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

TITLE 1. ADMINISTRATION
PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 354. MEDICAID HEALTH SERVICES
SUBCHAPTER A. PURCHASED HEALTH SERVICES
DIVISION 27. COMMUNITY FIRST CHOICE
1 TAC §354.1369
The Texas Health and Human Services Commission (HHSC) adopts new §354.1369, concerning Attendant Base Wage. New §354.1369 is adopted without changes to the proposed text as published in the February 7, 2020, issue of the Texas Register (45 TexReg 823). Therefore, the rule will not be republished.

BACKGROUND AND JUSTIFICATION
The purpose of the new rule is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of this new rule, the minimum hourly base wage for a personal attendant was referenced in multiple rules. The Executive Commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, so that the base wage requirements for all of HHSC's programs and services will be contained in that one section. New §354.1369, Attendant Base Wage, requires that providers of Community First Choice (CFC) personal assistance services and CFC Habilitation pay a personal attendant at least the base wage specified in new §355.7051. Elsewhere in this issue of the Texas Register, HHSC is amending rules in Title 40, Chapters 9, 41, 44, and 49, and Title 1, Chapter 363, to cross-reference new §355.7051 and remove specific base wage provisions or superseded cross-references to base wage requirements.

COMMENTS
The 31-day comment period ended March 9, 2020.
During this period, HHSC received comments regarding the proposed new rule from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rule and HHSC's responses follow.
Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.
Response: HHSC appreciates TAHCH's support of the rule.
Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.
Response: HHSC appreciates TAHCH’s support of the rule.
Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.
Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the rule in response to this comment.

STATUTORY AUTHORITY
The new rule is adopted under 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, and (Texas Government Code §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

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TRD-202001532
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

ADOPTED RULES  May 1, 2020  45 TexReg 2825
CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER H. BASE WAGE REQUIREMENTS FOR PERSONAL ATTENDANTS

1 TAC §355.7051

The Texas Health and Human Services Commission (HHSC) adopts new §355.7051, concerning Base Wage for a Personal Attendant, in new Subchapter H, Base Wage Requirements for Personal Attendants. New §355.7051 is adopted without changes to the proposed text as published in the February 7, 2020, issue of the Texas Register (45 TexReg 825). Therefore, the rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rule is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum hourly wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of this new rule, the minimum hourly wage for a personal attendant was referenced in multiple rules. The executive commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, so that the base wage requirements for all of HHSC's programs and services will be contained in this one section. Elsewhere in this issue of the Texas Register, the executive commissioner is amending or adding new rules in Title 40, Chapters 9, 41, 44, and 49, and Title 1, Chapter 354 and 363, to cross-reference the base wage requirements in new §355.7051 and remove specific base wage provisions or superseded cross-references to base wage requirements.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed new rule from five entities: Texas Association for Home Care & Hospice, ADAPT of Texas, El Paso Desert ADAPT, Personal Attendant Coalition of Texas (PACT), and Raise it. Texas Association for Home Care & Hospice expressed support for the proposed rule project, while ADAPT of Texas, El Paso Desert ADAPT, PACT, and Raise it expressed opposition to the project. A summary of comments relating to the rule and HHSC's responses follow.

Comment: Four commenters urged that the base wage for a personal attendant be raised from $8.11 per hour to at least $15.00 per hour.

Response: The base wage is limited by available appropriations and was increased to $8.11 per hour as a result of Rider 45. HHSC made no revisions to the new rule in response to this comment.

Comment: One commenter stated that §355.7051 falls short of employing means of improving the recruitment and retention of community attendants.

Response: This comment is outside the scope of this rule project and, therefore, no revisions were made to this rule in response to the comment. HHSC is in the process of developing a state workforce strategic plan to improve the retention and recruitment of community attendants per Rider 157 of the 2020-21 GAA, Article II, Special Provisions, H.B. 1, 86th Legislature, Regular Session, 2019.

Comment: One commenter stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates the commenter's support of the rule.

Comment: One commenter expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates the commenter's support of the rule.

Comment: One commenter expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The commenter suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the rule in response to this comment.

STATUTORY AUTHORITY

The new rule is adopted under 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, and Texas Government Code §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §31.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

CHAPTER 363. TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM
SUBCHAPTER F. PERSONAL CARE SERVICES

1 TAC §363.603

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §363.603, concerning Provider Participation Requirements. The amendment to §363.603 is adopted without changes to the proposed text as published in the February 7, 2020, issue of the Texas Register (45 TexReg 828). Therefore, the rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to “personal attendants” from $8.00 to $8.11 per hour. Prior to the adoption of this amendment, the minimum hourly base wage for a personal attendant was referenced in multiple rules. The executive commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, so that the base wage requirements for all of HHSC’s programs and services will be contained in that one section. As a result of this consolidation, the executive commissioner is, at the same time, amending §363.603 and amending or adding new rules in Title 40, Chapters 9, 41, 44, and 49, and Title 1, Chapter 354, to cross-reference the base wage requirements in new §355.7051 and remove specific base wage provisions or superseded cross-references to base wage requirements.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed amendment from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rule and HHSC’s responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH’s support of the amendment.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TAHCH’s support of the amendment.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the amendment in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under 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, and Texas Government Code §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission

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For further information, please call: (512) 424-6637

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS REGULATED BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER

SUBCHAPTER A. APPLICATION PROCEDURES

7 TAC §2.104, §2.106

The Finance Commission of Texas (commission) adopts amendments to §2.104 (relating to Application and Renewal Fees) and §2.106 (relating to Denial, Suspension, or Revocation Based on Criminal History), in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

The commission adopts the amendments to §2.104 without changes to the proposed text as published in the February 28, 2020, issue of the Texas Register (45 TexReg 1283). The rule will not be republished.

The commission adopts the amendments to §2.106 without changes to the proposed text as published in the February 28, 2020, issue of the Texas Register (45 TexReg 1283). The rule will be republished. The change addresses a recommendation from the staff of the Texas Register, as discussed below.

ADOPTED RULES May 1, 2020 45 TexReg 2827
The commission received no written comments on the proposal.
In general, the purpose of the amendments to 7 TAC Chapter 2 is to implement changes resulting from the commission’s review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 2 was published in the Texas Register on December 27, 2019 (44 TexReg 8343). The commission received no comments in response to that notice.
The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.
The amendments are intended to reduce costs for individual residential mortgage loan originators (RMLOs), to ensure consistency with current licensing procedures and processes, and to make technical corrections.
The amendments to §2.104 would lower the RMLO application and annual renewal fees from $300 to $200, resulting in lower costs to individual RMLOs. These amendments are intended to reduce barriers for individuals to engage in the licensed occupation of being an RMLO regulated by the OCCC.
The amendments to §2.106 relate to the OCCC’s review of the criminal history of an RMLO applicant or licensee. The OCCC is authorized to review criminal history of RMLO applicants and licensees under Texas Occupations Code, Chapter 53, and Texas Finance Code, Chapter 180 (the Texas SAFE Act). Amendments to subsection (c)(1) list the types of crimes that directly relate to the duties and responsibilities of being a regulated lender, as provided by Texas Occupations Code, §53.025(a). Other amendments to §2.106 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between element of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §2.106 would implement these statutory changes from HB 1342. Other amendments to §2.106 include technical corrections, clarifying changes, and updates to citations.
In the original proposal, §2.106(b)(2) was only amended to delete the phrase “from prosecution, law enforcement, and correctional authorities” in accordance with HB 1342. The proposal was submitted to the Texas Register, staff of the Texas Register recommended adding the phrase “of this section” to §2.106(b)(2). Based on this recommendation, the adopted text of §2.106(b)(2) states: “(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation.”
The rule amendments are adopted under Texas Finance Code, §180.061, which authorizes the commission to adopt rules relating to criminal background checks for RMLOs, as well as rules relating to payment of RMLO application and renewal fees. In addition, Texas Finance Code, §180.004(b) authorizes the commission to implement rules to comply with Texas Finance Code, Chapter 180. The amendments to §2.106 are also adopted under Texas Occupations Code, §53.025, which requires each state licensing authority to issue guidelines relating to review of criminal history.
The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 53 and Texas Finance Code, Chapter 180.

§2.106. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete application to NMLS, including a set of fingerprints, and pays the fees required under §2.104 of this title (relating to Application and Renewal Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant’s fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprint information has been initially processed.

(b) Disclosure of criminal history by applicant. The applicant must disclose all criminal history information required to file a complete application with NMLS. Failure to provide any information required by NMLS or requested by the OCCC reflects negatively on the applicant’s character and general fitness to hold a license. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions;
(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation;
(3) proof that the applicant has maintained a record of steady employment, has supported the applicant’s dependents, and has otherwise maintained a record of good conduct; and
(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensed residential mortgage loan originator, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating residential mortgage loans involves making representations to borrowers regarding the terms of the loan and collecting charges in a legal manner. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;
(B) assault;
(C) any offense that involves the misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
(D) any offense that involves breach of trust or other fiduciary duty;
(E) any criminal violation of a statute governing credit transactions or debt collection;
(F) failure to file a government report, filing a false government report, or tampering with a government record;
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(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;
(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a licensee; and
(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) If a criminal conviction directly relates to the duties and responsibilities of the license, the OCCC will consider the following factors in determining whether to deny a license application, or suspend or revoke a license, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;
(B) the age of the person when the crime was committed;
(C) the amount of time that has elapsed since the person's last criminal activity;
(D) the conduct and work activity of the person before and after the criminal activity;
(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served;
(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
(G) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation.

(d) Crimes related to financial responsibility, character, or general fitness. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that relates to financial responsibility, character, or general fitness to hold a license, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A). If the applicant or licensee has been convicted of an offense described by subsections (c)(1), (f)(1), or (f)(2) of this section, this reflects negatively on the applicant or licensee's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the applicant will operate lawfully and fairly. The OCCC will consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3); (2) a conviction for, or plea of guilty or nolo contendere to, a felony during the preceding seven years or a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, as provided by Texas Finance Code, §180.055(a)(2) and §180.201(2)(A);

(3) a material misstatement or failure to provide information in a license application, as provided by Texas Finance Code, §180.201(2); and

(4) any other information indicating that the financial responsibility, character, or general fitness of the applicant or licensee do not command the confidence of the public or do not warrant the determination that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of Texas Finance Code, Chapter 180 and other appropriate regulatory laws of this state, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A).

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

Filed with the Office of the Secretary of State on April 17, 2020.

TRD-202001493

Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner

Finance Commission of Texas

Effective date: May 7, 2020

Proposal publication date: February 28, 2020

For further information, please call: (512) 936-7660

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §§25.7, 25.10, 25.11, 25.13, 25.17, 25.19, 25.24, 25.25, and 25.31, concerning contract forms and regulation of licensees. The amended rules are adopted without changes to the proposed text as published in the February 28, 2020, issue of the Texas Register (45 TexReg 1286) and will not be republished.

Texas Government Code (Government Code) §2001.039 requires a state agency to review each of its rules every four
years and either readopt, readopt with amendments, or repeal rules based upon the agency’s review and determination as to whether the reasons for initially adopting the rules continue to exist. On June 21, 2019, Chapter 25 was readopted without amendments pursuant to Government Code §2001.039. At the time it was presented to the commission, staff stated that certain amendments which were necessary would be proposed at a later date.

On August 19, 2019, Chapter 25 was amended in response to a legislative directive that the commission by rule prescribe the term of a permit to sell prepaid funeral benefits. As a result of the amendments, permits are no longer renewed, but are effective until revoked by the department or surrendered by the permit holder. However, §§25.17, 25.19, 25.24, 25.25, and 25.31 still refer to the “renewal” of the permits. Thus, amendments to these sections are now adopted.

These amendments eliminate all remaining references to the requirement that these permits be renewed.

Amendments to §§25.7, 25.10, 25.11, and 25.13 are adopted to update citations, correct typographical errors and eliminate outdated language.

The department received no comments regarding the proposed amendments.

SUBCHAPTER A. CONTRACT FORMS

7 TAC §25.7

The amendments are adopted pursuant to Texas Finance Code (Finance Code) §154.051, which provides that the commission may adopt rules necessary or reasonable to supervise and regulate prepaid funeral services.

Finance Code, Chapter 154, Subchapters C and H are affected by the amendments to Chapter 25, Subchapters A and B.

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

Filed with the Office of the Secretary of State on April 17, 2020.

TRD-202001481
Catherine Reyer
General Counsel
Texas Department of Banking
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Proposal publication date: February 28, 2020
For further information, please call: (512) 475-1301

SUBCHAPTER B. REGULATION OF LICENSES


Amendments to Chapter 25, Subchapter B, §§25.10, 25.11, 25.13, 25.17, 25.19, 25.24, 25.25, and 25.31 are adopted under Texas Finance Code (Finance Code), §154.051, which provides that the commission may adopt rules necessary or reasonable to supervise and regulate prepaid funeral services.

Finance Code, Chapter 154, Subchapters C and H are affected by the adopted amendments to Chapter 25, Subchapter B.

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

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TRD-202001482
Catherine Reyer
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1301

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.201

The Finance Commission of Texas (commission) adopts amendments to §86.201 (relating to Documentary Fee) in 7 TAC, Chapter 86, concerning Retail Creditors.

The commission adopts the amendments without changes to the proposed text as published in the February 28, 2020, issue of the Texas Register (45 TexReg 1288). The rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §86.201 is to implement changes resulting from the commission’s review of 7 TAC Chapter 86 under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 86 was published in the Texas Register on December 27, 2019 (44 TexReg 8343). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

The amendments to §86.201 are intended to provide clarity and to update a statutory citation. New subsection (a) would add a purpose statement to specify which vehicles the rule applies to.

An amendment at subsection (b)(1) would amend a citation to the statutory definition of “all-terrain vehicle” in the Texas Transportation Code. This definition was moved to Texas Transportation Code, §551A.001(1) by HB 1548, which the Texas Legislature enacted during the 2019 legislative session.

These amendments are adopted under Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to implement and enforce the statutory provision authorizing a documentary fee for certain retail installment transactions under Texas Finance Code, Chapter 345. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.
The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 345.

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

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TRD-202001491
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: May 7, 2020
Proposal publication date: February 28, 2020
For further information, please call: (512) 936-7659

TITLE 13. CULTURAL RESOURCES
PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
CHAPTER 6. STATE RECORDS
SUBCHAPTER A. RECORDS RETENTION SCHEDULING
13 TAC §6.10
(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 1, 2020, issue of the Texas Register.)

The Texas State Library and Archives Commission (commission) adopts amendments to §6.10, Texas State Records Retention Schedule. The amendments are adopted with changes to the proposed text as published in February 14, 2020, issue of the Texas Register (45 TexReg 981) and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS. The amendments are adopted, in part, to implement a management action adopted by the Sunset Advisory Commission in its Staff Report with Final Results, 2018-2019 (86th Legislature). Recommendation 2.6 requires the Commission to update the Texas State Records Retention Schedule by April 2020. Following Sunset's adoption of this recommendation, the commission created a工作组 of records managers and analysts to collaborate on updating the State Records Retention Schedule. The group met for five months, from June to October, examining each series and evaluating everything from the accuracy of the description to the possibility of bucketing with other series to make for a more concise general schedule. The draft schedule was circulated among state agency records management officers for review and informal comment. Based on the feedback received, the commission then formally proposed amendments to the schedule in February of this year.

In general, the amendments revise record series for accuracy, clarity, and applicability as well as combine similar record series to streamline the schedule for improved usage by state agencies. Amendments also remove obsolete and unnecessary language, update and correct statutory references, and clarify language as appropriate.

SUMMARY OF COMMENTS. The Commission received comments from Deborah McFadden, City of Fort Worth; the Texas State Board of Dental Examiners; Angela Ossar, Office of the Governor; Erinn Barefield, University of Texas Medical Branch; Jenny Alexander, Health and Human Services Commission; and Angela Pardo and Laurel Parke, State Office of Administrative Hearings. These commenters submitted a total of 408 comments.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 3.2.002 Employee Earnings Records.
RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.1.003 Delivery Reports.
RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.1.011 Photocopy and Telefax Usage Logs & Reports.
RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.2.022 Utility Usage Reports.
RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.2.024 Material Specifications.
RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. An official from University of Texas Medical Branch commented that a description should be added to RSIN 5.2.027 Space Utilization Reports.
RESPONSE. The commission agrees with this comment and has added a series description.

COMMENT. Several commenters commented on a similarity in context, scope, and retention period of RSINs 3.1.011 Employee Insurance Records and 3.1.031 Employee Benefits - Other than Health Insurance and suggested the series be combined.
RESPONSE. The commission agrees with these comments and has combined all employee benefit and insurance records under RSIN 3.1.011. RSIN 3.1.031 has been deleted.

COMMENT. An official from Health and Human Services commented that records under RSIN 3.1.031 should only be kept for two years after their first open enrollment period, stating that after initial hire, these records are maintained by the Employees Retirement System of Texas.
RESPONSE. In response to other comments, the commission has deleted this series and combined all records of selection by employees of insurance options and other benefits in RSIN 3.1.011 (Employee Benefits). The commission declines to
amend the AC Definition, as records of enrollment selections are likely to be referenced during term of employment; agencies may already dispose of forms once they have been superseded.

COMMENT. An official from the Office of the Governor commented that RSIN 5.2.020 Supply Usage Records should be deleted, stating these records are transitory.

RESPONSE. The commission disagrees that supply usage records are transitory information, as they may be used when conducting inventories. The commission deleted this series as an individual records series, but amended the description of RSIN 5.2.006 (Inventory and Property Control Records) to include usage records.

COMMENT. An official from University of Texas Medical Branch commented on a similarity in context, scope, and retention period of RSINs 5.2.024 Material Specifications and 5.2.025 Equipment Descriptions and Specifications and suggested the series be combined.

RESPONSE. The commission agrees with this comment and has made the recommended change combining both series under RSIN 5.2.024 Material Specifications and deleting RSIN 5.2.025 Equipment Descriptions and Specifications.

COMMENT. Several commenters commented on a similarity in context, scope, and retention period of RSINs 5.5.001 Billing Detail - Telecommunications and 5.5.002 Telephone Activity Records, and suggested 5.5.001 be combined in the financial record series.

RESPONSE. The commission agrees with this comment and has combined RSIN 5.5.001 (Billing Detail - Telecommunications) and RSIN 5.5.002 (Telephone Activity Records). A cross-reference to RSIN 4.1.001 (Accounts Payable Information) has been added for clarification.

COMMENT. An official from University of Texas Medical Branch commented suggesting the increase of the retention period for RSIN 5.2.019 Service Orders to match the local government schedule retention period.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change at this time.

COMMENT. Several commentators commented with questions or concerns regarding the increase in retention period of fiscal record series from FE+3 to FE+5, specifically RSINs 4.1.001 Accounts Payable, 4.1.009 Accounts Receivable Information, 4.5.002 Fiscal Management Reports, 4.5.009 USAS Reports - Annual, and 4.8.001 Banking Records. The commenters generally cited the increase in financial and administrative burdens the increased retention period would create.

RESPONSE. The commission agrees that increasing the retention period of many series in Category 4 would be unduly burdensome for state agencies, in terms of storage costs and retention responsibilities. Therefore, the retention periods for RSINs 4.1.001, 4.1.009, 4.5.009, 4.8.001, and 4.9.001 will remain at FE+3 and not increased to FE+5. However, the commission believes that the value in retaining Investment Transaction Files and Fiscal Management Reports outweighs the potential increase in financial and administrative burden an additional two-year retention period might add. A retention period of FE+5 would result in these records being kept over two legislative sessions. Therefore, the retention periods for RSINs 4.1.006 and 4.5.002 will remain at FE+5 as proposed.

COMMENT. An official from University of Texas Medical Branch commented suggesting the addition of a new record series for surveillance videos.

RESPONSE. The commission agrees with this comment and has created the suggested new series under RSIN 5.1.018, with a retention period of AV. While this is a new retention series, it should not impose any new burden on governmental entities as the agencies will be able to make their own determinations regarding how long the video is administratively valuable, and have likely been doing so already.

COMMENT. An official from University of Texas Medical Branch commented that the reference in the archives note of RSIN 1.1.023 Organization Charts should be changed to "Texas State Library and Archives Commission," not division. They also recommended a reference be added that disposition logs need not be submitted for minor changes.

RESPONSE. The commission has fixed the typographical error in the archives note as suggested. The commission declines to make the remaining suggested change, as Organization Charts is an archival series and as such, disposition of prior versions must be documented on disposition logs.

COMMENT. An official from University of Texas Medical Branch commented with a formatting suggestion regarding blank "title" series for record series with subsseries.

RESPONSE. The commission agrees with this comment and has eliminated all "empty" RSINs.

COMMENT. An official from University of Texas Medical Branch commented with a formatting suggestion regarding removing blank lines indicating where record series were removed from the schedule.

RESPONSE. The commission agrees with this comment and has removed all blank table rows.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent paragraph spacing between lines in the schedule.

RESPONSE. The commission agrees with this comment and has revised formatting of schedule with consistent paragraph spacing.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent naming of information in the remarks section of record series across the schedule.

RESPONSE. The commission agrees with this comment and has revised formatting of schedule with consistent order of remarks.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent use of acronyms across the schedule.

RESPONSE. The commission agrees with this comment and has added relevant acronyms for ease of searching.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent capitalization of "RETENTION NOTE," "CAUTION," "ARCHIVES NOTE," and "See RSIN" across the schedule.

RESPONSE. The commission agrees with these comments and has amended all "Retention Notes" as "CAUTION" notes.
and made the recommended change to "See RSIN" across the schedule.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent use of commas or semicolons when implementing a list.

RESPONSE. The commission disagrees with this comment and declines to make the change. The commission follows the advice of the Chicago Manual of Style, which allows for the use of semicolons depending on the nature of the list, for example, if list items are complex or contain commas.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding consistent and accurate page numbers across the schedule.

RESPONSE. The commission agrees with this comment and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions regarding a reference on the Amendment Notice Page.

RESPONSE. The commission has deleted the bullet note from the Amendment Notice, as bullets have not been used in previous versions of the schedule.

COMMENT. An official from University of Texas Medical Branch commented with suggestions regarding formatting and removing the legal citation for RSINs 2.1.007 Computer Software Programs, 2.1008 Computer Hardware Documentation, and 2.1.009 Hardware and Software Technical Documentation.

RESPONSE. The commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods. Additionally, the commission has made the recommended formatting change as suggested.

COMMENT. An official from University of Texas Medical Branch commented with formatting suggestions for RSIN 1.2.001 Destruction Authorizations to remove "e.g." and define the "TSLAC" acronym.

RESPONSE. The commission declines to make the first suggested change, as the use of "e.g." is necessary to illustrate that the example form number does not exclude other types of forms from this series. The commission declines to make the second suggested change, as it does not add any additional clarity to the text as proposed.

COMMENT. Several commentators commented regarding classification of training materials related to RSINs 1.1.043 Training Materials and 3.3.030 Training Administration Records suggesting further clarification to be added as well as redefinition of AC.

RESPONSE. The commission agrees that these two series contain redundant record types. RSIN 1.1.043 has been edited to only include non-personnel training, and RSIN 3.3.030 has been edited to only include internal personnel training. In addition, the definition of AC has been clarified to mean close of training session, after training materials superseded, or termination of training program, as applicable. Additionally, cross-references have been added to the relevant record series for clarity.

COMMENT. An official from the Office of the Governor commented regarding the inclusion of "information resources strategic plan" in the description of RSIN 1.1.055 Strategic Plans.

RESPONSE. The commission agrees with this comment and has edited the series description for clarification.

COMMENT. An official from the Office of the Governor commented regarding clarification of description for RSIN 2.1.007 Software Programs because software programs that are licensed for use by an agency are not state records.

RESPONSE. The commission agrees with this comment and has amended the series description to include agency-developed automated applications.

COMMENT. An official from the Office of the Governor commented suggesting the exclusion of RSIN 2.2.001 System Monitoring Records from the disposition documentation requirement.

RESPONSE. The commission has added a remark that monitoring files that are automatically overwritten need not be included in disposition logs. Printed monitoring logs, or logs that are not automatically overwritten, must still be included on disposition logs.

COMMENT. Several commentators commented regarding the clarification of RSIN 3.4.004 Overtime Schedules and Authorizations, including changing the description to specify the series covers only the authorizations to work overtime (and possibly comp time), not the records of time worked. Commenters also suggested revert to the title of the original.

RESPONSE. The commission agrees with most of these comments and has amended the series description to include records created to schedule time worked outside of or in addition to their regular working hours. A cross-reference has also been added for RSIN 3.4.006 (Timekeeping Records). The commission disagree with the comment to revert the title and declines to make the suggested change, as the series description has been amended to provide clarity.

COMMENT. Several commentators commented to suggest adding distinct titles to the following series' subseries: RSINs 3.1.013 Employment Contracts, 3.1.040 Employee Drug Testing and Screening Records, 5.1.001 Contract Administration Files, and 5.1.013 Insurance Policies, 5.3.007 Bid Documentation.

RESPONSE. The commission agrees with these comments and has given all series unique titles.

COMMENT. An official from University of Texas Medical Branch commented to suggest the addition of the FMLA citation to RSIN 3.4.007 Time Off and/or Sick Leave as well as inquire about the fiscal year retention period.

RESPONSE. The commission has added the relevant citation to the series' remarks regarding fiscal year requirements and the commission agrees with the addition of the FMLA citation and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented to suggest clarification of the descriptions for RSINs 3.3.027 Aptitude and Skills Tests and 3.3.028 Aptitude and Skills Tests (Test Papers).

RESPONSE. The commission agrees with this comment and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented to suggest clarification of the descriptions for RSINs 3.3.027 Aptitude and Skills Tests and 3.3.028 Aptitude and Skills Tests (Test Papers).
COMMENT. An official from University of Texas Medical Branch commented to point out that the retention period for RSIN 3.3.004 Benefit Plans does not match the citation requirements.

RESPONSE. The commission agrees with this comment and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented to recommend shortening the title of RSIN 3.3.023 Reimbursable Activities, Requests and Authorizations to Engage in to "Reimbursable Activity Records" to be more concise.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented to suggest amending the definition of AC for RSINs 3.2.001 Employee Deduction Authorizations, 3.2.005 W-4 Forms, and 3.2.008 Direct Deposit Application/Authorizations in order to be clearer and more accurate and provided recommended changes.

RESPONSE. The commission agrees with these comments and has made the recommended changes.

COMMENT. Officials from the State Office of Administrative Hearings commented that the proposed amendment to RSIN 3.1.042 ADA Accommodation Requests is inconsistent with the retention period of RSIN 3.1.001 Applications for Employment – Not Hired. An ADA Accommodation Request for an applicant that is not hired has a retention period of 3 years while an application for employment for someone not hired has a retention period of 2 years. The commenter recommended having one standard for both series.

RESPONSE. The commission agrees with the comment and is reducing the retention period from 3 years to 2 years in line with 29 C.F.R. §1602.31. There is now a standard retention period for both series.

COMMENT. An official from University of Texas Medical Branch commented recommending changes to the a, b, and c subseries of RSIN 3.1.040 Employee Drug Testing and Screening Records by suggesting the addition of a caution note that these records should be kept as medical records and filed separately from personnel files, the addition of a caution note that pre-employment drug screening records should be kept with selection records per RSIN 3.1.014 Employment Selection Records, and the addition of a complimenting consent form signed by employee for release of information or understanding and agreeing that a test can be done.

RESPONSE. The commission declines to make the suggested changes since medical records already have a separate retention period than other personnel records. A cross-reference to these series has been added to RSIN 3.1.014 Employment Selection Records. Consent forms for releases of information are already included in RSIN 3.1.041 (Employee Acknowledgement and Agreement Forms) to provide clarification.

COMMENT. An official from University of Texas Medical Branch commented altering the title of RSIN 3.1.036 Apprenticeship Records in order to be clearer and more accurate and provided recommended change.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with changes to RSIN 3.1.014 Employment Selection Record, including adding a reference note to see RSIN 3.3.028 for pre-employment skills tests, or add pre-employment skills tests to description and removing it from RSIN 3.3.028 description; adding a reference to RSIN 3.1.036 for apprenticeship records; and adding a cross reference to drug screening, RSIN 3.1.040.

RESPONSE. The commission agrees with the comment to add a reference to RSIN 3.3.028 and the change has been made. The commission declines to add a cross-reference to RSIN 3.1.036 (Apprenticeship Records), as that series is for summary records. The commission agrees with the recommendation to add a cross-reference to RSIN 3.1.040 (Employee Drug Testing and Screening Records) and amend the series description, and it has made the suggested change.

COMMENT. An official from University of Texas Medical Branch suggested changing the retention of RSIN 3.1.014 Employment Selection Records to AC+2; AC = hiring decision made, or position closed.

RESPONSE. The commission declines to make the suggested change, but it has amended the series retention period to AC+2, where AC = Date of the making of the record or the personnel action involved, whichever occurs later. This change is consistent with the language of 29 C.F.R. §1602.31.

COMMENT. An official from University of Texas Medical Branch suggested removing the citation from RSIN 3.1.013a/b Employment Contracts if there is no guidance for retention. Possibly include SB20 reference.

RESPONSE. The commission agrees with this comment and has added "SB20 (84th Leg.)" to the legal citation to explain why the retention period is lower for contracts executed prior to 9/1/15.

COMMENT. An official from University of Texas Medical Branch suggested changing the retention of RSIN 3.1.001 Applications for Employment – Not Hired to "AC+2; AC = Hiring decision made, or position closed.

RESPONSE. The commission declines to make the suggested change, but it has amended the series retention period to AC+2, where AC = Date of the making of the record or the personnel action involved, whichever occurs later. This change is consistent with the language of 29 C.F.R. §1602.31.

COMMENT. An official from University of Texas Medical Branch suggested moving RSIN 2.1.012 Biennial Information Security Plan from the 2.1 Automated Applications category to a different category where it functionally fits.

RESPONSE. The commission agrees with this comment and has moved the record series under category 2.2 Computer Operations and Technical Support and changed the series RSIN to 2.2.018.

COMMENT. An official from University of Texas Medical Branch suggested altering the description of RSIN 1.3.002 Publication Development Files to include that this series is used to create RSIN 1.3.001 State Publications. Example: “*m, photo negatives, prints, flats, etc. that are used to create State Publications.”
RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch suggested altering the title and description of RSINs 1.2.016 Disaster Recovery Service Approval Form (RMD 113) and 1.2.015 Disaster Recovery Service Transmittals (RMD 109) to remove specific mentions of TSLAC forms, RMD 113 and 109, and provided recommended changes.

RESPONSE. The commission agrees with these comments and has made the recommended changes to series titles and descriptions for clarification.

COMMENT. An official from University of Texas Medical Branch suggested altering RSIN 1.2.005 Records Retention Schedule to reference the SLR 105 form since all state agencies must use this form to submit their retention schedule.

RESPONSE. The commission agrees with these comments and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch suggested returning to the original description of RSIN 1.2.003 Forms History and Maintenance to use "including" instead of "e.g." for better flow.

RESPONSE. The commission declines to make the suggested stylistic change as suggested but has edited the series description for clarity.

COMMENT. An official from Health and Human Services commented that RSIN 1.1.077 Release of Records Documentation seems problematic in light of HIPAA and suggested adding a note that information released under other statutes may have additional retention requirements. The commenter also suggested including "Not through Public Information Act" for clarity.

RESPONSE. The commission agrees with the first comment and has made the recommended change. The commission disagrees that adding "Not through the Public Information Act" adds clarity to the text and declines to make that suggested change. The commission believes the description provides the necessary clarity.

COMMENT. An official from University of Texas Medical Branch commented with concerns about combining working files records into RSIN 1.1.070 Agency Rules, Policies, and Procedures and the definition of AC, which would require maintaining all working copies and drafts until the termination of the policy or procedure, and that policy/procedure is updated annually, then this retention period is now requiring agencies to keep all working copies and drafts indefinately while the policy is still active. They question the continued relevance of working copies in this context.

RESPONSE. The commission agrees with this comment and has amended the AC Definition to "AC = Until superseded, or termination of program, rules, policies, or procedures, whichever applicable."

COMMENT. An official from University of Texas Medical Branch commented with suggested changes to RSIN 1.1.038 Customer Surveys, including adding an additional trigger to the AC definition since not all surveys end in a summary report and revising the retention period to reflect that surveys are raw data used to make up the summary report and do not need to be maintained for the same retention period as the final summary report.

RESPONSE. The commission has amended the AC Definition to clarify retention period as suggested. The commission declines to change the retention period, as this series is not equivalent to "raw data"; it includes actual surveys and survey collection materials, so it is more substantive than RSIN 1.1.065 (Reports and Studies [Non-Fiscal] - Raw Data).

COMMENT. Officials from State Office of Administrative Hearings commented with concerns about the proposed addition of "other feedback" to the description of RSIN 1.1.006 Complaint and Feedback Records as overly-broad and susceptible to the creation of confusion, misapplication, and inconsistency in identifying records that fall under this series. This proposed amendment elicits the following questions: How will this impact feedback provided through customer surveys per RSIN 1.1.038 Customer Surveys? Will this change the retention period for a survey instrument containing feedback (i.e., from a retention period of AC to AC+2)?

RESPONSE. The commission agrees with this comment and has amended the series description to only include unsolicited customer feedback that does not fall into other record series such as RSIN 1.1.038 Customer Surveys.

COMMENT. An official from University of Texas Medical Branch commented with concerns about the changed title of RSIN 1.1.007 Correspondence - High-Level stating that while high level correspondence is a better title than administrative correspondence, it still leaves a lot of interpretation to the agencies regarding the meaning of high level. The commenter suggested using Correspondence - Executive as an alternative. The commenter also recommended changing the archives note reference to new series title.

RESPONSE. After reviewing this comment, the commission believes the best way to clarify this series is to not amend the series title as originally proposed, and instead keep the title as "Administrative Correspondence." However, the commission has amended the series description to provide clarity on the definition of "Administrative Correspondence."

COMMENT. An official from University of Texas Medical Branch commented with recommendations to add a caution note to RSIN 4.5.002 Fiscal Management Reports that states there might be additional retention requirements for some reports similar to grants note. External entities that require specific reports and information to be submitted might have very specific requirements that are longer than required retention period.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from Health and Human Services commented with a request to clarify the note in the Remarks of RSIN 4.5.003 Annual Financial Reports, which refers to the Texas Administrative Code, and add a pinpoint cite which would be helpful consistent with the pinpoint cites throughout the rest of the document.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from Health and Human Services commented with an error in the description of RSIN 4.5.010 Unclaimed Property Reports and Documentation where there’s a reference to "treasurer" when it should be "comptroller."

RESPONSE. The commission agrees with this comment and has made the recommended change.
COMMENT. An official from University of Texas Medical Branch commented with a request to clarify the description of RSIN 4.7.003 Uncollectable Accounts.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a request to add a reference to other funding sources in the description of RSIN 4.7.008 Grant Records.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a request to clarify the description/remarks of RSIN 5.1.001 Contract Administration Files and remove the reference to performance bonds as well as a request to remove the government code citation since it does not reference the AC+4 retention period.

RESPONSE. The commission agrees with the first comment and has updated cross-references. The commission agrees with this comment and has added "SB20 (84th Leg.)" to the legal citation to explain why the retention period is lower for contracts executed prior to 9/1/15.

COMMENT. An official from University of Texas Medical Branch commented with a request to clarify the description of RSIN 5.1.010 Licenses and Permits for Non-vehicles to describe what the series does include, not what it does not include.

RESPONSE. The commission agrees with this comment and has amended the series description and added a caution note for clarification.

COMMENT. An official from University of Texas Medical Branch commented with a request to flesh out the descriptions of RSIN 5.1.013 subseries based on the local schedule descriptions for these records.

RESPONSE. The commission agrees with these comments and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented with requests to clarify the RSINs 5.2.002 Building Construction Project Files and 5.2.003 Building Plans and Specifications subseries by adding a reference to the remarks of 5.2.002 to point to RSIN 5.3.007 Bid Documentation, updating the descriptions of 5.2.002 and 5.2.003, and posed a question regarding classification of bid documentation associated with building construction projects.

RESPONSE. The commission agrees with these comments and has made the recommended changes. Records always should be classified under the longest applicable record series.

COMMENT. An official from University of Texas Medical Branch commented with recommendation to remove the archives note in RSIN 5.2.003a Building Plans and Specifications since there is an "R" in the archival field and not in the archival field for 5.2.003b.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a clarifying question regarding the inclusion of maintenance in the description when maintenance records has its own separate series.

RESPONSE. The commission has amended the descriptions of both series and added a cross-reference to RSIN 5.2.006 (Inventory and Property Control Records) to clarify that RSIN 5.2.006 is for general maintenance records and RSIN 5.2.008 (Equipment History File) is for individual equipment maintenance logs.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to either clarify the title of RSIN 5.2.008 Equipment History File or combine with record series counterpart for vehicles.

RESPONSE. The commission has changed the series title as suggested. COMMENT. An official from University of Texas Medical Branch commented with suggestions to change the title or the description of RSINs 5.2.010 Equipment Manuals and 5.2.011 Equipment Warranties to include "vehicles".

RESPONSE. The commission has added vehicle manuals to the series description of RSIN 5.6.007 (Vehicle Titles & Registrations) for clarification.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a caution note to RSIN 5.2.022 Utility Usage Reports to account for agencies that operate their own utilities.

RESPONSE. The commission has added a caution note to this series that excludes records for state agencies that operate their own utilities.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add additional legal citations to RSIN 5.3.003 Freight Claims, 43 TAC 218.61(d) and 49 USC 14706(e), which discusses the statute of limitations of 2 years for someone to bring civil action after resolution of claim.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a caution note to RSIN 5.3.004 Shipping Information mentioning that shipping information for dangerous or hazardous goods could have a longer retention period.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to clarify the descriptions and legal citations of RSIN 5.3.007 Bid Documentation subseries to reflect the specific timeframes of the retention period application and reference the senate bill that led to the change in retention.

RESPONSE. The commission agrees with the comments regarding the descriptions and has made the recommended changes. The commission agrees with this comment and has added "SB20 (84th Leg.)" to the legal citation to explain why the retention period is lower for contracts executed prior to 9/1/15.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a legal citation to the remarks of RSIN 5.4.001 Occupational Accident Reports and Associated Documentation, 28 TAC 120.1(c), which references to follow the CFR, but also lists employer responsibility including the record of all injuries - with list of required items.

RESPONSE. The commission agrees with this comment and has made the recommended change.
COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add examples from the legal citation to the description of RSIN 5.4.007 Hazardous Materials Training Records-- "Date of class, roster of attendees, subjects covered, and instructors".

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a legal citation to the description of RSIN 5.4.013 Continuity of Operations Plan-- "per Texas Labor Code, 412.054"-- since this citation is requiring agencies to create a disaster plan.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to clarify RSIN 5.4.014 subseries by altering the descriptions and definition of AC.

RESPONSE. The commission agrees with these comments and has made the recommended changes.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to clarify RSIN 5.4.016a Hazardous Materials - Exposure/ Survey Records by altering the definition of AC.

RESPONSE. The commission agrees with this comment and has made the recommended change.

COMMENT. Officials from the State Office of Administrative Hearings commented with recommendations to combine RSINs 5.4.018 Annual Audit Plan and 5.4.019 Audit Peer Review - Working Papers within Category 1 as these records seem closely related to RSIN 1.1.002 Audits.

RESPONSE. The commission declines to make the suggested change as audit plans and peer reviews comprise a distinct set of records. To assist with the distinction, the commission has added clarifying cross-references to RSIN 1.1.002 (Audits), RSIN 5.4.018 (Annual Audit Plan), and RSIN 5.4.019 (Audit Peer Review - Working Papers).

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to include a reference to Log of PBX or operator call transfers in the description of RSIN 5.5.002 Telephone Activity Records as having key search terms within descriptions helps users actually find the records.

RESPONSE. The commission has added the term "call transfers" to series description to improve clarity.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a new record series to cover training sign in sheets, rosters, evaluations, registrations, etc., stating these types of records would not be included with the course content materials listed under 3.3.030 and 1.1.043. The commenter stated that these types of records would not meet the US retention period because each training course would be unique and would need a retention not connected to the class information being superseded.

RESPONSE. The commission had amended the description of RSINs 3.3.030 and 1.1.043 to include the types of information described in this comment and amended the AC definition for clarification.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to change the retention period of RSIN 1.1.023 Organizational Charts from US to AC; AC= Until superseded or obsolete.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the current retention period is sufficient and functionally equivalent to the suggested retention period.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to keep the retention period of RSIN 1.2.006 Records Transmittal Forms at AC+2.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change; with an AV retention period, state agencies are given more latitude in determining the appropriate retention period.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to keep the retention period of RSIN 1.2.006 Records Transmittal Forms at AC+2, change the remarks to include that form RMD 101 is obsolete, and recommend that TSLAC still be providing retention guidance on commonly used records series such as this. Even though the TSLAC form is obsolete, other agencies might have their own internal way of documenting records transmittal information for storing records.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as TSLAC is still providing guidance that this needs to be a record series maintained by state agencies; with an AV retention period, state agencies are given more latitude in determining the appropriate retention period. State agencies that use the State Records Center, for example, may not have to keep these records as long as state agencies using other vendors, as TSLAC keeps this data permanently in TexLinx (see TSLAC AIN 5E.028).

COMMENT. An official from University of Texas Medical Branch commented with suggestions to generalize the title and description of RSIN 1.2.011 Record Center Storage Approval Forms (RMD 106) by removing (RMD 106), change the retention period back to US or AC, and make the record series not obsolete.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as this series specifically refers to State Records Center storage authorizations, and it is not meant to cover general authorizations for other vendors; these general authorizations should be classified under RSIN 5.1.001a/b (Contract Administration Files). The obsolete series must remain on the schedule until the next revision, for any agencies that are still maintaining obsolete forms.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add a cross reference pointing to RSIN 3.1.036 for apprenticeship records in the remarks of RSINs 3.1.001 Applications for Employment - Not Hired and 3.1.002 Applications for Employment - Hired.

RESPONSE. The commission declines to make the suggested change, as RSIN 3.1.036 (Apprenticeship Records) is for summary records.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add "State Board, Commission, Committee and/or Council" to the beginning of each record series title for RSINs 1.1.058, 1.1.061, and 1.1.062.
RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as it does not add clarity to the text as proposed.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to remove current citations that don’t require a retention period and include in text of description as well as add reference to citations to document the requirement for the creation of the security plan for RSIN 2.1.012 Biennial Information Security Plan.

RESPONSE. The commission declines to make the suggested changes as the commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods. The commission declines to make the suggested change to add a reference, as it does not add clarity to the text as proposed.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to remove citation reference from RSIN 3.1.042 ADA Accommodation Requests because not relevant to retention instructions. Possibly move citation reference to description.

RESPONSE. The commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to keep retention period at AC+5 until it can be confirmed that the manual is not requiring it for RSIN 3.2.009 State Deferred Compensation Records.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the Manual instructions regarding vendor requirements apply to ERS’s use of vendors; most state agencies may access records through CAPPS. Agencies that do utilize vendors for State Deferred Compensation may add custom series to their individual schedules.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to change title of RSIN 3.3.001a Affirmative Action Plans - Employees to include both employees and apprenticeship programs per citation.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the referenced Manual cannot be accessed widely outside of agency HR departments and is not a publicly available reference.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to change title of RSIN 3.3.001a Affirmative Action Plans - Employees to include both employees and apprenticeship programs per citation.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to include "request" and "authorizations" in description not title of RSIN 3.3.023 Reimbursable Activities, Requests and Authorizations to Engage in.

RESPONSE. The commission declines to make the suggested change, as it does not improve clarity.

COMMENT. An official from University of Texas Medical Branch commented with a suggestion to add a cross reference in the remarks of RSIN 3.3.025 Job Procedure Records pointing to either RSIN 3.3.024 or RSIN 1.1.070 identifying how they are different.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the series description makes it clear that this series is for "position-by-position" procedures, while RSIN 1.1.070 (Agency Rules, Policies, and Procedures) is for agency-wide procedures.

COMMENT. An official from University of Texas Medical Branch commented with questions about record series item number styling and assignment for RSINs 3.3.027, 3.3.028 and suggested changing the RSIN to 3.3.027a - Aptitude and Skills Tests - Master Copy and 3.3.028b - Aptitude and Skills Tests - Completed Test Papers, as well as RSINs 1.1.020 and 1.1.021.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as historical RSINs should not be changed unless there is a compelling need.

COMMENT. An official from University of Texas Medical Branch questioned why work schedules are included in description of RSIN 3.4.006 Time and Attendance Records when they are also included in RSIN 3.3.020, which has an AV retention. The commenter suggested removal or rewording of this series.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as RSIN 3.3.020 (Work Schedules/Assignments) is meant to cover general work schedules and assignments, while this series is meant to document actual time worked by individuals, as well as deviation from work schedules. Actual time worked does not necessarily correspond with assigned work schedules.

COMMENT. An official from University of Texas Medical Branch commented suggesting combining RSINs 3.4.006 Time and Attendance Records and 3.4.007 Time Off and/or Sick Leave Requests.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as state agencies in Texas usually maintain the records in these series in two different systems that must be managed separately; the two types of records are typically managed by different custodians (i.e. HR manages time and attendance records, while supervisors manage leave requests).

COMMENT. An official from University of Texas Medical Branch commented suggesting changing the retention of RSIN 5.1.004 Mail and Telecommunication Listings from US to AC; AC= Significant change or list obsolete.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change as it is unnecessary. The existing retention period of US is sufficient and functionally equivalent to the suggested retention period.

COMMENT. An official from University of Texas Medical Branch commented suggesting combination of RSIN 5.4.001 Occupational Accident Reports and Associated Documentation and RSIN 5.1.014 and creation of 3 sub parts for Accident Reports: 5.4.001a - Accident Reports - Occupational; 5.4.001b - Accident Reports - Adults; and 5.4.001c - Accident Reports - Minors.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the proposed new series do not add clarification and instead could overcomplicate the retention period.
COMMENT. An official from University of Texas Medical Branch commented suggesting changing description reference from SORM back to TDI in RSIN 5.4.001 since 28 TAC 120.1 is a regulation of the Texas Department of Insurance. The commenter stated that while a report might also go to SORM, TDI is who is requiring it.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as SORM is the agency to which reports are submitted, so this provides useful context for records managers.

COMMENT. An official from University of Texas Medical Branch commented suggesting changing the legal citation, description, and remarks of RSIN 5.4.007 Hazardous Materials Training Records to reference the shorter retention requirement of asbestos training material.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the series is meant to be broad enough to cover all hazardous substances.

COMMENT. An official from University of Texas Medical Branch commented suggesting adding a sub category - 5.4.011b to accommodate "Visitor Control Registers - Registration Logs" or add it to the description of series to be included under RSIN 5.4.011a, as well as adding a series for a log maintained to document specific information on Representations before State Agency Visitors. The information collected on these visitors must be reported to the Texas Ethics Commission (TEC) per Chapter 2004, Government Code.

RESPONSE. The commission disagrees with this comment and declines to make the suggested changes, as this series already includes "logs" and "registers" in the description and this specific log is already covered under RSIN 1.1.053 (Visitor Control Registers).

COMMENT. An official from University of Texas Medical Branch commented suggesting a change to the description of RSIN 5.4.012 Security Access Records- "Records relating to the request for and issuance of keys, "i.e.".

RESPONSE. The commission disagrees with this comment and declines to make the suggested changes, as key requests are already included in the series description with the term "signed statements."

COMMENT. An official from University of Texas Medical Branch commented suggesting multiple changes and updates to RSIN 5.4.015 Hazardous Materials - Administrative Records, including moving the series under 5.2 Facilities, changing the title to "Asbestos Management Records" and specifying the description accordingly, and removing the 29 CFR 1910.1001 and 1910.1020(d)(ii) citations as they reference asbestos removal and for exposure records, but the retention guidance does not apply to abatement or this series.

RESPONSE. The commission disagrees with this comment and declines to make the suggested changes-- any series dealing with hazardous materials (even if related to building records) should be in the Risk Management category, this series is meant to be broad enough to cover all hazardous substances, and the commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods. One of the goals of these amendments was to streamline and modernize the schedule and provide for more efficient use.


RESPONSE. The commission disagrees with these comments as the commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods. While shorter retention periods are specified in citation, the 30 year retention period has been selected to simplify the retention requirements of the complex law. The commission declines to make the suggested change off adding legal citations and creating new series, as the proposed new series do not add clarification and overcomplicate the retention period. One of the goals of these amendments was to streamline and modernize the schedule and provide for more efficient use.

COMMENT. An official from University of Texas Medical Branch commented suggesting changing the RSIN 5.4.016 Hazardous Materials - Exposure/ Survey Records subseries to match citations: 5.4.016a - Employee Medical Record; 5.4.016b - Employee Medical Record - Exposure Records; and 5.4.016c - Employee Medical Record - First Aid Records. The commentator provided additional comments with description, retention, legal citations, and remarks for the series.

RESPONSE. The commission disagrees with this comment and declines to make the suggested changes, as the proposed new series do not add clarification and overcomplicate the retention period. One of the goals of these amendments was to streamline and modernize the schedule and provide for more efficient use.


RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the description explains that this series is meant only for medical monitoring related to exposure to toxic and hazardous materials and the additional legal citations do not add clarification and overcomplicate the retention period. One of the goals of these amendments was to streamline and modernize the schedule and provide for more efficient use.


RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the citations do not apply to emergency response records.

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COMMENT. An official from University of Texas Medical Branch commented suggesting the removal of legal citation references "per Texas Internal Auditing Act and Chapter 2102, Government Code." and "as described in the State Agency Internal Audit Forum (SAIAF) Peer Review Manual and Chapter 2102, Government Code." from the remarks of RSINs 5.4.018 Annual Audit Plan and 5.4.019 Audit Peer Review - Working Papers, respectively, and move to the description.

RESPONSE. The commission has evaluated all citations to ensure that they provide additional valuable context for the retention decision or other recordkeeping considerations if they do not provide specific retention periods.

COMMENT. An official from University of Texas Medical Branch commented suggesting the use of "Includes but is not limited to:" for lists across the schedule for consistency. If not, match use of commas, semicolons, or manner to list examples.

RESPONSE. The commission disagrees with this grammatical and stylistic comment and declines to make the suggested change, as it does not add clarity to the text as proposed.

COMMENT. An official from University of Texas Medical Branch commented recommending moving record series from newly created categories 4.8/4.9 Banking/Budgeting Records to already existing category numbers.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as new sections were added to the Fiscal Category to create a logical structure that allows for growth in future revisions, if required.

COMMENT. An official from University of Texas Medical Branch questioned why HRIS reports are being combined with a non-financial report series with a lower retention period if these reports are both personnel and payroll records.

RESPONSE. The commission has included HRIS reports in RSIN 1.1.067 (Reports and Studies [Non-Fiscal]), as HRIS reports contain summary payroll information, not individual payroll registers; these reports should only contain duplicate or summary information from more detailed payroll records maintained in other record series. Additionally, the schedule is media-neutral and must not prescribe retention periods based on records storage systems.

COMMENT. An official from University of Texas Medical Branch commented recommending RSIN 4.5.006 be kept as it originally was and not moved to a new category.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as new sections were added to the Fiscal Category to create a logical structure that allows for growth in future revisions, if required.

COMMENT. An official from University of Texas Medical Branch commented recommending removal of the acronym bar from the bottom of all pages in the introduction.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the acronym bar is included on every page to reduce the need to flip back and forth through the schedule.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to change the AC definition in the retention code bar (field 7): Possibly use, "After closed or see remarks field for specific retention instructions." or "See event trigger for specific retention instructions." Records series definition doesn't seem to fit explanation. Further comments encourage consistent changes to the retention code on the RRS and the URRS, and matching the AC definition in introduction to the retention codes section.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the definition of "AC" has not changed. The definitions provided in the RRS and the URRS are identical.

COMMENT. An official from University of Texas Medical Branch commented with suggestions for consistent use of commas, semicolons, and other methods to list information as it pertains to RSINs 1.1.048 Litigation Files, 2.1.009 Hardware and Software Technical Documentation, 2.1.010 Audit Trail Records, 3.1.014 Employment Selection Records, 3.1.021 Personnel Disciplinary Action Documentation, 3.3.004 Benefit Plans, and 5.4.015 Hazardous Materials - Administrative Records.

RESPONSE. The commission declines to make the suggested change, as the commission follows the advice of the Chicago Manual of Style, which allows for the use of semicolons depending on the nature of the list, for example, if list items are complex or contain commas.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add an additional series to cover working copies of all legislative reporting as it pertains to RSIN 1.1.055 Strategic Plans.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as working files are already including in other reports/reporting series, as needed.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add an additional series for leadership meetings with a longer retention than RSIN 1.1.063 Staff Meetings, similar to the URRS. "Executive meetings" or "Leadership Meetings would merit a higher need to be kept over regular staff meetings and might require archival review.

RESPONSE. The commission declines to make the suggested change as it is unnecessary at a statewide level. State agencies are free to retain executive level internal staff meeting notes for longer periods, if needed.

COMMENT. An official from the Office of the Governor commented that internal policies do not belong in RSIN 1.1.070 Agency Rules, Policies, and Procedures - Final. Internal policies tend to be documents like employee handbooks, information technology/security policies, travel policies--records that are not especially unique to an agency and therefore do not have historical value.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as it is up to the archival appraiser to determine if the internal policies of an agency have historical value. The archival code "R" is sufficient.

COMMENT. An official from University of Texas Medical Branch commented the use of "e.g." is not used throughout the schedule, for RSIN 1.2.001 Destruction Authorizations and 1.2.003 Forms History and Maintenance, in particular. The commenter points out that "for example" or "including" are used instead, and that consistency should be applied.

RESPONSE. The commission declines to make the suggested change, as it does not add clarity to the text as proposed and is unnecessary at this time.
COMMENT. An official from University of Texas Medical Branch commented that RSIN 5.4.017 Emergency Response and Recovery Records should be moved to be with COOP Plan - 5.4.013. Change RSIN to 5.4.013b and the use of examples in a series - commas vs. semicolons vs. "This series may include but is not limited to." The commenter states the format throughout schedule should be the same.

RESPONSE. The commission will not move this series, as the schedule must remain in RSIN order. A cross-reference has been added for clarification. Additionally, the commission declines to make the suggested stylistic changes; the commission follows the advice of the Chicago Manual of Style, which allows for the use of semicolons when list items are complex.

COMMENT. An official from University of Texas Medical Branch commented that the description of RSIN 1.3.001 State Publication contains mistakes and needs clarifying, "as defined in section xi," but there is not section xi and the description needs to be more inclusive of what constitutes a state publication and state guidance would be helpful and actual examples. Commentator also requests guidance and description of website files as state publications.

RESPONSE. The commission has corrected all page number references in the schedule. Additionally, the commission has amended the definition of State Publication on page 11 to include websites. There is no need to add a new series for websites, as the remark for RSIN 1.3.001 (State Publications) points to this definition. Other website-related records such as website design files or website code are already covered under RSIN 1.3.002 (Publication Development Files) and RSIN 2.1.007 (Computer Software Programs).

COMMENT. An official from University of Texas Medical Branch commented recommending the revision of retention periods of RSINs 3.1.019 Performance Appraisals and 3.1.022 Personnel Information or Action Forms to AC+2; AC = Until superseded or terminated, whichever sooner. They state, "if an evaluation isn't done yearly or on a regular basis, you would not want to dispose of all appraisals on file and then have no documents to reference for prior evaluation history" and "if no changes are made within the 2 year time frame, would you really want to destroy the official document that lists pay grade, position class, etc. without having something to replace it?".

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the retention period of 2 years is sufficient to meet the needs of most state agencies that follow the standard appraisal cycle. Agencies may retain for longer on their own schedules if they find their HR departments have an administrative need for it.

COMMENT. An official from University of Texas Medical Branch commented recommending the combination of RSINs 3.1.024 Physical Examinations/Medical Reports and 5.4.016 or matching the retention period of 5.4.016.

RESPONSE. The commission declines to make the suggested change, as medical monitoring related to hazardous materials exposure is controlled by different regulations and has different retention requirements.

COMMENT. An official from University of Texas Medical Branch commented recommending changing the description of RSIN 3.1.026 Criminal History Checks to include "background checks" to make it easier for a user to search and locate as well as create a new series for authorization to run information, a new se-

RESPONSE. The commission declines to make the suggested changes, as the term "background check" is too broad of a term that may include information other than criminal history, and the commission declines to create the suggested new series, as the majority of state agencies are not "consumer reporting agencies." Authorizations are already included in RSIN 3.1.041 (Employee Acknowledgement and Agreement Forms). Officer background checks are too specific for most state agencies and would be adopted as custom series on by agencies like DPS and TCOLE.

COMMENT. An official from University of Texas Medical Branch commented recommending revising the AC definition of RSIN 3.1.029 Employment Eligibility Documentation to match citation.

RESPONSE. The commission declines to make the suggested change, as "date the individual's employment is terminated" and "termination of employment" are consistent.

COMMENT. An official from University of Texas Medical Branch commented recommending adding a caution notice under RSIN 3.1.031 Employee Benefits - Other than Health Insurance pointing to Insurance benefits under 3.1.011.

RESPONSE. This commission combined RSIN 3.1.011 and 3.1.031, which obviates the need for a caution note.

COMMENT. An official from University of Texas Medical Branch commented recommending a note be added to RSIN 5.1.004 Mail and Telecommunications Listings about not needing to submit disposition logs for every minor changes.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as this is a disposition decision that can be made by state agencies on their individual schedules.

COMMENT. Officials from State Office of Administrative Hearings commented that the proposed new record series of RSIN 5.3.007 Bid Documentation include any "canceled procurement" records with the already-proposed sub-series for "invalid bids" with a retention period of AC+2 for both. Both types of records would likely be retained only for the purpose of documenting the fact that no contract was awarded, and therefore there is no business reason to distinguish them according to different retention periods or categories. If the records of invalid bids or canceled procurements became the subject of an audit or litigation, then they would be subject to a different records series and retention period.

RESPONSE. The commission disagrees with this comment and declines the make the suggested change, as canceled procurement records are already covered under RSIN 5.3.009 (Requests for Information).

COMMENT. An official from University of Texas Medical Branch commented that RSIN 5.3.010 Vendor Records/W-9 define the acronym IRS in the reference and the chapter referenced in the citation is called "retention of certificates" should the description include that terminology as well.

RESPONSE. The commission has defined the acronym as suggested. The commission declines to make the suggested description change, as it does not add clarity to the text as proposed.
COMMENT. An official from University of Texas Medical Branch commented that the following changes should be made to RSIN 5.4.016 Hazardous Materials - Exposure/ Survey Records: 1) Remove 29 CFR 1910.1020(d) it's listed twice; 2) Add parenth-esis around (ii) on second reference to citation; 3) Remove Health and Safety Code, section 502.009(g) because it references train- ing and hazard plan records, not exposure; and 4) Remove 29 CFR 1904.33 because it references incident reporting and the OSHA requirements listed for 5.4.001 with a CE+5 retention, not exposure.

RESPONSE. The commission has not removed the first citation from this series, as it is not a duplicate listing; one citation lists the types of records to be maintained, and another specific line in that section is listed in order to show whence the 30 year retention period comes. The commission agrees with the remaining suggestions and has made the changes as advised.

COMMENT. An official from University of Texas Medical Branch commented questioning how RSIN 5.4.015b Hazardous Materi- als - Exposure/ Survey Records differs from RSIN 3.1.024 Phys- ical Exams and Medical Reports. Both series state "for employ- ees whom periodic monitoring of health and fitness is required." but list different retention periods. AC+2 vs. US+2.

RESPONSE. The commission states that RSIN 5.4.016 (Hazardous Materials - Exposure/ Survey Records) is specifically for hazardous materials work. Hazardous material exposure is monitored under different citations and has different retention requirements than standard medical monitoring records. Not all employees who require regular medical monitoring may work with hazardous chemicals.

COMMENT. An official from University of Texas Medical Branch commented questioning how RSIN 5.4.015b Hazardous Materi- als - Exposure/ Survey Records differs from RSIN 3.1.024 Phys- ical Exams and Medical Reports. Both series state "for employ- ees whom periodic monitoring of health and fitness is required." but list different retention periods. AC+2 vs. US+2.

RESPONSE. The commission states that RSIN 5.4.016 (Hazardous Materials - Exposure/ Survey Records) is specifically for hazardous materials work. Hazardous material exposure is monitored under different citations and has different retention requirements than standard medical monitoring records. Not all employees who require regular medical monitoring may work with hazardous chemicals.

COMMENT. Officials from the State Office of Administrative Hearings commented questioning the deletion of the entire record series concerning Suggestion System Records RSIN 1.1.041, but do not provide for another record series under which these types of records should be kept.

RESPONSE. The commission disagrees with this comment, as "Suggestion System Records" is an obsolete record series. Records should be classified under alternate series as applicable (e.g. RSIN 1.1.006 "Complaint and Feedback Records," RSIN 3.1.018 "Grievance Records," RSIN 1.1.008 "Correspondence - General," etc.)

COMMENT. An official from the Office of the Governor com- mented questioned RSIN 3.2.010 HRIS Reports stating these reports do not have archival value and may contain confidential information (PII); they should not be classified under 1.1.067. This record series should not be deleted for that reason.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as it is up to the archival appraiser to determine if agency reports have historical value. The archival code "R" and remark that only substantive reports are archival are sufficient. The possible presence of PII may be evaluated by archival appraisers to determine if HRIS reports may be restricted.

COMMENT. An official from the Office of the Governor com- mented questioning the deletion of RSIN 4.6.002 Reconciliations stating by deleting this series and incorporating reconciliations into the Banking Records series, you do not give agencies a way to classify reconciliations that are unrelated to banking. Most of the reconciliations performed by our agency are between different financial systems of record and have nothing to do with banking.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as the deleted recon- ciliations series did not apply to general reconciliations; it was a Fiscal/Category 4 record. Fiscal reconciliations are now classi- fied under RSIN 4.1.009 (Accounts Receivable), and all non-fiscal reconciliations can be classified into other appropriate series, such as RSIN 2.2.013 (Quality Assurance Records).

COMMENT. An official from the Office of the Governor com- mented requesting a record series covering website records, stating this is the time to resolve that issue and create a new record series.

RESPONSE. The commission has amended the definition of State Publication on page 13 to include websites; websites are included in the definition of State Publication in 13 TAC 3.1(27). There is no need to add a new series for websites, as the re- mark for RSIN 1.3.001 (State Publications) points to this defini- tion. Other website-related records such as website design files or website code are already covered under RSIN 1.3.002 (Pub- lication Development Files) and RSIN 2.1.007 (Computer Soft- ware Programs).

COMMENT. An official from the Office of the Governor com- mented requesting a record series covering social media com- munications, stating it is not reasonable to expect a state agency to categorize individual social media posts, comments, or mes- sages under specific, disparate record series, as has been sugges- ted in SLRM trainings. SLRM and ARIS need to decide on a minimum retention period and archival requirement at the ac- count level and create a record series that captures this.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as any records posted on social media platforms are to be classified according to their content and function. The State RRS does not classify records based on format. State agencies may choose to adopt a custom series for transitory social media records if needed.

COMMENT. Officials from the State Office of Administrative Hearings commented "SOAH wholly supports and appreciates the elimination of obsolete or superfluous records series; the addition of necessary record series for organizational and clarity purposes; the consolidating or bucketing of multiple records series that are similar in function and/or type to create a more concise Texas RRS; and the addition or revision of record series descriptions to provide for enhanced clarity, consistency, and a better reflection of each record series."

RESPONSE. The commission agrees with this comment.

COMMENT. Officials from the State Office of Administrative Hearings commented "SOAH would be remiss to not mention the noticeable absence of a column for the designation of "Vital
Records” from the proposed schedule. The current version of the Texas RRS includes a column indicating whether a record series is considered vital, and we recommend that TSLAC consider retaining this designation because it is helpful in identifying agency records that are essential to the continuity of state agency operations."

RESPONSE. The commission declines to make the suggested change, as the Vital Record column is referencing an outdated version of the SLR 105 (standard form used to submit individual state agency retention schedules). The vital record column has been discontinued. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Branch commented requesting the addition of series for Historical documentation about record series categories, some of these larger decisions or opinions need to be continually referenced to provide details about retention period decisions. This type of information could also be applied to the creation of the RRS/URRS/Local Government Schedules. Knowing the history behind the decisions made and retention periods applied is extremely helpful for future explanation and justification. Commentator provided additional information about title, description, and retention period in subsequent comments.

RESPONSE. The commission disagrees with this comment and declines to make the suggested change, as schedule recertification checklist and revision notes are already maintained by TSLAC for 50 years, and working copies are maintained for a retention period of AV; there is no need to require state agencies to keep copies as well. Agencies may choose to keep their own recertification notes in a custom series if they find them administratively valuable beyond the previous recertification period.

COMMENT. An official from University of Texas Medical Branch commented with suggestions to add various information to the title, descriptions, remarks, and legal citations for series, including RSINs 3.1.034 Resumes - Unsolicited, 3.1.036 Apprenticeship Records, 3.1.041 Employee Acknowledgement and Agreement Forms, 1.1.014 Legal Opinions and Advice, 1.1.053 Registration Logs, 1.1.076 Subpoenas, 3.1.014 Employment Selection Records, and 5.2.019 Service Orders.

RESPONSE. The commission declines to make the suggested changes, as it does not add clarity to the text as proposed.

COMMENT. Several commentators commented with suggestions to add cross references to various record series across the schedule to increase ease of use and navigating the retention schedule.

RESPONSE. The commission agrees with these comments and has added the suggested cross references.

COMMENT. Several commentators commented with typographical and grammatical errors throughout the schedule and the recommended corrections as well as suggestions for consistency across the schedule impacting the appearance of legal citations, the use "and", spacing, page numbering etc.

RESPONSE. The commission agrees with these comments and has made the recommended changes.

COMMENT. Officials from the State Office of Administrative Hearings commented that they appreciate of changes to particular series that will foster efficiency, eliminate uncertainty, and provide clarification

RESPONSE. The commission agrees with these comments.

COMMENT. An official from the University of Texas Medical Board commented recommending the addition of a Pesticide and Herbicide Application Records series to document the application of chemicals such as pesticides, herbicides, and fertilizers to institutional property. Records include date used, weather conditions, application area, chemical applied, mix ratio, and coverage rate.

AC+2; AC = Date of application.

Agriculture Code, 76.114(c); 4 TAC 7.33(a); 4 TAC 7.144(a).

RESPONSE. This suggestion is beyond the scope of the proposed amendments. However, the commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending the addition of a Vehicle and Equipment Assignment Records series. This series documents the assignment of agency vehicles and equipment to personnel.

AC+2; AC = Date returned.

RESPONSE. This suggestion is beyond the scope of the proposed amendments. However, the commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending the addition of a consent forms record series to cover picture consents to be added to a website or publication. And consent forms for drug screens, or other consents, etc. Retention period of AC+2; AC = Consent authorized or consent no longer active, whichever longer. And, add a caution note that if an image is still being used the authorized consent documentation needs to be kept until the image is no longer being used.

RESPONSE. This suggestion is beyond the scope of the proposed amendments. However, the commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the Office of the Governor commented recommending the addition of an unfunded grant applications record series. Unfunded applications do not need to be kept as long as funded ones; UGMS regulations applies to funded applications only. TSLAC should establish a separate record series for unfunded grant applications.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending an explanation in a caution or retention note that even though many wage and hour records are only required to be kept 2 years or federal law for 3 years, Texas requires 4 for unemployment tax law so all associated should be kept 4, even though lower federal requirements? Research should be done to how this applies to each series.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending research be done to see which exact series needs to be kept per the Texas Unemployment Earning and Tax Laws. What is the breakdown in the differences between the CFR citation documents vs. what's needed for the TAC unemployment reporting requirements? I
think some time should be spent ensuring all documents with lower retention periods that are following the CFR guidance aren't conflicting whatever is needed for the 4 years needed to follow the Texas requirements. Double check all series to make sure they are being kept for proper length of time.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending a record series like RSIN 5.6.003 Inspection Repair and Maintenance Records - Vehicles be created for airplane maintenance records—as 14 CFR 135.439. Also see PS4050-01.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending matching the retention periods of RSIN 5.2.008 Equipment maintenance to vehicle maintenance and matching the retention periods of RSIN 5.2.008 Equipment History File (LA+3) and 5.6.003 (LA+1)

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the University of Texas Medical Board commented recommending various changes and additional research into RSIN 5.6.001a Aircraft Flight Logs: Shouldn't Government Code, Title 10, Chapter 2205, Subchapter A discussing travel logs be referenced in the description?: Should there be reference to the Texas Airplane Pool in the TAC code?: and are there any FAA citations regarding requirements? Seems like with such a highly regulated field that there would be legal references?

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from Health and Human Services Commission commented recommending a new series be created RE: Canceled procurements, HHSC recommends AC, where AC=Date of cancellation. These records have no value to us once the procurement is canceled and actually pose a risk to the integrity of the procurement process if we choose to pursue a similar procurement later and these unused evaluations become available via open records request.

RESPONSE. This suggestion is beyond the scope of the proposed amendments. However, the commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from Health and Human Services Commission commented recommending RSIN 4.7.008 Grant Records be considered contract records for the purposes of compliance with Govt. Code 441.1855 (SB20) (based on CPA feedback) and updating this series as appropriate.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented recommending the creation of a new series or subseries under RSIN 4.7.008 Grant Records for Grants - Not Awarded. Possible retention of AC+2; AC = Notification that grant is not awarded.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented recommending the combination of various procedure series into RSIN 1.1.070 Agency Rules, Policies, and Procedures, including RSINs 4.7.001 Accounting Policies and Procedures, 3.3.024 Personnel Policies and Procedures, and 1.2.014 Records Management Policies and Procedures.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from the Office of the Governor commented recommending all internal policies & procedures be consolidated into a single record series, citing no legal mandate, and the need to simplify internal policy & procedure documents from seven separate series, particularly in the age of automation where agencies need to simplify retention requirements as much as possible. Records series that include internal policy and procedures and should be consolidated into a single series include: 1.1.070 - Agency Rules, Policies, and Procedures; 1.2.014 - Records Management Policies and Procedures; 2.2.011 - Data Processing Policies and Procedures; 3.3.024 - Personnel Policies and Procedures; 3.3.025 - Job Procedure Records; 4.7.001 - Accounting Policies and Procedures Manual; 5.1.014 - Office Procedures.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented recommending research into the retention period of RSIN 1.2.014 Records Management Policies and Procedures and why it doesn't match RSIN 1.1.070 Agency Rules, Policies, and Procedures.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented recommending research into why RSIN 1.1.064 Agency Performance Measures Documentation has its own separate series with a lower retention, but on every other legislative report series working documentation is now included as a part of the AC+6 retention requirements. Should this series be changed to a generic Legislative reporting raw data or supporting documentation series - to include: Agency Performance Measures Docs, Working files for Biennial or agency narrative reports, strategic plans, etc.?

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

COMMENT. An official from University of Texas Medical Board commented with recommendations for RSIN 3.3.001 subseries combining RSIN 3.3.001a Affirmative Action Plans - Employees and combining RSIN 3.3.001b Affirmative Action Plans - Apprenticeship Programs recommending the two series, researching the citation 29 CFR 30.12(d), changing to cover subcontractor and contractors in 3.3.001b and moving apprenticeship records to 3.3.001a.

RESPONSE. The commission will take this recommendation into consideration for further research in future revisions.

In addition to the changes from the above comments, the Commission identified and made non-substantive grammatical and typographical changes to the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.185(f), which grants authority to the Texas State Library and Archives Commission to prescribe
by rule a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court. The amended section is also proposed under Government Code, §441.199, which authorizes the Commission to adopt rules it determines necessary for the state's management and preservation of records.

§6.10. Texas State Records Retention Schedule.

(a) A record listed in the Texas State Records Retention Schedule (5th Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described.

Figure: 13 TAC §6.10(a)

(b) A record listed in the University Records Retention Schedule must be retained for the minimum retention period indicated by any university or institution of higher education.

Figure: 13 TAC §6.10(b) (No change.)

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

Filed with the Office of the Secretary of State on April 20, 2020.
TRD-202001511
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: May 10, 2020
Proposal publication date: February 14, 2020
For further information, please call: (512) 463-5591

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §§24.3, 24.11, 24.14, 24.25, 24.27, 24.29, 24.33, 24.35, 24.49, 24.127, 24.129, 24.227, and 24.363, relating to classifications for water and sewer utilities with changes to the proposed text as published in the December 27, 2019, issue of the Texas Register (44 TexReg 8172). The rules will be republished. The amendments will implement the changes required by sections 1, 2 (in part), 3, 7, 8, 9, and 11 of Senate Bill 700, passed in the 86th Regular Legislative Session and effective September 1, 2019, relating to changes in the classification of water and sewer utilities, the issuance of emergency orders by the commission and the Texas Commission on Environmental Quality(TCEQ), and the continuation of temporary rates for nonfunctioning utilities that are acquired by another utility. The proposed amendments make changes to 16 TAC §24.3 to conform certain definitions to the definitions found in TWC §13.002, delete terms that are defined using language that is repeated elsewhere in 16 TAC Chapter 24, delete terms that are also defined in 16 TAC Chapter 22, and delete terms that appear only in 16 TAC §24.3 and nowhere else in 16 TAC Chapter 24. Definitions of some commonly used ratemaking terms are also deleted. The amendments are adopted under Project Number 49798.

The commission received comments and reply comments on the proposed amendments from the Office of Public Utility Counsel(OPUC) and the Texas Association of Water Companies(TAWC).

Comments on the preamble.

OPUC recommended modifying the preamble to clarify that the deletion of certain definitions from 16 TAC §24.3 constitutes a repeal of those sections and adding a section-by-section explanation of the proposed deletions to the preamble. TAWC agreed that clarifying the reason why each definition was deleted may be helpful to stakeholders.

Commission response:

The commission declines to amend the preamble as recommended by OPUC because it disagrees with OPUC’s application of the term "repealed" to a subsection within a rule. If a rule as a whole is deleted, then the rule is repealed. If only a subsection of a rule is deleted, then the rule is amended. The commission also declines to provide the definition-by-definition analysis recommended by OPUC and TAWC and instead provides the following summary to address the deleted definitions.

The terms "intervenor" and "protestor" are defined in 16 TAC §22.2 and would not be defined differently for the purposes of a water case under 16 TAC Chapter 24. All defined acronyms such as "TCEQ" were deleted and instead defined when they appear throughout Chapter 24. Terms like "amortization," "annualization," "functional cost category," "functionalization," and "net book value" were deleted because they are common ratemaking terms. The terms "acquisition adjustment," "financial assurance," "return on invested capital," and "temporary water rate provision for mandatory water use reduction" are addressed in specific rules within Chapter 24. The terms "general rate revenue," "license," "licensing," "multi-jurisdictional," "purchased sewage treatment," and "rate region" are used only once or not at all in Chapter 24 outside of §24.3. The terms "reconnect fee," "sewage," and "tap fee" are commonly used terms in the industry. The terms "public utility" and "retail public utility" were combined into a single definition with "water and sewer utility" similar to how they are presented in TWC §13.002(23).

Comments on specific terms deleted from 16 TAC §24.3.

OPUC recommended adding a savings clause to make clear that the amendments to 16 TAC §24.3 do not affect any case filed before the effective date of the amendments. OPUC also recommended that the Commission retain the following terms and definitions: "active connection," "base rate," "block rates," "certificate of convenience and necessity(CCN)," "known and measurable," "main," "mandatory water use reduction," "point of use," "ratepayer," and "water use restrictions." TAWC agreed with retaining these definitions and suggested specific modifications to the existing definitions of the following terms: "active connection," "inactive connection," "block rates," and "ratepayer." TAWC and OPUC also recommended maintaining a definition of "landowner" that conforms exactly to the definition in TWC §13.002(1-a) and retaining the definition of point of use or point of ultimate use with a modification to clarify that this term refers to a service connection point. Finally, TAWC recommended broadening the definition of "nonfunctioning system or utility" to allow a
utility that acquires a system with "problems" to apply for a temporary rate even if the problems do not rise to the level of those enumerated in the current definition of nonfunctioning system or utility.

Commission response:

The commission agrees that the amendments to 16 TAC §24.3 do not affect pending applications that were filed before the effective date of these amendments; therefore, the addition of a savings clause to 16 TAC §24.3 is unnecessary. Additionally, the majority of the amendments delete the definition of a term completely, rather than changing how the term is defined, which should not materially affect a case that was filed before the adoption of the term was deleted. The commission amends the definition of "landowner" in 16 TAC §24.3 to match the definition in TWC §13.002(1-a). The commission retains the definition of "point of use or point of ultimate use" modified as follows: "Point of Use—The primary service connection point where water is used or sewage is generated." The commission also retains the existing definition of "water use restriction" because it clarifies the meaning of "16 TAC §24.3, subpar. 3." Because utility is a commonly used ratemaking term, it can be difficult to provide a definition that is appropriate for every context in which the term could be used. The commission retains the term "main" because it is a common term in the water industry that has the same meaning when used in the commission's rules.

The commission retains the definition of "block rate" because it was replaced with a definition of "minimum monthly charge." The phrase "base rate" is often used to collectively refer to a utility's fixed rate and volumetric charges as opposed to a utility's pass-through charge that is separate from these base charges; therefore, replacing "base rate" with a more specific term like "minimum monthly charge" will avoid confusion. The commission retains the definition of "block rate" because it is used only once in 16 TAC Chapter 24 and is not used at all in the sections of the TWC applicable to the commission. The commission responds to the definition of "certificate of convenience and necessity" because defining this term does not require any needed guidance for implementing the sections of the TWC or commission rules that address issuance of and requirements related to CCNs. The commission retains to the definition of "water use restriction" in 16 TAC §24.3 because a utility is a commonly used ratemaking term, it can be difficult to provide a definition that is appropriate for every context in which the term could be used. The commission retains the term "main" because it is a common term in the water industry that has the same meaning when used in the commission's rules.

When the commission amends TWC §24.3(b), TAWC recommended amending 16 TAC §24.29 by changing the time required between filings to increase rates under TWC §§13.187, 13.1871, 13.18715, and 13.1872(c)(2) that is included in 16 TAC §24.29(c). Currently, this includes exceptions for filings classified as a minor tariff change under 16 TAC §24.25(b)(2). The commission declines to expand the list at this time for the same reason the commission has declined to adopt the additions TAWC proposed to 16 TAC §24.25(b)(2). Namely, that such a change is beyond the scope of the proposed rule amendments, which amended 16 TAC §24.23(c) only to the extent necessary to reflect the addition of a fourth classification, Class D, for water and sewer utilities.

Comments on the amendments to 16 TAC §24.29.

If the commission declines to adopt the recommendation to expand the type of minor tariff changes authorized in 16 TAC §24.25(b)(2), TAWC recommended amending 16 TAC §24.29, which limits a utility to filing a base rate case only once in a 12-month period. Specifically, TAWC recommended creating an exception to this filing limitation for requests to change extension and construction policies or fees and policies related to payments by credit card; requests to adopt or revise rates charged to recover costs associated with using a water system for fire suppression; and requests to add rates for new meter sizes not currently served by a utility. OPUC opposed this recommendation on the grounds that expanding the list of exceptions could unnecessarily create rate uncertainty for customers.

Commission response:

The commission declines to adopt TAWC's recommendation to expand the existing list of exceptions to the time required between filings made to increase rates under TWC §§13.187, 13.1871, 13.18715, and 13.1872(c)(2) that is included in 16 TAC §24.29(c). Currently, this includes exceptions for filings classified as a minor tariff change under 16 TAC §24.25(b)(2). The commission declines to expand the list at this time for the same reason the commission has declined to adopt the additions TAWC proposed to 16 TAC §24.25(b)(2). Namely, that such a change is beyond the scope of the proposed rule amendments, which amended 16 TAC §24.23(c) only to the extent necessary to reflect the addition of a fourth classification, Class D, for water and sewer utilities.

Comments on 16 TAC §24.44.
TAWC suggested that amendments to 16 TAC §24.44, relating to recovery of rate-case expenses, may be appropriate because the current rule does not address recovery of rate-case expenses incurred for applications filed by a Class C utility under TWC §13.18715 or a Class D utility under TWC §13.1872(c)(2). OPUC recommended that such a change is unnecessary because 16 TAC §24.44 applies to rate-case expenses incurred as a result of filing a rate change application pursuant to TWC §13.187 or TWC §13.1871 and both TWC §13.18715(applicable to Class C utilities) and TWC §13.1872(c)(2)(applicable to Class D utilities) reference the procedures used in TWC §13.1871.

Commission response:
The commission acknowledges that amendments to 16 TAC §24.44 may be necessary to expressly reflect the increase in the number of water and sewer utility classes from three to four because the existing rule specifically references rate change applications filed under TWC §§13.187 and 13.1871 and not TWC §§13.18715 and 13.1872(c)(2). However, no proposed amendments to 16 TAC §24.44. were published as part of this project, and the commission declines to adopt a change that was not noticed.

Comments on the amendments to 16 TAC §24.127.
TAWC recommended additional amendments to 16 TAC §24.127, relating to financial records, to allow utilities to use the National Association of Regulatory Utility Commissioners’ uniform system of accounts based on annual operating revenues, rather than the number of connections, if appropriate.

Commission response:
The commission declines to adopt TAWC’s proposed changes to 16 TAC §24.127 because TWC §13.002 classifies utilities based on the number of connections served, and not on annual revenues.

Comments on the amendments to 16 TAC §24.227.
TAWC pointed out that new 16 TAC §24.227(c) includes requirements for applications submitted under TWC §13.258, which provides for a Class A utility to apply for an amendment of CCN held by a municipal utility district to allow the utility to have the same rights and powers under the certificate as the municipal utility district, that exceed the requirements in the statute. TAWC recommended that the commission adopt a separate rule to implement TWC §13.258 and consider adopting a special form for this type of CCN amendment.

Commission response:
The commission modifies the proposed version of 16 TAC §24.227(c) to conform with TWC §13.258. The commission declines to adopt a special form for this type of CCN amendment because TWC §13.258(c) clearly enumerates the information that must be submitted with an application of this type and bars the commission from requiring any additional information.

All initial and reply comments, including any not specifically referenced herein, were fully considered by the commission.

SUBCHAPTER A. GENERAL PROVISIONS
16 TAC §§24.3, 24.11, 24.14
Statutory Authority
The amendments are adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility’s actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.


§24.3. Definitions of Terms.
The following words and terms, when used in this chapter, have the following meanings, unless the context indicates otherwise.

2. Affected person--Any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.
3. Affiliated interest or affiliate--
   (A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;
   (B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;
   (C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;
(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(4) Billing period--The period between meter reading dates for which a bill is issued or, if usage is not metered, the period between bill issuance dates.

(5) Class A Utility--A public utility that provides retail water or sewer utility service to 10,000 or more taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(6) Class B Utility--A public utility that provides retail water or sewer utility service to 2,300 or more taps or active connections but fewer than 10,000 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(7) Class C Utility--A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 2,300 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(8) Class D Utility--A public utility that provides retail water or sewer utility service to fewer than 500 taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

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

(10) Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but does not include municipal corporations unless expressly provided in TWC Chapter 13.

(11) Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(12) Customer class--A group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

(13) Customer service line--The pipe connecting the water meter to the customer's point of consumption or the pipe that conveys sewage from the customer's premises to the service provider's service line.

(14) District--District has the meaning assigned to it by TWC §49.001(a).

(15) Facilities--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(16) Inactive connection--A water or wastewater connection that is not currently receiving service from a retail public utility.

(17) Incident of tenancy--Water or sewer service provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(18) Landowner--An owner or owners of a tract of land, including multiple owners of a single deeded tract of land, as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(19) Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(20) Minimum Monthly Charge--The fixed amount billed to a customer each month even if the customer uses no water or wastewater.

(21) Municipality--Cities existing, created, or organized under the general, home rule, or special laws of this state.

(22) Municipally owned utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(23) Nonfunctioning system or utility--A system that is operating as a retail public utility and

   (A) is required to have a CCN and is operating without a CCN; or

   (B) is under supervision in accordance with §24.353 of this title (relating to Supervision of Certain Utilities); or

   (C) is under the supervision of a receiver, temporary manager, or has been referred for the appointment of a temporary manager or receiver, in accordance with §24.355 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.357 of this title (relating to Operation of a Utility by a Temporary Manager).

(24) Person--Natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.
(25) Point of use—The primary service connection point where water is used or sewage is generated.
(26) Potable water—Water that is used for or intended to be used for human consumption or household use.
(27) Potential connections—Total number of active plus inactive connections.
(28) Premises—A tract of land or real estate including buildings and other appurtenances thereon.
(29) Rate—Every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.
(30) Requested area—The area that a petitioner or applicant seeks to obtain, add to, or remove from a retail public utility’s certificated service area.
(31) Retail public utility—Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.
(32) Retail water or sewer utility service—Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.
(33) Service—Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under TWC Chapter 13 to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.
(34) Service area—Area to which a retail public utility is obligated to provide retail water or sewer utility service.
(35) Stand-by fee—A charge, other than a tax, imposed on undeveloped property:
   (A) with no water or wastewater connections; and
   (B) for which water, sanitary sewer, or drainage facilities and services are available; water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve the property is available; or major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve the property are available.
(36) Temporary rate for services provided for a nonfunctioning system—A rate charged under TWC §13.046 to the customers of a nonfunctioning system by a retail public utility that takes over the provision of service for a nonfunctioning retail public water or sewer utility service provider.
(37) Test year—The most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.
(38) Tract of land—An area of land that has common ownership and is not severed by other land under different ownership, whether owned by government entities or private parties; such other land includes roads and railroads. A tract of land may be acquired through multiple deeds or shown in separate surveys.
(39) Water and sewer utility, utility, or public utility—Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.
(40) Water supply or sewer service corporation—Any non-profit corporation organized and operating under TWC chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer utility service to a person who is not a member, except that the corporation may provide retail water or sewer utility service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold.
(41) Water use restrictions—Restrictions implemented to reduce the amount of water that may be consumed by customers of the utility due to emergency conditions or drought.
(42) Wholesale water or sewer service—Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

(a) Purpose. This section establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.
(b) Application. This section applies to new and existing owners or operators of retail public utilities that are required to provide financial assurance under this chapter.
(c) Financial assurance must be demonstrated by compliance with subsection (d) or (e) of this section, unless the commission requires compliance with both subsections (d) and (e) of this section.
(d) Irrevocable stand-by letter of credit. Irrevocable stand-by letters of credit must be issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation. The retail public utility must use the standard form irrevocable stand-by letter of credit approved by the commission. The irrevocable stand-by letter of credit must be irrevocable for a period not less than five years, be payable to the commission, and permit a draw to be made in part or in full. The irrevocable stand-by letter of credit must permit the commission’s executive director or the executive director’s designee to draw on the irrevocable stand-by letter of credit if the retail public utility has failed to provide continuous and adequate service or the retail public utility cannot demonstrate its ability to provide continuous and adequate service.
(e) Financial test.

(1) An owner or operator may demonstrate financial assurance by satisfying the leverage and operations tests that conform to the requirements of this section, unless the commission finds good cause exists to require only one of these tests.

(2) Leverage test. To satisfy this test, the owner or operator must meet one or more of the following criteria:
   
   (A) The owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets;
   
   (B) The owner or operator must have a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt payments;
   
   (C) The owner or operator must have sufficient unrestricted cash available as a cushion for two years of debt service. Restricted cash includes monetary resources that are committed as a debt service reserve which will not be used for operations, maintenance or other payables;
   
   (D) The owner or operator must have an investment-grade credit rating from Standard & Poor's Financial Services LLC, Moody's Investors Service, or Fitch Ratings Inc.; or
   
   (E) The owner or operator must demonstrate that an affiliated interest is capable, available, and willing to cover temporary cash shortages. The affiliated interest must be found to satisfy the requirements of subparagraphs (A), (B), (C), or (D) of this paragraph.

(3) Operations test. The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. An affiliated interest may provide a written guarantee of coverage of temporary cash shortages. The affiliated interest of the owner or operator must satisfy the leverage test.

(4) To demonstrate that the requirements of the leverage and operations tests are being met, the owner or operator must submit the following items to the commission:

   (A) An affidavit signed by the owner or operator attesting to the accuracy of the information provided. The owner or operator may use the Applicant's Oath adopted by the commission as part of an application filed under §24.233 of this title (relating to Contents of Certificate of Convenience and Necessity Applications) for the purpose of meeting the requirements of this subparagraph; and
   
   (B) A copy of one of the following:
      
      (i) the owner or operator's independently audited year-end financial statements for the most recent fiscal year including the "unqualified opinion" of the auditor; or
      
      (ii) compilation of year-end financial statements for the most recent fiscal year as prepared by a certified public accountant (CPA); or
      
      (iii) internally produced financial statements meeting the following requirements:
         
         (I) for an existing utility, three years of projections and two years of historical data including a balance sheet, income statement and an expense statement or evidence that the utility is moving toward proper accountability and transparency; or
         
         (II) for a proposed or new utility, start up information and five years of pro forma projections including a balance sheet, income statement and expense statement or evidence that the utility will be moving toward proper accountability and transparency during the first five years of operations. All assumptions must be clearly defined and the utility must provide all documents supporting projected lot sales or customer growth.

   (C) In lieu of meeting the leverage and operations tests, if the applicant utility is a city or district, the city or district may substantiate financial capability with a letter from the city's or district's financial advisor indicating that the city or district is able to issue debt (bonds) in an amount sufficient to cover capital requirements to provide continuous and adequate service and providing the document in subparagraph (B)(i) of this paragraph.

(5) If the applicant is proposing service to a new CCN area or a substantial addition to its current CCN area requiring capital improvements in excess of $100,000, the applicant must provide the following:

   (A) The owner must submit loan approval documents indicating funds are available for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers if the application is a sale, transfer, or merger; or
   
   (B) The owner must submit loan approval documents or firm capital commitments affirming funds are available to install:
      
      (i) the plant and equipment necessary to serve projected customers in the first two years of projections; or
      
      (ii) a new water system or substantial addition to an existing water system if the applicant is proposing service to a new CCN area or a new subdivision.

(6) If the applicant is a nonfunctioning utility, as defined in §24.3(23) of this title (relating to Definitions of Terms), the commission may consider other information to determine if the proposed certificate holder is capable of meeting the leverage and operations tests.


(a) The commission may issue an emergency order in accordance with Texas Water Code (TWC) Chapter 13, Subchapter K-1 under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water and Sewer Utilities), with or without a hearing:

   (1) to appoint a person under §24.355 of this title (relating to Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver), §24.357 of this title (relating to Operation of a Utility by a Temporary Manager), or TWC §13.4132 to temporarily manage and operate a utility that has discontinued or abandoned operations or that is being referred to the Office of the Texas Attorney General for the appointment of a receiver under TWC §13.412;
   
   (2) to compel a retail public utility that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate retail water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the retail public utility's actions or inactions;
   
   (3) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if discontinuance of service or serious impairment in service is imminent or has occurred;
   
   (4) to authorize an emergency rate increase if necessary to ensure the provision of continuous and adequate retail water or sewer service to the utility's customers under TWC §13.4133;
   
   (A) for a utility for which a person has been appointed under TWC §13.4132 to temporarily manage and operate the utility; or
(B) for a utility for which a receiver has been appointed under TWC §13.412;

(5) to establish, on an expedited basis, in response to a request by the Texas Commission on Environmental Quality (TCEQ), reasonable compensation for the temporary service required under TWC §13.041(b)(2) and to allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment;

(6) to compel a retail public utility to make specified improvements and repairs to a water or sewer system owned or operated by the utility under TWC §13.253(b):

(A) if the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area;

(B) after providing a retail public utility notice and an opportunity to be heard at an open meeting of the commission; and

(C) if the retail public utility has provided financial assurance under Texas Health and Safety Code §341.0355 or TWC Chapter 13;

(7) to order an improvement in service or an interconnection under TWC §13.253(a)(1)-(3).

(b) The commission may establish reasonable compensation for temporary service ordered under subsection (a)(3) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(c) For an emergency order issued under subsection (a)(4) of this section:

(1) the commission will coordinate with the TCEQ as needed;

(2) an emergency rate increase may be granted for a period not to exceed 15 months from the date on which the increase takes effect;

(3) the additional revenues collected under an emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service;

(4) the effective date of the emergency rates must be the first day of a billing cycle, unless otherwise authorized by the commission;

(5) any emergency rate increase related to charges for actual consumption will be for consumption after the effective date. An increase or the portion of an increase that is not related to consumption may be billed at the emergency rate on the effective date or the first billing cycle after approval by the commission;

(6) the utility must maintain adequate books and records for a period not less than 12 months to allow for the determination of a cost of service as set forth in §24.41 of this title (relating to Cost of Service); and

(7) during the pendency of the emergency rate increase, the commission may require that the utility deposit all or part of the rate increase into an interest-bearing escrow account as set forth in §24.39 of this title (relating to Escrow of Proceeds Received under Rate Increase).

(d) The costs of any improvements ordered under subsection (a)(6) of this section may be paid by bond or other financial assurance in an amount determined by the commission not to exceed the amount of the bond or financial assurance. After notice and hearing, the commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

(e) An emergency order issued under this subchapter does not vest any rights and expires in accordance with its terms or this subchapter.

(f) An emergency order issued under this subchapter must be limited to a reasonable time as specified in the order. Except as otherwise provided by this chapter, the term of an emergency order may not exceed 180 days.

(g) An emergency order may be renewed once for a period not to exceed 180 days, except an emergency order issued under subsection (a)(4) of this section.

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

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SUBCHAPTER B. RATES AND TARIFFS
16 TAC §§24.25, 24.27, 24.29, 24.33, 24.35, 24.49

Statutory Authority

The amendments are adopted under Texas Water Code (TWC) §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility’s actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report, TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority

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to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.


§24.25. Form and Filing of Tariffs.

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as follows:

(1) A utility may charge the rates proposed under Texas Water Code (TWC) §§13.187, 13.1871, 13.18715, or 13.1872(c)(2) on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the regulatory authority sets interim rates.

(2) The regulatory assessment fee required in TWC §5.701(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity.

(3) A person who possesses facilities used to provide retail water utility service or a utility that holds a certificate of public convenience and necessity (CCN) to provide retail water service that enters into an agreement in accordance with TWC §13.250(b)(2), may collect charges for sewer services on behalf of another retail public utility on the same bill with its water charges and must at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(4) A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water or sewer charges and must at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes, and filing of tariffs.

(1) Tariffs filed with applications for CCNs.

(A) When applying to obtain or amend a CCN, or to add a new water or sewer system or subdivision to its certificated service area, each utility must file its proposed tariff with the commission and any regulatory authority with original rate jurisdiction over the utility.

(i) For a utility that is under the original rate jurisdiction of the commission, the tariff must include schedules of all the utility's rates, rules, and regulations pertaining to all its utility services when it applies for a CCN to operate as a utility. The tariff must be on the form prescribed by the commission or another form acceptable to the commission.

(ii) For a utility under the original rate jurisdiction of a municipality, the utility must file with the commission a copy of its tariff as approved by the municipality.

(B) If a person applying for a CCN is not currently a retail public utility and would be under the original rate jurisdiction of the commission if the CCN application were approved, the person must file a proposed tariff with the commission. The person filing the proposed tariff must also:

(1) provide a rate study supporting the proposed rates, which may include the costs of existing invested capital or estimates of future invested capital;

(ii) provide all calculations supporting the proposed rates;

(iii) provide all assumptions for any projections included in the rate study;

(iv) provide an estimated completion date for the construction of the physical plant;

(v) provide an estimate of the date service will begin for all phases of construction; and

(vi) provide notice to the commission once billing for service begins.

(C) A person under the original rate jurisdiction of the commission who has obtained an approved tariff for the first time must file a rate change application within 18 months from the date service begins to revise its rates to be based on a historic test year. Any dollar amount collected under the rates initially approved by the commission that exceeds the revenue requirement established by the commission during the rate change proceeding must be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. A Class D utility must file a rate change application under TWC §13.1872(c)(2) to satisfy the requirements of this subparagraph.

(D) A water supply or sewer service corporation must file with the commission a complete tariff containing schedules of all its rates, rules, and regulations pertaining to all its utility services when it applies to operate as a retail public utility and to obtain or amend a CCN.

(2) Minor tariff changes. Except for an affected county or a utility under the original rate jurisdiction of a municipality, a utility's approved tariff may not be changed or amended without commission approval. Changes to any fees charged by affiliates, the addition of a new extension policy to a tariff, or modification of an existing extension policy are not minor tariff changes. An affected county may change rates for retail water or sewer service without commission approval, but must file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The commission, or regulatory authority, as appropriate, may approve the following minor changes to utility tariffs:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by commission rules;

(iii) addition of the regulatory assessment fee payable to the Texas Commission on Environmental Quality (TCEQ) as a separate item or to be included in the currently authorized rate;

(iv) addition of a provision allowing a utility to collect retail sewer service charges in accordance with TWC §13.250(b)(2) or §13.147(d);

(v) rate adjustments to implement commission-authorized phased or multistep rates or downward rate adjustments to reconcile rates with actual costs;
(vi) implementation of an energy cost adjustment clause under subsection (n) of this section;

(vii) implementation or modification of a pass-through provision calculation in a tariff, as provided in subparagraphs (B)-(F) of this paragraph, which is necessary for the correct recovery of the actual charges from pass-through entities, including line loss;

(viii) some surcharges as provided in subparagraph (G) of this paragraph;

(ix) modifications, updates, or corrections that do not affect a rate may be made to the following information contained in the tariff:

(I) the list of the cities, counties, and subdivisions in which service is provided;

(II) the public water system name and corresponding identification number issued by the TCEQ; and

(III) the sewer system names and corresponding discharge permit number issued by the TCEQ.

(B) The commission, or other regulatory authority, as appropriate, may approve a minor tariff change for a utility to establish reduced rates for a minimal level of retail water service to be provided solely to a class of customers 65 years of age or older to ensure that those customers receive that level of retail water service at more affordable rates. The utility may establish a fund to receive donations to cover the cost of providing the reduced rates. A utility may not recover the cost of the reduced rates through charges to other customer classes.

(i) To request approval of a rate as defined in this subparagraph, the utility must file a proposed plan for consideration by the commission. The plan must include:

(II) The account or subaccount name and number, as included in the system of accounts described in §24.127(1) of this title (relating to Financial Records and Reports—Uniform System of Accounts), in which the donations will be accounted for, and a clear definition of how the administrative costs of operation of the program will be accounted for and removed from the cost of service for rate making purposes. Any interest earned on donated funds will be considered a donation to the fund.

(III) The proposed effective date of the program and an example of an annual accounting for donations received and a calculation of all lost revenues and the journal entries that transfer the funds from the account described in this subparagraph of this clause to the utility's revenue account. The annual accounting must be available for audit by the commission upon request.

(IV) An example bill with the contribution line item, if receiving contributions from customers.

(ii) For the purpose of clause (i) of this subparagraph, recovery of lost revenues from donations is limited to the lost revenues due to the difference in the utility's tariffed retail water rates and the reduced rates established by this subparagraph.

(iii) The minimal level of retail water service requested by the utility must not exceed 3,000 gallons per month per connection. Additional gallons used must be billed at the utility's tariffed rates.

(iv) For purposes of the provision in this subparagraph, a reduced rate authorized under this section does not:

(I) Make or grant an unreasonable preference or advantage to any corporation or person;

(II) Subject a corporation or person to an unreasonable prejudice or disadvantage; or

(III) Constitute an unreasonable difference as to retail water rates between classes of service.

(C) If a utility has provided notice as required in subparagraph (F) of this paragraph, the commission may approve a pass-through provision as a minor tariff change, even if the utility has never had an approved pass-through provision in its tariff. A pass-through provision may not be approved for a charge already included in the utility's cost of service used to calculate the rates approved by the commission in the utility's most recently approved rate change under TWC §§13.187, 13.1871, 13.18715, or 13.1872. A pass-through provision may only include passing through of the actual costs charged to the utility.

Only the commission staff or the utility may request a hearing on a proposed pass-through provision or a proposed revision or change to a pass-through provision. A pass-through provision may be approved as follows:

(i) A utility that purchases water or sewage treatment and whose rates are under the original jurisdiction of the commission may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated.

(ii) A utility may pass through a temporary water rate provision implemented in response to mandatory reductions in water use imposed by a court, government agency, or other authority. The provision must specify how the temporary water rate provision is calculated.

(iii) A utility may include the addition of a production fee charged by a groundwater conservation district, including a production fee charged in accordance with a groundwater reduction plan entered into by a utility in response to a groundwater conservation district production order or rule, as a separate line item in the tariff.

(iv) A utility may pass through the costs of changing its source of water if the source change is required by a governmental entity. The pass-through provision may not be effective prior to the date the conversion begins. The pass-through provision must be calculated using an annual true-up provision.

(v) A utility subject to more than one pass-through cost allowable in this section may request approval of an overall combined pass-through provision that includes all allowed pass-through costs to be recovered in one provision under subparagraph (D) of this paragraph. The twelve calendar months (true-up period) for inclusion in the true-up must remain constant, e.g., January through December.

(vi) A utility that has a combined pass-through provision in its approved tariff may request to amend its tariff to replace the combined pass-through provision with individual pass-through provisions if all revenues and expenses have been properly trued up in a true-up report and all overcollections have been credited back to the customers. A utility that has replaced its previously approved combined pass-through provision with individual provisions may not request another combined pass-through until three years after the replacement has been approved unless good cause is shown.

(D) A change in the combined pass-through provision may be implemented only once per year. The utility must file a true-up report within one month after the end of the true-up period. The report must reconcile both expenses and revenues related to the combined pass-through charge for the true-up period. If the true-up report reflects an over-collection from customers, the utility must change
its combined pass-through rate using the confirmed rate changes to charges being passed through and the over-collection from customers reflected in the true-up report. If the true-up report does not reflect an over-collection from the customers, the implementation of a change to the pass-through rate is optional. The change may be effective in a billing cycle within three months after the end of the true-up period as long as the true-up clearly shows the reconciliation between charges by pass-through entities and collections from the customers, and charges from previous years are reconciled. Only expenses charged by the pass-through provider may be included in the provision. The true-up report must include:

(i) a list of all entities charging fees included in the combined pass-through provision, specifying any new entities added to the combined pass-through provision;

(ii) a summary of each charge passed through in the report year, along with documentation verifying the charge assessed and showing the amount the utility paid;

(iii) a comparison between annual amounts billed by all entities charging fees included in the pass-through provision with amounts billed for the usage by the utility to its customers in the pass-through period;

(iv) all calculations and supporting documentation;

(v) a summary report, by year, for the lesser of all years prior or five years prior to the pass-through period showing the same information as in clause (iii) of this subparagraph with a reconciliation to the utility’s booked numbers, if there is a difference in any year; and

(vi) any other documentation or information requested by the commission.

(E) For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs must be stated separately from all charges by the utility to recover the revenue requirement. Except for a combined pass-through provision, the calculation for a pass-through gallonage rate for a utility with one source of water may be made using the following equation, which is provided as an example: \( R = G \times (1-L) \), where \( R \) is the utility’s new proposed pass-through rate, \( G \) equals the new gallonage charge by source supplier or conservation district, and \( L \) equals the actual line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085). Line loss will be considered on a case-by-case basis.

(F) A utility that requests to revise or implement an approved pass-through provision must take the following actions prior to the beginning of the billing period in which the revision takes effect:

(i) file a written notice with the commission that must include:

(I) each affected CCN number;

(II) a list of each affected subdivision public water system (including name and corresponding number issued by the TCEQ), and water quality system (including name and corresponding number issued by the TCEQ), if applicable;

(III) a copy of the notice to the customers;

(IV) documentation supporting the stated amounts of any new or modified pass-through costs; (V) historical documentation of line loss for one year;

(VI) all calculations and assumptions for any true-up of pass-through costs;

(VII) the calculations and assumptions used to determine the new rates; and

(VIII) a copy of the pages of the utility’s tariff that contain the rates that will change if the utility’s application is approved; and

(ii) e-mail (if the customer has agreed to receive communications electronically), mail, or hand-deliver notice to the utility’s customers. Notice may be in the form of a billing insert and must contain:

(I) the effective date of the change;

(II) the present calculation of customer billings;

(III) the new calculation of customer billings;

(IV) an explanation of any corrections to the pass-through formula, if applicable;

(V) the change in charges to the utility for purchased water or sewer treatment or ground water reduction fee or subsidence, if applicable; and

(VI) the following language: “This tariff change is being implemented in accordance with the minor tariff changes allowed by 16 Texas Administrative Code §24.25. The cost to you as a result of this change will not exceed the costs charged to your utility.”

(G) The following provisions apply to surcharges:

(i) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(ii) If authorized by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(I) sampling fees not already recovered by rates;

(II) inspection fees not already recovered by rates;

(III) production fees or connection fees not already recovered by rates charged by a groundwater conservation district; or

(IV) other governmental requirements beyond the control of the utility.

(iii) A utility must use the revenues collected through a surcharge approved by the commission to cover the costs listed in subparagraph (G)(ii) of this section or for any purpose noted in the order approving the surcharge. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the commission.

(iv) The commission may require a utility to file periodic and/or final accounting information to show the collection and disbursement of funds collected through an approved surcharge.

(3) Tariff revisions and tariffs filed with rate changes.

(A) If the commission is the regulatory authority, the utility must file its revisions with the commission. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(B) Each revision must be accompanied by a copy of the original tariff and a red-lined copy of the proposed tariff revisions clearly showing the proposed changes.
(4) Rate schedule. Each rate schedule must clearly state:

(A) the name of each public water system and corresponding identification number issued by the TCEQ, or the name of each sewer system and corresponding identification number issued by the TCEQ for each discharge permit, to which the schedule is applicable; and

(B) the name of each subdivision, city, and county in which the schedule is applicable.

(5) Tariff pages. Tariff pages must be numbered consecutively. Each page must show section number, page number, name of the utility, and title of the section in a consistent manner.

(c) Composition of tariffs. A utility’s tariff, including those utilities operating within the corporate limits of a municipality, must contain sections setting forth:

(1) a table of contents;

(2) a list of the cities, counties, and subdivisions in which service is provided, along with each public water system name and corresponding identification number issued by the TCEQ and each sewer system name and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;

(3) each CCN number under which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms to be completed as required by the TCEQ;

(6) the extension policy;

(7) an approved drought contingency plan as required by the TCEQ; and

(8) the forms of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariff attached is in compliance with the order, giving the docket number, date of the order, a list of tariff pages filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission’s tariff form or any modifications of a rule in the tariff must be clearly noted. All tariff pages must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariff must comply with the provisions of the order.

(e) Availability of tariffs. Each utility must make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees must lend assistance to persons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility must also provide copies of any portion of the tariffs at a reasonable cost to a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section must be returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Each utility operating within the corporate limits of a municipality exercising original jurisdiction must file with the commission its current tariff that has been authorized by the municipality. If changes are made to the utility’s tariff for one or more service areas under the jurisdiction of the municipality, the utility must file its tariff reflecting the changes along with the ordinance, resolution or order issued by the municipality to authorize the change.

(h) Effective date. The effective date of a tariff change is the date of approval by the regulatory authority, unless otherwise specified by the regulatory authority, in a commission order, or by rule. The effective date of a proposed rate increase under TWC §§13.187, 13.1871, 13.18715, or 13.1872 is the proposed date on the notice to customers and the regulatory authority, unless suspended by the regulatory authority.

(i) Tariffs filed by water supply or sewer service corporations. A water supply or sewer service corporation must file with the commission, for informational purposes only, its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rates, rules, and regulations relating to utility service or extension of service, each CCN number under which service is provided, and all affected counties or cities. If changes are made to the water supply or sewer service corporation’s tariff, the water supply or sewer service corporation must file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection must be filed in conformance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).

(j) Temporary water rate provision for mandatory water use reduction.

(1) A utility’s tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures that affect the utility customers’ use of water service and the utility’s water revenues. Implementation of the temporary water rate provision will allow the utility to recover revenues that the utility would otherwise have lost due to mandatory water use reductions. If a utility obtains an alternate water source to replace the required mandatory reduction during the time the temporary water rate provision is in effect, the temporary water rate provision must be adjusted to prevent over-recovery of revenues from customers. A temporary water rate provision may not be implemented if an alternative water supply is immediately available without additional cost.

(2) The temporary water rate provision must be approved by the regulatory authority having original jurisdiction in a rate proceeding before it may be included in the utility’s approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate provision must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions. The formula for a temporary water rate provision for mandatory water use reduction under this paragraph is TGC = egc + [(prr)(ccg)(t)/(1.0-r)] where, TGC = Temporary gallonage charge egc = current gallonage charge r = water use reduction expressed as a decimal fraction (the pumping restriction) prr = percentage of revenues to be recovered expressed as a decimal fraction (i.e., 50% = 0.5)

(A) The utility must file a request for a temporary water rate provision for mandatory water use reduction and provide customer notice as required by the regulatory authority, but is not required to

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provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, a list of all customer classes affected, the rates affected, information on how to protest or intervene in the rate change, the address of the regulatory authority, the time frame for protests, and any other information that is required by the regulatory authority. The utility's existing rates are not subject to review in this proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision for mandatory water use reduction under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §24.29 of this title (relating to Time Between Filings).

(B) The utility must establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in paragraph (3) of this subsection or any other method acceptable to the regulatory authority to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues, the utility must submit financial data to support its existing rates as well as the temporary water rate provision for mandatory water use reduction even if no other rates are proposed to be changed. The utility's existing rates are subject to review in addition to the temporary water rate provision for mandatory water use reduction.

(B) The utility must establish that the projected revenues that will be generated by the temporary water rate provision for mandatory water use reduction are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the regulatory authority in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate provision into effect only after:

(A) it has been approved by the regulatory authority and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility may readjust its temporary water rate provision to respond to modifications or changes to the original required water use reductions by reissuing notice as required by paragraph (7) of this subsection. If the commission is the regulatory authority, only the commission or the utility may request a hearing on the proposed implementation.

(7) A utility implementing a temporary water rate for mandatory water use reduction must take the following actions prior to the beginning of the billing period in which the temporary water rate provision takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the regulatory authority; and

(B) e-mail, if the customer has agreed to receive communications electronically, or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate provision is implemented. If the commission is the regulatory authority, the notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Public Utility Commission of Texas to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from ($ per 1,000 gallons to $ per 1,000 gallons)."

(8) A utility must stop charging a temporary water rate provision as soon as is practicable after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility must notify its customers of the date that the temporary water rate provision ends and that its rates will return to the level authorized before the temporary water rate provision was implemented. The notice provided to customers regarding the end of the temporary water rate provision must be filed with the commission.

(9) If the regulatory authority initiates an inquiry into the appropriateness or the continuation of a temporary water rate provision, it may establish the effective date of its decision on or after the date the inquiry is filed.

(k) Multiple system consolidation. Except as otherwise provided in subsection (m) of this section, a utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(I) Regional rates. The regulatory authority, where practicable, will consolidate the rates by region for applications submitted by a Class A, B, or C utility, or a Class D utility filing under TWC §13.1872(c)(2), with a consolidated tariff and rate design for more than one system.

(m) Exemption. Subsection (k) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.

(n) Energy cost adjustment clause.

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of retail water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.

(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff must file a request with the commission. The utility must also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, by e-mail, or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was delivered to affected customers and stating the date of such delivery must be filed with the commission by the utility as part of the request. Notice must be pro-
vided on a form prescribed by the commission and must contain the following information:

(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the classes of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;

(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and

(C) any other information that is required by the commission.

(3) The commission's review of the utility's request is not subject to a contested case hearing. However, the commission will hold a public meeting if requested by a member of the legislature who represents an area served by the utility or if the commission determines that there is substantial public interest in the matter.

(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass-through, whether an increase or decrease, must be implemented on at least an annual basis, unless the commission determines otherwise. Before making a change to the energy cost adjustment clause, notice must be provided as required by paragraph (5) of this subsection. Copies of notices to customers must be filed with the commission.

(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility must take the following actions prior to the beginning of the billing period in which the implementation takes effect:

(A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and

(B) e-mail, if the customer has agreed to receive communications electronically, mail, either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases)(decreases) in the documented energy costs. The cost of these changes to customers will not exceed the (increase)(decrease) in documented energy costs."

(6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly file the request or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission.

(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.

(8) A proceeding under this subsection is not a rate case under TWC §§13.187, 13.1871, 13.18715, or 13.1872.

§24.27. Notice of Intent and Application to Change Rates.

(a) Purpose. This section describes the requirements for the contents of an application to change rates and the requirements for the provision of notice of an application to change rates filed by a Class A, B, or C utility, or a Class D utility filing under Texas Water Code (TWC) §13.1872(c)(2).

(b) Contents of the application. An application to change rates is initiated by the filing of the applicable rate filing package, a statement of intent to change rates, and the proposed form and method of notice to customers and other affected entities under subsection (c) of this section.

(1) The application must include the commission's rate filing package form and include all required schedules.

(2) The application must be based on a test year as defined in §24.3(36) of this title (relating to Definitions of Terms).

(3) For an application filed by a Class A utility, the rate filing package, including each schedule, must be supported by pre-filed direct testimony. The pre-filed direct testimony must be filed at the same time as the application to change rates.

(4) For an application filed by a Class B utility, Class C utility, or Class D utility filing under TWC §13.1872(c)(2), the applicable rate filing package, including each schedule, must be supported by affidavit. The affidavit must be filed at the same time as the application to change rates. The utility may file pre-filed direct testimony at the same time as the application to change rates. If the application is set for a hearing, the presiding officer may require the filing of pre-filed direct testimony at a later date.

(5) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the dates of such delivery must be filed with the commission by the applicant utility as part of the rate change application.

(c) Notice requirements specific to applications filed by a Class A Utility under TWC §13.187.

(1) Notice of the application. In order to change rates under TWC §13.187, a utility must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a statement of intent (notice) with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change, to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice must be provided using the commission-approved form and must include a description of the process by which a ratepayer may intervene in the proceeding.

(C) This notice must state the docket number assigned to the rate application. Prior to the provision of notice, the utility must file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.
(2) Notice of the hearing. After the rate application is set for a hearing, the commission will give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The commission may require the utility to complete this notice requirement. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county.

(d) Notice requirements specific to applications filed by Class B, C, and D utilities.

(1) Notice of the application. In order to change rates, a Class B or C utility, or a Class D utility filing under TWC §13.1872(c)(2), must comply with the following requirements at least 35 days before the effective date of the proposed change.

(A) The utility must file a notice with the commission and provide a copy of the notice to all customers of the utility affected by the proposed rate change, to the appropriate offices of each municipality affected by the proposed rate change, and to the Office of Public Utility Counsel.

(B) Notice must be provided using the commission-approved form and must include a description of the process by which a ratepayer may file a protest under TWC §13.1871(1).

(C) The notice must state the docket number assigned to the rate application. Prior to providing notice, a Class B or C utility, or a Class D utility filing under TWC §13.1872(c)(2), must file a request for the assignment of a docket number for the rate application.

(D) Notices to affected ratepayers may be mailed separately, e-mailed (if the customer has agreed to receive communications electronically), or may accompany customer billings.

(E) Notice is considered to be completed upon mailing, e-mailing (if the customer has agreed to receive communications electronically), or hand delivery.

(2) Notice of the hearing. After the rate application is set for a hearing, the following notice requirements apply.

(A) The commission will give reasonable notice of the prehearing conference, including notice to the governing body of each affected municipality and county. The commission may require the utility to provide this notice. The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice for the prehearing conference, including notice to the governing body of each affected municipality and county.

(B) A Class B utility must mail notice of the prehearing conference to each affected ratepayer at least 20 days before the prehearing conference.

(C) A Class C utility, or a Class D utility filing under TWC §13.1872(c)(2), must mail, e-mail, or hand deliver notice of the prehearing conference to each affected ratepayer at least 20 days before the prehearing conference.

(D) A notice provided under subparagraph (B) or (C) of this paragraph must include a description of the process by which a ratepayer may intervene in the proceeding.

(e) Line extension and construction policies. A request to approve or amend a utility's line extension and construction policy must be filed in a rate change application under TWC §§13.187, 13.1871, 13.18715, or 13.1872(c)(2). The application must include the proposed tariff and other information requested by the commission. The request may be made with a request to change one or more of the utility's other rates.

(f) Capital improvements surcharge. In a rate proceeding under TWC §§13.187, 13.1871, 13.18715, or 13.1872(c)(2), the commission may approve a surcharge to collect funds for capital improvements necessary to provide facilities capable of providing continuous and adequate utility service, and for the preparation of design and planning documents.

(g) Debt repayments surcharge. In a rate proceeding under TWC §§13.187, 13.1871, 13.18715, or 13.1872(c)(2), the commission may approve a surcharge to collect funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all the requirements of the Texas Water Development Board regarding financial assistance from the Safe Drinking Water Revolving Fund.

§24.29. Time Between Filings.

(a) Application. The following provisions are applicable to utilities, including those with consolidated or regional tariffs, under common control or ownership with any utility that has filed a statement of intent to increase rates under TWC §§13.187, 13.1871, or 13.18715.

(b) A utility, or two or more utilities under common control and ownership, may not file a statement of intent to increase rates more than once in a 12-month period except:

1. to implement an approved purchase water pass through provision;
2. to adjust the rates of a newly acquired utility system;
3. to comply with a commission order;
4. to adjust rates authorized by §24.25(b)(2) of this title (relating to Form and Filing of Tariffs);
5. when the regulatory authority requires the utility to deliver a corrected statement of intent; or
6. when the regulatory authority determines that a financial hardship exists. A utility may be considered to be experiencing a financial hardship if revenues are insufficient to:

(A) cover reasonable and necessary operating expenses;
(B) cover cash flow needs which may include regulatory sampling requirements, unusual repair and maintenance expenses, revenues to finance required capital improvements or, in certain instances, existing debt service requirements specific to utility operations; or
(C) support a determination that the utility is able to provide continuous and adequate service to its existing service area.

(c) A Class D utility under common control or ownership with a utility that has filed an application to change rates under TWC §§13.187, 13.1871, or 13.18715 within the preceding 12 months may not file an application to change rates under TWC §13.1872(c)(2) unless one of the exceptions listed in subsection (b) of this section applies.

§24.33. Suspension of the Effective Date of Rates.

(a) Regardless of, and in addition to, any period of suspension ordered under subsection (b) of this section, after written notice to the utility, the commission may suspend the effective date of a rate change for not more than:
(1) 150 days from the date the proposed rates would otherwise be effective for an application filed under Texas Water Code (TWC) §13.187; or

(2) 265 days from the date the proposed rates would otherwise be effective for an application filed under TWC §§13.1871, 13.18715, or 13.1872(c)(2).

(b) Regardless of, and in addition to, any period of suspension ordered under subsection (a) of this section, the commission may suspend the effective date of a change in rates if the utility:

(1) has failed to properly complete the rate application as required by §24.27 of this title (relating to Notice of Intent and Application to Change Rates), has failed to comply with the notice requirements and proof of notice requirements, or has for any other reason filed a request to change rates that is not deemed administratively complete until a properly completed request to change rates is accepted by the commission;

(2) does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity until a completed application to obtain or transfer a certificate of convenience and necessity is accepted by the commission; or

(3) is delinquent in paying the regulatory assessment fee and any applicable penalties or interest required by TWC §5.701(n) until the delinquency is remedied.

(c) If the commission suspends the effective date of a requested change in rates under subsection (b) of this section, the requirement under §24.35(b)(1) of this title (relating to Processing and Hearing Requirements for an Application to Change Rates), to begin a hearing within 30 days of the effective date does not apply and the utility may not notify its customers of a new proposed effective date until the utility receives written notification from the commission that all deficiencies have been corrected.

(d) A suspension ordered under subsection (a) of this section will be extended two days for each day a hearing on the merits exceeds 15 days.

(e) If the commission does not make a final determination on the proposed rate before the expiration of the suspension period described by subsections (a) and (d) of this section, the proposed rate will be considered approved. This approval is subject to the authority of the commission thereafter to continue a hearing in progress.

(f) The effective date of any rate change may be suspended at any time during the pendency of a proceeding, including after the date on which the proposed rates are otherwise effective.

(g) For good cause shown, the commission may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended to the extent the proposed rate exceeds the existing rate.

§24.35. Processing and Hearing Requirements for an Application to Change Rates.

(a) Purpose. This section describes the requirements for the processing of applications to change rates filed by a Class A, B, or C utility, or a Class D utility filing under Texas Water Code (TWC) §13.1872(c)(2).

(b) Proceedings Under TWC §13.187. The following criteria apply to applications to change rates filed by Class A utilities under TWC §13.187.

(1) Not later than the 30th day after the effective date of the change, the commission will begin a hearing to determine the propriety of the change.

(2) The matter may be referred to the State Office of Administrative Hearings and the referral will be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.

(3) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference will be deemed to be the beginning of the hearing required by paragraph (1) of this subsection.

(c) Proceedings Under TWC §13.187. The following criteria apply to applications to change rates filed by a Class B, C, or D utility, using the procedures in TWC §13.1871.

(1) The commission may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change.

(2) The commission will set the matter for a hearing if it receives a complaint from any affected municipality or protests from the lesser of 1,000 or 10 percent of the affected ratepayers of the utility over whose rates the commission has original jurisdiction, during the first 90 days after the effective date of the proposed rate change.

(A) Ratepayers may file individual protests or joint protests. Each protest must contain the following information:

(i) a clear and concise statement that the ratepayer is protesting a specific rate action of the water or sewer service utility in question; and

(ii) the name and service address or other identifying information of each signatory ratepayer. The protest must list the address of the location where service is received if it differs from the residential address of the signatory ratepayer.

(B) For the purposes of this subsection, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The protest is properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

(3) Referral to the State Office of Administrative Hearings at any time during the pendency of the proceeding is deemed to be setting the matter for hearing as required by paragraphs (1) and (2) of this subsection.

(4) If the matter is not referred to the State Office of Administrative Hearings, an order establishing a date for a prehearing conference is deemed to be the beginning of the hearing required by paragraph (2) of this subsection.

(d) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the regulatory authority will determine the rates to be charged by the utility and will fix the rates by order served on the utility.

(e) The utility may begin charging the proposed rates on the proposed effective date, unless the proposed rate change is suspended by the commission under §24.33 of this title (relating to Suspension of the Effective Date of Rates) or interim rates are set by the presiding officer under §24.37 of this title (relating to Interim Rates). Rates charged under a proposed rate during the pendency of a proceeding are subject to refund to the extent the commission ultimately approves rates that are lower than the proposed rates.

(a) Purpose. This section establishes procedures for a Class D utility to apply for an adjustment to its water or wastewater rates as allowed by Texas Water Code (TWC) §13.1872(c)(1).

(b) Definitions. In this section, the term application means an application for a rate adjustment filed under this section and TWC §13.1872(c)(1).

(c) Requirements for filing of the application. Subject to the limitations set out in subsection (f) of this section, a Class D utility may file an application with the commission.

(1) The utility may request to increase its tarifed monthly fixed customer or meter charges and monthly gallonage charges by no more than five percent.

(2) The application must be on the commission's form and must include:
   (A) a proposal for the provision of notice that is consistent with subsection (e) of this section; and
   (B) a copy of the relevant pages of the utility's currently approved tariff showing its current monthly fixed customer or meter charges and monthly gallonage charges.

(d) Processing of the application. The following criteria apply to the processing of an application.

(1) Determining whether the application is administratively complete.
   (A) If commission staff requires additional information in order to process the application, commission staff must file a notification to the utility within 10 days of the filing of the application requesting any necessary information.
   (B) An application may not be deemed administratively complete as required by §24.8 of this title (relating to Administrative Completeness) until after the utility has responded to commission staff's request under subparagraph (A) of this paragraph.

(2) Within 30 days of the filing of the application, commission staff must file a recommendation stating whether the application should be deemed administratively complete as required by §24.8 of this title. If commission staff recommends that the application be deemed administratively complete, commission staff must also file a recommendation on final disposition, including, if necessary, a proposed tariff sheet reflecting the requested rate change.

(e) Notice of Approved Rates. After the utility receives a written order by the commission approving or modifying the utility's application, including the proposed notice of approved rates, and at least 30 days before the effective date of the proposed change established in the commission's order, the utility must send by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, the approved or modified notice to each ratepayer describing the proposed rate adjustment. The notice must include:
   (1) a statement that the utility requested an annual rate adjustment and specifying the percent amount requested;
   (2) the existing rate;
   (3) the approved rate; and
   (4) a statement that the rate adjustment was requested under TWC §13.1872 and that a hearing will not be held for the request.

(f) Time between filings. The following criteria apply to the timing of the filing of an application.

(1) A Class D utility may adjust its rates under this section not more than once each calendar year and not more than four times between rate proceedings filed under TWC §13.1872(c)(2).

(2) The filing of applications as allowed by this section is limited to a specific quarter of the calendar year, and is based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below, unless good cause is shown for filing in a different quarter. For a utility holding multiple CCNs, the utility may file an application in any quarter for which any of its CCN numbers is eligible.

(A) Quarter 1 (January-March): CCNs ending in 00 through 27;

(B) Quarter 2 (April-June): CCNs ending in 28 through 54;

(C) Quarter 3 (July-September): CCNs ending in 55 through 81; and

(D) Quarter 4 (October-December): CCNs ending in 82 through 99.

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

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

SUBCHAPTER E. RECORDS AND REPORTS

16 TAC §24.127, §24.129

Statutory Authority

The amendments are adopted under Texas Water Code(TWC) §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility's actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority
to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.


Each public utility, except a utility operated by an affected county, may keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, must be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

(1) System of accounts. For the purpose of accounting and reporting to the commission, each public utility must maintain its books and records in accordance with the commission’s approved system of accounts, or if the commission has not approved a system of accounts, the following prescribed system of accounts:

(A) Class A Utility, as defined by §24.3(5) of this title (relating to Definitions of Terms); the uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners (NARUC) for a utility classified as a NARUC Class A utility.

(B) Class B Utility, as defined by §24.3(6) of this title; the uniform system of accounts as adopted and amended by NARUC for a utility classified as a NARUC Class B utility.

(C) Class C Utility, as defined by §24.3(7) of this title; the uniform system of accounts as adopted and amended by for a utility classified as a NARUC Class C utility.

(D) Class D Utility, as defined by §24.3(8) of this title; the uniform system of accounts as adopted and amended by a utility classified as a NARUC Class D utility.

(2) Accounting period. Each utility must keep its books on a monthly basis so that for each month all transactions applicable thereto are entered in the books of the utility.

§24.129. Water and Sewer Utilities Annual Reports.

(a) Each utility, except a utility operated by an affected county, must file a service, financial, and normalized earnings report by June 1 of each year.

(b) Contents of report. The annual report must disclose the information required on the forms approved by the commission and may include any additional information required by the commission.

(c) A Class D utility's normalized earnings must be equal to its actual earnings during the reporting period for the purposes of compliance with Texas Water Code §13.136.

(d) For reporting year 2019 due on June 1, 2020, each utility, except a utility operated by an affected county, must file the report that corresponds to the Class A, B, or C classification that applied to the utility on August 31, 2019.

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

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SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.227

Statutory Authority

The amendments are adopted under Texas Water Code(TWC) §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility's actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the

ADOPTED RULES  May 1, 2020  45 TexReg 2861
applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.


§24.227. Criteria for Granting or Amending a Certificate of Convenience and Necessity:

(a) In determining whether to grant or amend a certificate of convenience and necessity (CCN), the commission will ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For retail water utility service, the commission will ensure that the applicant has:

(A) a public water system approved by the Texas Commission on Environmental Quality (TCEQ) that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC; and

(B) access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirement of paragraph (1)(A) of this subsection.

(2) For retail sewer utility service, the commission will ensure that the applicant has:

(A) a TCEQ-approved system that is capable of meeting TCEQ design criteria for sewer treatment plants, TCEQ rules, and the TWC; and

(B) access to sewer treatment and/or capacity or a long-term contract for purchased sewer treatment and/or capacity with an entity whose system meets the requirements of paragraph (2)(A) of this subsection.

(b) When applying for a new CCN or a CCN amendment for an area that would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) for applications to obtain or amend a water CCN, a list of all retail public water and/or sewer utilities within one half mile from the outer boundary of the requested area;

(2) for applications to obtain or amend a sewer CCN, a list of all retail sewer utilities within one half mile from the outer boundary of the requested area;

(3) copies of written requests seeking to obtain service from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection or evidence that it is not economically feasible to obtain service from the retail public utilities referenced in paragraph (1) or (2) of this subsection;

(4) copies of written responses from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection from which written requests for service were made or evidence that they failed to respond within 30 days of the date of the request;

(5) if a neighboring retail public utility has agreed to provide service to a requested area, then the following information must also be provided by the applicant:

(A) a description of the type of service that the neighboring retail public utility is willing to provide and comparison with service the applicant is proposing;

(B) an analysis of all necessary costs for constructing, operating, and maintaining the new facilities for at least the first five years of operations, including such items as taxes and insurance; and

(C) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility for at least the first five years of operations.

(c) Notwithstanding any other provision of this chapter, a Class A utility may apply to the commission for an amendment of a water or sewer CCN held by a municipal utility district, other than a municipal utility district located wholly or partly inside of the corporate limits or extraterritorial jurisdiction of a municipality with a population of two million or more, to allow the Class A utility to have the same rights and powers under the CCN as the municipal utility district.

(1) An application filed under this subsection must include:

(A) information identifying the applicant;

(B) the identifying number of the CCN to be amended;

(C) the written consent of the municipal utility district that holds the certificate of convenience and necessity;

(D) a written statement by the municipal utility district that the application is supported by a contract between the municipal utility district and the utility for the utility to provide services inside the certificated area and the boundaries of the municipal utility district; and

(E) a description of the proposed service area by:

(i) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(ii) the Texas State Plane Coordinate System;

(iii) verifiable landmarks, including roads, creeks, or railroad lines; or

(iv) if a recorded plat of the area exists, lot and block number.

(2) No later than the 60th day after the Class A utility files the application, the commission will review an application filed under this subsection and determine whether the application is sufficient.

(3) Once the application is found sufficient, the commission will:

(A) find that the amendment of the certificate is necessary for the service, accommodation, convenience, or safety of the public; and (B) grant the application and amend the certificate.

(4) Chapter 2001 of the Texas Government Code does not apply to a petition filed under this subsection. The applicant, municipal utility district, or commission staff may file a motion for rehearing of the commission's decision on the same timeline that applies to other final orders of the commission. The commission's order ruling on the application may not be appealed.

(5) The commission may approve an application filed under this subsection that requests to amend a CCN with area that is in the extraterritorial jurisdiction of a municipality without the consent of the municipality.

(6) TWC §13.241(d) and §13.245 and subsections (e),(f), and (g) of this section do not apply to an application filed under this subsection.

(d) The commission may approve applications and grant or amend a CCN only after finding that granting or amending the CCN
is necessary for the service, accommodation, convenience, or safety of the public. The commission may grant or amend the CCN as applied for, or refuse to grant it, or grant it for the construction of only a portion of the contemplated facilities or extension thereof, or for only the partial exercise of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(e) In considering whether to grant or amend a CCN, the commission will also consider:

(1) the adequacy of service currently provided to the requested area;
(2) the need for additional service in the requested area, including, but not limited to:
   (A) whether any landowners, prospective landowners, tenants, or residents have requested service;
   (B) economic needs;
   (C) environmental needs;
   (D) written application or requests for service; or
   (E) reports or market studies demonstrating existing or anticipated growth in the area;
(3) the effect of granting or amending a CCN on the CCN recipient, on any landowner in the requested area, and on any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested area. These effects include but are not limited to regionalization, compliance, and economic effects;
(4) the ability of the applicant to provide adequate service, including meeting the standards of the TCEQ and the commission, taking into consideration the current and projected density and land use of the requested area;
(5) the feasibility of obtaining service from an adjacent retail public utility;
(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
(7) environmental integrity;
(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the new CCN or a CCN amendment; and
(9) the effect on the land to be included in the requested area.

(f) The commission may require an applicant seeking to obtain a new CCN or a CCN amendment to provide a bond or other form of financial assurance to ensure that continuous and adequate retail water or sewer utility service is provided. The commission will set the amount of financial assurance. The form of the financial assurance will be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(g) Where applicable, in addition to the other factors in this chapter the commission will consider the efforts of the applicant to extend retail utility service to any economically distressed areas located within the applicant's certificated service area. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC §15.001(h) for two or more retail public utilities that apply for a CCN to provide retail water utility service to an unserved area located in an economically distressed area as defined in TWC §15.001, the commission will conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment will be conducted after the preliminary hearing and only if the parties cannot agree among themselves regarding who will provide service. The assessment will be conducted considering the following information:

(1) all criteria from subsections (a)-(g) of this section;
(2) source-water adequacy;
(3) infrastructure adequacy;
(4) technical knowledge of the applicant;
(5) ownership accountability;
(6) staffing and organization;
(7) revenue sufficiency;
(8) creditworthiness;
(9) fiscal management and controls;
(10) compliance history; and
(11) planning reports or studies by the applicant to serve the proposed area.

(i) Except as provided by subsection (j) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the requested area may elect to exclude some or all of the landowner's property from the requested area by providing written notice to the commission before the 30th day after the date the landowner receives notice of an application for a CCN or for a CCN amendment. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the requested area must be modified to remove the electing landowner's property. An applicant that has land removed from its requested area because of a landowner's election under this subsection may not be required to provide retail water or sewer utility service to the removed land for any reason, including a violation of law or commission rules.

(1) The landowner's request to opt out of the requested area must be filed with the commission and must include the following information:

   (A) the commission docket number and CCN number if applicable;
   (B) the total acreage of the tract of land subject to the landowner's opt-out request; and
   (C) a metes and bounds survey for the tract of land subject to the landowner's opt-out request, that is sealed or embossed by either a licensed state land surveyor or registered professional land surveyor

(2) The applicant must file the following mapping information to address each landowner's opt-out request:

   (A) a detailed map identifying the revised requested area after removing the tract of land subject to each landowner's opt-out request. The map must also identify the outer boundary of each tract of land subject to each landowner's opt-out request, in relation to the revised requested area. The map must identify the tract of land and the requested area in reference to verifiable man-made and natural landmarks such as roads, rivers, and railroads;
(B) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters) for the revised requested area after removing each tract of land subject to any landowner's opt-out request. The digital mapping data must include a single, continuous polygon record; and

(C) the total acreage for the revised requested area after removing each tract of land subject to the landowner's opt-out requests. The total acreage for the revised requested area must correspond to the total acreage included with the digital mapping data.

(j) If the requested area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a retail public utility owned by the municipality is the applicant, a landowner is not entitled to make an election under subsection (i) of this section but is entitled to file a request to intervene in order to contest the inclusion of the landowner's property in the requested area at a hearing regarding the application.

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

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SUBCHAPTER K. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §24.363

Statutory Authority

The amendments are adopted under Texas Water Code (TWC) §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.041(d), which grants the commission the authority to issue emergency orders to compel a retail public utility to provide continuous and adequate service if discontinuance of service is imminent or has occurred because of the retail public utility's actions or inactions; TWC §13.041(i), which grants the commission the authority to establish reasonable compensation for temporary service to a neighboring retail public utility when TCEQ has ordered an emergency interconnection and has requested that the commission set such compensation; TWC §13.046, which grants the commission the authority to adopt rules establishing a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate to the customers of the nonfunctioning system; TWC §13.131, which allows the commission to prescribe the forms of books, accounts, records, and memoranda to be kept by water and sewer utilities; TWC §13.136(b), which directs the commission to require by rule the filing of an annual service, financial, and normalized earnings report; TWC §13.181(b), which provides the commission with the authority to fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services for determining the applicability of rates; TWC §13.1871, which grants the commission the authority to adopt rules governing the contents of an application to change rates and the authority to suspend the effective date of a proposed rate change; TWC §13.1872, which requires the commission to adopt rules establishing procedures to allow a Class D utility to receive an annual rate adjustment; TWC §13.1873, which requires the commission to adopt rules that allow a Class B utility to file a less burdensome application than the application for a Class A utility, and a Class C or D utility to file a less burdensome application than the applications for a Class A or B utility; and TWC §13.246, which authorizes the commission to grant or amend a certificate of convenience and necessity.


§24.363. Temporary Rates for Services Provided for a Nonfunctioning System.

(a) Notwithstanding other provisions of this chapter, upon sending written notice to the commission, a retail public utility other than a municipally owned utility or a water and sewer utility subject to the original rate jurisdiction of a municipality that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider may immediately begin charging the customers of the nonfunctioning system a temporary rate to recover the reasonable costs incurred for interconnection or other costs incurred in making services available and any other reasonable costs incurred to bring the nonfunctioning system into compliance with commission rules.

(b) Notice of the temporary rate must be provided to the customers of the nonfunctioning system no later than the first bill which includes the temporary rates.

(c) Within 90 days of receiving notice of the temporary rate increase, the commission will issue an order regarding the reasonableness of the temporary rates. In making the determination, the commission will consider information submitted by the retail public utility taking over the provision of service, the customers of the nonfunctioning system, or any other affected person.

(d) At the time the commission approves an acquisition of a nonfunctioning retail water or sewer utility service provider under Texas Water Code (TWC) §13.301, the commission must:

(1) determine the duration of the temporary rates to the retail public utility, which must be for a reasonable period; and

(2) rule on the reasonableness of the temporary rates under subsection (a) of this section if the commission did not make a ruling before the application was filed under TWC §13.301.

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

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.5, relating to definitions; §25.130, relating to advanced metering; and §25.133, relating to non-standard metering service, with changes to the proposed text as published in the November 29, 2019, issue of the Texas Register (44 TexReg 7262). The amendments to §25.130 and §25.133 conform the rules to Senate Bill 1145, 85th Legislature, Regular Session, which amended Public Utility Regulatory Act (PURA) §39.452, and to the following bills from the 86th Legislature, Regular Session: House Bill 853, which amended PURA §39.5521; House Bill 986, which amended PURA §39.402; and House Bill 1595, which amended PURA §39.5021. These bills encourage deployment of advanced metering and meter information networks by extending the applicability of PURA §39.107(h) and (k) to electric utilities providing service in areas outside the Electric Reliability Council of Texas (ERCOT) region.

The amendments also remove the requirement for an electric utility to offer the home area network (HAN) feature and set minimum capabilities for on-demand reads of customers' advanced meter data. In addition, the amendments clarify and define rule language; and remove obsolete and other unnecessary rule language. These amendments are adopted under Project No. 48525.

The commission received comments on the proposed amendments from Southwestern Electric Power Company, El Paso Electric Company, Entergy Texas, Inc., and Southwestern Public Service Company (collectively Joint Non-ERCOT Utilities); Alliance for Retail Markets (ARM); Texas Energy Association for Marketers (TEAM); Office of Public Utility Counsel (OPUC); Mission:Data Coalition (Mission:Data); Texas Advanced Energy Business Alliance (TAEBA); Enel X North America, Inc. (Enel X); Lone Star Chapter of Sierra Club (Sierra Club); Texas Solar Power Association (TSPA); and Solar Energy Industries Association (SEIA). In addition, the commission received joint initial comments from AEP Texas Inc. (AEP), CenterPoint Energy Houston Electric, LLC, (CenterPoint) and Texas-New Mexico Power Company (TNMP) and joint reply comments from these utilities and Oncor Electric Delivery LLC (Oncor; collectively Joint ERCOT TDUs). There was no request for a public hearing.

Comments on §25.5 (definitions)

ARM supported the commission's proposed inclusion of a definition for "retail electric provider (REP) of record" to distinguish it from the general definition for retail electric provider.

Commission Response

The commission agrees with ARM and adopts the definition as proposed.

Comments on §25.130(c) (definitions)

TSPA recommended two changes to the definition of "web portal." The first recommended change was to add the word "secure" before "read-only access" to add clarity that the web portal needs to be secure because of the growing threat of cyber-attacks. TSPA also recommended that data be accessible in a standardized format to facilitate software development so customers, REPs, and other entities authorized to have access will not be required to use the web portal graphical user interface.

The Joint Non-ERCOT Utilities opposed TSPA's proposed changes to the definition of web portal. The Joint Non-ERCOT Utilities pointed out that §25.130(j) already requires access to the web portal to be secure. Concerning TSPA's proposal to require data accessibility in a standardized format, the Joint Non-ERCOT Utilities argued that TSPA did not consider or quantify the cost that would be imposed on utilities and their customers. The Joint Non-ERCOT Utilities stated that the costs of this proposal outweigh the benefits to customers.

ARM acknowledged that data provided in a standardized format facilitates software development to make data more readily available to customers and REPs. However, ARM stated that Smart Meter Texas (SMT) already provides data in a standardized format, so it is unclear what additional format standardization TSPA is requesting.

TEAM recommended a change to the definition of "web portal" to delete "by an electric utility or a group of electric utilities." TEAM advocated for this change to leave open the possibility in the future for ERCOT to perform some or all the features of access to advanced meter data. However, TEAM did not advocate for this change presently. ARM expressed support for TEAM's proposed amendment to the definition of web portal based on the same reason as TEAM. ARM also added it does not advocate for this change presently.

The Joint ERCOT TDUs responded by disagreeing with TEAM's proposed revision. The Joint ERCOT TDUs stated that there is no need to revise §25.130 now to address something that might come up in the future and noted that the commission routinely reviews and revises rules when appropriate.

Mission:Data proposed to add the following language to the definition of "web portal": "For non-ERCOT utilities, a portal shall also provide customer account information, billing information, and other information necessary to determine eligibility in, and for customers to participate in, any demand-side management program(s)." In addition, Mission:Data argued that Texas customers in non-ERCOT regions should be able to delegate access to their energy information to service providers so energy usage can be economically optimized to better serve customers.

The Joint Non-ERCOT Utilities opposed Mission:Data's proposal. The Joint Non-ERCOT Utilities stated that Mission:Data did not address the data privacy requirements of PURA §39.107(k) and §25.44, which require that "An electric utility shall not sell, share, or disclose information generated, provided, or otherwise collected from an advanced metering system or meter information network, including information used to calculate charges for service, historical load data, and any other customer information," or PURA §39.101(a)(2), which requires that the commission ensure retail customer protections that provide a customer with "privacy of customer consumption and credit information." Although the Joint Non-ERCOT Utilities acknowledged that customers are free to share their meter data and any other information with a competitive service provider, they stated that Mission:Data's proposal seems to make the sharing of virtually all customer information by the utility automatic via the web portal with customer approval of access to meter usage data. The Joint Non-ERCOT Utilities stated that this is inconsistent with PURA §39.107(k), which governs usage data. Further, the Joint Non-ERCOT Utilities stated that AMS does not produce the additional customer data requested by Mission:Data, and that it is improper to use this proceeding to attempt to alter the means by which third parties may access customer records.
Commission Response

The commission adopts TSPA’s recommendation to add the word "secure" before "read-only access" in the definition of "web portal." This addition makes explicit the important requirement that access to customer data be secure.

The commission does not adopt TSPA’s proposal to require data accessibility in a standardized format. TSPA did not provide enough information to justify its proposal.

The commission declines to adopt TEAM’s proposal to delete "by an electric utility or a group of electric utilities" from the definition of web portal. If, in the future, the commission requires ERCOT to provide access to advanced meter data, the rule can be amended at that time.

The commission does not adopt the definition of web portal proposed by Mission:Data. Mission:Data did not provide enough information to justify its proposal.

Comments on §25.130(d)(4)(D) (web portal)

TEAM proposed a modification to subsection (d)(4)(D) relating to the requirement to provide a web portal in order to ensure that the amended rule language leaves open the possibility that, with proper approval from ERCOT and stakeholders, some or all of the features of access to advanced meter data currently performed by SMT could be performed by ERCOT. TEAM did not advocate for implementing such changes now but does not want to foreclose any efficiencies that might be brought about by participation of ERCOT in the future.

The Joint ERCOT TDUs responded by disagreeing with TEAM’s proposed revision to §25.130 (d)(4)(D). The Joint ERCOT TDUs stated that there is no need to revise §25.130 now to address something that might come up in the future and noted that the Commission routinely reviews and revises rules when appropriate.

Commission Response

The commission declines to adopt TEAM’s proposed addition to §25.130(d)(4)(D) relating to the requirement to provide a web portal. If, in the future, the commission requires ERCOT to provide access to advanced meter data, the rule can be amended at that time.

Comments on §25.130(d)(6) and (d)(9), and §25.130(g)(4) (progress reports)

The Joint Non-ERCOT Utilities urged the commission to reduce the frequency of the progress reports relating to the deployment status of an electric utility’s AMS required under §25.130(d)(6) and (d)(9) from monthly to quarterly. In addition, they requested that the requirement to file such reports not begin until after deployment has commenced.

The Joint Non-ERCOT Utilities also urged the commission to reduce the frequency of progress reports relating to activities undertaken to enhance the electric utility’s AMS, required under §25.130(g)(4), from monthly to quarterly.

Commission Response

The commission declines to reduce the frequency of reports required under §25.130(d)(6) and (d)(9) regarding the utility’s deployment status, and retains the requirement that these reports commence after the deployment status is published. Monthly reports are better suited than quarterly reports to timely identify and follow up on issues arising prior to and during deployment. The commission declines to reduce the frequency of reports required under §25.130(g)(4) relating to the status of activities undertaken to enhance AMS features for the same reason.}

Comments on §25.130(d)(11) (outage notification)

Subsection (d)(11) requires that "notification of any planned or unplanned outage that affects access to customer usage data must be posted on the electric utility’s web portal home page." In order to conform this requirement with Mission:Data’s proposed modification to the definition of "web portal" in §25.130(c)(5), Mission:Data proposed to remove the word "usage" before "data." This change would broaden the existing requirement to require non-ERCOT utilities to provide account information, billing information, and other information through a web portal.

The Joint Non-ERCOT Utilities opposed Mission:Data’s proposed modification to §25.130(d)(11) for the same data privacy reasons it opposed Mission:Data’s proposed modification to the definition of "web portal" in §25.130(c)(5). Furthermore, the Joint Non-ERCOT Utilities argued that AMS does not produce the additional customer data discussed by Mission:Data, and that it is improper to use this proceeding to attempt to alter the means by which third parties may access customer records.

Commission Response

The commission declines to adopt Mission:Data’s proposal to make changes to §25.130(d)(11) to broaden the existing provision to require non-ERCOT utilities to provide account information, billing information, and other information through a web portal. As stated in its response to the comments of Mission:Data regarding §25.130(c), the commission declines to modify the advanced metering rule to require that non-ERCOT electric utilities provide information through a web portal other than the information provided by the utility’s AMS.

Comments on §25.130(d)(12) (prohibition on provision of competitive energy services)

ARM requested that §25.130(d)(12) be revised to clarify that the prohibition on transmission and distribution utilities (TDUs) providing any advanced metering equipment or service under §25.343, relating to competitive energy services, applies to any service provided through SMT, which is the web portal jointly owned and operated by the TDUs.

The Joint ERCOT TDUs opposed ARM’s proposed revision and stated that the subsection already makes clear that a utility must not provide any advanced metering equipment or service that is deemed a competitive energy service under §25.343 of this title. The Joint ERCOT TDUs expressed belief that ARM’s proposal to insert "including any service provided through a web portal" is too broad because it seems to capture any possible action taken by a utility on a web portal. The Joint ERCOT TDUs stated that not every action taken on a web portal should or would constitute a competitive energy service under §25.343. In addition, the Joint ERCOT TDUs stated that a modification to this subsection should not be used as a device to expand the definition of competitive energy services provided in §25.343 of this title. The Joint ERCOT TDUs expressed concern that if ARM’s proposal is adopted, ARM or another party could assert that SMT is precluded from using dashboards, graphs, or charts to communicate meter data to customers. The Joint ERCOT TDUs were concerned that without these tools, it would be very difficult for customers to understand and use the meter data provided by SMT. Furthermore, the Joint ERCOT TDUs noted that the SMT
business requirements approved in Docket No. 47472 address the manner in which meter data must be provided and displayed on SMT.

**Commission Response**

The commission declines to adopt ARM's request to modify §25.130(d)(12) to specify that the prohibition on TDUs relating to provision of competitive energy services under §25.343 of this title applies to any service provided through SMT. The provision already properly addresses the issue raised by ARM. Furthermore, the commission agrees with the Joint ERCOT TDUs that the SMT business requirements approved in Docket No. 47472 clearly specify the way meter data must be provided and displayed on SMT.

**Comments on §25.130(d)(13) (limitation of liability)**

AEP, CenterPoint, and TNMP opposed elimination of the limitation of liability provision in §25.130(d)(13), and suggested language to revise the existing provision. They stated that the existing language resolves any uncertainty as to whether a utility's provision of AMS with the minimum features required by subsection (g) of this section constitutes provision of a delivery service. They were concerned that removal of the current provision would cause uncertainty and could lead to a court determination that provision of the minimum AMS features required under subsection (g) does not constitute provision of a delivery service under the utilities' retail delivery service tariff. In addition, these commenters stated that the proposed rule would require the utilities to provide access to a new class of entities: those authorized by the customer to receive such access. These commenters stated that their retail delivery service tariffs only cover competitive retailers and retail customers. Because of this, they urged the commission to extend the reach of the limits of liability in the retail delivery service tariff to all entities that the utilities would be required to provide access to. To accomplish this, they proposed retention of existing §25.130(d)(13) as modified by their revisions. The proposed revisions clarify that provision of AMS services and features constitute delivery services under the electric utility's tariff; and allow any commercial entity other than a REP that is authorized to access a customer's meter data under subsection (g) of this section, to be deemed a retail customer for purposes of the limitation of liability provisions in the electric utility's tariff.

ARM did not oppose the extension of limitation of liability, but rejected the proposed wording that any commercial entity other than a REP "shall be deemed a retail customer for purposes of limitation of liability provisions." ARM stated that deeming a person or entity to be a retail customer, who is not a retail customer, could raise a host of unintended consequences in the interpretation of other commission rules. ARM proposed alternate language for the commission to consider that would allow a commercial entity to be included within the limitation of liability in the electric utility's tariff if §25.130(d)(13) is retained.

Mission:Data and Enel X supported removal of the limitation of liability language in this subsection. Mission:Data stated that the language properly belongs in the Joint ERCOT TDUs' retail delivery tariffs. Mission:Data urged the commission to consider revisions to the Joint ERCOT TDUs' retail delivery tariffs in a separate proceeding. Mission:Data and Enel X reminded the commission that the Joint ERCOT TDUs agreed in Docket No. 47472 not to address issues relating to limitation of liability, because SMT's terms and conditions provide sufficient limitations on their liability. Enel X stated that the proposed language seems to be inconsistent with the agreement of the settling parties in Docket No. 47472, is not necessary, and should be rejected. Mission:Data stated that if the commission decides to address these issues in this proceeding, there are significant issues to be addressed concerning the TDU's liability for poor or negligent operation of SMT. Mission:Data argued that it is not necessarily reasonable for tort immunity provisions relating to retail delivery service to apply equally to an information technology service such as SMT. Mission:Data stated that these issues have not been adequately addressed in the present proceeding and should be addressed in a separate proceeding where a sufficient record can be developed.

**Commission Response**

In response to the comments of AEP, CenterPoint, and TNMP, the commission retains the existing limitation of liability provision in the rule in order to avoid unintended consequences that could result from deleting the provision. In proposing to delete the provision, the commission did not intend to make a substantive change. The commission declines to modify the provision as proposed by AEP, CenterPoint, and TNMP, because the commission intends to maintain the applicability of the limitation of liability provisions found in an electric utility's tariff to the electric utility's deployment and provision of AMS services and features.

The commission disagrees with the comments of AEP, CenterPoint, and TNMP that the proposed rule would require the utilities to provide access to a new class of entities: those authorized by the customer to receive such access. Existing §25.130(j)(5) provides: "A customer may authorize data to be available to an entity other than its REP." In the order adopting this provision, Rulemaking Related to Advanced Metering, Project No. 31418, order at 69 (May 10, 2007), the commission anticipated that access to customer data could be shared with any entity authorized by the customer when it stated: "The commission concurs with the Joint DSPs that it is sufficient for the REP, the customer, and any authorized third party to have access to the advanced meter data..."

**Comments on §25.130(f) (pilot programs)**

Subsection (f) provides that an electric utility may deploy AMS with a limited number of meters that do not meet the requirements of subsection (g) of this section in a pilot program in order to gather information.

TSPA stated that notice and opportunity to participate in pilots should extend beyond REPs to include entities authorized by the customer to have access to customer data.

**Commission Response**

The commission makes the change proposed by TSPA. The commission agrees that notice and opportunity to participate in pilots should extend beyond REPs to include entities authorized by the customer to have access to customer data. Use of AMS has become widespread since this section was adopted in 2007. If an electric utility engages in a pilot program to gather additional information beyond the body of information currently available, the commission agrees with TSPA that notice and opportunity to participate in the pilot should be sent by the utility not only to REPs but also to the entities authorized by a customer to have read-only access to the customer's advanced meter data. These entities may have systems that use the advanced meter data and these systems may be affected by broad deployment of the technology used in the pilot.
Comments on 25.130(g)(1)(D) (provision of time-stamped meter data)

The Joint Non-ERCOT Utilities noted that §25.130(g)(1)(D) requires that a utility's AMS provide or support sharing of time-stamped meter data to the independent organization or regional transmission organization for purposes of wholesale settlement. They stated that the intent of the provision seems to be that an organization that administers a retail marketplace have access to retail sales data in order to settle market transactions. The Joint Non-ERCOT Utilities explained that there is no reason for a vertically integrated utility to submit retail meter data to a regional transmission operator because the Southwest Power Pool (SPP) and the Midcontinent Independent System Operator (MISO) do not administer a retail market place, and utilities participating in SPP or MISO already have appropriate metering and processes in place to settle wholesale market transactions. The Joint Non-ERCOT Utilities proposed revisions to §25.130(g)(1)(D) to clarify that the provision applies only to utilities that participate in a retail marketplace administered by an independent organization or a regional transmission organization.

ARM did not oppose the comments of the Joint Non-ERCOT Utilities, but stated that because the ERCOT TDUs do not "participate" in the retail market the proposed revision could be confusing or have unintended consequences. ARM recommended language to address this distinction.

Commission Response

The commission agrees with the Joint Non-ERCOT TDUs that not all electric utilities are required to provide time-stamped meter data to an independent organization or regional transmission organization. However, time-stamped meter data is necessary to identify when a meter is read and is needed for on-demand meter reads and time of use rates. The commission has therefore changed §25.130(g)(1)(D) to require an AMS to provide time-stamped meter data, without reference to providing it to an independent organization or a regional transmission organization. A utility subject to requirements concerning time-stamped meter data by an independent organization or regional transmission organization will be subject to those requirements regardless of whether such requirements are addressed in the rule.

Comments on §25.130(g)(1)(E) (provision of direct, real-time access to customer usage data)

Enel X, Sierra Club, Mission:Data, and TSPA urged the commission to retain the existing provision in §25.130(g)(1)(E) that requires an AMS to provide or support the "capability to provide direct, real time" access to customer usage data. Enel X stated that new technologies are developing that would enable customers to make use of real-time data. TSPA acknowledged that HAN devices have not been widely adopted but stressed that continued access to real-time data is essential because alternative methods to access real-time data could be more successful. Enel X stated that removing this requirement would require customers that want real-time data to pay for duplicative meter equipment that can only provide similar data to the utility meter.

Enel X proposed a modification to the current provision in the rule that would expand the requirement to provide direct, real-time access to customer usage data to entities authorized by the customer. Enel X argued that its proposed revision is faithful to the settlement in Docket No. 47472 that only removes the HAN requirement and preserves the opportunity for new technologies to enable real-time access to customer usage data. Sierra Club supported Enel X's proposed revision to §25.130(g)(1)(E), because it preserves the opportunity for new technologies to access direct, real-time usage data.

Mission:Data stated that retail tariffs in non-ERCOT regions that include time-of-use, peak demand, or other time or demand charges are fundamentally unfair if customers, and the devices customers install, are deprived of real-time access to information needed to make economic decisions. Mission:Data argued that no cost-effective alternative to the HAN for acquiring real-time energy usage currently exists. Mission:Data stated that because there is no evidence on record concerning the costs, benefits, or customer uptake of HAN, any attempt to eliminate the HAN requirements is premature and unwarranted.

ARM agreed with ENEL X, Sierra Club, TSPA, and Mission:Data that access to direct, real-time customer usage data would be beneficial, but explained that they do not seek to upset the agreement reached in Docket No. 47472.

The Joint ERCOT TDUs and the Joint Non-ERCOT Utilities were opposed to the proposal to leave language in §25.130(g)(1)(E) that requires a utility's AMS to have the capability to provide direct, real-time access to customer usage data. The Joint Non-ERCOT Utilities argued that this would essentially continue to require HAN functionality without naming it. The Joint Non-ERCOT Utilities asserted that on-demand-reads, which provide near real-time access, is the reasonable minimum capability that should be required, because it seems that few people need or want HAN.

The Joint Non-ERCOT Utilities stated that HAN functionality should be permissive, and utilities that deploy HAN should be permitted to recover costs if it is shown that there is a sufficient level of customer interest or there is some reason to socialize costs.

Commission Response

The commission declines to retain the existing language in §25.130(g)(1)(E) that requires an electric utility's AMS to support the capability to provide direct, real-time access to customer usage data as proposed by Enel X, Sierra Club, Mission:Data, and TSPA. Furthermore, the commission declines to accept the changes proposed by Enel X that would expand the current requirement in the rule to provide direct, real-time access to customer usage data to entities authorized by the customer. Only a very small percentage of customers has taken advantage of the capability of AMS to provide direct, real-time access to customer usage data. The commission does not agree with the comments of Enel X that customer appetite for direct, real-time access to customer usage data will increase as a result of any new technologies that are being developed to make use of real-time data, or of methods to access real-time data other than through a HAN device as suggested by TSPA. In addition, the commission does not agree with the comments of Mission:Data that customer use of HAN would be significantly different in the non-ERCOT regions of Texas than in the ERCOT region of Texas. The commission found in "Commission Staff's Petition to Determine Requirements for Smart Meter Texas", Docket No. 47472, Finding of Fact No. 621 (Jul. 12, 2018) that on-demand meter reading functionality is an adequate substitute for HAN functionality. On-demand meter reading gives a customer prompt access to usage information without the costs incurred by the customer for a HAN. In addition, use of on-demand reads
is increasing by customers in ERCOT, whereas use of HAN by customers in ERCOT is decreasing.

Comments on §25.130(g)(1)(E) (interval data recorder (IDR) meters)

ARM requested that the commission retain existing §25.130(g)(1)(E)(ii), which requires a stakeholder process and commission approval to determine when and how 15-minute IDR data will be made available on the electric utility's web portal. ARM stated this would balance the interests of all stakeholders. If the commission declines to retain §25.130(g)(1)(E)(ii), ARM requested the commission clarify that removal of the provision is not intended to foreclose a future proceeding to include IDR metered data on the SMT portal or via some other means. ARM stated that ERCOT Nodal Protocol Revision Request 877 provides a process for a TDU to replace a customer's IDR meter with an AMS meter but explained that not all premises can utilize an AMS meter in place of an IDR meter. ARM acknowledged that technical limitations keep IDR metered data from being available as frequently as AMS data and recommended that the TDUs undertake system modifications to allow for daily interval data to be available on SMT or some other means.

The Joint ERCOT TDUs opposed ARM's proposal. The Joint ERCOT TDUs stated that §25.130 is applicable only to AMS, not metering for those customers with IDR meters. In addition, the Joint ERCOT TDUs stated that, from a technical perspective, it would only be possible to make 15-minute IDR data available on SMT if all IDR meters were converted to AMS meters which, they observed, is not required by rule or statute.

Commission Response

The commission declines to retain the language in §25.130(g)(1)(E)(ii) that requires a stakeholder process and commission approval to determine when and how 15-minute IDR data will be made available on the electric utility's web portal. As ARM acknowledged, there are technical problems with implementing this requirement. Methods to gain better access to energy usage data recorded by IDR meters may be considered in future proceedings.

Comments on §25.130(g)(1)(E) (time intervals for data collection)

TEAM proposed modifications to §25.130(g)(1)(E) to address the potential future approval of involvement of an independent organization to provide a database of meter data and a web portal to allow access to that data.

TSPA proposed that data on meters and AMS be stored in five-minute intervals. TSPA stated this move is necessary to predicate further wholesale market innovation that would include five-minute wholesale market settlement.

The Joint ERCOT TDUs opposed TEAM's and TSPA's proposed revisions. Regarding TEAM's proposal, the Joint ERCOT TDUs asserted there is no reason to make changes to address a circumstance that is not under consideration or lacks sufficient support at this time. The Joint ERCOT TDUs stated that TSPA's comments did not address the technical aspects of five-minute interval data collection and the AMS upgrades that would be required to move data collection to shorter than 15-minute intervals. In addition, the Joint ERCOT TDUs noted that extensive technical inquiry and cost evaluation would be required before such a significant change could be considered. The Joint Non-ERCOT Utilities also opposed TSPA's proposal and stated that they saw no value in requiring data storage and communication capability for 5-minute intervals when it is not necessary for settlement. The Joint Non-ERCOT Utilities supported the 15-minute interval requirement in the rule.

Commission Response

The commission declines to adopt TEAM's proposal to accommodate the possible future involvement by an independent organization. If, in the future, the commission requires ERCOT to provide access to advanced meter data, the rule can be amended at that time.

Further, the commission declines to adopt the changes proposed by TSPA to require that meter data be stored in five-minute intervals. The commission agrees with the Joint ERCOT TDUs that extensive technical inquiry and cost evaluation would be required before such a significant change could be considered, and there are insufficient reasons for doing so at this time.

Comments on §25.130(g)(1)(G) (on-demand reads)

The Joint Non-ERCOT Utilities requested that the commission clarify §25.130(g)(1)(G) to specify that access to "customer advanced meter data" is provided.

TSPA, Sierra Club, OPUC, and Enel X expressed concern regarding the proposed minimum requirements for on-demand reads provided through an application programming interface. TSPA remarked that merely allowing on-demand reads to be done via the graphical user interface (web page) will substantially diminish its usefulness because this method, typically accomplished by a user clicking a button on a website, is not scalable. TSPA stated that on-demand reads must be encouraged programmatically through software. TSPA asserted that if two on-demand reads per hour per meter via an application programming interface is insufficient in times of significant strains on the grid when customer load can lead to dramatic differences in energy costs. In addition, TSPA asserted that far more than 6,000 on-demand reads per day per utility are necessary, and a level of service should be reliably expected without an exception for network traffic.

Sierra Club and OPUC also asserted that the proposed minimum requirement for provision of on-demand reads through an application programming interface is too low. Sierra Club stated that for the large utilities, the requirement represents only a tiny percentage of total advanced meters deployed. In order to make the minimum requirement more equitable, Sierra Club requested that the requirement be based on a percentage of meters or some other number based on the size of the utility. Alternatively, Sierra Club suggested that the commission determine appropriate requirements for provision of on-demand reads for each utility outside of the rule. OPUC preferred no minimum requirement be set and stated that many utilities currently provide more on-demand reads than the proposed minimum requirement. OPUC recommended that, if the commission keeps a minimum requirement in the rule, it be increased substantially, or the commission establish appropriate minimum requirements on an individual utility basis. OPUC did not oppose Sierra Club's suggestion to make the minimum requirement a percentage rather than a number but preferred no minimum requirement be set.

Enel X stated that deleting the proposed revision to §25.130(g)(1)(G) would allow the issue to be addressed by the terms of the settlement agreement in Docket No. 47472 for now and, at a future date, enable the commission to more
easily consider alternate minimum requirements that more appropriately reflect the size and capability of each utility’s system.

ARM agreed that it is unnecessary to include a minimum number of on-demand reads in the rule because the settlement in Docket No. 47472 already addresses the issue. ARM stated that if a minimum is included, it could create confusion as to whether the settlement in Docket No. 47472 or the rule controls. ARM recommended that the proposed changes to §25.130(g)(1)(G) that could be inconsistent with the settlement be dropped.

The Joint ERCOT TDUs opposed proposals to change the minimum number of on-demand reads required through an application programming interface. The Joint ERCOT TDUs stated that there is no need to require unlimited on-demand reads, because customer demand for on-demand reads are being met. In response to TSPA’s comment that on-demand reads should be available programmatically through software, the Joint ERCOT TDUs responded that SMT already provides on-demand reads programmatically through software by offering on-demand reads through an application programming interface.

The Joint Non-ERCOT Utilities opposed TSPA’s comment that on-demand reads be available programmatically through software. The Joint Non-ERCOT Utilities asserted that keeping the rule permissive for the Joint Non-ERCOT Utilities is a better approach, because on-demand reads through a graphical user interface are mandatory. The Joint Non-ERCOT Utilities believed the proposed language provides a reasonable balance of facilitating near real-time access to meter data and the costs and requirements of each utility’s communications and information technology infrastructure. The Joint Non-ERCOT Utilities remarked that the benefit a non-ERCOT customer would receive as a result of mandating on-demand reads through an application programming interface has not been demonstrated.

The Joint Non-ERCOT Utilities also opposed TSPA’s proposal to remove the rule’s exception for network traffic. The Joint Non-ERCOT Utilities explained that the utility must retain the ability to protect core network data flow, particularly with respect to sensors and any distribution automation devices on the grid during an outage. The Joint Non-ERCOT Utilities believed that the exception provides reasonable protection against sudden increased demand on the communications system to protect core processes and mitigates risk of incurring unreasonable or unnecessary investment to expand the communication network solely to facilitate more on-demand reads, which to date are relatively few.

Commission Response

The commission makes the change proposed by the Joint Non-ERCOT Utilities to specify that access to “customer meter data” is provided by an on-demand read.

The commission agrees with the concerns of TSPA, Sierra Club, OPUC, Enel, and ARM about including specific numerical requirements in the rule relating to-demand reads through an application programming interface (API). The commission therefore does not adopt those requirements in the proposed rule, so that any specific numerical requirements will be addressed on a case-by-case basis. Therefore, the specific numerical requirements approved by the commission in Docket No. 47472 for the four ERCOT utilities will remain in place unless and until the commission changes them in a future proceeding. Version 2.0 of SMT, the web portal used by the four ERCOT utilities, was implemented in December 2019 and for the first time allows on-demand reads to be made through an API rather than manually through SMT’s graphical user interface (web page). Because on-demand reads through an API are automated, this upgrade of SMT creates the potential for a quick and significant increase in the numbers of on-demand reads, which could overwhelm a utility’s ability to provide timely on-demand reads. The specific numerical requirements approved by the commission in Docket No. 47472 addressed this concern.

The commission declines to adopt TSPA’s proposed revision that would require the Joint Non-ERCOT Utilities to provide on-demand reads through an API. These utilities currently do not have retail competition or tariff offerings that create a potential need for API access. The rule permits but does not require a utility to support API access. Therefore, if there is a cost-justified reason for adding this functionality, a utility has the ability to do so under the rule.

The commission declines to adopt TSPA’s proposal to remove the rule’s provision making the availability of on-demand reads subject to network traffic. The commission agrees with the comments of the Joint Non-ERCOT Utilities that an electric utility must retain the ability to protect core network data flow.

Comments on §25.130(g)(1)(H) (on-board storage of AMS meter data)

Subsection §25.130(g)(1)(H) requires that an AMS must support on-board storage of meter data that complies with nationally recognized non-proprietary standards.

The Joint Non-ERCOT Utilities suggested that the range of relevant standards for on-board storage of meter data be expanded to include the International Electromechanical Commission (IEC) DLMS-COSEM standards, which are used by OpenWay Riva meters. They also proposed ending this subparagraph with the term “etc.”

Commission Response

The commission agrees to expand the example of relevant non-proprietary standards for on-board storage of meter data as suggested by the Joint Non-ERCOT Utilities. However, the commission declines to add “etc.” to §25.130(g)(1)(H) because the language is vague and unnecessary.

Comments on §25.130(g)(1)(J) (HAN devices)

Enel X and Sierra Club opposed the proposed revisions to §25.130(g)(1)(J) that would remove the requirement that an AMS have the capability to communicate with devices inside the home.

Sierra Club stated that it is open to some change in the language to reflect the limited use of HANs. However, Sierra Club preferred that the commission keep the requirement that an AMS have the capability to communicate with devices inside the premises so that customers can obtain their data in real-time. Furthermore, Sierra Club stated that not requiring non-ERCOT utilities’ AMS to have the capability to communicate with devices inside the home is a disservice to ratepayers who will be funding deployment of advanced meters.

Enel X stated that the structure of §25.130(g)(1)(J) does not mandate that HAN be the only solution that may be used to provide real-time access to data from a customer’s advanced meter. In addition, it stated that the result of the proposed revisions to §25.130(g)(1)(J) would be not only to limit access to real-time data through a HAN that communicates through the utility’s AMS, but also to limit the customers who can have access to those
granted in the settlement agreement adopted in Docket No. 47472. Enel X proposed a more narrowly focused revision
to the subsection that eliminates the ERCOT TDU’s obligation
to maintain HAN functionality consistent with the agreement in
Docket No. 47472 but retains clear authority for customers to
use other potential means to receive data from their meters in
real-time. Enel X believed that limiting customer access to their
meter data on a delayed, after-the-fact, basis is not adequate in
many circumstances. In addition, Enel X stated that as ERCOT
looks for solutions to provide it with a better understanding of the
status and activity of resources on the distribution grid, allow-
ing pathways to provide awareness that is less cost-prohibitive
than solutions used for larger resources on the transmission grid,
such as access to real-time data from a customer’s meter, could
facilitate this awareness and allow smaller customers easier ac-
cess to wholesale markets.

Mission:Data urged the commission to maintain the HAN re-
quirement for the non-ERCOT utilities. Mission:Data asserted
that retaining the HAN is necessary because there is no ade-
quate or practical substitute for the HAN’s ability to relay real-
time electricity consumption information to devices inside the
home. Mission:Data provided information to support its assertion
that alternatives to HAN are expensive, difficult, and potentially
dangerous to install, and may not be possible for certain elec-
trical panels throughout Texas. Mission:Data argued that elim-
inating HAN will have significant impacts on distributed energy
resources in the non-ERCOT regions of Texas. Mission:Data as-
serted that advanced systems involving rooftop solar, batteries,
aggregated energy efficiency, or demand response resources in
homes and businesses will be negatively impacted without ac-
cess to cost-effective real-time energy usage data. Mission:Data
stated that it does not necessarily follow that eliminating the re-
quirement for ERCOT TDU’s to provide HAN means that it is rea-
sonable to eliminate HAN for the non-ERCOT investor-owned
utilities. To the extent that customer longevity is required to fi-
nance market energy management systems that use HAN, Mis-
ion:Data believed that vertically integrated utilities may be in a
better position than REPs in the ERCOT region. Furthermore,
Mission:Data asserted that there has been no discussion in this
proceeding about the rate design implications for non-ERCOT
utilities of eliminating the only cost-effective method of providing
customers with real-time feedback on their electricity usage.

The Joint Non-ERCOT Utilities asserted that Mission:Data’s
comments failed to provide the full scope of issues surrounding
the HAN that weigh against proposals of HAN as a required
minimum feature. The Joint Non-ERCOT Utilities asserted that
Mission:Data’s comments failed to recognize that HAN function-
ality has been available through the ERCOT TDU’s deployments
for over ten years but never widely adopted by customers. The
Joint Non-ERCOT Utilities pointed to testimony in support of the
stipulation and settlement agreement filed in Docket No. 47472
that indicated less than 7,700 HAN devices were provisioned on
SMT as of April 2018. The Joint Non-ERCOT Utilities stated that
the commission found on-demand reads to be an acceptable
substitute for HAN functionality.

ARM stated that AMS meters were designed to be pairable with
HAN devices. ARM asserted that to the extent possible through
manual support on an as-requested basis, customers should re-
tain the ability to have self-provided or REP-provided on-premise
devices supported for pairing to AMS meters provided the cus-
tomer or REP is willing to pay for the reasonable cost of neces-
sary modifications. ARM believed that this could be effectuated
under §25.130(h), which provides a process for a REP to request
TDUs to provide enhanced advanced meters, additional meter-
ing technology, or advanced meter features. ARM provided a
proposed revision to §25.130(g)(1)(J) to acknowledge that REPs
or customers may request that ERCOT TDUs support the pair-
ing of a customer or REP-provided device to an AMS meter. The
REPs asserted that their proposed amendment to the subsection
would not alter the business requirements approved in Docket
No. 47472 because those are in relation to SMT support for
HAN, as distinct from AMS meters’ support.

The Joint ERCOT TDUs opposed ARM’s proposal unless the
commission authorizes utilities to implement a discretionary ser-
vice charge for that service. The Joint ERCOT TDUs also stated
that ARM’s proposal is inconsistent with the Order and Stipula-
tion in Docket No. 47472. In addition, the Joint ERCOT TDUs
stated that ARM’s proposal would require the TDUs to enable the
pairing of an AMS meter with a customer-provided HAN de-
vice or a HAN device provided by a REP or a competitive service
provider. Furthermore, the Joint ERCOT TDUs stated that SMT
2.0 is not capable of pairing a HAN device to a meter because
that functionality was removed under the stipulation and com-
mission’s order in Docket No. 47472.

Commission Response

The commission makes no change to the proposed language
in §25.130(g)(1)(J). The language in the proposed rule narrows
the requirement for an AMS to have the capability to commu-
nicate with devices inside a customer’s premises to an electric
utility in the ERCOT region with a HAN device paired to a meter
and in use at the time the version of the web portal approved in
Docket No. 47472 was implemented. As found in Docket No.
47472, only a very small percentage of customers have taken
advantage of the capability of AMS to provide access to direct,
real-time data through a HAN device. Furthermore, as stated in
response to comments made on §25.130(g)(1)(E), on-demand
meter reading gives a customer prompt access to usage infor-
mation without the costs incurred by the customer for a HAN.
In addition, use of on-demand reads is increasing by customers
in the ERCOT region, whereas use of HAN by customers in the
ERCOT region is decreasing. For the same reason, the com-
mission declines to adopt the changes proposed by Enel X and
Sierra Club to retain the requirement that an AMS have the ca-
pability to communicate with devices inside the home, and the
changes proposed by Mission:Data to retain the HAN require-
ment for non-ERCOT investor-owned utilities. The commission
does not adopt ARM’s proposal to revise §25.130(g)(1)(J)
to permit REPs or customers to request that ERCOT TDUs sup-
port the pairing of a customer or REP-provided device to an AMS
meter, because the commission is eliminating the requirement
that an AMS meter be capable of pairing with a customer or
REP-provided device. The commission’s finding in Docket No.
47472 remains correct that "On-demand meter reading function-
ality through SMT is an adequate substitute for HAN function-
ality."

Comments on §25.130(h)(2) (discretionary service charges)

ARM recommended removal of proposed language in
§25.130(h)(2) that require a REP to be responsible for the cost
of system changes necessary to provide enhanced advanced
meters requested by the REP. The REPs asserted that the term
"system changes" is broad, undefined, and could result in REPs
being charged for a variety of TDU overhead and administrativ-
recommend removal of proposed language in
§25.130(h)(2) that require a REP to be responsible for the cost
of system changes necessary to provide enhanced advanced
meters requested by the REP. The REPs asserted that the term
"system changes" is broad, undefined, and could result in REPs
being charged for a variety of TDU overhead and administrativ-

they only be charged the pro-rata share of the differential costs directly attributable to any individual request for the enhanced meter or feature.

The Joint ERCOT TDUs opposed ARM's request. The Joint ERCOT TDUs stated that REPs should pay for enhanced meters or features; otherwise, REPs will be empowered to request features regardless of the changes required to the utility's system or the costs associated with system changes.

**Commission Response**

The commission declines to make ARM's proposed change that would eliminate the requirement that a REP be responsible for the cost of system changes necessary to provide enhanced advanced meters requested by the REP. Further, the commission disagrees with ARM's alternate proposal that would charge a REP only the pro-rata share of the differential costs directly attributable to any individual request for the enhanced meter or feature. The commission declines to adopt either of ARM's proposals, in order to prevent costs related to an enhanced advanced meter or feature from being charged to customers that did not cause the costs to be incurred.

**Comments on §25.130(j)(3) (access to meter data)**

TSPA and ARM requested that the commission replace "appropriate and reasonable" standards for data access with "robust and reliable" standards in §25.130(j)(3). ARM stated that the competitive retail market relies on consistent and timely access to meter data and the commission's support for robustness of that access would support innovation.

In addition, TSPA stated that allowing access to meter data as soon as it is available, rather than the following day, could reduce the need for on-demand reads. TSPA suggested that utilities be required to provide access to data before validation, estimation, and editing of the data to ensure same day access to the data.

The Joint ERCOT TDUs and the Joint Non-ERCOT Utilities opposed TSPA's proposal for access to unvalidated data, because providing access to that data creates the possibility that customers, REPs, and other entities will make decisions based on incorrect or incomplete data. The Joint ERCOT TDUs asserted that it is crucial that data provided to customers be as correct as possible, because customers may not have the technical expertise to understand the differences that can occur between initial as-read data and data that has been validated or re-versioned.

**Commission Response**

The commission declines to adopt TSPA's and ARM's proposal to replace "appropriate and reasonable" standards with "robust and reliable" standards for access to meter data. TSPA and ARM did not provide enough information to justify this proposal.

The commission declines to adopt TSPA's proposal to require electric utilities to provide access to data before validation, estimation, and editing of the data in order to ensure same day access to the data. The commission agrees with the Joint ERCOT TDUs and the Joint Non-ERCOT Utilities that providing data that has not been through the electric utilities' validation process creates a significant risk that customers, REPs and other entities would make decisions based on incorrect or incomplete usage data. In addition, extensive technical inquiry and cost evaluation may be required before such a change could be considered, and there are insufficient reasons for doing so at this time.

**Comments on §25.130(j)(5) (customer authorization of access to meter data)**

TAeba, Mission:Data, Enel X, and Sierra Club requested that the commission retain §25.130(j)(5), which provides that "a customer may authorize its data to be available to an entity other than its REP." They stated that the provision is consistent with PURA §39.107(b), which provides that the end-use customer owns and controls all its meter data. TAeba suspected that the proposal to delete the provision may be based on the perception that the language is unnecessary and potentially redundant to §25.130(j)(1), which states that a utility must provide the customer, the customer's REP, and other entities authorized by the customer read-only access to the customer's meter data. However, TAeba stated that deleting the explicit provision in §25.130(j)(5) may create unnecessary confusion.

Furthermore, Mission:Data, Enel X, and Sierra Club disagreed with the Joint ERCOT TDUs' interpretation offered in their comments on §25.130(d)(13) that the proposed changes to the AMS rule open up a utility's provision of AMS access to a new class of entities: those that have been authorized by a retail customer to receive such access. Mission:Data, Enel X, and Sierra Club asserted that the existing rule already provides this access. Enel X stated that when the commission adopted §25.130, it recognized that customers could authorize third-parties to receive access to their meter data through the utility's web portal. "The Commission concurs with the joint DSPs that it is sufficient for the REP, the customer, and any authorized third party to have access to the advanced meter data via the web portal, as well as through the customer's home area network (HAN)." Mission:Data, Enel X, and the Sierra Club stated that the Joint ERCOT TDUs' narrow interpretation of the rule also conflicts with PURA §39.107(b). Enel X asserted that customers need to be able to continue to share their data with entities other than REPs, because most customers do not have the means to analyze their data or to understand the breadth of services available to them for energy management purposes. In addition, Enel X stated that energy management services provide benefits that extend beyond the customer premises to the electric grid. To avoid confusion regarding the ability of a customer to authorize access to its data to an entity other than its REP, Mission:Data and Enel X suggested replacing "an" with "any" to strengthen the provision in §25.130(j)(5) by revising it to read: "A customer may authorize data to be available to any entity other than its REP." Sierra Club agreed with this proposal.

**Commission Response**

The commission agrees with TAeba, Mission:Data, Enel X, and Sierra Club that the rule should clearly state a customer's right to authorize its meter data to be available to an entity other than its REP. Therefore, the commission keeps the language in existing §25.130(j)(5), with clarifications, and moves it to §25.130(j)(1) in order to streamline §25.130(j).

**Comments on §25.130(k) (fees for distributed generation)**

TSPA stated that because advanced meters are capable of multiple channels, an electric utility with an approved advanced meter deployment plan should not be allowed to charge an additional metering fee for distributed generation. Furthermore, TSPA asserted that any cost that would be recovered by such a fee should be included in the AMS surcharge or rates. Sierra Club and SEIA agreed with TSPA that a utility should be prohibited from charging an additional metering fee associated with distributed generation.

ARM stated that this rulemaking was undertaken to harmonize the rules with legislative amendments extending AMS deploy-
Comprehensive metering to non-ERCOT electric utilities. Considering this, ARM recommended that TSPA, SEIA, and Sierra Club's issue would be better addressed in a separate proceeding.

The Joint Non-ERCOT Utilities stated that, although it is true that advanced meters typically have multiple channels that can be used for distributed generation, a fee charged for premises with distributed generation might include costs other than the meter, such as a manual monthly billing calculation if this is not an automated feature, or provision of bi-directional meter data. The Joint Non-ERCOT Utilities also stated that failure to charge these costs to the distributed generation customer directly would put the burden for cost recovery on all customers.

Commission Response
The commission agrees with the Joint Non-ERCOT Utilities that there may be costs associated with premises with distributed generation that warrant a fee charged to such premises. Therefore, TSPA's proposal to prohibit such fees is inappropriate.

Comments on §25.133(d)(1) (termination of non-standard metering service)
This provision requires a utility to offer the following four different specific means of non-standard metering: disabling communications technology in an advanced meter if feasible; if applicable, allowing the customer to continue to receive metering service using the existing meter if the electric utility determines that it meets applicable accuracy standards; if commercially available, an analog meter that meets applicable meter accuracy standards; and a digital, non-communicating meter.

The Joint Non-ERCOT Utilities proposed to replace "and" with "or" in subsection(d)(1)(E)(iii) so a utility is not required to make all four alternative non-standard metering solutions available when any one of the options would be sufficient for offering non-standard metering service.

OPUC agreed with the Joint Non-ERCOT Utilities’ proposal and argued that requiring a utility to provide all four non-standard metering options will increase costs passed onto ratepayers.

ARM opposed the Joint Non-ERCOT Utilities' proposed edit to this subsection, because all four means may be required in some instances. ARM further argued that the Joint Non-ERCOT Utilities’ concern is addressed in the rule by qualifying statements of "if feasible" in clause (i), "if applicable" in clause (ii), and "if commercially available" in clause (iii).

Commission Response
The commission does not adopt the Joint Non-ERCOT Utilities’ proposal to change the language in §25.133(d)(1) that requires a utility to offer non-standard metering using one of four alternative non-standard metering solutions. Electric utilities in ERCOT have been offering non-standard metering service for a number of years under the rule that Joint Non-ERCOT Utilities seek to change and significant issues with this requirement have not been raised with the commission. The provision that non-ERCOT utilities propose to change already properly addresses the issue raised by the Joint Non-ERCOT Utilities. The Joint Non-ERCOT Utilities’ concern about being required to make all four alternative non-standard metering solutions available is addressed by qualifying statements in the provision. Specifically, "if feasible" applies to disabling communications technology in an advanced meter; "if applicable" applies to allowing the customer to continue to receive metering service using the existing meter if the electric utility determines that it meets applicable accuracy standards; and "if commercially available" applies to an analog meter that meets applicable meter accuracy standards.

Comments on §25.133(d)(2) (termination of non-standard metering service)
This subsection allows a customer to terminate non-standard metering service by contacting the customer’s electric utility. The customer is responsible for any remaining non-standard metering costs.

ARM proposed a change to this subsection to clarify the customer’s cost responsibility ends when terminating non-standard metering service. This edit adds "until the electric utility has terminated the service" to ensure a customer's cost responsibility ends once the utility terminates service and does not continue indefinitely. OPUC agreed with ARM’s proposal.

The Joint Non-ERCOT Utilities opposed ARM’s proposal, because it could have unintended consequences. They stated that it is possible that some capital costs incurred to provide non-standard metering service may not be fully recovered by the utility when a customer terminates non-standard metering service. The Joint Non-ERCOT Utilities provided the example of when a utility incurs costs for making back office programming changes to provide non-standard metering service for a customer request. The utility will incur costs to obtain and install the non-standard meter and update the billing system. If the non-standard metering service is terminated before these costs have been fully recovered, then the utility or other customers would be responsible for the remainder of these costs. The Joint Non-ERCOT Utilities recommended the rule as proposed to give the utilities and the commission flexibility to determine recovery of non-standard metering service costs from the customers who caused the costs to be incurred.

Commission Response
The commission agrees with the Joint Non-ERCOT Utilities that it is appropriate for the commission to retain the flexibility to determine recovery for any non-standard metering service costs that may not have been recovered upon the termination of non-standard metering service. Therefore, the commission declines to adopt ARM’s proposed change that would specify that the customer’s cost responsibility ends when terminating non-standard metering service.

All comments, including any not specifically referenced herein, were fully considered by the commission.

SUBCHAPTER A. GENERAL PROVISIONS
16 TAC §25.5
These amendments are adopted under §14.001 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §36.003, which grants the commission the authority to ensure that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; PURA §39.107, which grants the commission the authority to approve electric utility surcharges for the deployment of advanced meters, adopt rules relating to the transfer of customer data, and approve non-discriminatory rates
for metering service; and PURA §§39.402, 39.452, 39.5021 and 39.5521, which permit the electric utilities outside of the ERCOT region that elect to deploy advanced meters and meter information networks to recover reasonable and necessary deployment costs and subjects the deployment to commission rules adopted under PURA §39.107(h) and (k).


§25.5. Definitions.

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

(1) Above-market purchased power costs -- Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) Affected person -- means:
   (A) a public utility or electric cooperative affected by an action of a regulatory authority;
   (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
   (C) a person who:
      (i) is a competitor of a public utility with respect to a service performed by the utility; or
      (ii) wants to enter into competition with a public utility.

(3) Affiliate -- means:
   (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;
   (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
   (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
   (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
      (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
      (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
   (E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or
   (F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.

(4) Affiliated electric utility -- The electric utility from which an affiliated retail electric provider was unbundled in accordance with Public Utility Regulatory Act §39.051.

(5) Affiliated power generation company (APGC) -- A power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(6) Affiliated retail electric provider (AREP) -- A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(7) Aggregation -- Includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load.

(8) Aggregator -- A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

(9) Ancillary service -- A service necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services the commission may determine by rule.

(10) Base rate -- Generally, a rate designed to recover the cost of service other than certain costs separately identified and recovered through a rider, rate schedule, or other schedule. For bundled utilities, these separately identified costs may include items such as a fuel factor, power cost recovery factor, and surcharge. Distribution service providers may have separately identified costs such as transition costs, the excess mitigation charge, transmission cost recovery factors, and the competition transition charge.

(11) Bundled Municipally Owned Utilities/Electric Cooperatives (MOU/COOP) -- A municipally owned utility/electric cooperative that is conducting both transmission and distribution activities and competitive energy-related activities on a bundled basis without structural or functional separation of transmission and distribution functions from competitive energy-related activities and that makes a written declaration of its status as a bundled municipally owned utility/electric cooperative pursuant to §25.275(o)(3)(A) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).

(12) Calendar year -- January 1 through December 31.

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

(14) Competition transition charge (CTC) -- Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.

(15) Competitive affiliate -- An affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.
(16) Competitive energy efficiency services -- Energy efficiency services that are defined as competitive energy services pursuant to §25.341 of this title (relating to Definitions).

(17) Competitive retailer -- A retail electric provider; or a municipally owned utility or electric cooperative, that has the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice, without regard to geographic location.

(18) Congestion zone -- An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.

(19) Control area -- An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;

(C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and

(D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.

(20) Corporation -- A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by the Public Utility Regulatory Act.

(21) Critical loads -- Loads for which electric service is considered crucial for the protection or maintenance of public health and safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.

(22) Customer choice -- The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(23) Customer class -- A group of customers with similar electric service characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas Government Code, Title 10, Chapter 2303 may be considered to be a separate customer class of electric utilities.

(24) Day-ahead -- The day preceding the operating day.

(25) Deemed savings -- A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(26) Demand -- The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(27) Demand savings -- A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(28) Demand-side management (DSM) -- Activities that affect the magnitude or timing of customer electrical usage, or both.

(29) Demand-side resource or demand-side management -- Equipment, materials, and activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

(30) Disconnection of service -- Interruption of a customer's supply of electric service at the customer's point of delivery by an electric utility, a transmission and distribution utility, a municipally owned utility or an electric cooperative.

(31) Distribution line -- A power line operated below 60,000 volts, when measured phase-to-phase, that is owned by an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.

(32) Distributed resource -- A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (below 60,000 volts), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.

(33) Distribution service provider (DSP) -- An electric utility, municipally-owned utility, or electric cooperative that owns or operates for compensation in this state equipment or facilities that are used for the distribution of electricity to retail customers, as defined in this section, including retail customers served at transmission voltage levels.

(34) Economically distressed geographic area -- Zip code area in which the average household income is less than or equal to 60% of the statewide median income, as reported in the most recently available United States Census data.

(35) Electric cooperative --

(A) a corporation organized under the Texas Utilities Code, Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;

(B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or

(C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.

(36) Electric generating facility -- A facility that generates electric energy for compensation and that is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.

(37) Electricity Facts Label -- Information in a standardized format, as described in §25.475(f) of this title (relating to Information Disclosures to Residential and Small Commercial Customers),
that summarizes the price, contract terms, fuel sources, and environmental impact associated with an electricity product.

(38) Electricity product -- A specific type of retail electricity service developed and identified by a REP, the specific terms and conditions of which are summarized in an Electricity Facts Label that is specific to that electricity product.

(39) Electric Reliability Council of Texas (ERCOT) -- Refers to the independent organization and, in a geographic sense, refers to the area served by electric utilities, municipally owned utilities, and electric cooperatives that are not synchronously interconnected with electric utilities outside of the State of Texas.

(40) Electric service identifier (ESI ID) -- The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by the Electric Reliability Council of Texas (ERCOT) or another independent organization.

(41) Electric utility -- Except as otherwise provided in this Chapter, an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;
(B) a qualifying facility;
(C) a power generation company;
(D) an exempt wholesale generator;
(E) a power marketer;
(F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
(G) an electric cooperative;
(H) a retail electric provider;
(I) the state of Texas or an agency of the state; or
(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Subchapter C, Chapter 184.

(42) Energy efficiency -- Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.

(43) Energy efficiency measures -- Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kW, or both.

(44) Energy efficiency project -- An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers’ electric energy consumption and peak demand, and energy costs.

(45) Energy efficiency service provider (EESP) -- A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or large commercial customer, if the person has executed a standard offer contract.

(46) Energy savings -- A quantifiable reduction in a customer’s consumption of energy.

(47) ERCOT protocols -- Body of procedures developed by ERCOT to maintain the reliability of the regional electric network and account for the production and delivery of electricity among resources and market participants. The procedures, initially approved by the commission, include a revisions process that may be appealed to the commission, and are subject to the oversight and review of the commission.

(48) ERCOT region -- The geographic area under the jurisdiction of the commission that is served by transmission service providers that are not synchronously interconnected with transmission service providers outside of the state of Texas.

(49) Exempt wholesale generator -- A person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electric energy, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale, and who is in compliance with the registration requirements of §25.109 of this title (Registration of Power Generation Companies and Self-Generators).

(50) Existing purchased power contract -- A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(51) Facilities -- All the plant and equipment of an electric utility, including all tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of an electric utility.

(52) Financing order -- An order of the commission adopted under the Public Utility Regulatory Act §39.201 or §39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.

(53) Freeze period -- The period beginning on January 1, 1999, and ending on December 31, 2001.

(54) Generation assets -- All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or
subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(55) Generation service -- The production and purchase of electricity for retail customers and the production, purchase and sale of electricity in the wholesale power market.

(56) Good utility practice -- Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

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

(58) Independent organization -- An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller.

(59) Independent system operator -- An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

(60) Installed generation capacity -- All potentially marketable electric generation capacity, including the capacity of:

(A) generating facilities that are connected with a transmission or distribution system;
(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and
(C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(61) Interconnection agreement -- The standard form of agreement, which has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.

(62) License -- The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(63) Licensing -- The commission process for granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(64) Load factor -- The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.

(65) Low-income customer -- An electric customer who receives Supplemental Nutrition Assistance Program (SNAP) from Texas Health and Human Services Commission (HHSC) or medical assistance from a state agency administering a part of the medical assistance program.

(66) Low-Income List Administrator (LILA) -- A third-party administrator contracted by the commission to administer aspects of the low-income customer identification process established under PURA §17.007.

(67) Market power mitigation plan -- A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act §39.154.

(68) Market value -- For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under the Public Utility Regulatory Act ( PURA ) §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

(69) Master meter -- A meter used to measure, for billing purposes, all electric use of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.

(70) Municipality -- A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(71) Municipally-owned utility (MOU) -- Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(72) Nameplate rating -- The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

(73) Native load customer -- A wholesale or retail customer on whose behalf an electric utility, electric cooperative, or municipally-owned utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.

(74) Natural gas energy credit (NGEC) -- A tradable instrument representing each megawatt of new generating capacity fueled by natural gas, as authorized by the Public Utility Regulatory Act §39.9044 and implemented under §25.172 of this title (relating to Goal for Natural Gas).

(75) Net book value -- The original cost of an asset less accumulated depreciation.

(76) Net dependable capability -- The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.

(77) New on-site generation -- Electric generation capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:

(A) A fully operational facility, or
(B) A project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission ( TNRCC ) in effect at the time of filing.

(78) Off-grid renewable generation -- The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(79) Other generation sources -- A competitive retailer's or affiliated retail electric provider's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.

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(80) Person -- Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

(81) Power cost recovery factor (PCRF) -- A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

(82) Power generation company (PGC) -- A person that:
   (A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies;
   (B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and
   (C) does not have a certified service area, although its affiliated electric utility or transmission and distribution utility may have a certified service area.

(83) Power marketer -- A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state; does not have a certified service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers).

(84) Power region -- A contiguous geographical area which is a distinct region of the North American Electric Reliability Council.

(85) Pre-interconnection study -- A study or studies that may be undertaken by a utility in response to its receipt of a completed application for interconnection and parallel operation with the utility system at distribution voltage. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies and utility system impact studies.

(86) Premises -- A tract of land or real estate or related commonly used tracts including buildings and other appurtenances thereon.

(87) Price to beat (PTB) -- A price for electricity, as determined pursuant to the Public Utility Regulatory Act §39.202, charged by an affiliated retail electric provider to eligible residential and small commercial customers in its service area.

(88) Proceeding -- A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

(89) Proprietary customer information -- Any information compiled by a retail electric provider, an electric utility, a transmission and distribution business unit as defined in §25.275(c)(16) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities) on a customer in the course of providing electric service or by an aggregator on a customer in the course of aggregating electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any information that the customer has expressly requested not be disclosed.

Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

(90) Provider of last resort (POLR) -- A retail electric provider (REP) certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)).

(91) Public retail customer -- A retail customer that is an agency of this state, a state institution of higher education, a public school district, or a political subdivision of this state.

(92) Public utility or utility -- An electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in the Public Utility Regulatory Act §51.002.

(93) Public Utility Regulatory Act (PUA) -- The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 et seq.

(94) Purchased power market value -- The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(95) Qualified scheduling entity -- A market participant that is qualified by the Electric Reliability Council of Texas (ERCOT) in accordance with Section 16, Registration and Qualification of Market Participants of ERCOT's Protocols, to submit balanced schedules and ancillary services bids and settle payments with ERCOT.

(96) Qualifying cogenerator -- The meaning as assigned this term by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is for that reason considered to be a retail electric provider or a power generation company.

(97) Qualifying facility -- A qualifying cogenerator or qualifying small power producer.

(98) Qualifying small power producer -- The meaning as assigned this term by 16 U.S.C. §796(17)(D).

(99) Rate -- A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

(100) Rate class -- A group of customers taking electric service under the same rate schedule.

(101) Rate year -- The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

(102) Ratemaking proceeding -- A proceeding in which a rate may be changed.

(103) Registration agent -- Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.
(104) Regulatory authority -- In accordance with the context where it is found, either the commission or the governing body of a municipality.

(105) Renewable demand side management (DSM) technologies -- Equipment that uses a renewable energy resource (renewable resource) as defined in this section, that, when installed at a customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.

(106) Renewable energy -- Energy derived from renewable energy technologies.

(107) Renewable energy credit (REC) -- A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by the Public Utility Regulatory Act §39.904 and implemented under §25.173(e) of this title (relating to Goal for Renewable Energy).

(108) Renewable energy credit account (REC account) -- An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.

(109) Renewable energy resource (renewable resource) -- A resource that produces energy derived from renewable energy technologies.

(110) Renewable energy technology -- Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(111) Repowering -- Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(112) Residential customer -- Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity at the customer’s place of residence for personal, family or household purposes and who are not resellers of electricity.

(113) Retail customer -- The separately metered end-use customer who purchases and ultimately consumes electricity.

(114) Retail electric provider (REP) -- A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(115) Retail electric provider (REP) of record -- The REP assigned to the electric service identifier (ESI ID) in ERCOT’s database. There can be no more than one REP of record assigned to an ESI ID at any specific point in time.

(116) Retail stranded costs -- That part of net stranded cost associated with the provision of retail service.

(117) Retrofit -- The installation of control technology on an electric generating facility to reduce the emissions of nitrogen oxide, sulfur dioxide, or both.

(118) River authority -- A conservation and reclamation district created pursuant to the Texas Constitution, Article 16, Section 59, including any nonprofit corporation created by such a district pursuant to the Texas Water Code, Chapter 152, that is an electric utility.

(119) Rule -- A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(120) Separately metered -- Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(121) Service -- Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.

(122) Spanish-speaking person -- A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(123) Standard meter -- The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.

(124) Stranded cost -- The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.

(125) Submetering -- Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.

(126) Summer net dependable capability -- The net capability of a generating unit in megawatts (MW) for daily planning and operational purposes during the summer peak season, as determined in accordance with requirements of the reliability council or independent organization in which the unit operates.

(127) Supply-side resource -- A resource, including a storage device, that provides electricity from fuels or renewable resources.

(128) System emergency -- A condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

(129) Tariff -- The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.

(130) Termination of service -- The cancellation or expiration of a sales agreement or contract by a retail electric provider by notification to the customer and the registration agent.
(131) Tenant -- A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(132) Test year -- The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(133) Texas jurisdictional installed generation capacity -- The amount of an affiliated power generation company's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

(134) Transition bonds -- Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.

(135) Transition charges -- Non-bypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.

(136) Transmission and distribution business unit (TDBU) -- The business unit of a municipally owned utility/electric cooperative, whether structurally unbundled as a separate legal entity or functionally unbundled as a division, that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity at retail, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of electric utility in a qualifying power region certified under the Public Utility Regulatory Act §39.152. Transmission and distribution business unit does not include a municipally owned utility/electric cooperative that owns, controls, or is an affiliate of the transmission and distribution business unit if the transmission and distribution business unit is organized as a separate corporation or other legally distinct entity. Except as specifically authorized by statute, a transmission and distribution business unit shall not provide competitive energy-related activities.

(137) Transmission and distribution utility (TDU) -- A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility", in a qualifying power region certified under the Public Utility Regulatory Act (PURA) §39.152, but does not include a municipally owned utility or an electric cooperative. The TDU may be a single utility or may be separate transmission and distribution utilities.

(138) Transmission line -- A power line that is operated at 60 kilovolts (kV) or above, when measured phase-to-phase.

(139) Transmission service -- Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice in any portion of the Electric Reliability Council of Texas (ERCOT) region, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not "transmission service".

(140) Transmission service customer -- A transmission service provider, distribution service provider, river authority, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be eligible to be a transmission service customer. A retail customer, as defined in this section, may not be a transmission service customer.

(141) Transmission service provider (TSP) -- An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.

(142) Transmission system -- The transmission facilities at or above 60 kilovolts (kV) owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission service.

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

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Public Utility Commission of Texas
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SUBCHAPTER F. METERING
16 TAC §25.130, §25.133
Statutory Authority
These amendments are adopted under §14.001 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §36.003, which grants the commission the authority to issue and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §36.003, which grants the commission the authority to ensure that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; PURA §39.107, which grants the commission the authority to approve electric utility surcharges for the deployment of advanced meters, adopt rules relating to the transfer of customer data, and approve non-discriminatory rates for metering service; and PURA §§39.402, 39.452, 39.5021 and 39.5521, which permit the electric utilities outside of the ERCOT region that elect to deploy advanced meters and meter information networks to recover reasonable and necessary deployment
costs and subjects the deployment to commission rules adopted under PURA §39.107(h) and (k).


§25.130. Advanced Metering.

(a) Purpose. This section addresses the deployment, operation, and cost recovery for advanced metering systems.

(b) Applicability. This section is applicable to all electric utilities, including transmission and distribution utilities. Any requirement applicable to an electric utility in this section that relates to retail electric providers (REPs) or REPs of record is applicable only to electric utilities operating in areas open to customer choice.

(c) Definitions. As used in this section, the following terms have the following meanings, unless the context indicates otherwise:

(1) Advanced meter -- Any new or appropriately retrofitted meter that functions as part of an advanced metering system and that has the minimum system features specified in this section, except to the extent the electric utility has obtained a waiver of a minimum feature from the commission.

(2) Advanced Metering System (AMS) -- A system, including advanced meters and the associated hardware, software, and communications systems, including meter information networks, that collects time-differentiated energy usage and performs the functions and has the features specified in this section.

(3) Deployment Plan -- An electric utility's plan for deploying advanced meters in accordance with this section and either filed with the commission as part of the Notice of Deployment or approved by the commission following a Request for Approval of Deployment.

(4) Enhanced advanced meter -- A meter that contains features and functions in addition to the AMS features in the deployment plan approved by the commission.

(5) Web portal -- The website made available on the internet in compliance with this section by an electric utility or a group of electric utilities through which secure, read-only access to AMS usage data is made available to the customer, the customer's REP of record, and entities authorized by the customer.

(d) Deployment and use of advanced meters.

(1) Deployment and use of an AMS by an electric utility is voluntary unless otherwise ordered by the commission. However, deployment and use of an AMS for which an electric utility seeks a surcharge for cost recovery must be consistent with this section, except to the extent that the electric utility has obtained a waiver from the commission.

(2) Six months prior to initiating deployment of an AMS or as soon as practicable after the effective date of this section, whichever is later, an electric utility that intends to deploy an AMS must file a statement of AMS functionality, and either a notice of deployment or a request for approval of deployment. An electric utility may request a surcharge under subsection (k) of this section in combination with a notice of deployment or a request for approval of deployment. A proceeding that includes a request to establish or amend a surcharge will be a ratemaking proceeding and a proceeding involving only a request for approval of deployment will not be a ratemaking proceeding.

(3) The statement of AMS functionality must:

(A) state whether the AMS meets the requirements specified in subsection (g) of this section and what additional features, if any, it will have;

(B) describe any variances between technologies and meter functions within the electric utility's service territory; and

(C) state whether the electric utility intends to seek a waiver of any provision of this section in its request for surcharge.

(4) A deployment plan must contain the following information:

(A) Type of meter technology;

(B) Type and description of communications equipment in the AMS;

(C) Systems that will be developed during the deployment period;

(D) A timeline for the web portal development or integration into an existing web portal;

(E) A deployment schedule by specific area (geographic information); and

(F) A schedule for deployment of web portal functionalities.

(5) An electric utility must file with the deployment plan, testimony and other supporting information, including estimated costs for all AMS components, estimated net operating cost savings expected in connection with implementing the deployment plan, and the contracts for equipment and services associated with the deployment plan, that prove the reasonableness of the plan.

(6) Competitively sensitive information contained in the deployment plan and the monthly progress reports required under paragraph (9) of this subsection may be filed confidentially. An electric utility's deployment plan must be maintained and made available for review on the electric utility's website. Competitively sensitive information contained in the deployment plan must be maintained and made available at the electric utility's offices in Austin. Any REP that wishes to review competitively sensitive information contained in the electric utility's deployment plan available at its Austin office may do so during normal business hours upon reasonable advanced notice to the electric utility and after executing a non-disclosure agreement with the electric utility.

(7) If the request for approval of a deployment plan contains the information described in paragraph (4) of this subsection and the AMS features described in subsection (g)(1) of this section, then the commission will approve or disapprove the deployment plan within 150 days, but this deadline may be extended by the commission for good cause.

(8) An electric utility's treatment of AMS, including technology, functionalities, services, deployment, operations, maintenance, and cost recovery must not be unreasonably discriminatory, prejudicial, preferential, or anticompetitive.

(9) Each electric utility must provide progress reports on a monthly basis following the filing of its deployment plan with the commission until deployment is complete. Upon filing of such reports, an electric utility operating in an area open to customer choice must notify all REPs of the filing through standard market notice procedures. A monthly progress report must be filed within 15 days of the end of the month to which it applies, and must include the following information:

(A) the number of advanced meters installed, listed by electric service identifier for meters in the Electric Reliability Council...
of Texas (ERCOT) region. Additional deployment information if available must also be provided, such as county, city, zip code, feeder numbers, and any other easily discernable geographic identification available to the electric utility about the meters that have been deployed;

(B) significant delays or deviation from the deployment plan and the reasons for the delay or deviation;

(C) a description of significant problems the electric utility has experienced with an AMS, with an explanation of how the problems are being addressed;

(D) the number of advanced meters that have been replaced as a result of problems with the AMS; and

(E) the status of deployment of features identified in the deployment plan and any changes in deployment of these features.

(10) If an electric utility has received approval of its deployment plan from the commission, the electric utility must obtain commission approval before making any changes to its AMS that would affect the ability of a customer, the customer's REP of record, or entities authorized by the customer to utilize any of the AMS features identified in the electric utility's deployment plan by filing a request for amendment to its deployment plan. In addition, an electric utility may request commission approval for other changes in its approved deployment plan. The commission will act upon the request for an amendment to the deployment plan within 45 days of submission of the request, unless good cause exists for additional time. If an electric utility filed a notice of deployment, the electric utility must file an amendment to its notice of deployment at least 45 days before making any changes to its AMS that would affect the ability of a customer, the customer's REP of record, or entities authorized by the customer to utilize any of the AMS features identified in the electric utility's notice of deployment. This paragraph does not in any way preclude the electric utility from conducting its normal operations and maintenance with respect to the electric utility's transmission and distribution system and metering systems.

(11) During and following deployment, any outage related to normal operations and maintenance that affects a REP's ability to obtain information from the system must be communicated to the REP through the outage and restoration notice process according to Applicable Legal Authorities, as defined in 25.214(d)(1) of this title (relating to Tariff for Retail Delivery Service). Notification of any planned or unplanned outage that affects access to customer usage data must be posted on the electric utility's web portal home page.

(12) An electric utility subject to 25.343 of this title (relating to Competitive Energy Services) must not provide any advanced metering equipment or service that is deemed a competitive energy service under that section. Any functionality of the AMS that is a required feature under this section or that is included in an approved deployment plan or otherwise approved by the commission does not constitute a competitive energy service under §25.343 of this title.

(13) An electric utility's deployment and provision of AMS services and features, including but not limited to the features required in subsection (g) of this section, are subject to the limitation of liability provisions found in the electric utility's tariff.

(e) Technology requirements. Except for pilot programs, an electric utility must not deploy AMS technology that has not been successfully installed previously with at least 500 advanced meters in North America, Australia, Japan, or Western Europe.

(f) Pilot programs. An electric utility may deploy AMS with up to 10,000 meters that do not meet the requirements of subsection (g) of this section in a pilot program, to gather additional information on metering technologies, pricing, and management techniques, for studies, evaluations, and other reasons. A pilot program may be used to satisfy the requirement in subsection (e) of this section. An electric utility is not required to obtain commission approval for a pilot program. Notice of the pilot program and opportunity to participate must be sent by the electric utility to all REPs and all entities authorized by a customer to have read-only access to the customer's advanced meter data.

(g) AMS features.

(1) An AMS must provide or support the following minimum system features:

(A) automated or remote meter reading;

(B) two-way communications between the meter and the electric utility;

(C) remote disconnection and reconnection capability for meters rated at or below 200 amps.

(D) time-stamped meter data;

(E) access to customer usage data by the customer, the customer's REP of record, and entities authorized by the customer provided that 15-minute interval or shorter data from the electric utility's AMS must be transmitted to the electric utility's or a group of electric utilities' web portal on a day-after basis;

(F) capability to provide on-demand reads of a customer's advanced meter through the graphical user interface of an electric utility's or a group of electric utilities' web portal when requested by a customer, the customer's REP of record, or entities authorized by the customer subject to network traffic such as interval data collection, market orders if applicable, and planned and unplanned outages;

(G) for an electric utility that provides access through an application programming interface, the capability to provide on-demand reads of a customer's advanced meter data, subject to network traffic such as interval data collection, market orders if applicable, and planned and unplanned outages;

(H) on-board meter storage of meter data that complies with nationally recognized non-proprietary standards such as in American National Standards Institute (ANSI) C12.19 tables or International Electrotechnical Commission (IEC) DLMS-COSEM standards;

(I) open standards and protocols that comply with nationally recognized non-proprietary standards such as ANSI C12.22, including future revisions;

(J) for an electric utility in the ERCOT region, the capability to communicate with devices inside the premises, including, but not limited to, usage monitoring devices, load control devices, and prepayment systems through a home area network (HAN), based on open standards and protocols that comply with nationally recognized non-proprietary standards such as ZigBee, Home-Plug, or the equivalent through the electric utility's AMS. This requirement applies only to a HAN device paired to a meter and in use at the time that the version of the web portal approved in Docket Number 47472 was implemented and terminates when the HAN device is disconnected at the request of the customer or a move-out transaction occurs for the customer's premises; and

(K) the ability to upgrade these features as the need arises.

(2) A waiver from any of the requirements of paragraph (1) of this subsection may be granted by the commission if it would
be uneconomic or technically infeasible to implement or there is an adequate substitute for that particular requirement. The electric utility must meet its burden of proof in its waiver request.

(3) In areas where there is not a commission-approved independent regional transmission organization, standards referred to in this section for time tolerance and data transfer and security may be approved by a regional transmission organization approved by the Federal Energy Regulatory Commission or, if there is no approved regional transmission organization, by the commission.

(4) Once an electric utility has deployed its advanced meters, it may add or enhance features provided by AMS, as technology evolves. The electric utility must notify the commission and REPs of any such additions or enhancements at least three months in advance of deployment, with a description of the features, the deployment and notification plan, and the cost of such additions or enhancements, and must follow the monthly progress report process described in subsection (d)(9) of this section until the enhancement process is complete.

(h) Discretionary Meter Services. An electric utility that operates in an area that offers customer choice must offer, as discretionary services in its tariff, installation of advanced meters and advanced meter features.

(1) A REP may request the electric utility to provide enhanced advanced meters, additional metering technology, or advanced meter features not specifically offered in the electric utility's tariff, that are technically feasible, generally available in the market, and compatible with the electric utility's AMS.

(2) The REP must pay the reasonable differential cost for the enhanced advanced meters or features and system changes required by the electric utility to offer those meters or features.

(3) Upon request by a REP, an electric utility must expeditiously provide a report to the REP that includes an evaluation of the cost and a schedule for providing the enhanced advanced meters or advanced meter features of interest to the REP. The REP must pay a reasonable discretionary services fee for this report. This discretionary services fee must be included in the electric utility's tariff.

(4) If an electric utility deploys advanced meters or advanced meter features not addressed in its tariff at the request of the REP, the electric utility must expeditiously apply to amend its tariff to specifically include the enhanced advanced meters or meter features that it agreed to deploy. Additional REPs may request the tariffed enhanced advanced meters or advanced meter features under the process described in this paragraph of this subsection.

(i) Tariff. All discretionary AMS features offered by the electric utility must be described in the electric utility's tariff.

(j) Access to meter data.

(1) A customer may authorize its meter data to be available to an entity other than its REP. An electric utility must provide a customer, the customer's REP of record, and other entities authorized by the customer read-only access to the customer's advanced meter data, including meter data used to calculate charges for service, historical load data, and any other proprietary customer information. The access must be convenient and secure, and the data must be made available no later than the day after it was created.

(2) The requirement to provide access to the data begins when the electric utility has installed 2,000 advanced meters for residential and non-residential customers. If an electric utility has already installed 2,000 advanced meters by the effective date of this section, the electric utility must provide access to the data in the timeframe approved by the commission in either the deployment plan or request for

surcharge proceeding. If only a notice of deployment has been filed, access to the data must begin no later than six months from the filing of the notice of deployment with the commission.

(3) An electric utility's or group of electric utilities' web portal must use appropriate and reasonable standards and methods to provide secure access for the customer, the customer's REP of record, and entities authorized by the customer to the meter data. The electric utility must have an independent security audit conducted within one year of providing that access to meter data. The electric utility must promptly report the audit results to the commission.

(4) The independent organization, regional transmission organization, or regional reliability entity must have access to information that is required for wholesale settlement, load profiling, load research, and reliability purposes.

(k) Cost recovery for deployment of AMS.

(1) Recovery Method. The commission will establish a nonbypassable surcharge for an electric utility to recover reasonable and necessary costs incurred in deploying AMS to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter. The surcharge must not be established until after a detailed deployment plan is filed under subsection (d) of this section. In addition, the surcharge must not ultimately recover more than the AMS costs that are spent, reasonable and necessary, and fully allocated, but may include estimated costs that will be reconciled pursuant to paragraph (6) of this subsection. As indicated by the definition of AMS in subsection (c)(2) of this section, the costs for facilities that do not perform the functions and have the features specified in this section must not be included in the surcharge provided for by this subsection unless an electric utility has received a waiver under subsection (g)(2) of this section. The costs of providing AMS services include those costs of AMS installed as part of a pilot program under this section. Costs of providing AMS for a particular customer class must be surcharged only to customers in that customer class.

(2) Carrying Costs. The annualized carrying-cost rate to be applied to the unamortized balance of the AMS capital costs must be the electric utility's authorized weighted-average cost of capital (WACC). If the commission has not approved a WACC for the electric utility within the last four years, the commission may set a new WACC to apply to the unamortized balance of the AMS capital costs. In each subsequent rate proceeding in which the commission resets the electric utility's WACC, the carrying-charge rate that is applied to the unamortized balance of the utility's AMS costs must be correspondingly adjusted to reflect the new authorized WACC.

(3) Surcharge Proceeding. In the request for surcharge proceeding, the commission will set the surcharge based on a levelized amount, and an amortization period based on the useful life of the AMS. The commission may set the surcharge to reflect a deployment of advanced meters that is up to one-third of the electric utility's total meters over each calendar year, regardless of the rate of actual AMS deployment. The actual or expected net operating cost savings from AMS deployment, to the extent that the operating costs are not reflected in base rates, may be considered in setting the surcharge. If an electric utility that requests a surcharge does not have an approved deployment plan, the commission in the surcharge proceeding may reconcile the costs that the electric utility already spent on AMS in accordance with paragraph (6) of this subsection and may approve a deployment plan.

(4) General Base Rate Proceeding while Surcharge is in Effect. If the commission conducts a general base rate proceeding while a surcharge under this section is in effect, then the commission will include the reasonable and necessary costs of installed AMS equipment
in the base rates and decrease the surcharge accordingly, and permit reasonable recovery of any non-AMS metering equipment that has not yet been fully depreciated but has been replaced by the equipment installed under an approved deployment plan.

(5) Annual Reports. An electric utility must file annual reports with the commission updating the cost information used in setting the surcharge. The annual reports must include the actual costs spent to date in the deployment of AMS and the actual net operating cost savings from AMS deployment and how those numbers compare to the projections used to set the surcharge. During the annual report process, an electric utility may apply to update its surcharge, and the commission may set a schedule for such applications. For a levelized surcharge, the commission may alter the length of the surcharge collection period based on review of information concerning changes in deployment costs or operating costs savings in the annual report or changes in WACC. An annual report filed with the commission will not be a ratemaking proceeding, but an application by the electric utility to update the surcharge must be a ratemaking proceeding.

(6) Reconciliation Proceeding. All costs recovered through the surcharge must be reviewed in a reconciliation proceeding on a schedule to be determined by the commission. Notwithstanding the preceding sentence, the electric utility may request multiple reconciliation proceedings, but no more frequently than once every three years. There is a presumption that costs spent in accordance with a deployment plan or amended deployment plan approved by the commission are reasonable and necessary. Any costs recovered through the surcharge that are found in a reconciliation proceeding not to have been spent or properly allocated, or not to be reasonable and necessary, must be refunded to electric utility’s customers. In addition, the commission will make a final determination of the net operating cost savings from AMS deployment used to reduce the amount of costs that ultimately can be recovered through the surcharge. Accrual of interest on any refunded or surcharged amounts resulting from the reconciliation must be at the electric utility’s WACC and must begin at the time the under or over recovery occurred.

(7) Cross-subsidization and fees. The electric utility must account for its costs in a manner that ensures there is no inappropriate cost allocation, cost recovery, or cost assignment that would cause cross-subsidization between utility activities and non-utility activities. The electric utility shall not charge a disconnection or reconnection fee that was approved by the commission prior to the effective date of this rule, for a disconnection or reconnection that is effectuated using the remote disconnection or connection capability of an advanced meter.


(a) Purpose. This section allows a customer to choose to receive electric service through a non-standard meter from an electric utility that has deployed or is requesting to deploy advanced meters under a commission-approved deployment plan or notice of deployment and authorizes the electric utility to assess fees to recover the costs associated with this section from a customer who elects to receive electric service through a non-standard meter.

(b) Applicability. This section is applicable to an electric utility, including a transmission and distribution utility, that has deployed or is requesting to deploy advanced meters under a commission-approved deployment plan or notice of deployment. Any requirement in this section that relates to retail electric providers (REPs) is applicable only to REPs and electric utilities that operate in areas open to customer choice.

(c) Definitions. As used in this section, the following terms have the following meanings, unless the context indicates otherwise:

(1) Advanced meter -- As defined in §25.130 of this title (relating to Advanced Metering).

(2) Non-standard meter -- A meter that does not function as an advanced meter.

(3) Non-standard metering service -- Provision of electric service through a non-standard meter from an electric utility that has deployed or is requesting to deploy advanced meters under a commission-approved deployment plan or notice of deployment.

(d) Initiation and termination of non-standard metering service.

(1) Initiation of non-standard metering service. An electric utility that has deployed or is requesting to deploy advanced meters under a commission-approved deployment plan or notice of deployment must offer non-standard metering service to customers.

(A) An electric utility filing a deployment plan or notice of deployment under §25.130 of this title after the effective date of this section must include non-standard metering service as a part of the plan or notice.

(i) Within 30 days of the date of commission approval of an electric utility's deployment plan or the filing of a notice of deployment, the electric utility must provide information on its website that describes its non-standard metering service, the process under this section to request non-standard metering service, and all the costs associated with the service.

(ii) An electric utility must provide a statement that non-standard metering service is available and provide a hyperlink to the information required under clause (i) of this subparagraph in all notices and messages delivered to a customer relating to the deployment date of advanced meters in the customer's geographic area.

(B) An electric utility must provide notice to a customer consistent with subparagraph (C) of this paragraph within seven days of the customer's request for non-standard metering service, using an appropriate means of service.

(C) An electric utility must notify a customer that requests non-standard metering service of the following through a written acknowledgement.

(i) The customer will be required to pay the costs associated with the initiation of non-standard metering service and the ongoing costs associated with the manual reading of the meter, and other fees and charges that may be assessed by the electric utility that are associated with the non-standard metering service;

(ii) The current one-time fees and monthly fee for non-standard metering service;

(iii) The customer may be required to wait up to 45 days to switch the customer's REP of record;

(iv) The customer may experience longer restoration times in case of a service interruption or outage;

(v) The customer may be required by the customer's REP of record to choose a different product or service before initiation of the non-standard metering service, subject to any applicable charges or fees required under the customer's existing contract, if the customer is currently enrolled in a product or service that relies on an advanced meter; and

(vi) For a customer that does not currently have an advanced meter, the date (60 days after service of the notice) by which the customer must provide a signed, written acknowledgement and payment of the one-time fee to the electric utility prescribed by sub-
section (f)(3) of this section. If the signed, written acknowledgement and payment are not received within 60 days, the electric utility will install an advanced meter on the customer's premises.

(D) The electric utility must retain the signed, written acknowledgement for at least two years after the non-standard meter is removed from the premises. The commission may adopt a form for the written acknowledgement.

(E) An electric utility must offer non-standard metering through the following means:

(i) disabling communications technology in an advanced meter if feasible;

(ii) if applicable, allowing the customer to continue to receive metering service using the existing meter if the electric utility determines that it meets applicable accuracy standards;

(iii) if commercially available, an analog meter that meets applicable meter accuracy standards; and

(iv) a digital, non-communicating meter.

(F) The electric utility must not initiate the process to provide non-standard metering service before it has received the customer's payment and signed, written acknowledgement. The electric utility must initiate the approved standard market process to notify the customer's REP of record within three days of the electric utility's receipt of the customer's payment and signed, written acknowledgement. Within 30 days of receipt of the payment of the one-time fee and the signed written acknowledgement from the customer, the electric utility, using the approved standard market process, must notify the customer's REP of record of the date the non-standard metering service was initiated.

(2) Termination of non-standard metering service. A customer receiving non-standard metering service may terminate that service by notifying the customer's electric utility. The customer will remain responsible for all costs related to non-standard metering service.

(e) Other electric utility obligations.

(1) When an electric utility completes a move-out transaction for a customer who was receiving non-standard metering service, the electric utility must install or activate an advanced meter at the premises.

(2) An electric utility must read a non-standard meter monthly. In order for the electric utility to maintain a non-standard meter at the customer's premises, the customer must provide the electric utility with sufficient access to properly operate and maintain the meter, including reading and testing the meter.

(f) Cost recovery and compliance tariffs. All costs incurred by an electric utility to implement this section must be borne only by customers who choose non-standard metering service. A customer receiving non-standard metering service must be charged a one-time fee and a recurring monthly fee.

(1) An electric utility's application for approval of its non-standard metering service tariff or amended tariff must be fully supported with testimony and documentation. The application must include one-time fees and a monthly fee for non-standard metering service and must also include the fees for other discretionary services performed by the electric utility that are affected by the customer's selection of non-standard metering service. The commission will allow the electric utility to recover the reasonable rate case expenses that it incurs under this paragraph as part of the one-time fee, the monthly fee, or both. The application must describe the extent to which the back-office costs that are new and fixed vary depending on the number of customers receiving non-standard metering service. Unless otherwise ordered, the electric utility must serve notice of the approved rates and the effective date of the approved rates within five working days of the filing of the commission’s final order to REPs that are authorized by the registration agent to provide service in the electric utility’s service area. Notice to REPs under this paragraph may be served by email and must be served at least 45 days before the effective date of the rates.

(2) An electric utility must have a single recurring monthly fee for non-standard metering service and several one-time fees, one of which must apply to the customer depending on the customer's circumstances. A one-time fee must be charged to a customer that does not have an advanced meter at the customer's premises and will continue receiving metering service through the meter currently at the premises. For a customer that currently has an advanced meter at the premises, the fee will vary depending on the type of meter that is installed to provide non-standard metering service, and the fee must include the cost to remove the advanced meter and subsequently re-install an advanced meter once non-standard metering service is terminated. The one-time fee must recover costs to initiate non-standard metering service. The monthly fee must recover ongoing costs to provide non-standard metering service, including costs for meter reading and billing. Fixed costs not related to the initiation of non-standard metering service may be allocated between the one-time and monthly fees and recovered through the monthly fee over a shortened period of time.

(g) Retail electric product compatibility. After receipt of the notice prescribed by subsection (d)(1)(C) of this section, if the customer's current product is not compatible with non-standard metering service, the customer's REP of record must work with the customer to either promptly transition the customer to a product that is compatible with non-standard metering service or transfer the customer to another REP, subject to any applicable charges or fees required under the customer's existing contract. If the customer is unresponsive, the customer's REP of record may transition the customer without the customer's affirmative consent to a market-based, month-to-month product that is compatible with non-standard metering service. Alternatively, if the customer is unresponsive, the customer's REP of record may transfer the customer to another REP under §25.493 (relating to Acquisition and Transfer of Customers from One Retail Electric Provider or Another) so long as the new REP serves the customer using a market-based, month-to-month product with a rate (excluding charges for non-standard metering service or other discretionary services) no higher than one of the tests prescribed by §25.498(c)(15)(A) - (C) of this title (relating to Prepaid Service). The customer's REP of record must promptly provide the customer notice that the customer has been transferred to a new product and, if applicable, to a new REP, and must also promptly provide the new Terms of Service and Electricity Facts Label.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001510
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 10, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 936-7244

ADOPTED RULES May 1, 2020 45 TexReg 2885
The Comptroller of Public Accounts adopts amendments to §3.711, concerning collection and reporting requirements, without changes to the proposed text as published in the March 13, 2020, issue of the Texas Register (45 TexReg 1839). The rule will not be republished. The comptroller adopts amendments to add the fee amounts for sales of lead-acid batteries; to explain the penalty and interest provisions relating to delinquent fees and reports; and to add an exemption for maquiladora enterprises.

The comptroller amends the title of §3.711 to "Battery Sales Fee Collection and Reporting Requirements" to clearly identify the fee addressed by the section.

The comptroller amends subsection (b)(1) to include the battery sales fee amounts due under Health and Safety Code, §361.138(b) (Fee on the Sale of Batteries).

The comptroller renames subsection (c) "Due date and reporting requirements" to better reflect the content of this subsection. The comptroller moves information currently in subsection (c) to subsection (d) and information in subsection (d) to subsection (c) to reorganize the rule structure for better flow. The discussion of the due date and reporting requirements should logically come before a discussion on the report forms on which the report is filed.

The comptroller moves the content of existing subsection (e)(2) with minor wording changes, and re-letter this as subsection (f). The comptroller titles subsection (f) "Discount" and re-letter subsequent subsections. The comptroller amends re-lettered subsection (e)(2) to remove unnecessary language.

The comptroller adds subparagraph (E) to re-lettered subsection (h)(3) that provides an exemption for exports to a maquiladora enterprise. This exemption memorializes the comptroller’s longstanding practice of allowing a maquiladora enterprise to purchase batteries tax-free for export to Mexico and references §3.358 of this title (relating to Maquiladoras).

Additionally, the comptroller rewords subsection (h)(7) to state that the sale of a battery may be exempt from the fee if the battery meets certain criteria.

The comptroller adds new subsection (j) regarding penalty on unremitted fees or failure to file a report as provided under Health and Safety Code, §361.138(g).

The comptroller adds new subsection (k) regarding interest due on delinquent fees as provided under Tax Code, §111.060 (Interest on Delinquent Tax).

No comments were received regarding adoption of the amendment.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller’s Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The section implements Health & Safety Code, §361.138 (Fee on the Sale of Batteries).

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

Filed with the Office of the Secretary of State on April 14, 2020.

TRD-202001455
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: May 4, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 475-0387

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES
CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §§531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts amendments to Title 40, Part 1, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, §§9.177, concerning Certification Principles: Staff Member and Service Provider Requirements; and §§9.579, concerning Certification Principles: Staff Member and Service Provider Requirements. The amendments are adopted without changes to the proposed text as published in the February 7, 2020, issue of the Texas Register (45 TexReg 877). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of these amendments,
the minimum hourly base wage for a personal attendant was referenced in multiple rules. The Executive Commissioner is adopting new §355.7051 in Texas Administrative Code, Title 1, Chapter 355, Base Wage for a Personal Attendant, in this issue of the Texas Register, so that the base wage requirements for all of HHSC’s programs and services will be contained in that one section of Title 1. As a result of the consolidation of base wage requirements in Chapter 355 of Title 1, amendments are being adopted in §49.312 to delete the base wage requirements in that section and instead reference new §355.7051. Because §49.312 is being amended, amendments to §9.177 and §9.579 are also being adopted to correct the references to §49.312.

COMMENTS
The 31-day comment period ended March 9, 2020.
During this period, HHSC received comments regarding the proposed amendments from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rules and HHSC’s responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.
Response: HHSC appreciates TAHCH’s support of the amendments.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.
Response: HHSC appreciates TAHCH’s support of the amendments.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.
Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the amendments in response to this comment.

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

§49.312

§531.0055, §531.033, §531.041, §9.177

§531.0055, §531.033, §531.041

The amendment is adopted under 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, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to adminis-
40 TAC §41.505

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1 and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts an amendment to Title 40, Part 1, Chapter 41, Consumer Directed Services Option, §41.505, concerning Payroll Budgeting. The amendment is adopted without changes to the proposed text as published in the February 7, 2020, issue of the Texas Register (45 TexReg 879). The rule will be renumbered.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of this amendment, the minimum hourly base wage for a personal attendant was referenced in multiple rules. In the consumer-directed services (CDS) option, the requirements for payment of a base wage to personal attendants were in §41.505. The Executive Commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, in Texas Administrative Code (TAC) Title 1, Part 15, Chapter 355, in this issue of the Texas Register, so that the base wage requirements for all of HHSC's programs and services will be contained in that one section of Title 1. As a result of the consolidation of base wage requirements in Chapter 355 of Title 1, §41.505 is being amended in this issue of the Texas Register to replace its specific base wage requirements with a cross reference to new §355.7051.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed amendment from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rule and HHSC's responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH's support of the rule.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TAHCH's support of the rule.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the rule in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under 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, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on April 20, 2020.
TRD-202001521
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: May 10, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

CHAPTER 44. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES (CMPAS) PROGRAM

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts amendments to Title 40, Part 1, Chapter 44, Consumer Managed Personal Attendant Services (CMPAS) Program, §44.302, concerning Provider Qualifications and Respon-
sibilities in All CMPAS Service Delivery Options; and §44.422, concerning Individual Responsibilities in the Block Grant Option. The amendments are adopted without changes to the proposed text as published in the February 7, 2020, issue of the Texas Register (45 TexReg 881). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of these amendments, the minimum hourly base wage for a personal attendant was referenced in multiple rules. In the Consumer Managed Personal Attendant Services (CMPAS) Program, CMPAS providers in all service delivery options have been required in §44.302 to comply with Chapter 49, including the requirements in §49.312 for payment of a base wage to personal attendants. However, the Executive Commissioner is adopting new §355.7051, Base Wage for a Personal Attendant, in Texas Administrative Code, Title 1, Part 15, Chapter 355, in this issue of the Texas Register, so that the base wage requirements for all of HHSC's programs and services will be contained in that one section of Title 1. As a result of this consolidation of base wage requirements in Chapter 355 of Title 1, §49.312 in Title 40, as amended in this issue of the Texas Register, no longer refers to the base wage requirements, and instead references new §355.7051. Amendments to §44.302 are therefore being adopted in this issue of the Texas Register to specifically cross-reference the base wage requirements in new §355.7051 of Title 1, rather than including through general cross reference to Chapter 49 in Title 40. Clarifying amendments to §44.442 are also adopted to more clearly and directly reference the base wage requirements of new §355.7051.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed amendments from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rules and HHSC's responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH's support of the amendments.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TAHCH's support of the amendments.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the amendments in response to this comment.

SUBCHAPTER C. SERVICE DELIVERY IN ALL CMPAS OPTIONS

40 TAC §44.302

STATUTORY AUTHORITY

The amendments are adopted under 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, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001518
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 9, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

SUBCHAPTER D. SERVICE DELIVERY OPTIONS

DIVISION 2. BLOCK GRANT OPTION

40 TAC §44.422

STATUTORY AUTHORITY

The amendments are adopted under 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, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

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 April 20, 2020.

TRD-202001519
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 9, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

ADOPTED RULES  May 1, 2020  45 TexReg 2889
CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1 and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern procedures previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts amendments to Title 40, Part 1, Chapter 49, Contracting for Community Services, §49.102, concerning Definitions; and §49.312, concerning Personal Attendants. The amendments are adopted without changes to the proposed text as published in the February 7, 2020, issue of the Texas Register (45 TexReg 883). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement Rider 45 of the 2020-21 General Appropriations Act (GAA), Article II, HHSC, House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Rider 45). Rider 45 appropriated funds to HHSC to increase the minimum base wage paid to "personal attendants" from $8.00 to $8.11 per hour. Prior to the adoption of these amendments, the minimum hourly base wage for a personal attendant in programs and services administered by HHSC was referenced in multiple rules. HHSC is adopting new §355.7051 in Texas Administrative Code, Title 1 Chapter 355, Base Wage for a Personal Attendant, in this issue of the Texas Register, so that the base wage requirements for all of HHSC's programs and services will be contained in that one section of Title 1. For contractors subject to Chapter 49, the requirements for payment of a base wage to personal attendants were in §49.312, Personal Attendants. As a result of the consolidation of base wage requirements in Chapter 355 of Title 1, an amendment to §49.312 is being adopted to delete the base wage requirements in that section and instead reference new §355.7051. An amendment is also being adopted to §49.102 to delete the definition of "personal attendant" because the definition of that term is in new §355.7051.

COMMENTS

The 31-day comment period ended March 9, 2020.

During this period, HHSC received comments regarding the proposed amendments from the Texas Association for Home Care & Hospice (TAHCH), expressing support for the proposed rule project. A summary of comments relating to the rules and HHSC's responses follow.

Comment: TAHCH stated support for inclusion in the rate increase of attendant care and day habilitation services provided through the Community First Choice program.

Response: HHSC appreciates TAHCH's support of the amendments.

Comment: TAHCH expressed support for the adoption of a new, streamlined rule (§355.7051) that defines attendant care in one place within the Texas Administrative Code.

Response: HHSC appreciates TAHCH's support of the amendments.

Comment: TAHCH expressed concerns regarding implementation of the Fiscal Year 2020 rate increase through the managed care organizations (MCOs). The association suggested that HHSC require MCO contractors to pay community attendants a base wage of $8.11 per hour.

Response: HHSC adopts fee-for-service (FFS) rates for STAR+PLUS Home and Community Based Services (HCBS) and STAR+PLUS Non-HCBS services that follow the rate methodologies that the state would have paid if these services remained under a FFS model. These FFS rates are available to MCOs and their contracted providers for possible use in rate negotiations. HHSC made no revisions to the amendments in response to this comment.

SUBCHAPTER A. APPLICATION AND DEFINITIONS

40 TAC §49.102

STATUTORY AUTHORITY

The amendments are adopted under 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, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §32.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001523
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: May 10, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 424-6637

SUBCHAPTER C. REQUIREMENTS OF A CONTRACTOR

40 TAC §49.312

STATUTORY AUTHORITY

The amendments are adopted under 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, and Texas Government Code §531.033, which provides the Executive

For

Title

Commissioner

Department

TRD-202001525

Human

vehicle

TAC

§531.021(a), which establishes

HHSC as the agency responsible for adopting reasonable

rules governing the determination of fees, charges, and rates

for Medicaid payments under Texas Human Resources Code

Chapter 32.

The agency certifies that legal counsel has reviewed the adop-
tion and found it to be a valid exercise of the agency's legal au-
thority.

Filed with the Office of the Secretary of State on April 20, 2020.

TRD-202001525

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: May 10, 2020

Proposal publication date: February 7, 2020

For further information, please call: (512) 424-6637

 TITLE 43. TRANSPORTATION

PART 16. WILLIAMSON COUNTY TAX ASSESSOR-COLLECTOR

CHAPTER 435. MOTOR VEHICLE TITLE SERVICES

43 TAC §§435.1 - 435.16

The Williamson County Tax Assessor-Collector adopts new 43

TAC §§435.1 - 435.13, 435.15, and 435.16, concerning the reg-

ulation of motor vehicle title services, with changes to the pro-

posed text as published in the January 24, 2020, issue of the

Texas Register (45 TexReg 514). The rules will be republi-

ed.

Simultaneously, the Williamson County Tax Assessor-Collector

adopts new 43 TAC §435.14, concerning the regulation of motor

vehicle title services, without changes to the proposed text as

published in the March 13, 2020, issue of the Texas Register

(45 TexReg 1847). The rule will not be republished.

There were no comments on the proposed new sections sub-
mited to Matt Johnson, Chief Deputy of the Williamson County Tax

Assessor-Collector, or to the office in general.

Statutory Authority. The Williamson County Tax Assessor-Collect-

or adopts the new sections pursuant to Transportation Code, Chapter

520, Subchapter E, which provides the county tax ass-

sessor-collector the authority to adopt rules regarding motor ve-

hicle title services.

This adoption does not affect any other statutes, articles or

codes.

§435.1. Definitions.

(a) "Application." Except where otherwise expressly stated,

the term "Application" includes all documentation submitted with

a Motor Vehicle Title Service Application Form or Motor Vehicle Title

Service Runner Application Form.

(b) "Motor vehicle" has the meaning assigned by Texas Trans-

portation Code §501.002.

(c) "Motor vehicle title service" or "MVTS" means any person

or entity that for compensation directly or indirectly assists other

persons in obtaining title documents, in either written or electronic

form, by submitting, transmitting, or sending applications for title documents to the appropriate government agencies.

(d) "Title documents" means motor vehicle title applications,

motor vehicle registration renewal applications, motor vehicle

mechanic's lien title applications, motor vehicle storage lien title

applications, motor vehicle temporary registration permits, motor vehicle

title application transfers occasioned by the death of the title holder,

motor vehicle inquiries, license plate and/or sticker replacement or

any other motor vehicle related transaction.

(e) "Title service runner," "Runner" or "MVTSR" means any person

employed by a licensed motor vehicle title service to submit or

present title documents to the Williamson County Tax Assessor-Col-

lector on behalf of that licensed motor vehicle title service.

§435.2. License Required.

(a) License No./Effective Date. Each license granted will be

assigned a number. The effective date of issuance is the date upon

which notice is sent under §435.8(c) of this chapter (relating to Appli-

cation Review/Applicant Background Check/Applicant Interview).

(b) Original. Each licensee shall be issued one original license.

(c) A title service shall process all work at the Williamson

County Main St. office for the first ninety days of the license period,

after which the title service may process work at any Williamson County

Tax Assessor-Collector location. A title service whose license is re-

newed under §435.12(a) - (d) of this chapter (relating to License Ren-

ewal) may, upon the commencement of the renewal period, process

work at any Williamson County Tax Assessor-Collector location.

§435.3. Eligible Applicants.

A person may not apply for a Motor Vehicle Title Service License or

Motor Vehicle Title Service Runner License unless the person is:

(1) at least 18 years of age on the date the application is

submitted; and

(2) authorized to handle financial transactions whether rep-

resenting himself/herself or another.

§435.4. Criminal Background Check.

Each Applicant for a license must submit to a criminal background

check.

§435.5. Submission of Application.

Each Applicant must submit his/her completed application form, in-

cluding all required documentation, in person to the Tax Assessor-Col-

lector or the Tax Assessor-Collector's designated representative. The

Tax Assessor-Collector or the Tax Assessor-Collector's designated rep-

resentative will accept the completed Application provided Applicant:

(1) presents a valid Texas driver's license and a valid Social Security Card or, if applicable, a U.S.-issued alien identification card

issued by the Department of Homeland Security, and permits the Tax

Assessor-Collector or Tax Assessor-Collector's designated representa-

tive to make a copy of both; and

(2) pays the Application fee.

§435.6. Completion of Motor Vehicle Title Service Application.
(a) A Motor Vehicle Title Service ("MVTS") License Application will not be considered complete under §435.5 of this chapter (relating to Submission of Application) unless all applicable information identified on the Title Service License Application form ("TSLA Form") has been provided, all required documentation has been attached, and the Applicant identified on the TSLA Form has executed the Applicant Affidavit section of the Form as described in subsection (c) of this section. If Applicant Business is a partnership, each partner must submit a separate application. If Applicant Business is a corporation, each officer and director must submit a separate application and identify the state of incorporation on that application.

(b) The following documents must be submitted with and attached to the signed and completed TSLA Form:

(1) a copy of Applicant's valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) an original or certified copy of:
   (A) if Applicant Business is a DBA, each applicable Assumed Name Certificate;
   (B) if Applicant Business is a corporation, the applicable Articles of Incorporation; or
   (C) if Applicant Business is a partnership, the applicable Partnership Agreement; and

(3) all forms required by the Williamson County Tax Assessor-Collector, signed and completed as required by the Williamson County Tax Assessor-Collector.

(c) Each Applicant shall provide all information indicated on the TSLA Form, which information shall include but is not limited to:

(1) Applicant name, address, telephone number, Social Security number, date of birth, Texas Driver's license number, citizenship status, and what position the Applicant holds in the Applicant Business (i.e., owner, principal, director, officer, partner);

(2) Applicant Business name, physical address, mailing address, and telephone number(s);

(3) identification of Applicant Business type (i.e., DBA, Corporation or Partnership);

(4) name under which Service will conduct business (if different than Applicant Business name);

(5) the physical address(es) (including any applicable suite number(s)) of each location/office from which the Service will conduct business (a P.O. Box will not be accepted) and a corresponding photo, with address numbers clearly visible, of each location/building where business is to be conducted;

(6) the name(s), as applicable, of:
   (A) each individual with any ownership interest in the Applicant Business; and
   (B) each principal, officer or director of Applicant Business;

(7) whether the Applicant or Applicant Business has previously applied for an MVTS license (or permit), the result of the previous application, and whether the Applicant or Applicant Business has ever held an MVTS license (or permit) that was revoked or suspended;

(8) Applicant Business federal tax identification number; and

(9) Applicant Business state sales tax number.

(d) Each Applicant shall execute the Applicant Affidavit Section of the Form, attesting to the following:

(1) that information provided in and with the application is true and accurate; and

(2) that Applicant freely grants the Williamson County Tax Assessor-Collector and local law enforcement agencies permission to conduct a criminal background investigation on Applicant and/or Applicant's business.

§435.7. Completion of Title Service License Runner Application.

(a) A Motor Vehicle Title Service License Application will not be considered complete under §435.5 of this chapter (relating to Submission of Application) unless all applicable information identified on the Title Service License Application form ("TSRA Form") has been provided, all required documentation has been attached, and the Applicant identified on the TSRA Form has executed the Applicant Affidavit section of the Form as described in subsection (c) of this section. The following documents must be submitted with and attached to the signed and completed TSRA Form:

(1) a copy of Applicant's valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) all forms required by the Williamson County Tax Assessor-Collector, signed and completed as required by the Williamson County Tax Assessor-Collector; and

(3) sworn affidavits of each owner, partner, officer or director of the Licensed Title Service identified on the TSRA form, stating that the Licensed Title Service (which must be identified specifically in the statement by name and License No.) employs Applicant and authorizes him/her to submit or present title documents to the Williamson County Tax Assessor-Collector on its behalf.

(b) Applicants shall provide all information indicated on the TSRA Form, which information shall include but is not limited to:

(1) the name of the licensed motor vehicle title service for which the Applicant seeks a license to submit or present title documents, the MVTS License Number, and date of issue;

(2) the name, office address and office phone of the title service owner, officer or employee who will supervise Applicant;

(3) Applicant name, address, telephone number, Social Security number, date of birth, Texas Driver's license number, and citizenship status;

(4) whether the Applicant has previously applied for an MVTS or MVTSR license (or permit), the result of the previous application(s), and whether the Applicant or Applicant Business has ever held an MVTS or MVTS Runner license (or permit) that was revoked or suspended; and

(5) a sworn affidavit stating that the Applicant is employed by the motor vehicle title service identified on the Application and authorized by that motor vehicle title service to submit or present title documents to the Williamson County Tax Assessor-Collector.

(c) Each Applicant shall execute the Applicant Affidavit Section of the Form, attesting to the following:

(1) that information provided in and with the application is true and accurate; and

(2) that Applicant is employed by the Title Service identified in Section 1 of the Application to submit or present title documents to the Williamson County Tax Assessor-Collector under Chapter 520 of the Texas Transportation Code; and
§435.8. Application Review/Applicant Background Check/Applicant Interview:

(a) After acceptance of a completed application, the Williamson County Tax Assessor-Collector will conduct an initial review of the Application. If information known to or obtained by the Williamson County Tax Assessor-Collector conflicts or appears to conflict with information supplied in the Application, the Williamson County Tax Assessor-Collector may ask the Applicant to provide additional clarifying or verifying information.

(b) Following initial application review under subsection (a) of this section, the Williamson County Tax Assessor-Collector will conduct the Applicant Background check. Upon completion of this process, interviews for eligible Applicants may be scheduled according to Williamson County Tax Assessor-Collector office needs/staff availability. Applicants are responsible for reserving open interview slots, which will be assigned by the Williamson County Tax Assessor-Collector on a first-come, first-served basis. No license may issue unless each person required to apply for the requested license has completed the interview process if requested by the Williamson County Tax Assessor-Collector. During the interview process, the Williamson County Tax Assessor-Collector may question Applicant and request additional documentation for the purpose of establishing Applicant's business reputation and character.

(c) Applicants will be notified of the outcome of an application within 30 days of receiving the application or the date the interview process is completed should one be required. Such notice will be sent by certified mail:

(1) to Runner License Applicants at the home address listed on the Application; and

(2) to Title Service License Applicants at the business mailing address listed on the Application.

§435.9. License.

(a) License No./Effective Date. Each license granted will be assigned a number. The effective date of issuance is the date upon which notice is sent under §435.8(c) of this chapter (relating to Application Review/Applicant Background Check/Applicant Interview).

(b) Original. Each licensee shall be issued one original license.

(c) A title service and/or runner shall process all work at the Georgetown Main office for the first ninety days of the license period, after which the title service may process work at any Williamson County Tax Assessor-Collector location. A title service whose license is renewed under §435.12(a) - (d) of this chapter (relating to License Renewal) may, upon the commencement of the renewal period, process work at any Williamson County Tax Assessor-Collector location.

§435.10. Records and Reporting.

(a) MVTS.

(1) Each licensed MVTS must inform the Williamson County Tax Assessor-Collector of a change to its primary physical and/or mailing address by submitting a written address change request form to the Williamson County Tax Assessor-Collector. The Williamson County Tax Assessor-Collector shall update the address information upon receipt of such request.

(2) A licensed MVTS shall report a change to its principals, partners, owners, officers, or directors as provided in §435.14(b)(1) of this chapter (relating to Suspension).

(3) Each licensed MVTS must keep on file at its principal place of business:

(A) the original MVTS license and Application (including all submitted documentation); and

(B) a copy of each license issued to a Runner for that MVTS, and of the Application (including all submitted documentation) submitted by each such licensed runner.

(b) Runner.

(1) In order to submit or present documents on behalf of an MVTS, a valid runner license must be presented. A licensed runner may submit or present title documents to the Williamson County Tax Assessor-Collector only on behalf of the licensed motor vehicle title service for which he/she is a licensed runner.

(2) Each licensed Runner must inform the Williamson County Tax Assessor-Collector if his/her home address has changed by submitting a written home address change request to the Williamson County Tax Assessor-Collector. Upon receipt of such request, the Williamson County Tax Assessor-Collector will update the Runner's home address information.

§435.11. License Fees.

(a) All License fees must be paid by business check on account in the applicable (Title Service License) or employing (Title Service Runner License) Title Service's name, unless the Williamson County Tax Assessor-Collector in its sole discretion agrees to accept other forms of payment. Other forms of payment will not be accepted except as authorized in writing by the Williamson County Tax Assessor-Collector.

(b) The fee for a motor vehicle title service license shall be $300 for the initial application and $300 for each annual renewal.

(c) The fee for a title service runner license shall be $100 for the initial application and $100 for each annual renewal.

(d) The fee for replacement of a license issued under §435.9(b) of this chapter (relating to License), lost title service license, or title runner license shall be $20.

§435.12. License Renewal.

(a) A license issued under these rules expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the Williamson County Tax Assessor-Collector before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) If a license has been expired for 90 days or less, the person/entity (as applicable), may renew the license by paying to the Williamson County Tax Assessor-Collector 1-1/2 times the required renewal fee.

(d) If a license has been expired for longer than 90 days but less than one year, the person/entity (as applicable), may renew the license by paying to the Williamson County Tax Assessor-Collector two times the required renewal fee.

(e) If a license has been expired for one year or longer, the person/entity (as applicable) may not renew the license. The person/entity may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) Notwithstanding subsection (e) of this section, if a person/entity (as applicable) was licensed in this state, moved to another
state, and has been doing business in the other state for the two years preceding application, the person/entity may renew an expired license. The person must pay to the Williamson County Tax Assessor-Collector a fee that is equal to two times the required renewal fee for the license.

(g) Before the 30th day preceding the date on which a license expires, the Williamson County Tax Assessor-Collector shall notify the license holder of the impending expiration. The notice must be in writing and sent to the license holder's last known address according to the records of the Williamson County Tax Assessor-Collector.

§435.13. Denial or Revocation of License.

(a) Grounds for the denial (after completed Application submission) or revocation of a license include, but are not limited to:

(1) past or present submission by licensee or any applicant for the license, of a license application or related document to the Williamson County Tax Assessor-Collector that contains false information or that by its submission constitutes a misrepresentation of fact;

(2) the licensee or any applicant for the license has been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the sentence completion date is fewer than five years from the application date;

(3) the licensee or any applicant for the license has been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(4) one or more than one of the affiants described in §435.7(a)(3) of this chapter (relating to Completion of Title Service Runner License Application) has withdrawn his/her affidavit or otherwise informed the Williamson County Tax Assessor-Collector that Applicant is not employed and authorized to submit title documents on behalf of the title service identified in the application;

(5) disruptive or aggressive behavior by a licensee or any applicant for the license at any Williamson County Tax Assessor-Collector location that in the opinion of the Williamson County Tax Assessor-Collector creates a security concern;

(6) any dishonest, fraudulent, or criminal activity by a licensee or any applicant for the license; and/or

(7) failure to pay fines and/or fees identified in a suspension notice under §435.14(a) of this chapter (relating to Suspension) within 30 days of the suspension's effective date.

(b) Upon its determination that a license should be denied or revoked, the Williamson County Tax Assessor-Collector shall send notice of denial/revocation to the applicant/licensee by certified mail. Notice of any license denial shall be sent to each applicant at the home address listed on his/her application form. Notice of a Runner license revocation shall be sent to the most recent home address on file. Notice of a Title Service License revocation shall be sent to the attention of "all" MVTS partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file for license. The notice shall identify the grounds that warrant the determination.

(c) Revocation - effective date. Revocation shall be effective upon the date notice described in subsection (b) of this section is sent.

(d) A licensee whose license is denied or revoked may not apply for any license before the first anniversary of the date of the revocation. No applicant for a license that has been denied or revoked may apply for any license before the first anniversary of the date of revocation.

§435.15. Appeals.

(a) An applicant/licensee may appeal the denial/revocation of a license by filing a written appeal request with the Williamson County Tax Assessor-Collector within 30 days of the date notice is sent under §435.13(b) of this chapter (relating to Denial or Revocation of License). Any information/documentation in support of such appeal must be submitted with the appeal request.

(b) The Williamson County Tax Assessor-Collector shall appoint a Review Board consisting of five members. At least one member of the Review Board shall be a law enforcement officer. The Williamson County Tax Assessor-Collector may appoint one or more Williamson County Tax Assessor-Collector employees to serve on the Board. Provided at least one law enforcement officer is in attendance, appeals shall be reviewed at a meeting of at least three members of the Board. Such meetings shall be held periodically as determined by the Williamson County Tax Assessor-Collector.

(c) Timely filed appeals will be scheduled for review at the next Review Board meeting, which shall take place no less than sixty (60) days following the filing of the appeal. An applicant/licensee whose appeal is under review may attend the meeting and, at the Board's discretion, provide testimony in support of the appeal. The Board also has discretion to consider documentation not timely provided under subsection (a) of this section.

(d) Recommendation. The law enforcement officer in attendance shall preside over the meeting and determine when each appeal has been sufficiently considered, discussed and reviewed by the members in attendance. Following such determination, each member in attendance shall state and briefly describe the reasons for his/her opinion as to whether the action appealed should be sustained. Thereafter, the presiding law enforcement officer shall independently make a written recommendation to the Williamson County Tax Assessor-Collector. The written recommendation shall be signed by the presiding officer and shall identify which, if any, of the other members in attendance did not agree with it.

(e) Within fifteen (15) days of receiving the presiding officer's written recommendation, the Williamson County Tax Assessor-Collector shall make a final determination on the appeal. The Williamson County Tax Assessor-Collector shall consider the presiding officer's recommendation before making the final determination.

(f) The Williamson County Tax Assessor-Collector shall send notice of its final determination to the applicant/licensee by certified mail as follows:

(1) License denial - to each applicant at the home address listed on his/her application form;

(2) Runner License revocation - to the most recent home address on file;

(3) Title Service License revocation - to the attention of all partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file.

§435.16. Amendment of Rules.

The Williamson County Tax Assessor-Collector may amend these rules in his/her sole discretion and as deemed necessary at any time.

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

Filed with the Office of the Secretary of State on April 15, 2020.

TRD-202001477
Larry Gaddes
Williamson County Tax Assessor-Collector
Williamson County Tax Assessor-Collector
Effective date: May 5, 2020
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For further information, please call: (512) 943-1641