The proposed amendments are consistent with 31 TAC §26.12(5) as they provide the City with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone.

The proposed rules are also consistent with CMP policies in 31 TAC §26.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use of and access to and from public beaches.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number

(512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches and certification of local government beach access and dune protection plans as consistent with state law.

Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121 are affected by the proposed amendments. The GLO hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

§15.36. Certification Status of City of Galveston Dune Protection and Beach Access Plan.

(a) The City of Galveston (City) has submitted to the General Land Office a dune protection and beach access plan (Beach and Dune Plan) which is adopted on August 12, 1993 and amended on February 9, 1995, June 19, 1997, February 14, 2002, March 13, 2003, January 29, 2004, February 26, 2004, and April 12, 2012. The City's plan is fully certified as consistent with state law.

(b) The General Land Office certifies as consistent with state law the City's Erosion Response Plan as an amendment to the Dune Protection and Beach Access Plan.

(c) The General Land Office certifies as consistent with state law the City's Beach and Dune Plan as amended on January 15, 2016 by Ordinance 16-003 to increase the daily beach user fee to a maximum of $15.00 and season passes to a maximum of $50 at Stewart Beach, R.A. Apffel Park, Dellanera Park, and Pocket Parks Nos. #1-3.

(d) The General Land Office [~~conditionally~~] certifies as consistent with state law amendments to the City of Galveston's Dune Protection and Beach Access Plan as amended on January 24, 2019 by Ordinance No. 19-012. The amendments include an increase in the Beach User Fee on the Seawall, the adoption of updated maps in Exhibit B, and a variance for certain in-ground pools. The amendments were adopted by City Council in Ordinance No. 19-012 on January 24, 2019, which incorporated previously adopted Ordinance No. 18-005.

(e) The General Land Office certifies as consistent with state law amendments to the City of Galveston's Dune Protection and Beach Access Plan in accordance with a City Council Resolution dated March 21, 2024. The amendments include a variance for the use of reinforced concrete, prohibit vehicular access at Access Point 7, reduce the size of the Restricted Use Area at Access Point 1(C) by 1,000 linear feet, add an ADA-only vehicular beach area at Access Point 2 and additional vehicular beach access areas at Access Points 6 and 13, and update the Beach Access Plan in Appendix A and Beach Access Maps in Exhibit C.

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

Filed with the Office of the Secretary of State on May 23, 2024.

TRD-202402338

Mark Havens
Chief Clerk
General Land Office
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 475-1859

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 850. VOCATIONAL REHABILITATION SERVICES ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES

The Texas Workforce Commission (TWC) proposes the repeal of the following section of Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §850.11

TWC proposes the following new section to Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §850.11

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 850 rule change is to clarify TWC's Vocational Rehabilitation Division's (VRD) Comprehensive System of Personnel Development (CSPD) standards for Qualified Vocational Rehabilitation Counselors (QVRCs) in accordance with 34 Code of Federal Regulations (CFR) §361.18, relating to vocational rehabilitation personnel development.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES

TWC proposes the following amendments to Subchapter A:

§850.11. Qualified Vocational Rehabilitation Counselor

Section 850.11 is repealed and added as new to clarify requirements for QVRCs.

The current rule language in §850.11(a) - (f) is repealed and proposed as new in new §850.11 with the updated QVRC requirements. The current rule language is added throughout new §850.11(e) - (j), except for current §850.11(d) because the rule language is no longer applicable.

The repealed rule language in §850.11(e) is added into two subsections in new §850.11 as follows:

--The rule language regarding the time period for completing the graduate education requirements is added into new §850.11(e).

--The rule language regarding transcript reviews and confirming certifications is moved from repealed §850.11(e) to new §850.11(f).

Additionally, the repealed rule language in current §850.11(a) and (f) is moved, with modifications, to new §850.11(g) and (j), respectively, to align with and clarify the updated QVRC requirements. New §850.11(a) clarifies that VRD develops and maintains the CSPD standards.

New §850.11(b) specifies what is needed for staff to be classified as a QVRC.

New §850.11(c) specifies what staff must do to be qualified to perform non-delegable duties.

New §850.11(d) specifies the minimum education and experience standards required to be hired as a VR counselor.

New §850.11(e) specifies the graduate education requirements that must be completed within seven years from completion of the initial training year.

New §850.11(f) specifies that VRD must conduct transcript reviews and/or confirm certifications to determine compliance with standards, coursework, and graduate education requirements.

New §850.11(g) is the rule language that was repealed from current §850.11(a), with modifications, to align with and clarify the updated QVRC requirements.

New §850.11(h) relating to QVRC financial assistance is the rule language that was repealed from current §850.11(b).

New §850.11(i) relating to the requirements for applying for QVRC program assistance is the rule language that was repealed from current §850.11(c).

New §850.11(j) is the rule language that was repealed from current §850.11(f), with modifications, to align with and clarify the updated QVRC requirements.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to clarify requirements for QVRCs.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

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

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

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

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

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure Vocational Rehabilitation Counselors are sufficiently trained and prepared to effectively serve Texans with disabilities.

PART IV. COORDINATION ACTIVITIES

The proposed rule amendments to Chapter 850 have been reviewed by the Rehabilitation Council of Texas (RCT) in accordance with 34 CFR §§361.16 - 361.18.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than July 8, 2024.

40 TAC §850.11

PART VI. STATUTORY AUTHORITY

The rule is repealed under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services;

--Texas Labor Code §352.104(b), which provides TWC with the specific authority to establish rules for monitoring and oversight of VR counselor performance and decision making; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repealed rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§850.11. Qualified Vocational Rehabilitation Counselor.

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

Filed with the Office of the Secretary of State on May 21, 2024.

TRD-202402261
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 850-8356

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40 TAC §850.11

The new rule is proposed under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services;

--Texas Labor Code §352.104(b), which provides TWC with the specific authority to establish rules for monitoring and oversight of VR counselor performance and decision making; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§850.11. Qualified Vocational Rehabilitation Counselor.

(a) The Vocational Rehabilitation Division (VRD) develops and maintains a Comprehensive System of Personnel Development (CSPD). This system includes procedures to ensure VRD maintains an adequate supply of qualified personnel, referred to as Qualified Vocational Rehabilitation Counselors (QVRCs).

(b) To classify as a QVRC, staff must meet specific state requirements related to education and experience. Standards for QVRCs serve as an internal control to ensure staff are sufficiently trained and prepared to effectively serve Texans with disabilities.

(c) VR counselors are considered qualified to perform non-delegable duties upon meeting the minimum initial standards for hire, successful completion of required training, and an initial probationary period that allows demonstration of performance. The minimum initial standards for hire are aligned with 34 CFR §361.18(c)(1)(ii)(A) and the State of Texas VR Counselor Classification Schedule.

(d) Minimum initial standards for hire as a VR counselor include the following education and experience requirements:

(1) A bachelor's degree in a field of study reasonably related to vocational rehabilitation, to indicate a level of competency and skill demonstrating basic preparation in a field of study such as vocational rehabilitation counseling, social work, psychology, disability studies, business administration, human resources, special education, supported employment, customized employment, economics, or another field that reasonably prepares individuals to work with customers and employers; and

(2) Demonstrated paid or unpaid experience, for not less than one year, consisting of:

(A) Direct work with individuals with disabilities in a setting such as an independent living center;

(B) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or

(C) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, or in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities.

(e) Within seven years from completion of the initial training year, a VR counselor is expected to achieve one or more of the following graduate education requirements:

(1) A master's degree in rehabilitation counseling or clinical rehabilitation counseling;

(2) A master's degree in counseling or a counseling-related field with required completion of specified coursework identified by the VR division;

(3) A master's, specialist, or doctoral degree in specific majors with required specified coursework identified by the Agency's VR division;

(4) A current certified rehabilitation counselor (CRC) certificate from the Commission on Rehabilitation Counselor Certification (CRCC); or

(5) Current licensure for a licensed professional counselor (LPC).

(f) VRD must conduct transcript reviews and/or confirm certifications to determine compliance with standards or to outline coursework to be completed by the VR counselor to meet graduate education requirements.

(g) VRD helps VR counselors to advance as QVRCs by making funds available through the Qualified Vocational Rehabilitation Counselor (QVRC) program for the required graduate education except when:

(1) unforeseen circumstances occur that may restrict or prohibit the funding; or

(2) VRD management discontinues a VR counselor's participation in the program in the best interests of VRD.

(h) The VRD director or designee must approve QVRC financial assistance. This financial assistance is contingent on:

(1) funding;

(2) VRD management approval; and

(3) compliance with qualifications for participation.

(i) Qualifications for participation in the QVRC program require that VR counselors and transition VR counselors applying for assistance must:

(1) have completed the initial training year;

(2) be meeting or exceeding job performance expectations;

(3) obtain the appropriate approvals to pursue a graduate degree or prescribed coursework;

(4) apply for Rehabilitation Services Administration scholarship and university stipend funding, if applicable; and

(5) be accepted by an appropriate institution of higher education.

(j) A VR counselor participating in the QVRC program is expected to pay all costs or expenses:

(1) associated with the college application, admission, and GRE exam(reimbursement of one GRE exam is allowed);

(2) related to tuition, fees, and books for any coursework that must be repeated because of failure to successfully complete; and

(3) related to completing work necessary to remove any grade of "I" (Incomplete) unless compelling reasons exist and payment is approved by the VR division director or designee (for example, serious illness, or university regulations to the contrary).

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

Filed with the Office of the Secretary of State on May 21, 2024.

TRD-202402262
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 850-8356

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 27. TOLL PROJECTS

SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

The Texas Department of Transportation (department) proposes amendments to §§27.80 - 27.82 and the repeal of §27.86, all concerning Operation of Department Toll Projects.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

The primary purpose of this rulemaking is to provide contracting flexibility for the department with respect to the operation of its toll projects. In addition, the rulemaking corrects outdated terminology and eliminates unnecessary provisions.

Amendments to §27.80, Definitions, add the defined term "Toll Project Entity" to mean an entity authorized by law to acquire, design, construct, finance, operate, and maintain a toll project, including a regional tollway authority under Transportation Code, Chapter 366, a regional mobility authority under Transportation Code, Chapter 370, or a county under Transportation Code, Chapter 284.

Amendments to §27.81, Free Use of Turnpike Project By Military Vehicle, replace the term "turnpike" with the term "toll" for consistency with current statutory provisions. The amendments also add new subsection (g), which provides that if the department enters into an agreement with a toll project entity to operate a toll project, the use of the project by military vehicles may be governed by the rules and policies of the toll project entity in lieu of the requirements of the section, with exception of subsection (f).

Amendments to §27.82, Toll Operations, update the heading of subsection (f) to distinguish that subsection from new subsection (i). New subsection (i) provides that if the department enters into an agreement with a toll project entity to operate a toll project, the operation of the project may be governed by the rules and policies of the toll project entity in lieu of the requirements of the section, with the exception of subsections (d) and (g).

Repeal of §27.86, Veteran Discount Program, eliminates the stated requirements for an electronic toll collection customer to participate in the veteran discount program established pursuant Texas Transportation Code, §372.053. This rule was never implemented due to system limitations and the department has subsequently determined that the provisions are unnecessary.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Benjamin Asher, Director, Project Finance, Debt and Strategic Contracts Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Benjamin Asher has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years

in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be consistent regional policies and procedures for the operation of toll projects and elimination of an unnecessary rule.

COSTS ON REGULATED PERSONS

Benjamin Asher, has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Benjamin Asher has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Benjamin Asher, has also determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §§27.80 - 27.82 and the repeal of §27.86, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "operation of department toll projects." The deadline for receipt of comments is 5:00 p.m. on July 8, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

43 TAC §§27.80 - 27.82

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.007, which authorizes the department to enter into an agreement with a toll project entity to design, construct, operate, or maintain a toll lane on a state highway and to charge a toll for the use of one or more lanes of a state highway facility, Transportation Code, §228.059, which authorizes a toll collected for the use of a toll lane on a state highway pursuant to an agreement for tolling services with a toll project entity to be governed by the fee and fine structure of the entity issuing the initial toll invoice, Transportation Code, §362.901, which requires the commission to adopt rules relating to the free use of department toll projects by military vehicles, and Transportation Code, §372.053, which authorizes a toll project entity to establish a veterans discount program.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §228.007, §228.059, §362.901, and §372.053.

§27.80. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Comprehensive development agreement--An agreement as defined in §27.2 of this chapter (relating to Definitions).

(3) Department--The Texas Department of Transportation.

(4) Executive director--The executive director of the department or designee.

(5) Military vehicle--A vehicle owned by a branch of the armed forces of the United States or national or state guard of the United States, properly marked according to the rules of the owning military branch, and not registered with a state motor vehicle registry to an individual, corporation, or entity other than the owning military branch or organization.

(6) Operational concession--An agreement under which a private operator purchases a right to conduct a business involving a toll project for a specified number of years in return for a fee paid to the department and the assumption of operation and maintenance responsibilities.

(7) Tag--A transponder placed on or within a vehicle that is capable of transmitting information used to assess or collect tolls.

(8) Toll project--A project of the Texas Department of Transportation as defined by Transportation Code, §201.001.

(9) Toll project entity--An entity authorized by law to acquire, design, construct, finance, operate, and maintain a toll project, including a regional tollway authority under Transportation Code, Chapter 366, a regional mobility authority under Transportation Code, Chapter 370, or a county under Transportation Code, Chapter 284.

§27.81. Free Use Of Toll [~~Turnpike~~] Project By Military Vehicles.

(a) Purpose. Transportation Code, §362.901, requires the commission to adopt rules to allow a military vehicle to use toll [~~turnpike~~] projects without payment of a toll or fare. This section describes the policies implementing §362.901.

(b) General. Except as provided in subsection (f) or (g) of this section, the department will allow free use of toll [~~turnpike~~] projects by military vehicles in convoy and individually. Military vehicles will be allowed free use in all lanes except where it would be unsafe or impractical to do so.

(c) Electronic toll collection (ETC) lanes. The department prefers that military vehicles use ETC lanes. Military vehicles will not be required to carry transponders or be registered with a toll customer service center in order to obtain free passage.

(d) Automated enforcement. The department will develop procedures so that military vehicle images recorded by automated violation enforcement systems, if any, will be rejected and violation notices will not be issued.

(e) Records. The department may maintain records of free passage of military vehicles on its toll [~~turnpike~~] projects for audit, reconciliation, and reporting purposes.

(f) Exception. To the extent of any inconsistency with the requirements of this subchapter, the provision of free passage for military vehicles on toll [~~turnpike~~] projects that are governed by a trust agreement or indenture in existence on the effective date of this subchapter shall be governed by the terms of that trust agreement or indenture.

(g) Operating agreements with a toll project entity. If the department enters into an agreement with a toll project entity to operate a toll project, the use of the project by military vehicles may be governed by the rules and policies of the toll project entity in lieu of the requirements of this section, with the exception of subsection (f) of this section.

§27.82. Toll Operations.

(a) Toll policies. The department shall adopt policies relating to toll collection and enforcement and the operation of customer service centers. The policies will authorize all fees imposed under this section to be paid by credit card, debit card not requiring the entry of a personal identification number (PIN), money order, personal or cashier's check, or cash. In adopting those policies, the department shall consider:

(1) whether those policies will provide ease of use by travelers and maximize mobility on toll projects;

(2) whether those policies will provide a high level of customer service;

(3) the requirements of project bond covenants;

(4) cost of operations;

(5) whether those policies will facilitate the auditing of customer service center operations and the marketing of toll projects; and

(6) whether those policies will maximize the preservation of revenue streams.

(b) Exception. Toll collection and enforcement policies adopted by the department are not subject to the requirements of §5.10 of this title (relating to Collection of Debts).

(c) Customer account fees. The department may charge fees to customers for purposes of establishing and administering electronic toll collection customer accounts. The commission by minute order will establish customer account fees. In establishing customer account fees, the commission will consider the cost of operations, including the estimated cost to the department for labor, materials, storage, postage, and bank fees, as well as the requirements of project bond covenants. Customer account fees may be waived or dismissed in accordance with toll collection and enforcement policies adopted by the department under this section. Customer account fees may include fees for the following items:

(1) standard tags;

(2) specialty tags;

(3) mailed or faxed account statements;

(4) account maintenance; and

(5) checks returned for insufficient funds.

(d) Toll rates. Except as provided in subsections (f) and (g) of this section, the commission by minute order will establish toll rates for the use of a toll project. In setting toll rates, the commission will consider:

(1) the results of traffic and revenue studies and any schedule of toll rates established in a traffic and revenue report;

(2) the requirements of project bond covenants; and

(3) vehicle classifications, type and location of the facility, and similar criteria that apply to a specific project.

(e) Administrative fees. Except as provided in subsection (f) of this section, the owner or lessee of a vehicle who fails to pay the amount owed as stated in an invoice from the department for the use of a toll project may be charged an administrative fee of $4 per unpaid invoice. Administrative fees may be waived or dismissed in accordance with toll collection and enforcement policies adopted by the department under this section.

(f) Operating agreements with a private entity. The commission may authorize a private entity under contract to operate a department toll project to set toll rates for the use of the toll project and to establish an administrative fee charged to owners of vehicles that use the toll project without paying the proper toll, if:

(1) the private entity is required under the contract to submit to the department for approval:

(A) the methodology for:

(i) the setting of tolls;

(ii) increasing the amount of the tolls; and

(iii) the setting of an administrative fee to be imposed to recover the cost of collecting an unpaid toll; and

(B) any proposed change in an approved methodology for the setting of a toll or an administrative fee;

(2) the private entity will operate the toll project under a comprehensive development agreement or under a contract resulting from a procurement under §27.83 of this chapter (relating to Contracts to Operate Department Toll Projects) that provides an operational concession to the private entity; and

(3) the commission approves the award of the contract to the private entity.

(g) Dynamic pricing. The executive director will establish toll rates for the use of a toll project where dynamic pricing is in effect. In setting the toll rates, the executive director will consider vehicle classifications, type and location of the facility, regional policies, and similar criteria that apply to a specific project. The toll rates may be established through the approval of an algorithm or other methodology designed to maintain a free-flowing level of traffic on one or more lanes of the toll project.

(h) Toll Assessment Review. An owner or lessee may, not later than the due date specified in the invoice from the department, send a

written request to the department for a review of the toll assessments contained in the invoice. If, after a review, the department determines that the tolls were assessed correctly, the customer will be responsible for paying the amount owed as stated in the invoice. If the department determines that any of the tolls were assessed incorrectly, the department will provide the customer with an updated balance due. If the customer fails to pay the amount owed by the due date specified in the first invoice after the review, the department may charge the customer an administrative fee, as described in subsection (e) of this section. A request under this subsection must be mailed to the department's customer service center at 12719 Burnet Road, Austin, Texas 78727, or submitted through www.txtag.org, and must include the following information:

(1) the customer's name, address, and contact information;

(2) the make, model, year, and license plate number of the vehicle associated with the tolls under review;

(3) the date, time, and location of the tolls under review;

(4) the reason that the tolls are being disputed; and

(5) if the dispute involves vehicle ownership, the date that the person purchased or sold the vehicle, as applicable.

(i) Operating agreements with a toll project entity. If the department enters into an agreement with a toll project entity to operate a toll project, the operation of the project may be governed by the rules and policies of the toll project entity in lieu of the requirements of this section, with the exception of subsections (d) and (g) of this section.

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

Filed with the Office of the Secretary of State on May 23, 2024.

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 7, 2024
For further information, please call: (512) 463-3164

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43 TAC §27.86

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.007, which authorizes the department to enter into an agreement with a toll project entity to design, construct, operate, or maintain a toll lane on a state highway and to charge a toll for the use of one or more lanes of a state highway facility, Transportation Code, §228.059, which authorizes a toll collected for the use of a toll lane on a state highway pursuant to an agreement for tolling services with a toll project entity to be governed by the fee and fine structure of the entity issuing the initial toll invoice, Transportation Code, §362.901, which requires the commission to adopt rules relating to the free use of department toll projects by military vehicles, and Transportation Code, §372.053, which authorizes a toll project entity to establish a veterans discount program.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §228.007, §228.059, §362.901, and §372.053.

§27.86. Veteran Discount Program.

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

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS
SUBCHAPTER H. HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY PERMITS

43 TAC §28.102

The Texas Department of Transportation (department) proposes the amendments to §28.102 concerning Authority's Powers and Duties.

EXPLANATION OF PROPOSED AMENDMENTS

These amendments grant the Hidalgo County Regional Mobility Authority (HCRMA) additional authority to issue permits for the operation of oversize/overweight vehicles on a designated roadway segment within Hidalgo County and clarify the limits of that authority. Transportation Code, §623.363(a)(2), authorizes the Texas Transportation Commission (commission) to designate additional routes for which HCRMA may issue oversize and overweight permits. The statute requires that the commission consult with HCRMA prior to the designation. The department worked with HCRMA to identify the additional route that would benefit the HCRMA permitting process.

Amendments to §28.102, Authority's Powers and Duties, clarify that the purpose of the rule is to authorize the issuance of permits by the HCRMA for roads listed under Transportation Code, §623.363, and those routes identified and designated by the commission. The amendments add an additional route designated by the commission for which HCRMA is authorized to issue permits for the operation of oversize/overweight vehicles. The added route is: the segment of W. Doffing Road from the intersection with Doffin Canal Road/S. Veterans Blvd (Spur 29) to 0.8 miles east of that intersection, which segment is not on the state highway system. This addition expands HCRMA's permitting authority for the operation of the roadways within its jurisdiction and allows HCRMA to provide more complete service to the motor carriers using the permits within Hidalgo County.

These amendments also require, prior to issuing any oversize/overweight permits on the newly added off-system roadway, HCRMA must demonstrate to the department's satisfaction that the roadway has sufficient structure to safely sustain the overweight loads. The amendments also dictate that it is the re-

sponsibility of HCRMA to maintain the off-system road and that the maintenance contract required between the department and HCRMA will provide for the allocation of permit fees between the department and HCRMA. Finally, the amendments dictate that HCRMA may not issue permits that authorize travel on this off-system segment of roadway after September 30, 2025.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The permit fee collected by HCRMA will be used to cover the cost of any additional damage to the roadway added by this amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT

James Stevenson, P.E., Director, Maintenance Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Stevenson has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be more efficient freight transportation and a potential for vehicle reduction.

COSTS ON REGULATED PERSONS

Mr. Stevenson has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Stevenson has considered the requirements of Government Code, §2001.0221, and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Stevenson has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §28.102 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line *"HCRMA OSOW Permitting."* The deadline for receipt of comments is 5:00 p.m. on July 8, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.369 authorizing the commission to adopt rules necessary to implement Subchapter S, Regional Mobility Authority Permits.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 623, Subchapter S.

§28.102. Authority's Powers and Duties.

(a) Authority authorized to issue permits. Subject to subsection (j) of this section, the [~~The~~] authority may issue a permit and collect a fee for the movement within the territory of the authority of a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C, but does not exceed loaded dimensions of 12 feet wide, 16 feet high, and 110 feet long, and does not exceed 125,000 pounds gross weight for travel on:

(1) the state-owned roads designated by Transportation Code, §623.363;

(2) US 281/Military Highway from Spur 29 to FM 1015;

(3) FM 1015 from US 281/Military Highway, south to the Progreso International Bridge;

(4) FM 2557 from US 281/Military Highway to Interstate 2;

(5) FM 3072 from Veterans Boulevard ("I" Road) to Cesar Chavez Road;

(6) US 281 (Cage Boulevard) from Spur 600 to Anaya Road; [~~and~~]

(7) U.S. Highway 83 Business from South Pleasantview Drive to South Bridge Avenue; and

(8) the segment of W. Doffing Road from the intersection with Doffin Canal Road/S. Veterans Blvd (Spur 29) to 0.8 miles east of that intersection, which segment is not on the state highway system.

(b) Surety bond. The authority shall obtain a surety bond in the amount set by the department to cover the estimated annual maintenance costs of roads identified in subsection (a) of this section. The department will draw on the bond only if revenue collected from permits issued under this subchapter is insufficient to pay for those costs and the authority fails to reimburse the department for those costs. The estimated maintenance costs will be based on the amortized cost of the identified roads, projected regular maintenance and operations costs, and the bridge consumption costs associated with the movement of overweight and oversize vehicles issued a permit by the authority.

(c) Verification of permits. The authority shall provide law enforcement and department personnel access to any of the authority's property to verify compliance with this subchapter by the authority or another person.

(d) Training. The authority shall provide or obtain any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training on request by the authority.

(e) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter with which the authority must comply for revenue collections and any payment made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or at the direction of the executive director of all permit issuance activities of the authority. To insure compliance with applicable law, audits at a minimum will include a review of all permits issued, financial transaction records related to permit issuance and vehicle scale weight tickets, and the monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the authority is not complying with this subchapter or other applicable law, the executive director will issue a notice to the authority allowing 30 days for the authority to correct any non-compliance issue. If the department determines that, after that 30-day period, the authority has not corrected the issue, the executive director may revoke the authority's authority to issue permits under this subchapter. The authority may appeal to the commission in writing the revocation of its authority under this subsection. If the authority appeals the revocation, the authority's authority to issue permits under this subchapter remains in effect until the commission makes a final decision on the appeal.

(h) Fees. Fees under this subchapter may be collected, deposited, and used only as provided by Transportation Code, §623.364. The authority may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency. On revocation of the authority's authority to issue permits, termination of the maintenance contract entered into under subsection (i) of this section, or expiration of this subchapter, the authority shall pay to the department all permit fees collected by the authority, less allowable administrative costs.

(i) Maintenance contract. The authority shall enter into a contract with the department for the maintenance of roads identified in subsection (a) of this section for which a permit may be issued under this subchapter. The contract will cover routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures, as determined by the department to maintain the current level of service, and may include other types of maintenance.

(j) Off-system roadways. Before the authority may issue a permit and collect a fee for the movement of a vehicle or vehicle combination on a roadway designated in subsection (a)(8) of this section, the authority must demonstrate to the satisfaction of the department that the roadway has sufficient structure to safely sustain the overweight loads. The authority is responsible for the maintenance and repair of each roadway designated in subsection (a)(8) of this section for which it issues a permit to the level of service determined by the department under subsection (i) of this section. The maintenance contract entered into under subsection (i) of this section must provide details of the allocation of the permit fees to be used for the maintenance of such a roadway. The authority may not issue a permit for the movement of a vehicle or vehicle combination after September 30, 2025, on a roadway designated in subsection (a)(8) of this section.

(k) [j] Reporting. The authority shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

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

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Becky Blewett
Deputy General Counsel
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